

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 421(ND) 2019

In the matter of

SUMUKHI SALES PRIVATE LIMITED
Karan Complex, Plot No. 108,
Agroha Mod, Hissar,
Haryana - 125047

.....Operational Creditor

V/s

Y M FOODWAYS PRIVATE LIMITED
B-14, Office No. 302A,
3rd Floor, Vikas Marg,
Laxmi Nagar,
New Delhi -110092

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 21.11.2019

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Mr. Jaswant Singh for the Petitioner
Mr. Alok Kumar for the Respondent

ORDER

Per Ms. Sumita Purkayastha (Member Technical)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.
2. The petitioner supplied raw milk to the respondent as per Invoice No. SSPL/1819/Apr/05 dated 5th April, 2018 at the agreed rates. The

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21.11.19

petitioner in accordance with the agreed terms of supply of raw milk raised invoices on the respondent. The respondent has defaulted in payment of Invoice No. SSPL/1819/Apr/05 dated 5th April, 2018 amounting to Rs. 5,39,533/-. The Petitioner has therefore filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor for its inability to liquidate their claim of Rs. 5,39,533/-.

3. As per averment, the payment should have been made immediate from the date of invoice as per the terms of invoice. However, no payment has been received even after repetitive reminders. Accordingly, the date of default is 05.04.2018.
4. The Operational Creditor has claimed as detailed as under: -

Particulars	Outstanding Amount as on 19.03.2019 (Rs.)
Invoice No. SSPL/1819/Apr/05 of Rs. 5,39,533/- due on 05.04.2018	5,39,533/-
Total	5,39,533/-

5. The Operational Creditor issued the demand notice dated 11.01.2019 as required under Section 8 of the Code was issued, demanding a total sum of Rs. 5,39,533/-.
6. In view of the Corporate Debtor's failure to reduce or liquidate its liability, the present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process

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of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) and 9(3)(c) of Code are on record to corroborate his case.

7. Pursuant to the Court notice issued to the Corporate Debtor, reply was filed and it was submitted by Corporate Debtor that the Operational Creditor supplied inferior quality of raw milk to the Corporate Debtor due to which it suffered huge losses. The Operational Creditor has deliberately not disclosed this fact before the Tribunal. It was further submitted that the Operational Creditor has therefore suppressed the material facts regarding pre-existing dispute of supply of poor quality of goods.
8. Oral arguments were also heard and order was reserved. We have gone through the documents filed by both the parties and heard the arguments made by both the counsels. The Tribunal observed that the Operational Creditor has provided all the necessary documents required for proving that the debt has been defaulted. While going through the documents, it was observed by the Tribunal that it was an admitted fact that there was a work relation between the Operational Creditor and the Corporate Debtor whereby the Operational Creditor provided goods to the Corporate Debtor and payments were remitted to the Operational Creditor for the same. The Corporate Debtor had not disputed or denied the fact that there was a working relation between the parties. However, it was admitted by the Corporate Debtor that the default of payment was made due to the

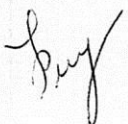
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quality of goods supplied to the Corporate Debtor. In the matter of **Rajeev K. Aggarwal Vs. Panipat Texo Fabs Pvt. Ltd. & Ors. (Company Appeal [AT] [Insolvency] No. 715 of 2018)**, decided on 27.11.2018, it was held by Hon'ble bench of NCLAT that:

"In absence of even a whisper from the Corporate Debtor suggesting that the goods supplied were defective or did not conform to the agreed standard and his failure to show any communication emanated from his side intimating the Operational Creditor that the goods supplied were defective or substandard, it should not lie in his mouth that he had raised a dispute which did not warrant admission of the Operational Creditors petition under Section 9 of the I&B Code. Raising of dispute in regard to quality of goods being inferior/substandard or defective for the first time in reply to demand notice or in response to notice served by the Adjudicating Authority would not constitute a prior and pre-existing dispute contemplated under law as a defence to the initiation of Corporate Insolvency Resolution Process, more so when the contemporary record in regard to transactions between the Corporate Debtor and the Operational Creditor at the time of delivery of goods or immediately thereafter does not demonstrate raising of any dispute with respect to quality of goods supplied by the Operational Creditor."

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It was observed that there is no proof regarding communication in regard to quality of goods supplied allegedly being inferior before issuance of the S.8 Demand Notice. Therefore, it cannot be established that there was a pre-existing dispute.

9. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

- (a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) *transferring, encumbering, alienating or disposing of by the corporate debt or any of its assets or any legal right or beneficial interest therein;*
- (c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

Further:



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(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

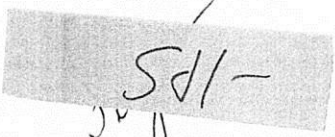
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

10. The Operational Creditor has proposed the name of IRP. Accordingly, we appoint Mr. Amit Kaushal, an Insolvency Professional, registration no. IBBI/IPA-002/IP-N00041/2016-2017/10080 email- aka_pcs@yahoo.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.




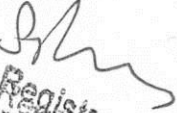
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11. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
12. Copy of the order be sent to both the parties as well as to the IRP.
13. To come up on for further consideration.


Sumita Purkayastha
Member (T)




Ina Malhótra
Member (J)


Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003
21/11/19

8-

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(T), Ms. Sumita Purkayastha is not holding court today.

SD/-

(PRABHAT KUMAR SHARMA)

COURT OFFICER



Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

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21/11/19

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