IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition
(IB)No.128/ALD/2019

In the matter of:
The Insolvency and Bankruptcy Code,2016

AND
In the matter of:
Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

AND
In the matter of :

Smt. Anuradha Devi

............*Operational Creditor/ Applicant.*

VERSUS

K K Milk Fresh India Limited

..................*Corporate Debtor/Respondent.*

ORDER DELIVERED ON :24.09.2019

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

For the Applicant/ Operational Creditor: Mr. Prateek Shukla, Adv
For the Respondent/ Corporate Debtor: Mr. Imtiyaz, Adv

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code,2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the Applicant/ operational creditor, i.e. "**Smt. Anuradha Devi**" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company **"KK Milk Fresh India Limited".**

2. The Applicant "**Smt Anuradha Devi**" is a Sole Proprietor of one "Prakash Tech Interiors"(herein after refer to as "firm"), a Sole

Proprietorship firm and mainly engaged in the business of building constructions and Interior Works.

3. The Respondent/Corporate Debtor **"K K Milk Fresh India limited"** is a Public Limited Company Incorporated on 20.01.2010 under the provision of Companies Act, 1956, bearing CIN No. U01403UP2010PLC039300. It is engaged mainly in the business of milk processing and dairy manufacturing from last one decade including cream, white butter, ghee, skimmed milk powder, butter milk powder and other allied milk and dairy products.

4. Brief facts raising to the present IB to petition are stated as follows:

   i. The learned Counsel of the petitioner stated in the petition that the sole proprietor of the firm has authorised ***Sh. Rajendra Singh*** as an authorised signatory vide letter of delegation dated 15.03.2012 to sign documents including issuing invoices and work orders on behalf of applicant. ***(Annexed as Annexure –II(b) of the application).***

   ii. The learned counsel also stated that the Corporate debtor had approached the applicant to avail services for the construction & erection of all civil and structural work and for the same the corporate debtor also placed a work order bearing no. #KKMFIL/Gur-2015-2016/0095 dated 28.01.2016 for the amount of Rs. 90,00.000. ***(Copy is annexed as Annexure-II (c) of the application).*** And accordingly started executing the work earnestly as per the specifications and requirements of the Corporate debtor.

   iii. Further stated that by an email dated 07.04.2016 Mr. Rakesh Gupta, official of the corporate debtor requested the applicant for extension of work in addition to work order dated 28.01.2016 ***(Copy of email. is annexed as Annexure –I (d) colly)*** which was agreed and was duly executed by the operational creditor as per the specifications provided by the Corporate Debtor in the effective and timely manner at designated place without there being any objection by the Corporate Debtor till date.

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iv. The learned counsel for the applicant further stated the applicant as against the work executed as per the work orders placed by the Corporate debtor, raised corresponding invoice bearing no. 114/UHT EXT/16-17 dated 05.05.2016 for the payment of Rs. 4,189.528/- and another invoice bearing no. 115/UH TEXT/16-17 dated 26.05.2016 for the payment of Rs. 1,717,500/-. which the corporate debtor has failed to clear till date. ***(Copy of the invoices are annexed as annexure-II(e) Colly).***

v. It is also submitted by the learned counsel for the applicant that on 02.06.2016, Mr. Arvind Tiwari, official of the corporate Debtor, duly checked the work performed by the applicant and signed the "UHT & Mozzeralla Slab measurement sheet, after being satisfied as to the performance of the applicant with respect to the description so given by the Corporate Debtor thus it is apparent on the face of the record that the applicant has indeed executed the work in an effective manner.

vi. It is further stated that the applicant after relentless persuasion and request made to the corporate Debtor handed over two cheques bearing Nos 334585 and 624086 with assurance that the remaining outstanding due shall be repaid within some time and the cheques will be honoured upon presentation in the bank but the cheques were bounced and returned with the remark "Fund insufficient" to the applicant.***(Copy of account statement of the applicant demonstrating the dishonour of the said cheques annexed as Annexure –II(h) of the application).***

vii. It is also stated that the Corporate debtor is in deep default of its due to the applicant against the invoices which fell due as on 21.05.2016 and 11.06.2016 respectively and the corporate Debtor is in default of its obligation to pay against the issued invoices and has not made any payment in full against the total outstanding balance of Rs. 59,07,028/-

viii. Further stated that after repeated reminders when Corporate debtor failed to fulfil its obligation then the applicant issue demand notice dated 16.02.2019 in prescribed Form-4 to the Corporate Debtor.***(Copy of the statutory Demand Notice dated 16.02.2019 annexed as Annexure I of the application)*** where in demanded repayment of the unpaid amount of Rs.59,07,028/- which was duly served by the applicant but no reply was made to the Demand Notice dated 16.02.2019 and also failed to establish any dispute with regard to the services provided by the applicant.

ix. It is also submitted that the corporate debtor never raised any objections as regards the quality of the services rendered by the applicant and after repeated request chosen not to pay the amount legally due. Thus till date, the Corporate Debtor remains to be in default of its obligation to pay principal amount of Rs. 59,07,028/- with an additional amount of Rs.35,70,229/- on account at the rate of 24%from the date of default till 04.03.2019 cumulatively coming out to be as Rs.94,76,987/- (Rupees Ninety-Four Lakhs Seventy-Six Thousand Nine- Hundred and Eighty- Seven Only*)*. ***(The computation of amount due in respect of interest till date is annexed as Annexure-II(J) of the application.)***

x. Further submitted that the present petition filed under Sec 9 of IBC has been filed within limitation and prayed for the petition to be admitted.

Sd/-

Further, the operational creditor in support of its petition has annexed the following documents: -

i. *The Copy of the statutory Demand Notice dated 16.02.2019 sent by the applicant to the corporate Debtor along with invoices and work order.* ***(The copy is annexed as annexure I of the application).***

ii. The copy of the work order bearing No. #KKMFIL/ Gur-2015-16/0095 dated 28.01.2016. ***(The Copy is annexed as Annexure II-b of the application).***

iii. *The copy of the invoices bearing no. 114/UH TXT/16-17 AND 115/UHT EXT/16-17 for payment of Rs. 4,189,528 and Rs. 1,717,500 respectively.* ***(The Copy of invoices dated 05.05.2016 and 26.05.2016 is annexed as Annexure-II (e) (Colly.) of the application.)***

iv. *The Copy of account statement of operational Creditor demonstrating the dishonour of cheques given by the Corporate Debtor.* ***(Annexed as annexure-II (h) of the application).***

6. The learned Counsel for the Corporate debtor in the counter affidavit in para 3 admits that the Corporate Debtor has placed purchase orders bearing no. #KKMFIL/Gur-2015-2016/0095 dated 28.01.2016 for the contract amount of Rs 90,00,000/-.

7. The learned counsel for the respondent further admitted in Para 14 of the counter affidavit filed by him that the Corporate Debtor on account of financial stringency, could not make the payment of the alleged amount.

8. I have heard the arguments raised by the Ld. Counsel for the Operational Creditor and the learned Counsel of the Corporate Debtor and perused the application and the reply and the documents annexed there in.

Sd

Now, before considering the submissions raised on behalf of the parties, I would like to refer Section 9 (5) of the IB Code and the same is quoted below:

<u>Sec 9: Application for initiation of corporate insolvency resolution process by operation creditor"</u>

> *(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order*
>
> *(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,--*
>
> *(a) the application made under sub-section (2) is complete;*
>
> *(b) there is no [3] [payment] of the unpaid operational debt;*

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any;

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if--

(a) the application made under sub-section (2) is incomplete;

(b) there has been [3][payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

10. Mere plain reading of the provision shows that when demand notice Under Section 8 of the IB Code is delivered for initiation of proceeding Under Section 9 of the IB Code and if no dispute has been raised by the Corporate Debtor in pursuant of the demand notice issued by the Operational Creditor then requirement is to be considered before triggering the insolvency process.

11. Therefore, in light of the aforesaid provisions, I would like to consider the present application and this adjudicating Authority is of the considered view

that the total amount claimed in default is of **Rs. 94,76,987/-** which is more than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corpoarte Debtor.

12.It is matter of record that applicant filed a copy of invoices dated 05.05.2016 and 26.05.2016 along with the present petition and the present petition is filed under section 9 of IB code on 06.03.2019. A perusal of the same goes to show that invoices of this period are found well within the limitation ***(As per section 238 A of IB Code)*** to triggered the CIRP in respect of corporate debtor.

13.From the perusal of record this Adjudicating Authority further finds that Corporate Debtor failed to raise any dispute through its reply to demand notice within ten days after receipt of Demand Notice as mandated under section 8 (2)(a) of the Code and also admits in Para 14 of the reply that on the account of financial stringency, the Corporate Debtor could not make the payment of the alleged amount.

14.Therefore, the Petitioner succeeded in proving its debt and the Corporate Debtor failed to discharge its payment liability towards supply of goods to corporate debtor as per its purchase order. The Corporate Debtor has not paid the outstanding debt owed to operational creditor despite demand notice delivered upon him under Sec 8 of the Code. Therefore, the amount and default on the side of the Operational Creditor stand proved in the present case. Therefore, petitioner is found entitled to initiate corporate insolvency resolution process as against the Corporate Debtor.

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15.In the present matter, applicant had proposed the name of the IRP, ***Swami Deen Gupta, IBBI/IPA-003/IP-N00132/2017-2018/11458*** as Interim Resolution Professional. Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. ***(Annexed as Annexure-V of the application).***

16. Thus the Petitioner, in the present IB petition, has complied with section 9 (3) (b) and 9(3)(c) by filing supporting affidavit. As the petitioner fulfils the requirement for invoking CIRP in terms of Section 9 of the Code. The present application is found complete and the default of debts is established. Hence the present petition deserves for admission.

17. Accordingly, this Adjudicating Authority hereby admit the application of the Operational Creditor and declare a moratorium in respect of corporate Debtor company for purpose referred to in section14 of the Code with the following directions:

(i) Subject to provisions of sub-sections (2) and (3), on the insolvency Commencement date, the Adjudicating Authority shall by order declare a moratorium on prohibiting all of the following, namely: —

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 Securitization 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 possession of the corporate debtor.

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

(iii) 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.

(*iv*) The order of moratorium shall with immediate effect i.e. from ***24.09.2019*** till the completion of the corporate insolvency resolution process as prescribed Under section 12 of the code.

18.***Mr Swami Deen Gupta, Registration Number IBBI/IPA-003/IP-N00132/2017-18/11458*** is appointed as Interim Resolution Professional(IRP) and he is further directed to cause public announcement of CIRP immediately as provided in Section 15 of the Code.

17. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and also to IRP.

18. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

List on ***10.10.2019*** for the filing of the progress report.

—Sd—

Abni Ranjan Kumar Sinha
Member(Judicial)

Date : 24.09.2019