IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.1459/MB-IV/2020
Under Section 9 of the I&B Code, 2016
In the matter of:
National Steel and Agro Industries Limited
[CIN: L27100MH1985PLC140379]
…Operational Creditor/Applicant
V/s
Rite Bite Trading Private Limited
[CIN: U74900MH2010PTC200116]
...Corporate Debtor/Respondent

Order Dated: 02.06.2022

Coram:

Mr. Rajesh Sharma	Mr. Kishore Vemulapalli
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Yash Jain a/w Mr. Devesh Juvekar and Mr. Dikshit Mehra i/b Rajani Associates, Advocates.
For the Respondent(s)	:	Mr. Samanth Archan, Advocate

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application being C.P. (IB) No. 1459/MB/C-IV/2020 filed by National Steel and Agro Industries Limited, the Operational

Creditor/Applicant, under Section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Rite Bite Trading Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Operational Creditor is an entity incorporated on 09.01.1985 under the provisions of Companies Act, 1956 with the Registrar of Companies, Maharashtra, Mumbai. The Application is filed by Mr. Anurag Gangrade, Authorised Representative of Operational Creditor claiming total default amount of Rs.78,61,05,760/- (Rupees seventy-eight crores sixty-one lakhs five thousand seven hundred and sixty only).

3. The Corporate Debtor is an entity incorporated on 16.02.2010 under the provisions of Companies Act, 1956 with the Registrar of Companies, Maharashtra, Mumbai. Its CIN is U74900MH2010PTC200116. Its registered office is situated at Nagpur, Maharashtra. Therefore, this Bench has Jurisdiction to deal with the present Petition.

4. The Date of Default as mentioned in the Petition is 11.05.2018. The Petition is filed on 30.12.2020. Hence, the Petition is filed well within Limitation.

5. The case of the Operational Creditor is as under:

   a) Operational Creditor is engaged in the business of Trading Agro Products and Commodities. Since 2013, Corporate Debtor has been purchasing on credit, the agricultural products namely, yellow peas from the Operational Creditor.

   b) Pursuant to the goods provided by the Operational Creditor, various invoices were raised by the Operational Creditor upon the Corporate

Debtor. Operational Creditor maintains a running account of Corporate Debtor in the books of Operational Creditor.

c) All the goods were delivered and accepted without any dispute or demur or protest.

d) The Corporate Debtor from the year 2018 failed to clear the invoices raised upon them by the Operational Creditor. Total 58 invoices were raised against the Corporate Debtor from May 2018 to August 2018.

e) The Operational Creditor submits that the Corporate Debtor has made default in payment of invoices raised between 11th May, 2018 to 06th August, 2018.

f) The Operational Creditors has issued a reminder letter dated 06.06.2018 to the Corporate Debtor to which the Corporate Debtor has replied vide its letter dated 11.07.2018 requesting to allow payment of outstanding balance in equal monthly instalments.

g) The Operational Creditor again issued another reminder letter dated 08.08.2018 for the outstanding dues. However, the Corporate Debtor has not replied to the said reminder letter.

h) Then after, the Operational Creditor issued Legal Notice dated 11.09.2018 to which the Corporate Debtor replied vide its letter dated 29.09.2018 stating inability to pay the dues.

i) The total amount aggregates to Rs.81,56,05,760/- (Rupees eighty-one crore fifty-six lakhs five thousand seven hundred sixty only). The Operational Creditor again issued Legal Notices through its Advocate dated 15.11.2018 and 18.02.2019 to the Corporate Debtor claiming total outstanding amount of Rs. 81,56,05,760/- (Rupees eighty-one crore fifty-six lakhs five thousand seven hundred sixty only) as due and payable. The Corporate Debtor replied to the said Legal Notices vide its letter dated 30.11.2018 and 27.02.2019 contending inability to pay the dues to the Operational Creditor.

j) After issuance of the above Legal Notices, the Corporate Debtor made part payment of Rs.2,95,00,000/- (Rupees two crore ninety-five lakh only) to the Operational Creditor from August 2019 to December 2019 being the last payment. Hence, the total outstanding amount is Rs.78,61,05,760/- (Rupees seventy-eight crores sixty-one lakhs five thousand seven hundred and sixty only) as due and payable.

6. The Operational Creditor issued the Demand Notice dated 21.09.2020 under Section 8 of Insolvency and Bankruptcy Code, 2016 in Form 3 to the Corporate Debtor claiming total outstanding of Rs.78,61,05,760/- (Rupees seventy-eight crores sixty-one lakhs five thousand seven hundred and sixty only). The said Demand Notice is attached at pp 33-43 of the Petition. The Corporate Debtor has not replied to the said Demand Notice.

7. The Operational Creditor filed its written submission and the same is taken on record.

8. The Corporate Debtor has filed Affidavit in Reply dated 11.12.2021 and submitted that due to adverse market conditions coupled with the onset of global pandemic of COVID-19, the Corporate debtor failed to make payments of invoices raised by Operational Creditor for a period commencing from 11th May, 2018 till 6th August, 2018.

9. When the matter was listed on 23rd December, 2021, The Bench directed the Corporate Debtor to submit last five years' Financial Statements containing Income, Expenditure, Assets and Liabilities by way of an Additional Affidavit. Accordingly, the Corporate Debtor has submitted the Additional Affidavit dated 24th February, 2022 containing the last 5 years Financial Statements. The Corporate Debtor has nowhere disputed in terms of the goods received and the invoices raised by the Operational Creditor.

10. The Operational Creditor has submitted Affidavit under section 9(3) (b) of the Code which is placed at pp 126-129 of the Petition.

11. The Operational Creditor submitted the Ledger Accounts for the period of 01.04.2018 to 30.04.2018 and 01.05.2018 to 31.05.2018. The said Ledger Account is at p.45and pp 47-49 of the Petition respectively.

Findings:

1. We have heard the arguments of the Learned Counsel for both the parties and perused the records.

2. It is observed by the Bench that the Corporate Debtor has not disputed in terms of the goods received and the invoices raised by the Operational Creditor. It is also observed that from August, 2019 to December, 2019 the Corporate Debtor has made a payment of Rs. 2,95,00,000 hence, the admitted outstanding amount is Rs 78,61,05,760/- as on the date of filing the petition. The said amount is reflected in the Ledger Account filed by the Operational Creditor.

3. As regards to the contentions of the Corporate Debtor, there is Operational Debt as defined in section 2(51) of the Code.

4. Corporate Debtor has nowhere disputed in terms of the goods received and the invoices raised by the Operational Creditor. It is observed by the Bench that the Operational Creditor has provided the agricultural product namely, yellow peas to the Corporate Debtor.

5. After perusal of the material on record, this Bench is of considered view that the there is no reason to deny the Petition under section 9 filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.

6. On perusal of the documents submitted by the Applicant, it is clear that operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Operational Creditor is liable to be admitted.

7. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.

8. The Operational Creditor has proposed the name of Navin Khandelwal as Interim Resolution Professional (IRP) in the matter and his consent has also been taken and attached in the petition.

9. It is, accordingly, hereby ordered as follows: -

   (a) The petition bearing CP (IB) 1459/MB-IV/2020 filed by National Steel and Agro Industries Limited, the Operational

Creditor, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Rite Bite Trading Private Limited [CIN-U74900MH2010PTC200116], the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium,-

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) Mr. Navin Khandelwal, registration No. IBBI/IPA-001/IP-P00703/2017-18/11301; Email: navink25@yahoo.com; is appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) as advance with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-	**Sd/-**
Kishore Vemulapalli	Rajesh Sharma
Member (Judicial)	Member (Technical)
02.06.2022	