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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/IB/9/CHE/2022

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **Varadharaja Foods Private Limited***

Shree Keshav Agro Private Limited

214-215, Garg Tower, 2nd Floor,
H-1, Netaji Subhash Place, Pitampura,
New Delhi- 110 034

...Petitioner/ Operational Creditor

-Vs-

Varadharaja Foods Private Limited

Plot No: 74, Ground Floor,
Akhshaya Apartments,
4th Street, New Fairlands,
Salem, Tamil Nadu- 636 016.

...Respondent/Corporate Debtor

*Order Pronounced on **09th November 2022***

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Operational Creditor: Mr. Pankaj Jain, Advocate

For Corporate Debtor : Mr. Gopinathan, Advocate

ORDER

Per: JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT

Under Adjudication is CP/IB/9/CHE/2022 which has been
filed by Shree Keshav Agro Private Limited (hereinafter referred to



as 'Operational Creditor') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Varadharaja Foods Private Limited (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company with CIN No: U74899DL2000PTC105695. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN: U15130TZ2009PTC015235 and was incorporated on 26.05.2009 under the Companies Act, 1956. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at Plot No 3/2C2, Veppanapalli Road, Ponnappagaunipalli Village, V.Mathepalli Post, Krishnagiri Taluk, Krishnagiri District, Tamil Nadu- 635 121. From Part III of the application, it is seen that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of this Tribunal to appoint the same.



3. The Affidavit verifying the application is placed at 'Page No-18-20' of the Application typeset and one Mr. Ranjan Kumar Kedia, has sworn the Affidavit as the authorized representative of the Operational Creditor. The said Board Resolution authorizing Mr. Ranjan Kumar Kedia is placed as "Page No 21" of the Application typeset.

4. From Part-IV of the Application, it is seen that a total sum of Rs. 2,30,20,095/- (Rupees Two Crore Thirty Lakh Twenty Two Thousand Ninety Five Thousand Only) is being claimed by the Operational Creditor as the Operational debt along with a further interest of 12 % from 30.06.2020. Further in the Application Operational Creditor has stated the date of default to be 30.07.2021.

5. Part – V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in order to prove the 'Operational debt', which are extracted as follows;

(i) Copy of the Board Resolution is annexed herewith as (Annexure: 1)

(ii) Copy of the MCA Master Data of the Corporate Debtor i.e., M/s Varadhraya Foods Private Limited and Operational Creditor i.e. Shree Keshav Agro Pvt. Ltd. is annexed herewith as (Annexure: 2)



(iii) Copy of the Demand Notice dated 29.09.2021 given by the Operational Creditor to the Corporate Debtor is annexed as (Annexure 3).

(iv) Copy of Balance Confirmation ledger issued by the Operational Creditor to the Corporate Debtor (Annexure 4).

(v) Copy of Ledger Accounts of the Corporate Debtor maintained in the Books of the Operational Creditor and Copy of the Invoices raised by the Operational Creditor (Annexure 5)

(vi) Copy of the Demand Notice dated 28.07.2020 given by the Operational Creditor to the Corporate Debtor. (Annexure 6)

(vii) Copy of Letter from Bank Confirming no outstanding payments were made by the Corporate Debtor (Annexure 7).

(viii) Copy of the Bank Account statements of the Operational Creditor .

(ix) Copy of correspondence/ communication between the Operational Creditor and the Corporate Debtor . (Annexure 8)

6. It is submitted by the Ld. Counsel for the Applicant that the Operational Creditor supplied mango, processing of mango, mango pulp and packaging materials etc., to the Corporate Debtor herein.

7. It is submitted that in pursuance to the business operations between the parties the Operational Creditor and the Corporate Debtor entered into a 'First Amendment to Corporate Guarantee for Advance' on 14.12.2020. Further it was submitted that on 31.07.2021 the notice for invocation of corporate guarantee



demanding the said amount due and payable was sent to the Corporate Debtor by the Operational Creditor and served.

8. The Ld. Counsel for the Operational Creditor submitted that in response to the said notice mentioned *Supra* did not repay the debt claimed nor disputed the same. There is no reply to the notice.

9. Subsequently, it can be seen that the Operational Creditor has issued and served the FORM-III Demand notice to the Corporate Debtor by registered post on 26.10.2021 which was delivered on 02.11.2021 claiming a sum of Rs. 2,30,20,095/- (Rupees Two Crore Thirty Lakh Twenty Two Thousand Ninety Five Thousand Only) along with a further interest of 12 % from 30.06.2020 as debt liable to be paid. The said proof of the same has been placed as Annexure-3 of the Application typeset. Further the Applicant has placed on record Section 9 (3) (b) affidavit stating that no payment against the outstanding dues was received from the Corporate Debtor after the delivery of the demand notice. The said affidavit is placed as pages 87-88 of the Application typeset.

10. The Respondent/ Corporate Debtor have filed a reply/ Counter statement in this said matter on 31.03.2022.



11. It is submitted by the Ld. Counsel for the Respondent /Corporate Debtor that owing to the COVID-19 lockdowns imposed by the state and central government, the business of the Corporate Debtor faced huge losses and the mango and mango pulp became spoiled and could not be used for business purposes. Thus the Corporate Debtor failed to meet out the demands of the Operational Creditor. Further it is stated in the Counter that the Operational Creditor is facing SARFAESI proceedings in SA No 270/2021 and the same is pending on file of DRT-II Chennai.

12. The Respondent in their reply statement has pleaded that the COVID lockdown was a *force majeure* owing to the same the Corporate Debtor could not be held responsible for the same. The Respondent has stated in para 9 of the reply statement that it was neither wilful and wanton to default in delivery of the mango pulp and the packaging material to the Operational Creditor but was a force majeure event owing to the COVID-19 lockdowns in which all the business activities in the country has come to a standstill.

13. The Corporate Debtor pressed emphasis on the following judgements which holds that COVID-19 is to be treated as a force majeure event:-

a) M/s Halliburton Offshore Services Inc –Vs- Vedanta Limited.



- b) R. Narayanan –Vs- The Government of Tamil Nadu.
- c) Sathyabrata Ghosh –Vs- Mugneeram Bangur and others.

14. In regard to the arguments made above by the Corporate Debtor the Applicant Operational Creditor has filed a rejoinder statement dated 21.04.2022. The Operational Creditor has vehemently denied all the averments made by the Corporate Debtor in the Counter statement and submitted that the even during the COVID-19 lockdown the Essential commodities Act, 1955 was enforced and this be so operation of a food processing unit, like that of the Corporate Debtor were permissible.

15. The Ld. Counsel for the Applicant submitted that the Corporate Debtor cannot escape the payment obligations by citing COVID 19 lockdown and losses in business activity as a defence to escape the holds of IBC. Further the Corporate Debtor in e-mail dated 05.09.2020 has sought time to repay the amounts due and payable and the same can be treated as 'admission' of debt and default under the IBC,2016. The said mail dated 05.09.2020 is placed as Annexure-8 of the Application typeset.

16. Heard the submissions made by the Ld. Counsel for the Applicant and perused the pleadings and documents placed on record. This Tribunal after comprehensively hearing the said matter



is of the view that, the existence of 'a debt' and 'default' had been proven based on the email communication 05.09.2020 in which the Corporate Debtor has acknowledged the outstanding dues payable amounting to the Operational Creditor. The said mail is extracted below for reference:-

ANNEXURE - 8

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From: Kumar NE VFPL <kumar@vfoods.in>
Subject: Request for need more time to repay your outstanding
Date: 5 September 2020 at 11:01:22 AM IST
To: Kedia Fresh <kedia@kediafresh.com>
Cc: Vishal Swaika <blr@kediafresh.com>, MD
<kumarnee@yahoo.com>, shahirfoods@gmail.com, Kedia Blr Accts
<blr.ac@kediafresh.com>

Basis our discussions we need more time to repay your outstanding dues, which we will do by means of direct payment and adjustment in processing charges. All dues will be settled on or before 31.07.2021. You are requested to send us your proposal for resolution as above.

Regards

N.E.Kumar
Managing Director
Varadharaja Foods Pvt. Ltd
Salem.

17. Though the Respondent has pleaded in the counter that COVID -19 lockdown has caused immense loss to the Corporate Debtor as stated *supra* the same does not hold water before this Tribunal. Further the Ld. Counsel for the Respondent during the hearing appeared and submitted that there was huge turmoil in the Corporate Debtor due to the passing away of erstwhile MD of the Corporate Debtor one Mr. NE Kumar and prayed for the Tribunal to grant time to settle the dues liable to be paid. This Tribunal empathises with the same, however as the Adjudicating authority



under 'IBC' the hands of this Bench are tied with the ropes of duty and no other option is left, as there is an existence of a 'debt and default' that has been clearly proved in this present application by the virtue of the e-mail communication extracted *supra* and the earlier correspondences, notices etc.

18. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

19. In continuum, the Hon'ble Supreme Court in various landmark judgements have reiterated that, the adjudicating authority has merely to see the records or other evidence produced and satisfy itself that a default has occurred. Thus, the Adjudicating authority in this present case is of the considered view that the 'preponderance of probabilities' clearly proves "the existence of a debt and default" which is sufficient to trigger the CIRP against the Corporate Debtor herein Viz., Varadharaja Foods Private Limited.




20. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition, as filed by the Operational Creditor, is required to be **admitted** under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between June 2022 - December 2022 appoints **MR. MUTHARASAPURAM GANESAN CHANDRASEKARAN** with *Registration No: IBBI/IPA-003/00337/2021-2022/13620 (email id: sekaranirp@gmail.com)* as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.



21. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State



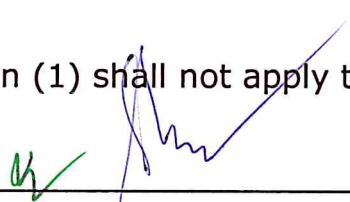
Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

22. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to





- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

23. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (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.

24. The Operational Creditor is directed to pay a sum of **Rs. 2,00,000/-** (*Rupees Two Lakhs only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the



Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

Justice Retd. RAMALINGAM SUDAKAR
PRESIDENT

Varshini