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

**IBA/842/CHE/2020**

*(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 **KOBSTER E-SHOP PRIVATE LIMITED**

**AUSTRALIAN FOODS INDIA PRIVATE LIMITED**

Represented by its Deputy General Manager (Accounts)

Mr. S. Aravamudhan

Having Registered office at Plot No-22-23

Sidco Industrial Estate,

Ambattur, Chennai- 600 058

*... Operational Creditor*

-Vs-

**KOBSTER E-SHOP PRIVATE LIMITED**

Having Registered office at No.51-B,

Mount Poonamallee Road

Saint Thomas Mount,

Chennai- 600 016.

*...Corporate Debtor*

*Order Pronounced on 8<sup>th</sup> March 2022*

PRESENT:

*For Operational Creditor : Ambili Menon, Advocate*

*For Corporate Debtor : Karthik, Director of Corporate Debtor*

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)**

**SAMEER KAKAR, MEMBER (TECHNICAL)**

ORDER

**Per: R. SUCHARITHA, MEMBER (JUDICIAL)**

Under Adjudication is IBA/842/2020 that has been filed by  
**Australian Foods India Private Limited** (hereinafter referred to  
as '**Operational Creditor**') under Section 9 of the Insolvency &

Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Kobster E- shop 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. Further, it is evident that the Operational Creditor is a Company incorporated on 12.09.1998, under the Companies Act, 1956 with CIN: U15499TN1998PTC041414. The Registered office of the Operational Creditor is Plot No. 22-23, SIDCO Industrial Estate, Ambattur, Chennai- 600 058.

3. As per Part II of the Application, the Corporate Debtor is a Private Limited Company with CIN:U74999TN2012PTC086489 and registered office of the Corporate Debtor as per the Application is stated to be at No. 51B, Mount Poonamallee Road, Saint Thomas Mount, Chennai-600 016. As per Part III of the application, 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.



4. Part IV of the application signifies the amount of debt to the tune of Rs.2,65,778 /- (Rupees. Two Lakhs Sixty Five Thousand Seven Hundred and Seventy Eight) as the outstanding dues that is payable by the Corporate Debtor with an interest of 19.5% from 14.02.2019. Further, in Part-IV of the Application the date of default is stated as 14.12.2019.

5. The Applicant herein has attached the following list of invoices in order to prove the existence of operational debt and the debt claimed:-

- i. Invoice dated 21.02.2019
- ii. Invoice dated 06.03.2019
- iii. Invoice dated 21.03.2019
- iv. Invoice dated 23.03.2019
- v. Invoice dated 25.03.2019
- vi. Invoice dated 25.03.2019
- vii. Invoice dated 26.03.2019
- viii. Invoice dated 27.03.2019

6. It was submitted that the statutory Demand notice, Form 3 as mandated under the IBC, 2016 was sent by the Operational Creditor to the Corporate Debtor on 17.09.2019, demanding the outstanding dues amounting to Rs.2,96,196/- along with 19.5% interest from 14.02.2019 and the Corporate Debtor had replied to the same vide reply notice dated 25.09.2019.

7. It was submitted by the Ld. Counsel for the Applicant that, the Operational Creditor had supplied cookies to the Corporate Debtor

with a payment term of 30 days credit. Further, on repeated remainders for payment of the amount due, the Corporate Debtor sought time to make further payments by remitting a sum of Rs. 50,000/- on 20.12.2019.

8. Incidentally, the Ld. Applicant Counsel submitted that, the Applicant had preferred this Application as the Corporate Debtor had not paid the balance outstanding amounts after repeated remainders.

9. The Ld. Counsel for the Applicant submitted that, the Corporate Debtor in the Reply Notice dated 25.09.2019 had accepted the outstanding due amounting to Rs. 2,76,157/- and further accepted to make the payment of the above mentioned amount only by 20.10.2019.

10. The Respondent has not filed any counter/ reply statement in this said matter. However, the Respondent was represented by a Director of the Company and has admitted the debt due and payable by the Corporate Debtor.

11. Heard the submissions and perused all the records placed before us. This Application under section 9 of the IBC, 2016 has been filed by the Applicant/ Operational Creditor herein on 05.02.2020 i.e. before the increase of the pecuniary limit by the central government vide **Notification, S.O 1205(E) dated 24.3.2020**. Therefore, this

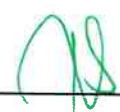


Application is maintainable and all doubts with regard to the maintainability are satisfied.

12. Further, from the Reply notice sent by the Corporate Debtor on 25.09.2019, as attached in Page No: 56-57 of this Application typeset, the Corporate Debtor has agreed to the outstanding dues of Rs. 2,76,157/- (Rupees Two lakhs Seventy-Six Thousand One Hundred and Fifty-Seven) to the Operational creditor. Thus this Tribunal is of the opinion that this is a clear case of admission of debt from the side of the Respondent/Corporate Debtor and thus we are constrained to initiate the Corporate Insolvency Resolution Process under Section 9 of the IBC, 2016 against the Corporate Debtor, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

13. 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;

14. 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.

15. 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.



16. 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 Jan 2022 – June 2022 appoints **Mr. Gopal Mohanlal**, having registration number *IBBI/IPA-001/IP-P-02387/2021-2022/13743* 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.

17. The IRP is directed to take charge of the Corporate Debtor’s management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. 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 IBC, 2016 and file his report within 30 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.

19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

20. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

21. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-** (*Rupees One Lakh 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.

22. 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.

23. The IRP is directed to file the 1<sup>st</sup> Progress Report before this Tribunal on or before the 45<sup>th</sup> day of initiation of CIRP by this Adjudicating Authority.

24. Post this IBA/842/2020 for hearing on **25.04.2022**

-Sd-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-

**R. SUCHARITHA**  
MEMBER (JUDICIAL)

*Varshini*