

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH - V**

**C.P. (I.B) No. 1164/MB/2022**

**Under Section 9** of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**T. Choitram and Sons (London) Ltd.**

Silverdale Road, Off Pump Lane, Hayes, Middlesex, UB33BL, England, UK.

**.....Petitioner/Operational Creditor**

Vs

**Tree of Life Pvt Ltd.**

Quantum Towers, Office No. 304, 3<sup>rd</sup> Floor, Rambaug, S.V. Road, Malad (West)Mumbai-400064, Maharashtra

**.....Corporate Debtor**

**Order Dated: 21.12.2023**

**Coram:**

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

**Appearances in Physical Mode:**

**For the Petitioner:** Adv. C. Keswani i/b ELP

**For the Corporate Debtor:** None Present

**ORDER**

*Per: Reeta Kohli, Member (Judicial)*

This Company Petition is filed by **T. Choitram and Sons (London) Ltd.** (hereinafter referred as “**the Petitioner/Operational Creditor**”) on **19.10.2022** seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Tree of Life Pvt. Ltd.** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 9,87,76,680/- (Rs. 9,87,76,680/- on account of payment outstanding against the Purchase Orders raised).**

**Brief Facts of the Case and Submission by the Petitioner:-**

1. The present petition has been preferred by the Operational Creditor against the Corporate Debtor for not having paid, admitted dues, to the extent of Rs. 9,87,76,680/-.
2. The case of the Operational Creditor is that he had supplied food and associate products to the Corporate Debtor against duly validated purchase orders dated 25.04.2019 and 07.08.2019. The aforementioned purchase order dates are also the Dates of Default in the present case.
3. The Operational Creditor has also placed on record the Balance Sheet for financial year ending 31.03.2019 of Corporate Debtor so as to substantiate his case before filing the present petition under section 9.

4. A Statutory Demand Notice dated 06.08.2021 under Section 8 in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 of the Code, was served upon the Corporate Debtor together with all supporting documents. The said notice was responded to by the Corporate Debtor on 27.08.2021 stating therein that they are in the process of assessing files in the office and sought some time to respond in detail to the said Demand Notice.
5. Even prior to the issuance of Demand Notice the Operational Creditor has placed E-mails on record to prove the fact that parties were in communication so as to resolve the issue of pending dues. The E-mails sent from the Operational Creditor to the Corporate Debtor dated 16.05.2019 and 21.08.2019 substantiate the same. In fact, on 07.09.2019 the Corporate Debtor responded to the same stating that it was facing technical difficulties due to some ongoing updation in tally software which they were trying to rectify.
6. Ultimately the Corporate Debtor made a proposal vide E-mail dated 23.11.2023 suggesting two alternate/options to the Operational Creditor so as to settle the issue of pendency of debt. The options proposed vide E-mail dated 23.11.2021 are reproduced as under:

**“Option 1:** *We go as per the suggested payment schedule of 24 months with a total payable of Rs. 2,79,75,415.55 with payments starting 30 days from signing the agreement. The situation can be reviewed on a bi-annual basis to see if any acceleration or additional lump sum payment is possible.*

**Option 2:** *Year 1 at the rate of Ra. 11,65,642.31 starting 30 days from signing of an agreement. Year 2 we can accelerate the balance*

*payment in 8 months (Rs.17,48,463.46 per month). We will still attempt to ensure any lump sum payments as and when possible to accelerate however this only be in Year 2.”*

7. After having perused the above stated options the Operational Creditor chose option 2 vide E-mail dated 07.12.2021. Ultimately, the parties prepared draft settlement based on option 2 which was shared between both of them. This draft settlement was prepared in January 2023. After exchange of this draft settlement the Operational Creditor failed to illicit any response from the Corporate Debtor, which is evident from the perusal of the E-mail dated 22.02.2022.
8. Ultimately, vide E-mail dated 02.05.2022 the Corporate Debtor gave another twist to the agreed proposal and offered to Operational Creditor to buy the equity of the Corporate Debtor stating as under:

*“Since the time the amount payable as well as schedule have been agreed upon, we have been trying to bring in an investor or strategic partner to bear this burden with us. Unfortunately, no one wants to come on board a company due to this large operational debt. Everyone is keen to invest to grow the business but not to fund older losses and dues. Plus, there are other financial lenders as well who need to be settled. Hence all attempt at raising money have failed. The company is in major losses due the lack of working capital, increased input costs and Covid 19 ravages. All attempts are being made to revive this company back from the brink have failed and we are even deeper in the hole.*

*Most of our agencies are discontinuing their agreements since we have had payment issues.*

*Most of the staff has resigned, and we are unable to replace the same. Most our markets have shut down as a result.”*

*We don't have the working capital to bridge the looming loss and then earn the money to pay the instalments.*

*In fact, I believe the additional burden would just kill the company all together.*

*I would like to put the proposal to the Choithrams to once again consider Converting this loan into equity and taking over the company in totality. Maybe under their management and with fresh infusion of funds this company can be brought back from the brink.”*

9. In response to this E-mail sent by the Corporate Debtor, an E-mail dated 30.05.2022 declining the offer of buying equity of the Corporate Debtor was sent by the Operational Creditor. The audited financials for the year ending 31.03.2022 of the Corporate Debtor were asked for.

### **Findings**

1. At the very outset, we mention that the Corporate Debtor filed no reply to this Petition even though it had been given several opportunities with sufficient time period. Hence, in view of the fact that it is a petition preferred in 2022, the Bench decided to proceed against the Corporate Debtor ex-parte vide its Daily Order dated 28.08.2023.
2. In view of the fact that there is no denial on the part of the Corporate Debtor we are constrained to accept the fact submitted by Operational Creditor as correct and admitted. The Operational Creditor has also placed on record the Balance Sheet of the Corporate Debtor from 01.04.2018 to 31.10.2019 showing the amount due and payable towards the Operational Creditor. The amount due reflected in the Balance Sheet is the same amount for which the present Company Petition under section 9 has been

preferred by the Operational Creditor. Therefore, in view of the stated facts and documents placed on record the amount due stands established.

3. Since there is no reply to the petition filed by the Corporate Debtor other than as has been stated earlier the question of existence of any pre-existing dispute does not arise.
4. The present petition has been filed well within limitation and is also within the pecuniary, subject-matter and territorial jurisdiction of this Hon'ble Tribunal.
5. In light of the above findings it is clearly established that all the mandatory ingredients of Section 9 of the Code have been fully satisfied and hence we are of the considered view that this present petition deserves to be **admitted**.

### **ORDER**

- a. In view of the aforesaid findings, the above Company Petition No. 1164/IBC/MB/2022 is hereby **admitted** and thereby initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Tree of Life Pvt. Ltd.
- b. Since there is no proposal for the name of Interim Resolution Professional by the Petitioner, Pournima Jayant Tungatkar having Registration Number IBBI/IPA- 002/IP- N01188/2021-2022/13989 is appointed as the Interim Resolution Professional from this Tribunal's Panel.
- c. The Petitioner shall deposit an amount of **Rs. 2 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour

of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.
- k. **Accordingly, CP 1164 of 2022 is admitted.**

Sd/-

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

//VLM//

Sd/-

**REETA KOHLI**  
**MEMBER (JUDICIAL)**