

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH

Company Petition  
(IB)No.32/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 :

**BAFF ENGINEERS (P) LTD**

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

**VERSUS**

**M/s FARMECH FOODS PVT. LTD.**

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

**ORDER RESERVED ON : 23.01.2020**  
**ORDER DELIVERED ON :04.02.2020**

**CORAM:**

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant/ Operational Creditor: Mr. Sanyam Jain, Advocate  
For the Respondent/ Corporate Debtor:

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

**Order**

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. "**Baff Engineers (P) Ltd.**" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "**M/s Farmech Foods Pvt. Ltd.**"
2. The Applicant "**BAFF Engineers (P) Ltd.**" is a private limited company incorporated under the provision of Companies Act, 1956, bearing CIN No. U29248DL19996PTC078829 has registered office at D-84 City Apartment, Vasundhara, Delhi-110096 and is engaged in supply of

— s-d —

Turnkey contract, installation and commissioning of all kinds of processing plant including Dairy Processing Plant.

3. The Respondent/Corporate Debtor "**M/s FARMEC Foods Pvt. Ltd**" is a Private Limited Company Incorporated on 03.07.2012 under the provision of Companies Act, 1956, bearing CIN No. U01403UP201PLC051294 having authorised share capital Rs.6,50,00,000 and paid up share capital Rs.6,39,99,500.
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 operational creditor has authorised **Mr. Anil Bhan, Managing director of Baaf Engineers (P) Ltd.** as an authorised person for submitting an application on behalf of operational creditor. **(Copy of the Board Resolution dated 20.12.2018 as annexed as Annexure -1/B of the application).**
  - ii. The learned counsel also stated that the corporate debtor has issued purchase order no. 53/2012-13 dated 20/08/2013 and 56/2012-13 dated 31/10/2013 for turnkey contract for supply, installation and commissioning of dairy processing plant phase I & phase II at site village kadriganj Tehsil, Bilaspur of Rs 5,44,00,000/- and Rs. 2,23,00,000.
  - iii. Further stated by the counsel for the applicant that the operational creditor had supplied, installed and commissioned dairy processing plant phase I and phase II (partly) (Milk plant) at site village kadriganj Tehsil, Bilaspur and raised invoice of Rs. 6,56,43,312/- (Rupees Six Crore Fifty-Six lac forty-Three thousand Three Hundred and Twelve Only) during the period 30.10.2013-05.02.2016.
  - iv. It is further stated that that the operational creditor has received total payment of Rs. 5,31,53,832 and the amount of default is Rs. 1,24,89,480 which is unpaid towards the liability to the operational creditor.
  - v. Further stated that the operational creditor had sent a notice to the Corporate Debtor on 18.12.2018 under Sec 8 of the IB Code, 2016 for the repayment of the unpaid amount of Rs. 1,24,89,480 (Rupees One Crore Twenty-Four Lac Eighty-Nine Thousand Four Hundred Eighty) exclusive of interest which is in default within 10 days of receipt of this notice and the notice was delivered to the corporate debtor at its registered address on 22.12.2018. However corporate debtor had failed to repay the outstanding debt and



— 5-d —



replied to the demand notice that the amount of Rs. 1,19,64,674 is only pending and need more time to repay unpaid amount due to his bank not releasing the capital grant money and not agreeing on a workable resolution plan.

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

- i. The Copy of the statutory Demand Notice dated 18.12.2018 sent by the applicant to the corporate Debtor along with invoices and work order. **(The copy is annexed as annexure 1/F of the application along with the postal tracking report).**
- ii. The copy of invoices and payment made on receipt of the material and the computation of outstanding debt. **(The copy is annexed as annexure 1/C and Annexure 1/D of the application).**
- iii. The copy of statement of bank account where deposits are made or credits received normally by the operational creditor in respect of the debt of the corporate debtor. **(The copy is annexed as annexure 1/E of the application).**
- iv. The copy of the reply of the demand notice by the corporate debtor dated 22.12.2018 **(The copy is annexed as annexure 1/G of the application).**

6. It is matter of record that the respondent/ corporate debtor company despite sufficient notice issued to it, did not choose to contest the matter. Therefore this tribunal vide its order dated 28.05.2019 directed the matter to proceed exparte against the respondent. Today also, none present on behalf of the respondent.

7. I have heard the arguments of the Ld. Counsel for the Operational Creditor and perused the application and the documents annexed there in.

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

**Sec 9: Application for initiation of corporate insolvency resolution process by operation creditor"**

(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;

— 5-d —



- (b) there is no <sup>3</sup> [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 <sup>3</sup>[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.



9. 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.

10. 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. 1,24,89,480-** which is more than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor.

11. It is matter of record that applicant filed a copy of invoices dated 24.05.2014 to 05.02.2016 along with the present petition and the present petition is filed under section 9 of IB code on 21.01.2019. 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.

— 5-d —



12. 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 reply to the demand notice that an amount of Rs. 1,19,64,674 is pending and need more time to repay the unpaid amount due to his bank not releasing the capital grant money and not agreeing on a workable resolution plan.

13. 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.

14. 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.

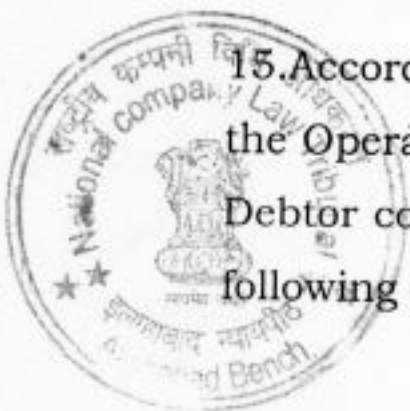
15. Accordingly, this Adjudicating Authority hereby admit the application of the Operational Creditor and declare a moratorium in respect of corporate Debtor company for purpose referred to in section 14 of the Code with the following directions:

*(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for 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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing off 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*



— S-d —

action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

*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.]

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.



— 5-d —



(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 in the present matter the applicant did not propose the name of the IRP. Hence, this Adjudicating Authority hereby appoint **Ms. Hemi Gupta** **IBBI/IPA-002/IP-N00147/2017-18/10383** as Interim resolution Professional.

17. IRP is directed to cause public announcement of CIRP immediately as provided in Section 15 of the Code.

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

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

List on **26.02.2020** for the filing of the progress report.

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**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**Date: 04.02.2020**

Swati Gupta  
(LRA)

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

Compared by Me  
Mahesh Sahai  
4/02/2020

*[Signature]*  
4/2/2020  
**P. P. PANDEY**  
ASSISTANT REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD-U.P.

**FREE OF COST COPY**

