

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

In CP No. (IB) 36/9/JPR/2022

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

IN THE MATTER OF:

M/s Sanmati Edible Oils Private Limited
CIN:U15142RJ1999PTC015476
Regd. Office at: A-20, Subhash Nagar,
Jaipur-302016

... Applicant / Operational Creditor

VERSUS

M/s Satwiki Proteins Private Limited
CIN:U15147RJ2013PTC041240
Regd. Office at: Khasra No. 1118-1121,
Chomu Ajitgarh Road, Markhi,
Tehsil Shahpura, Jaipur-303601

... Respondent/Corporate Debtor

For the Applicant : Mr. Nitesh Shrivastava, Adv.
For the Respondent : None Appeared

Order Pronounced on:13.01.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by M/s Sanmati Edible Oils Private Limited through its authorised signatory Mr. Suresh Chand Jain ('Operational Creditor' / 'Applicant'), seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against Satwiki Proteins Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant, M/s Sanmati Edible Oils Private Limited, is a manufacturer of crude mustard oil and de-oiled mustard cake. Its registered office is located at: A-20, Subhash Nagar, Jaipur-302016. The alleged default on the part of the Respondent for the non-payment of operational dues amounts to Rs. 3,00,67,474/- (Rupees Three Crores Sixty Seven Thousand Four Hundred Seventy-Four Only).
3. The Corporate Debtor, M/s Satwiki Proteins Private Limited, is a private limited company incorporated under the Companies Act, 1956 on 09.01.2013, having CIN: U15147RJ2013PTC041240. The Respondent has its registered office at – Khasra No. 1118-1121, Chomu Ajitgarh Road, Village Markhi, Tehsil Shahpura, Jaipur-303601. The Corporate Debtor has an Authorised Share Capital of Rs. 7,00,00,000/- (Rupees Seven Crores Only) and a Paid-Up Share Capital of Rs. 7,00,00,000/- (Rupees Seven Crores Only).

4. The details of the transactions leading to the filing of this Application as averred by the Applicant *vide* Diary No. – 1279/2022 dated 27.04.2022 are as follows:

a. The Applicant has received various purchase orders through a broker from the Corporate Debtor for the purchase of Mustard Cake. The details of the orders during the period between 13.07.2021 to 27.09.2021 are as follows:

Date	Particulars
13.07.2021	M/s Satwiki Proteins Private Limited-100/105 MT-2850
09.08.2021	M/s Satwiki Proteins Private Limited-100/105 MT-2975
25.08.2021	M/s Satwiki Proteins Private Limited-250/255 MT-3025
06.09.2021	M/s Satwiki Proteins Private Limited-100/105 MT-3250
11.09.2021	M/s Satwiki Proteins Private Limited-100/105 MT-3250
18.09.2021	M/s Satwiki Proteins Private Limited-100/105 MT-3200
22.09.2021	M/s Satwiki Proteins Private Limited-100/105 MT-3190
27.09.2021	M/s Satwiki Proteins Private Limited-100/105 MT-3175

Copy of the Purchase Orders are annexed as Annexure-A5 of the Application.

b. Against these Purchase Orders, the Applicant raised various invoices, amounting to Rs. 3,00,67,474/- (Rupees Three Crores Sixty-Seven Thousand Four Hundred Seventy-Four Only) from 12.08.2021 to

16.10.2021 which remained unpaid. Copy of the Invoices are annexed as Annexure A3 of the Application. It is alleged that the Respondent failed to make a payment of Rs. 3,00,67,474/- (Rupees Three Crores Sixty Seven Thousand Four Hundred Seventy-Four Only) to the Applicant. Copy of the Ledger Account of Corporate Debtor maintained by Applicant is annexed as Annexure A4 of the Application.

- c. The Applicant, in pursuance of the above cause of action, issued a Demand Notice dated 07.04.2022 ('Demand Notice') to the Respondent through speed post at the registered office of the Respondent. The Demand Notice under Section 8 of the IBC stated the unpaid Operational Debt as Rs. 3,00,67,474/- (Rupees Three Crores Sixty Seven Thousand Four Hundred Seventy-Four Only). The notice called for the immediate payment of the operational due within ten days from receipt of the Demand Notice failing which the Applicant shall initiate proceedings of CIRP against the Respondent Company. Copy of the Demand Notice dated 07.04.2022 annexed as Annexure A6 of the Application.
- b. The aforementioned details, as reflected in Part IV of the Application, are as follows:

Part IV

PARTICULARS OF OPERATIONAL DEBT

1.	Total Amount of Debt, Details of Transactions on account of which debt fell	Total amount of debt: Rs. 3,00,67,474/- (Rupees Three Crores Sixty-Seven Thousand Four Hundred Seventy-Four Only).
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	due, and the Date from which such debt fell due.	
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 3,00,67,474/- (Rupees Three Crores Sixty Seven Thousand Four Hundred Seventy-Four Only). Date from which Debt fell Due: 16.10.2021

5. In spite of the service of notice on the Corporate Debtor, there was no representation. The Applicant was directed to issue a notice of hearing in the newspapers (one English and one Hindi) to the Respondent *vide* Order dated 01.08.2022. The compliance for the same is done by the Applicant *vide* Diary No. 2637/2022 dated 02.09.2022.

6. It is noted that the Respondent has not filed any reply to this application in spite of having numerous opportunities provided by this Authority in the matter and has wilfully avoided appearance in the present case. Thus, the Respondent has forgone its right to file a reply and ex-parte proceedings are being initiated against it.

7. During the hearing, the learned counsel for the Applicant relied on the Application filed and stated that the requirements of Section 9 of the Code were satisfied. We have carefully considered the submissions of learned counsel for the Applicants and have perused the record.

8. This Adjudicating Authority having perused all the relevant papers and finding them in the order notes that the Registered Office of the Respondent is situated in Jaipur, and therefore Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of Laws of Limitation, as the time period of default is in the year 2021 and the Application has been filed before this Adjudicating Authority on 28.04.2022, hence the period of three years after the default occurred had not been exhausted at the time of filing of this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
9. In the present case, the occurrence of default is evidenced by the details furnished by the Applicant. Further, the copies of purchase orders through a broker, copies of the various invoices, the copies of signed and sealed ledger accounts by the Corporate Debtor in the books of the Applicant, and the copy of the Demand Notice dated 07.04.2022 are attached to the Application.
10. In *M/s S.S. Engineers versus Hindustan Petroleum Corporation Ltd. & Ors. Civil Appeal No. 4583 OF 2022*, in para 16, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 16 is as follows:-

“16. When examining an application under Section 9 of the IBC, the Adjudicating Authority would have to examine (i) whether there was an operational debt exceeding Rupees 1,00,000/- (Rupees One Lac); (ii) whether the evidence furnished with the application showed that

debt exceeding Rupees one lac was due and payable and had not till then been paid; and (ii) whether there was existence of any dispute between the parties or the record of pendency of a suit or arbitration proceedings filed before the receipt of demand notice in relation to such dispute. If any one of the aforesaid conditions was not fulfilled, the application of the Operational Creditor would have to be rejected.”

8. The application filed in the prescribed Form No. 5 is complete.
9. The Operational Debt and further default in the debt payment should be established to initiate proceedings under Section 9 of the IBC. The Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor, as it has committed a default. Therefore, the Adjudicating Authority has come to the view that the Corporate Insolvency Resolution Process of the Corporate Debtor should be initiated.
10. The Applicant has named one Mrs. Garima Diggiwal with Registration No. IBBI/IPA-001/IP-P-02018/2020-2021/13158, duly registered with the Insolvency and Bankruptcy Board of India, to be appointed as the Interim Resolution Professional ('IRP'). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP. The credentials of the proposed IRP have been checked from the IBBI website, and nothing adverse is found on record. A copy of the Written Consent of the IRP is annexed as Annexure – A7 of the Application.
11. Consequences of initiation of CIRP shall be inter-alia as follows:

- a. The Insolvency Resolution Professional proposed by the Applicant, Mrs. Garima Diggiwal, is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issuance of publication in widely circulated Newspapers as contemplated under the provisions of IBC, 2016 and calling for claims from the creditors of Corporate Debtor and collation of the same shall be done.
- b. Further, as a sequel of admission, the moratorium, as envisaged under Section 14 of IBC, 2016, is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly per the timelines specified and as envisaged under the provisions of IBC, 2016, concerning the Corporate Debtor.
- c. The said IRP shall act strictly in accordance with the provisions of IBC, 2016, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rs. Two Lakh Only) to the bank account of IRP within three days from the date of this Order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors ('CoC'). Further, the fees of

the IRP shall be regulated as per the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2022 notified on 13.09.2022.

- d. In terms of Sections 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor, including promoters and the Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- e. In terms of Section 9 of IBC, 2016, this Order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, and the IRP appointed by this Adjudicating Authority to carry out the CIRP. A copy of this Order shall also be communicated to IBBI for its records.

12. Accordingly, CP No. (IB) 36/9/JPR/2022 is admitted in the abovementioned circumstances.

DEEP
CHANDRA
JOSHI

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANT
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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**