

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court -II)  
KOLKATA**

CP(IB) No. 245/KB/2021

*A petition under section 9 of the Insolvency and Bankruptcy Code, 2016 read  
with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016.*

***In the matter of:***

**Express Dairy Company Limited**, being a company under the Companies Act 2013, having CIN: U51224WB1930PLC006634 and having its registered office at 198, Bhupen Roy Road, Behala, Kolkata – 700034, in the state of West Bengal.

*.....Operational Creditor*

*-Versus-*

**Njoy Blues LLP**, a limited liability partnership, as defined in section 2(1)(n) of Limited Liability Partnership Act, 2008 and having Identification No- AAO-3175 and its registered office at 22/6/1A, Rustomjee Street, 1<sup>st</sup> Floor, Kolkata-700019, in the State of West Bengal.

*.... Corporate Debtor*

**Date of pronouncing the order: 29<sup>th</sup> November 2022**

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Appearances (via video conferencing/ physical ):**

For Operational Creditor : Mr. Nirmalya Dasgupta, Advocate  
Ms. Ankita Agrahari, Advocate

**ORDER**

***Balraj Joshi, Member (Technical):***

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by **Express Dairy Company Limited.** (Operational Creditor), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Njoy Blues LLP** (“Corporate Debtor”).
3. The Corporate Debtor is a limited liability partnership incorporated on 19.02.2019. The total obligation of contribution of the Corporate Debtor is ₹10,00,000/-.
4. The total amount claimed by the Operational Creditor is ₹1,66,94,856.37 paise. The Demand notice under section 8 of the Code was issued by the Operational Creditor on 19<sup>th</sup> July 2021. No reply to the same was issued by the Corporate Debtor.
5. **Submissions on behalf of the Operational Creditor:**
  - 5.1 The Operational Creditor is engaged in the business of production and distribution of processed milk and milk products and supplied the same to the Corporate Debtor. The Proposal Letter dated May 27, 2019 received from Corporate Debtor was duly accepted by the Operational Creditor *vide* letter dated May 29, 2019. Copies of the letters dated 27<sup>th</sup> May 2019 and 29<sup>th</sup> May 2019 are annexed with the petition as **Annexure V** at page no. 21 and 22 respectively.
  - 5.2 Thereafter the Operational Creditor *vide* letter dated 7<sup>th</sup> June, 2019 quoted the price for the supply of the above-mentioned goods and the terms were duly accepted by the Corporate Debtor *vide* letter dated June

8, 2019. However, the Corporate Debtor, *vide* its reply, requested the Operational Creditor to lower the price of the items to be delivered. Copies of the said letters are annexed with the petition as **Annexures VI** and **VII** at page no. 23 and 24 respectively.

- 5.3 It was agreed between the parties herein that the Corporate Debtor would take delivery of the said goods from the factory site of the Operational Creditor. It was further agreed that the Corporate Debtor shall have to make payment in advance prior to effecting dispatch of each consignment. Accordingly, an initial advance payment of ₹91,250/- was made by the Corporate Debtor.
- 5.4 The Operational Creditor raised several invoices against such supplies from time to time aggregating to an amount of ₹1,51,08,011.60 paise. The said invoices were received by the Corporate Debtor without demur.
- 5.5 The Operational Creditor issued email dated 26<sup>th</sup> August 2019 to the Corporate Debtor enclosing the Accounting Vouchers to the Corporate Debtor. The Corporate Debtor, in reply, issued email dated 29<sup>th</sup> August 2019, thereby informing that it has decided to pay ₹2,96,785/- and also assuring thereby that it would regularize the payment system.
- 5.6 Thereafter, on follow ups by the Operational Creditor, the Corporate Debtor under the cover of its letter dated 2<sup>nd</sup> October, 2019, handed over a cheque for ₹15,00,000/- through one of its sister concerns, to be kept only as security money, to be encashed only in case the Corporate Debtor defaulted in payment of the bills raised by the Operational Creditor. Copies of the letter dated 2<sup>nd</sup> October, 2019 along with the cheque dated 4<sup>th</sup> October, 2019 are annexed to the petition as **Annexure X**.
- 5.7 Thereafter, the Corporate Debtor has handed over multiple cheques drawn by its sister concern, which on presentation, have been

dishonoured. Copies of the such cheques and their return advices are attached to the petition as **Annexure XI and XVIII.**

- 5.8 The Corporate Debtor thereafter by a letter dated January 6, 2020 submitted that they will be clearing their entire outstanding amount against the said invoices by January 9, 2020. A copy of the letter dated January 6, 2020 is annexed hereto and marked as **Annexure XII.**
- 5.9 On 16<sup>th</sup> March, 2020, the Operational Creditor issued a letter to the Corporate Debtor recording the outstanding amounting to ₹1,05,88,717/- as on 16<sup>th</sup> March, 2020 and requested the Corporate Debtor to arrange for immediate remittance by March 20, 2020. A copy of the letter dated March 16, 2020 is annexed hereto and marked as **Annexure XIII.**
- 5.10 On 9<sup>th</sup> July, 2020, the Operational Creditor issued a reminder letter regarding the overdue outstanding payments stating that unless the full amount was received by them by 10<sup>th</sup> July, 2020, the Operational Creditor would have no choice but to stop supply of the goods as well as initiating litigation process for such continued defaults.
- 5.11 The Corporate Debtor, in spite of several assurances has neglected to repay its dues to the Operational Creditor. The Corporate Debtor has admitted to its liability towards the Operational Creditor *vide* letter dated 10<sup>th</sup> July 2020 wherein it again promised to clear its dues by 14<sup>th</sup> July 2020.
- 5.12 Due the dishonour of cheques issued by the Corporate Debtor, the Operational Creditor initiated litigation process against it under section 138 of the Negotiable Instruments Act, 1881 and accordingly sent demand notice under section 138 read with section 141 of the Negotiable Instruments Act, 1881. The Corporate Debtor replied to the same *vide* letter dated 3<sup>rd</sup> August 2021. Further, the Operational Creditor issued

demand notice under section 8 of the Insolvency and Bankruptcy Code, 2016 on 19<sup>th</sup> July 2021, which was received by the Corporate Debtor on 22<sup>nd</sup> July 2021.

5.13 Copy of Demand Notice under Form 3 dated July 19, 2021 sent to Corporate Debtor on July 19, 2021 and the same got delivered on July 22, 2021 is annexed with the petition as **Annexure XIX** at page no. 321 to 335A.

5.14 Bank Statements of Operational Creditor is annexed with the petition as **Annexure XXV** at page no. 393 to 627. Further, an Affidavit under Section 9(3)(c) of IBC 2016 is annexed with the petition at page no. 628 to 631. Also, an Affidavit under Section 9(3)(b) of IBC 2016 though not annexed with the petition but was filed separately before Hon'ble NCLT on September 10, 2022.

5.1 Thereafter, the Operational Creditor filed an application under sec 9 of Code against the Corporate Debtor. The amount of debt is inclusive of principal amount of ₹1,29,87,138.10/- and ₹37,07,718.27/- towards interest which is calculated @18% p.a. up to August 15, 2021.

5.2 The Operational Creditor had received some of the part payments against the total default on February 19, 2021 from the Corporate debtor. Thereafter the Corporate Debtor has not paid any amount against their default.

## **6 Analysis and Findings:**

6.1 Heard the Ld. Counsel on behalf of the Operational Creditor and perused the record.

- 6.2 Due to continued non-appearance on behalf of the Corporate Debtor, it has been set *ex parte* by this Adjudicating Authority *vide* order dated 12<sup>th</sup> July 2022.
- 6.3 Further, this Adjudicating Authority has directed the Operational Creditor to file an Affidavit under section 9(3)(b) *vide* order dated 2<sup>nd</sup> November 2022. The said order has been complied with and an Affidavit under section 9(3)(b) has been filed on 10<sup>th</sup> September 2022.
- 6.4 The Adjudicating Authority, while deciding a petition under section 9 of the Code, has to check on three main aspects *i.e* debt, default and dispute, besides the aspect of limitation. The Adjudicating Authority has to ensure that a debt is due from the Corporate Debtor to the Operational Creditor, that the Corporate Debtor has defaulted in paying the said debt and that there are no pre-existing disputes or record of pendency of any suit or arbitration proceedings in relation to such dispute.
- 6.5 On perusal of the communications between the parties as produced on record, including the Corporate Debtor's letter dated 6<sup>th</sup> January 2020, it is clear that the Corporate Debtor has promised to clear its outstanding dues against the invoices issued by the Operational Creditor.
- 6.6 The debt and its default can further be established from the Corporate Debtor's letter dated 10<sup>th</sup> July, 2020 issued to the Operational Creditor, wherein the Corporate Debtor has admitted to being a defaulter of the overdue payment and promised to make the payment by 14<sup>th</sup> July 2020. In light of the multiple admissions on part of the Corporate Debtor towards its default in repayment of the outstanding dues, coupled with the bank statements of the Operational Creditor, which indicates that no payments have been made by the Corporate Debtor since 14<sup>th</sup> July 2020, this Adjudicating Authority is satisfied that there is a debt due from the

Corporate Debtor to the Operational Creditor, and the Corporate Debtor has admittedly defaulted in the repayment of the same.

- 6.7 Due the dishonoring of cheques issued by the Corporate Debtor, the Operational Creditor initiated litigation process against it under section 138 of the Negotiable Instruments Act, 1881 as well as issued demand notice under section 8 of the Insolvency and Bankruptcy Code, 2016 on 19<sup>th</sup> July 2021, which was received by the Corporate Debtor on 22<sup>nd</sup> July 2021. However, no reply to the same has been issued by the Corporate Debtor, as has been affirmed by the Affidavit under section 9(3)(b) of the Code. It has further been affirmed by said affidavit that there are no pre-existing disputes with respect to the debt amount claimed by the Operational Creditor.
- 6.8 It is noted that no specific date of default has been mentioned in the Form 5 of the petition. However, on perusal of records, it can be seen that the invoices raised by the Operational Creditor range from 31<sup>st</sup> July 2019 to 2<sup>nd</sup> September 2020. As such the date of default cannot precede 31<sup>st</sup> July 2019. That indicates that the limitation period will, at the very least, extend till 31<sup>st</sup> July 2022. The instant petition, having been filed on 21<sup>st</sup> August 2021, therefore, is well within the period of limitation. Since the primary purpose of the date of default is to ensure that the petition is filed within limitation, therefore, in the instant matter, this Adjudicating authority, having been satisfied that the petition is compliant of laws of limitation, is inclined to condone the said technical error on part of the Operational Creditor.
- 6.9 It is noted that the claimed amount being ₹ ₹1,66,94,856.37 paise (inclusive of principal amount of ₹1,29,87,138.10/- and ₹37,07,718.27/- towards interest) is above the minimum pecuniary threshold of ₹1 Crore, required to institute corporate insolvency proceedings under the Code. The petition is therefore complete in all respects.

6.10 In light of the above facts and circumstances, this Adjudicating Authority is satisfied that a debt from the Corporate Debtor towards the Operational Creditor is due and defaulted on, therefore, the instant petition should be admitted. We, therefore, pass the following orders: -

- a) The application bearing **CP (IB) No. 245/KB/2021** filed by **Express Dairy Company Limited**. (*Operational Creditor*), under section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Njoy Blues LLP**, the Corporate Debtor, is **admitted**.
- b) There shall be a moratorium under section 14 of the IBC.
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Mr. Arun Poddar**, registration number **IBBI/IPA-001/IP-P02237/2020-2021/13387**, email: **ca.arunpoddar@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor, to carry out the functions as per the Code, subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry

out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) The Operational Creditor shall initially deposit a sum of ₹ 3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance

report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- 7 **CP (IB) No. 245/KB/2021** to come up on **05.01.2023** for filing the progress report.
- 8 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

**Signed on this, the 29<sup>th</sup> day of November, 2022**

SM(LRA)