

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. (IB) 415/MB/2019

Under Section 8 & 9 of the IBC, 2016

In the matter of

Om Traders

Shop No. 584-A, New Sabji Mandi,
Kamal, Haryana- 132041

.... Petitioner

v/s.

SARU Agro Foods Limited

Office No. B-301, 3rd Floor, Plot No. 36,
Vishnu Commercial Complex, Sector-15,
CBD Belapur, Navi Mumbai, Thane,
Maharashtra- 400614

.... Corporate Debtor

Order Delivered on 14.11.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. Amit Mishra, Adv. Gaurang A. Patil

For the Corporate Debtor: Adv. Jeetendra Kumar Pandey

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. This Company Petition is filed by Om Traders (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against SARU Agro Foods Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹11,99,138/- including interest at the rate of 18% per annum on the delay in payment by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The petition reveals that the Corporate Debtor approached the Petitioner for purchase of garlic seeds. The Corporate Debtor issued purchase order dated 16.01.2017 upon the Petitioner. Accordingly, the Petitioner effected the supply and raised an invoice on 16.01.2017 on the Corporate Debtor for ₹11,50,000/-. After taking in account the payments made, there is a balance of ₹9,65,000/- receivable from the Corporate Debtor.



3. The Petitioner issued Demand Notice dated 22.06.2018 in Form 3 & 4 under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding payment of ₹11,99,138/- which is inclusive of interest.
4. The Petitioner has annexed the copies of the purchase order and invoice raised pursuant to the delivery of products.
5. The Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no notice of dispute given by the Corporate Debtor.
6. On 12.9.2019, during the hearing, the Counsel for the Petitioner produced an email dated 24.07.2019 addressed by the Advocate of the Corporate Debtor to the Petitioner proposing to negotiate and settle the matter. The following is the content of the email:

"Dear Sir,

As per the telephonic conversation and I read your email on behalf of the M/S SARU Agro Foods Ltd., Corporate Debtor Mr. Ashok Rao, we finally agreed and ensure to you that our director is ready to settle the matter with our Corporate Creditor at the proper time and place so that we should come to final conclusion of ascertain amount to honor to your Corporate Creditor.

I request you please co-operate with us and place a reliance to the Corporate Debtors.

Thanking You

With warm regard"

It is submitted that there was no proposal from the corporate Debtor's side.

7. Even though, the Counsel for the Corporate Debtor has attended for all the hearings, no reply was filed, this bench has heard both the sides and reserved the matter for orders.
8. On going through the Form-5, the related documents submitted therein, and after hearing the submissions, this bench is of the view that the Corporate Debtor has committed default and the petition deserves admission.
9. Mr. Atul Babulal Shah, having office at Mahavir Dham-A/1A,48/51 Garodia Nagar, Ghatkopar (East), Mumbai- 400077, having email address shahatul_b@yahoo.com, having Registration No. IBBI/IPA-001/IP-P01102/2017-18/11795 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

10. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

(a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including



- execution of any judgement, decree or other in any court of law; 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.
- (b) 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.
- (c) 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.
- (d) that the order of moratorium shall have effect from 14.11.2019 till the completion of the CIRP 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.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) that this Bench hereby appoints Mr. Atul Babulal Shah, having office at Mahavir Dham-A/1A,48/51 Garodia Nagar, Ghatkopar (East), Mumbai-400077, having email address shahatul_b@yahoo.com, having Registration No. IBBI/IPA-001/IP-P01102/2017-18/11795 as Interim Resolution Professional to carry the functions as mentioned under the Code.
11. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-

V. Nallasenapathy
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)

