



**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 226/Chd/Chd/2020  
Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of:**

**Om Sai Boxes**

Plot No. W-167  
MIDC, Pawane Village  
Navi Mumbai-400705

...Petitioner-Operational Creditor

Vs.

**C & A Farm Fresh Pvt. Ltd.**

House No. 1329, Sector 34C  
Chandigarh-160022  
CIN No. U01119CH2010PTC032189

...Respondent-Corporate Debtor

**Judgement delivered on: 23.08.2023**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-  
Operational Creditor : Ms. Mandeep Gujral, Advocate

For the Respondent-  
Corporate Debtor : Ms. Divya Sharma, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)**

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Om Sai Boxes** through its authorised representative and partner, Mr. Manoj Rajendra Singh (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate



Corporate Insolvency Resolution Process (**CIRP**) in case of M/s C&A Farm Fresh Pvt. Ltd. (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, M/s C&A Farm Fresh Pvt. Ltd., is a Company incorporated on 28.04.2010 under the provisions of the Companies Act, 1956 with CIN No. U01119CH2010PTC032189 with its registered office at Sector-34C, Chandigarh, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure VI .

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is a manufacturer of corrugated boxes, sheets, rolls and packaging materials. The corporate debtor is a supplier of mangoes, onions and fresh fruits. Upto November,2016 respondent placed orders and the material was supplied accordingly thereby raising invoices. On 17.02.2017, the last payment was received from the corporate debtor. Despite the repeated reminders, the outstanding amount was not paid by the corporate debtor.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 20,66,028.76/- (Rupees Twenty Lakh Sixty Six Thousand Twenty Eight and Seventy Six Paise Only) including 24% interest of Rs. 8,96,029.76/-. The default occurred on 17.02.2017 i.e. date on which last payment was made by the corporate debtor. Copy of invoices (Annexure II), Partnership deed of M/s Om Sai Boxes (Annexure II/4), Bank Statement (Annexure III) are attached with the main petition.



5. A demand notice in Form 3 is stated to be issued by the operational creditor on 15.01.2020 and the same has been delivered to the corporate debtor vide registered post as the postal receipt and tracking reports are attached at Annexure-I of the petition. The corporate debtor did not reply to demand notice till date.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Dairy No. 02256/01 dated 22.07.2021. The corporate debtor has filed a reply vide diary No. 02256/2 dated 25.10.2021, wherein it is stated that the petition arises from a pre-existing dispute between the parties. The quality of boxes was not as per specifications leading to damage of fruits packed in boxes leading to financial loss to the respondent. Mr. Arvind Gulsia, Managing Director visited the Mumbai office of the petitioner company and during discussing the quality of boxes was admitted by the petitioner. It was mutually agreed that all balance payments would be made commencing w.e.f. May, 2018 to 31.03.2019 without interest. The respondent remitted various sums of money in cash amounting to Rs. 11,69,948/-. The books of respondent duly reflect these amounts paid to the petitioner, despite receiving the amount notice has been issued. The invoice stated to be due from 29.06.2016 to 30.11.2016 includes GST @18%, however, the GST regime was introduced in India only w.e.f .01.07.2017. No amount is due or payable. The petitioner has filed false affidavits. The present petitioner is time-barred. The bank statement annexed neither bears the name of the account holder nor it is signed by the bank. No authority letter is annexed to the demand notice. The present petition is signed by Mr.



Manoj Rajendra Singh. However, the partnership deed dated 10.12.2015 does not give any authority to initiate proceedings under IBC,2016.

7. The rejoinder was filed vide Diary No.02256/3 dated 21.02.2022, wherein it is stated that there was no pre-existing dispute between the parties. The dispute arose only after the issuance of the legal notice. The issue of specification and quality of boxes was never raised. The respondent never made any payment in cash. The GST charged at 18% is on the interest amount and is charged on the day of the demand notice i.e. 15.01.2020 when the GST regime was applicable. The last payment was received on 17.02.2017 and the application was filed on 17.02.2020, within 3 years time limit as per Limitation Act. Any partner is allowed to sign the demand notice.

8. The short written submissions have been filed by the petitioner vide Diary No. 02256/5 dated 11.07.2022 and by the respondent corporate debtor vide diary No.02256/4 dated 01.06.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in Form-3 dated 15.01.2020 was properly served. The demand notice delivered to the corporate debtor vide registered post as the postal receipt and tracking reports are attached at Annexure-I of the petition. The corporate debtor did not reply to the demand notice till date. Therefore, a demand notice was duly served.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is submitted by learned counsel for



an operational creditor that no notice has been given by the corporate debtor relating to a dispute of the unpaid operational debt arising out of the invoices.

The corporate debtor has stated that the petition arises from a pre-existing dispute between the parties. The quality of boxes was not as per specifications leading to damage of fruits packed in boxes leading to financial loss to the respondent. However, there is no cogent evidence placed on record to show that the dispute existed between the parties much before the issuance of the demand notice. There is no correspondence between the parties to that effect. Hence, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand.

Although, issue of GST has been raised by the corporate debtor but same is not admitted as nothing has been placed on record to prove the same. Apart, the respondent has raised the issue of authorization to file the present petition by Mr. Manoj Rajendra Singh, the partner. However, this contention is devoid of legal force because the petitioner is a partnership firm and in law of partnership each partner has joint and several liability. Thus, he is competent to file the present petition.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 15.01.2020 in Form 3 attached as (Annexure I) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e. 17.02.2017 i.e. date on which last payment was made by the corporate debtor. This application was filed vide Diary No. 1271 on 17.02.2020 and was re-filed on



03.03.2020 vide Diary No.1733. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 20,66,028.76/- (Rupees Twenty Lakh Sixty Six Thousand Twenty Eight and Seventy Six Paise Only) including 24% interest of Rs. 8,96,029.76/-. Copy of invoices (Annexure II), Partnership deed of M/s Om Sai Boxes (Annexure II/4), Bank Statement (Annexure III) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

14. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

15. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **M/s C&A Farm**



**Fresh Private Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. In Part-III of Form No. 5, Mr. Paresh Mehta Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Paresh Mehta and there is nothing adverse against him. In view of the above, we appoint Mr. Paresh Mehta, Registration No. IBBI/IPA-003/ IP-N00099/2017-2018/ 11008, E-mail:pareshmehta5959@gmail.com, Mobile No. +91-7021008921, the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Paresh Mehta shall be in accordance with the provisions of Section 16(5) of the Code;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;



iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider



kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific



mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.



17. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- a) 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;
- b) transferring, encumbering, alienating or disposing of 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 action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 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.

18. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.



19. The order of moratorium shall have effect from the date of this order till 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.

20. The petitioner is directed to deposit an amount of ₹40,000/- (Rupees Forty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

21. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

22. This petition is accordingly admitted.

Sd/-  
(Subrata Kumar Dash)  
Member (Technical)

Sd/-  
(Harnam Singh Thakur)  
Member (Judicial)

August 23 , 2023  
PKA/TBG