

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-686/ND/2020

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

M/s Sahni International,

Having registered address at

J-7/49, Rajouri Garden,

New Delhi-110085

...Operational Creditor/Applicant

Versus

LRM Spices Pvt. Limited

Regg. Office:

D-16/75, Ground Floor, Sector-3,

Rohini, North West Delhi, New Delhi-110085

...Corporate Debtor/Respondent

Delivered on 13.05.2022

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Narender Kumar Bhola

Hon'ble Member (Technical)

Appearances:

Operational Creditor : Adv. Jaspreet Singh

Corporate Debtor: Adv. Sanjeev Panda



ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. Under consideration is IB-686/ND/2020 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s Sahni International is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') of the Corporate Debtor viz., M/s LRM Spices Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -

- a. The present petition is being filed by the Operational creditor for debt of Rs. 36,36,706/- (Rupees Thirty Six Lakhs Thirty Six Thousand Seven Hundred and Six Only) (Principal Rs. 29,68,740/- plus interest Rs. 6,67,966/- calculated at 18% per annum from September, 2018 till January, 2020) which is due and payable by the Corporate Debtor. It is stated that the Corporate Debtor and the Operational Creditor have been in business relations since May, 2017 whereby the Corporate Debtor placed orders upon the Operational Creditor for supply for various spices from time to time.



- b. It is submitted that in accordance with the orders placed by the Corporate Debtor, the Operational Creditor supplied the required quantity and quality of spices to the Corporate Debtor timely and to its satisfaction without any protest or demur. The Operational Creditor used to supply material at Corporate Debtor's Haryana factory as well as its Delhi office as per the requirement of the Corporate Debtor. The Operational Creditor raised invoices upon the Corporate Debtor from time to time for the material supplied which were duly delivered by the Operational Creditor and received by the Corporate Debtor with acknowledgment. The Corporate Debtor has never raised any objection/protest/demur regarding the quality, quantity, prices, invoices etc. of the material/spices supplied to it by the Operational Creditor. Despite having received the material to its satisfaction and despite acknowledging the invoices, the Corporate Debtor failed to make payments in full and consistently defaulted in making payments. As such an outstanding payment of Rs. 29,68,740/- (Rupees Twenty-Nine Lakhs Sixty-Eight Thousand Seven Hundred and Forty Only) became due and payable by the Corporate Debtor as on September, 2018.
- c. It is further submitted that the Corporate Debtor issued various cheques in favour of the Operational Creditor to discharge its liability in part towards the aforementioned outstanding payments



due and payable to the Operational Creditor. One of the said cheques being Cheque No. 296964 of Rs. 5,19,199/- drawn on Vijaya Bank which was deposited by the Operational Creditor returned unpaid on the ground of insufficient funds. When confronted with the same, the Corporate Debtor requested the Operational Creditor not to deposit other cheques and assured the Operational Creditor that it shall soon clear the outstanding payments as it was in some financial difficulty at the time. Based on its requests and assurances, the Operational Creditor did not deposit the other cheques and trusted that the Corporate Debtor would make the outstanding payments.

- d. It is averred that the Corporate Debtor, on several occasions, was requested to clear the outstanding dues through various emails but it did not pay any heed to such reminders and cleared only a meagre amount during May to September, 2018. It is stated that the Operational Creditor has served statutory demand notice dated 20.01.2020 in Form 3 and Form 4 as prescribed under Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via speed post, courier, email and registered post at the registered address of the Corporate Debtor, latest of the delivery being on 01.02.2020. However, the Corporate Debtor has neither replied to it raising any objection/dispute nor has the Corporate Debtor made



any payment to the Operational Creditor against the outstanding amount within statutory period of 10 days after receipt of the Demand Notice. Hence, the present petition.

3. The Corporate Debtor has filed the reply to the present petition and questioned the status of operational creditor and further submitted that the applicant has supplied to the respondent, the substandard poor quality spices which was found with live and dead infestation with glass pieces and some wanted things not fit for human consumption and same was communicated to the operational creditor on phone and product rejection report is annexed with the reply and most of the products were returned or rejected in the warehouse by the importer. Due to the above poor quality of product, the corporate debtor did not purchase any material from operational creditor since 2018. Hence, prayed that in light of the above facts and circumstances, the petition may be rejected.
4. The Operational Creditor also filed rejoinder and reiterated all the facts mentioned in the petition and further submitted that the Respondent has filed false and fabricated documents i.e. details of allegedly rejected material from M/s Navya Imports and Product Rejection Reports. It is pertinent to mention that the Respondent for the first time in the present reply has taken this objection that the goods of the Applicant



were of substandard poor-quality as alleged. The said objection has never been taken by the Respondent prior to filing the present reply or the application for setting aside the ex-parte order dated 18.03.2021. The Respondent has never intimated to the Applicant orally or in writing, that the goods of the Applicant were of substandard poor-quality or that the same have been rejected by the importer Navya Imports. The Respondent has failed to file any document on record to show that the applicant was informed about the said objection of the respondent. It is averred that the Respondent has relied upon an email dated 02.07.2020 allegedly sent by the importer M/s Navya Imports to the Respondent and has contended that the said importer has suffered huge losses owing to the poor-quality material exported by the Respondent which was supplied to them by the Applicant. The said contention of the Respondent is false, concocted and misleading as it is inconceivable that an importer would complain about poor-quality of perishable products over more than two years of the shipments having been delivered to them. The fact that the alleged email is sent so belatedly i.e. on 02.07.2020 when the shipments were sent to the importer admittedly in 2017-18. The said email was never intimated to applicant. Hence, reiterated its prayer for initiation of CIRP of Corporate Debtor.



5. During the oral arguments, the operational creditor brought our attention to production and rejection report and invoices. As per invoice no. 5/2017-18 dated 10.07.2017, Bay leaves were supplied by the operational creditor on 10.07.2017, however, the production rejection report of bay leaves is dated 09.07.2017 i.e., one day prior, and how can such report be relied under such circumstances. The operational creditor further argued that there is dried ginger slices production rejection report dated 23.11.2017 with respect to invoice no. 137/2017-18, however, there is no supply of dried ginger slices as per invoice no. 137/2017-18 dated 23.10.2017. It is further stated that there is production rejection report dated 05.04.2018 of cumin whole as alleged to be supplied vide invoice no. 137/2017-18, however, there is no supply of cumin whole vide invoice no. 137/2017-18 dated 23.10.2017. Furthermore, there is production rejection report dated 06.04.2018 of coconut powder alleged to be supplied vide invoice no. 137/2017-18, however, there is no supply of coconut powder vide invoice no. 137/2017-18 dated 23.10.2017. Hence, submitted that such report is not reliable in view of the above facts and circumstances.
6. We have perused the pleadings and arguments advanced by both the parties. It is clear from the pleadings that the Operational Creditor has supplied the goods to the Corporate Debtor as evident from invoices



annexed, furthermore, admittedly there is no dispute raised by the corporate debtor before the filing of reply to the present petition, which cannot be taken into consideration at this time. Moreover, the production rejection report is also doubtful as evident from the instances brought to our knowledge by the counsel of Operational Creditor as discussed in the preceding paragraph. Also there is an amount outstanding which corporate debtor has defaulted in payment as evident from the ledger account. It is also pertinent to mention that the Notification regarding the enhancement of minimum amount of default to one crore for the purpose of Section 4 was issued by the Ministry of Corporate Affairs on 24th March, 2020 and the amount defaulted by the Corporate Debtor and filing of the petition was much before the said date. Since any notification issued by the Government is generally prospective in nature unless specifically expressed, therefore the notification is not applicable to the present case. Hence, this authority is inclined to initiate the CIR Process of Corporate Debtor, therefore, the captioned petition is **admitted**.

7. The Applicant has not proposed any insolvency resolution professional. This Adjudicating Authority, hereby, appoints Insolvency Professional namely, **Mr. Satish Kumar Chugh** having Registration Number IBBI/IPA-003/IP-N00270/2020-21/13196 (Email ID-skchugh@gmail.com) as Interim Resolution Professional from the list



provided by IBBI. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.

8. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.



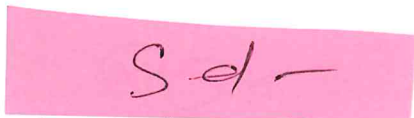
9. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.
10. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his functions under section 20 of the IBC, 2016. The Operational Creditor is directed to immediately pay an amount of Rs. 2,00,000/- as advance to IRP for performing the duties as per the relevant provisions of the Code and relevant regulations. The said amount of Rs. 2,00,000/- shall be adjustable upon constitution of Committee of Creditors by the IRP.
11. The Operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.
12. The Registry is directed to serve a copy of this order on Registrar of Companies, Delhi & Haryana for appropriately updating the status of Corporate Debtor on M/O Corporate Affairs website for information of



general public. The RoC as aforesaid shall then file a compliance report in this regard with this Adjudicating Authority.

13. IA-1306/2022 and IA-1140/2022 have been filed by the Applicant/Operational Creditor seeking interim relief. Since, the present petition (IB-686(ND)/2020) stands admitted, therefore, there is no requirement to go in merits of the above mentioned IAs and issues therein are already addressed in captioned petition. Hence, IA-1306/2022 and IA-1140/2022 stands disposed of in view of the admission order passed in the captioned petition by this Adjudicating Authority.

14. The order is pronounced by this Adjudicating Authority in virtual Hearing.



(Bachu Venkat Balaram Das)
Member (Judicial)



(Narender Kumar Bhola)
Member (Technical)