



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

COURT-III

Item No.05

IB-408(ND)/2022

IN THE MATTER OF: -

RAM RATAN JAGATI

Sole Propreitor Of JJ Trading FZE

P6-ELOB office no. E-32G-34, P.O Box 51016

Hamriyah Free Zone,

Sharjah, UAE

.....Operational Creditor

Versus

DHARITRIMAA URJA PRIVATE LIMITED

F-35/4, Ground Floor,

Okhla Industrial Area

Phase - II, New Delhi – 110020

..... Corporate Debtor

Order pronounced on 09.06.2023

CORAM:

BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open court vide separate sheets. Application bearing IB- 408/ND/2022 stands ***admitted***.

SD/-

ATUL CHATURVEDI

MEMBER (TECHNICAL)

SD/-

BACHU VENKAT BALARAM DAS

MEMBER (JUDICIAL)



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-408/ND/2022

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

RAM RATAN JAGATI

Sole Propreitor Of JJ Trading FZE

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DHARITRIMAA URJA PRIVATE LIMITED

F-35/4, Ground Floor,

Okhla Industrial Area

Phase - II, New Delhi – 110020

..... Corporate Debtor

Delivered on: - 09.06.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Atul Chaturvedi

Hon'ble Member (Technical)

**Appearances:**

Operational Creditor : Mr. Lakshay Dhamija and Mr. Sahil Dutta, Advocates
Corporate Debtor : Mr. Prashant Mehta and Mr. Raghav Marwah, Advocates

ORDER

Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The instant application bearing IB-408/ND/2022 has been 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, One Mr. Ram Ratan Jagati (sole proprietor) of JJ Trading FZE is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., Dharitrimaa Ujra Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

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

- a. It is submitted that, the Operational Creditor is engaged in the business of production of ferrous and non-ferrous products for sale in domestic and export markets and the Corporate Debtor is engaged in the business of trading of metal scrap and crude palm oil.



b. It is further submitted that, Corporate Debtor approached Operational Creditor for supply of various materials including crude palm oil and placed order for the same. Further, the Operational Creditor supplied the above mentioned materials to the Corporate Debtor from time to time.

c. It is averred that, a total 7 transaction took place between the parties over the period of business relation. Out of the said 7 invoices, the Corporate Debtor made payments of 6 invoices and remaining 1 invoice of 18.11.2015 remained unpaid. The last payment for an amount of US \$ 1,248,000 was received by the Operational Creditor on 25.10.2017.

d. It is further averred that, the Operational Creditor had been regularly following up with the Corporate Debtor over calls and emails and prayed the Corporate Debtor to pay the outstanding payment. Corporate Debtor from time to time had been acknowledging its liability and inter alia had sought time to make the payment due on several grounds. Such acknowledgement of debt by Corporate Debtor has been made through letters starting from 25.03.2016 to 26.02.2020.

e. It is further averred that, despite repeated reminders Corporate Debtor has failed to pay the dues.

3. Per contra, Corporate Debtor has not raised any legal defence in the reply and submitted that the Corporate Debtor is facing some financial difficulties and despite continuous efforts of the management, the Corporate Debtor has



failed to generate profit from the existing business. Corporate Debtor has further submitted that, it will indeed be very difficult for the Corporate Debtor to pay the Operational Debt as demanded by the Applicant.

4. We have heard the arguments advanced by Ld. Counsels appearing for Operational creditor as well as for the Corporate Debtor and also perused the records.

5. The Operational Creditor's claim is based on the facts that, In 2015 Corporate Debtor approached Operational Creditor for supply of various materials including crude palm oil and placed order for the same. The Corporate Debtor has failed to pay the outstanding amount of the invoice dated 18.11.2015 for which debt has occurred.

6. It is further submitted that, Operational Creditor sent demand notice u/s 8 (1) of the Code to the Corporate Debtor on 18.08.2021. The total amount of debt in respect of which default is claimed in the notice is Rs. 3,21,36,427/- being converted to INR from US \$ 4,32,348/- @ Rs. 74.33 as on 17.08.2021. Corporate debtor has also responded to the demand notice on 19.11.2021 and promised to pay the outstanding amount within a period of 60 days. However, Corporate Debtor has not repaid the amount in default till date of filing the instant application even after persistent reminders and notices.

7. However, in this matter, before deciding the issue of admission of the Corporate Debtor into CIRP on the basics of the instant application filed u/s 9 of the IBC, 2016 we are required to decide following questions: -



- I. Whether this petition is barred by the law of Limitation?
- II. Whether a Foreign entity can file plea for initiation of CIRP u/s 9, IBC, 2016.

8. As regards to the first issue of limitation it is observed that, the Operational Creditor has raised its invoice on 18.11.2015 and accordingly the Date of Default mentioned in Part – IV in this instant petition is 18.11.2015. Further, it is confirmed that this instant application was filed on 04.04.2022 which is filed after the 3 years. The Applicant has placed on record a copy of Section – 8 demand notice dated 18.08.2021 and reply by the Corporate Debtor dated 19.11.2021, wherein Corporate Debtor has acknowledged the debt and promised to pay the outstanding amount within a period of 60 days. The extract of the above mentioned letter is reproduced below for reference: -

Sir,

We are in receipt of your demand notice dated 18.08.2021. As discussed with your Client, we wish to inform you that we have discussed the matter regarding the outstanding payment which will be made in due course and not later than 60 days. We request you to seek instructions and hold any further action.

9. It is pertinent at this stage to refer the decision of NCLT, New Delhi Bench given in ***M/s. SSP PRIVATE LIMITED vs. M/s. GOVIND JEE DAIRY MILK***



PRIVATE LIMITED, Company Petition No. (IB)-532(ND)/2022. The relevant para of the judgement is reproduced below for reference: -

(PARA – 17)

However, it is also trite now that an application under Section 9 of the Code, 2016 would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of default when the debt became due, if there were an acknowledgement of the debt or part payment by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years as envisaged under Section 18 of the Limitation Act, 1963 or under Section 19 of the Limitation Act, 1963 respectively. It is pertinent to note that the effect and operation of Section 18 of the Limitation Act, 1963 or Section 19 of the Limitation Act, 1963 is not to revive a debt, the recovery of which is time barred as per the Limitation Act, but only to extend an existing period of limitation.

Thus, in the present case, the Corporate Debtor has vide reply to demand notice dated 19.11.2021 has acknowledged the debt and promised to pay the outstanding amount within a period of 60 days. It is amply clear that the Corporate Debtor has acknowledged the debt after doing part-payment of the Operational Debt so, the fresh period of limitation would start from 19.11.2021 and this petition is filed on 04.04.2022 which is in the period of limitation and hence maintainable.



10. As regards to the second question it is relevant at this stage to refer the decision given in ***Forever Glory Trading Limited vs. Global Power source (India) Limited. C.P. (IB) No. 3735/NCLT/MB/2018.*** The relevant extract of the judgement is reproduced below for reference: -

(PARA – 21)

The objection that the Petitioner is a foreign entity and cannot file the present petition is not tenable in view of Sec. 3(23(g) and 25) of I & B code, wherein, the definition of person includes person resident outside India.

(PARA – 26)

The Application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than one lakh rupees against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

Thus, in the light of decision referred to ***supra***, we are of the considered view that the instant Application filed by the applicant is complete in every required manner and the applicant has successfully proved the debt and default by placing true copy of the due invoices issued in the name of Corporate Debtor.

11. In the light of the averments made by both sides, and on perusal of records, we observe that the claims made by the Operational Creditor towards the goods supplied to the Corporate debtor shall fall within the ambit of the



definition of Operational Debt and the applicant will qualify as an Operational Creditor in terms of section 5(20) of the Code. Further, the averments of the applicant stating that there is a 'debt' which the corporate debtor was liable to pay but failed to do so have not been rebutted by the Corporate Debtor by placing any suitable evidence on record. Therefore, this Adjudicating Authority is inclined to admit the Corporate Debtor into CIRP under the provisions of the Code.

12. The Operational Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Alok Kumar Agarwal having Registration No. IBBI/IPA-001/IP-P00059/2017-18/10137 as IRP email id-(alok@insolvencyservices.in). The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

13. The moratorium is declared which shall have effect from the date of 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 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's 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 Securitisation 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 Corporate Debtor.

e. The explanation below section - 14 (1) also stipulates "that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period".



14. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, the provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

15. 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 function under section 20 of the IBC, 2016.

16. The Operational Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect so that IRP could take charge of the Corporate Debtor's assets etc., and make compliance with this order as per the provisions of IBC, 2016.

17. Further, the Operational creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

18. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA site of Ministry of Corporate Affairs for information of all concerned.



19. **Accordingly, the instant Application bearing IB - 408/ND/2022 stands *admitted*.**

SD/-
(Atul Chaturvedi)
Member (Technical)

SD/-
(Bachu Venkat Balaram Das)
Member (Judicial)