

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB-1311/ND/2018**

*(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:

Mr. DEEPAK KHANDELWAL

...Applicant/Operational Creditor

VERSUS

M/s FE AAGROCHEM PVT LTD

...Respondent/Corporate Debtor

Pronounced on: 03.09.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant: Mr. Rupesh Kumar Tyagi, Adv.

For the Respondent:

MEMO OF PARTIES

M/s DEEPAK KHANDELWAL

Proprietor M/s Tamoliya Enterprises

Having its office at:

1, Old Industrial Area,

Delhi Road, Near Alwar Malt Factory,

Alwar, Rajasthan

...Applicant/Operational Creditor

VERSUS

M/s FE AAGROCHEM PVT. LTD

Having its registered office at:

W-19, Greater Kailash-II,

New Delhi- 110048

...Respondent/ Corporate Debtor

ORDER

PER-SHRI HEMANT KUMAR SARANGI MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Deepak Khandelwal (for brevity 'Applicant') proprietor M/s Tamoliya Enterprises, with a prayer to initiate the Corporate Insolvency process against M/s FE agrochem Private Limited (for brevity 'Respondent').

2. The Applicant, the Operational Creditor is a sole proprietorship concern, with GST Registration No. 08AEDPK5942C1Z9, having its office at 1, Old Industrial Area, Delhi Road, Near Alwar Malt Factory, Alwar, Rajasthan, inter alia, is a grain merchant cum Commission Agent (Aaditi).
3. The Respondent, namely M/s FE Agrochem Private Limited is a company incorporated on 20.04.1995 under the provisions of Companies Act, 1956 with CIN No. U74899DL1995PLC067544, having its registered office at A-54, Wazirpur Industrial Area, New Delhi-110052. The Authorised Share Capital of the respondent company is Rs. 82,00,00,000/- and Paid Up Share Capital of the company is Rs. 46,00,09,230/- as per Master Data of the company.

4. It is the case of the applicant that, during the period from September, 2014 to June, 2015, the Operational Creditor supplied grains to the Corporate Debtor aggregating to an amount of Rs.13,11,18,431 (Rupees Thirteen Crore Eleven Lac Eighteen Thousand Four Hundred Thirty One Only), and 169 invoices were issued for the said supply during September, 2014 to June, 2015. The copies of said invoices have been annexed.
5. Pursuant thereto, the Corporate Debtor made payment for a sum of Rs.7,71,00,000/- (Rupees Seven crore Seventy One Lac only) till 18.05.2015 on account basis. The applicant further states that after 18.05.2015 no payment has been made by the corporate debtor despite regular follow ups and requests of the operational creditor.
6. The applicant further states that on 03.11.2017 the respondent had acknowledged/ confirmed his liability of Rs.5,55,03,078/- (Rupees Five Crore Fifty Five Lac Three Thousand Seventy Eight Only), which includes the interest of Rs.14,84,647/- charged for the financial year 2014-15.

7. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 23.05.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire payment of Rs.5,55,03,078/- (Rupees Five Crore Fifty Five Lac Three Thousand Seventy Eight only) inclusive of interest of Rs.14,84,647/- (Rupees Fourteen Lac Eighty Four Thousand Six Hundred Forty Seven Only) charged for the financial year 2014-15 with future interest to be calculated @ 18% per annum, within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.
8. The said section 8 notice has been sent by registered post as well as through mail by the applicant. The records reveal that the notice sent by post to the registered office of the corporate debtor and also on director's address were returned with the endorsements "left without address" and "DFT/No such firm at this address" respectively. Although, the same was delivered to another director's address. Also, the email has been sent to the email ID of the corporate. Further, the

applicant has also placed on record showing the demand notice affixed on the gate of the registered office of the corporate debtor.

9. Further, the operational creditor has also uploaded the said demand notice to the official website/ database of the National E- governance Services Limited, an Information Utility registered with the IBBI and placed on record the report generated thereof.
10. Despite the demand notice sent under Section 8 of the Code, the Respondent has failed to pay the amount demanded and has neither raised any notice of dispute nor replied to the said notice.
11. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The applicant has also filed affidavit of service wherein he states that service to one of the addresses of the corporate debtor has been done through speed post and by affixation on all other addresses. The photographs taken with regard to the affixation done, has been placed on record by the applicant of notice issued by this Tribunal. In his affidavit he further states that the service

of notice on the corporate debtor has also been done through email on the registered email address as well as other email addresses of the Corporate Debtor and the said mail has not bounced back.

12. In spite of service of application under section 9, the corporate debtor has not filed any reply.
13. This Tribunal proceed ex-parte against the Corporate Debtor as per order dated 27.02.2019.
14. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.
15. The applicant has attached the copy of Bank statements issued by HDFC Bank Ltd. in compliance with the requirement of Section 9(3)(C) of the IBC 2016.
16. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. On perusal of the record it is clear that the default has occurred on 18.06.2015 when the last invoice fell due. It was again acknowledged on 03.11.2017 by way of confirmation of

outstanding ledger account statement by the Corporate Debtor. Hence, the claim is not time barred. And the present application is well within the limitation period.

18. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
19. The Applicant has proposed the name of Interim Resolution Professional, Mr. Prabhakar Kumar, having registration no. IBBI/IPA-002/IP-N00774/2018-2019/12373, mobile number 9810011532 and email address prabhakar_acs@rediffmail.com, who is appointed as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
20. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d)

of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

21. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (T)

Sd/-

DR. DEEPTI MUKESH

HON'BLE MEMBER (J)