

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.354/9/HDB/2019
Under section 9 of the IB Code, 2016
Read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of M/s. SRK FOOD PRODUCTS PRIVATE LIMITED

M/s. Prisha Om Foods,
Through its Partner
Mr.Jagdish Omprakash Sharma
Regd. Office: Plot No.676/A, Sitaram Chowk,
GIDC-Phase-II, Dared-Jamnagar,
Gujarat - 361004.

...Petitioner/
Operational Creditor

Versus

M/s. SRK FOOD PRODUCTS PRIVATE LIMITED,
Regd. Office: H. No: 17-1-391/T/250,
Saraswati Nagar,
Saidabad, Hyderabad,
Telangana State - 500 059.

...Respondent/
Corporate Debtor



Order delivered on:17.09.2019

**Coram: Shri.K.ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL
Dr.BINOD KUMAR SINHA, MEMBER TECHNICAL**

Parties/Counsel Present:

For the Petitioner/Operational Creditor:

Shri. Abhishek Darak, PCS.

For the Respondent/Corporate Debtor:

Shri. M.Ravindra, PCS.

17/09.

PER: K.ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL

ORDER

1. Under consideration is a Company Petition filed by M/s. Prisha Om Foods (in short, 'Petitioner/Operational Creditor') against M/s. M/s. SRK FOOD PRODUCTS PRIVATE LIMITED (in short, 'Respondent/Corporate Debtor') under section 9 of the Insolvency and Bankruptcy Code 2016 (in short, I & B Code 2016) Read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').
2. The Petitioner/Operational Creditor is a Partnership Firm registered under the Partnership Act, 1932 and having its Office at Plot No.676/A, Sitaram Chowk GIDC-Phase-II, Dared-Jamnagar, Gujarat. The Respondent/Corporate Debtor is a Company having CIN No:- U15122TG2011PTC075321 incorporated under the Companies Act, 1956 having its Registered Office H. No: 17-1-391/T/250, Saraswati Nagar, Saidabad, Hyderabad, Telangana.
3. The Learned PCS appearing on behalf of the Petitioner/Operational Creditor submitted that the partner of Petitioner/Operational Creditor had visited the Respondent/CD at the Hyderabad Office of the Respondent/CD and shown it a sample product of its products sometime in December, 2015.
4. It is also submitted that thereafter, the Respondent/CD has placed its first order in December, 2015 for the goods worth Rs.1,88,700/- (Rupees One Lakh Eighty-Eight Thousand Seven Hundred Only). In this way the business relations between the Petitioner/OC and Respondent/CD had started. The business relation between the



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Petitioner/OC and Respondent/CD thereafter continued till 24.12.2018 on the day when last goods worth Rs.89,250/-(Rupees Eighty Nine Thousand Two Hundred and Fifty Only) were sold by the Petitioner/OC to the Respondent/CD.

5. It is also submitted that the Petitioner/OC has sold the goods worth Rs.74,41,363/-(Rupees Seventy Four Lakhs Forty One Thousand Three Hundred and Sixty Three Only) including taxes from 01.04.2017 to till 24.12.2018 to the Respondent/CD. The Respondent/CD though made part payments for the goods supplied, it has not paid an amount of Rs.32,06,960/- (Rupees Thirty-Two Lakhs Six Thousand Nine Hundred Sixty Only) till date against the sale of goods. The aforesaid amount is excluding the claim of interest for delayed payment.

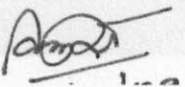
6. It is further submitted that the Respondent/CD has accepted goods and never raised any kind of disputes in the past regarding the quality of goods or any other kind of dispute till date. When the Respondent/CD has started to make inordinate delay in payment against the sale of goods, the Petitioner/OC has asked the Respondent/CD to give him a cheque against the outstanding demand. The Respondent/CD handed over three signed cheques to the Petitioner/OC against the outstanding due. The Petitioner/OC on 29.03.2019 has deposited these cheques with the Bank but unfortunately the cheques were dishonoured by the Drawee Bank. The cheque return memo has been received by the Petitioner/OC on 02.04.2019. It is submitted that no contemporaneous notice has been given by the Respondent/CD relating to any dispute of the unpaid operational debt. The Petitioner/Applicant had made several requests



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via telephone calls, personal visit to the Respondent for the outstanding amount, who repeatedly assured the Applicant that the outstanding invoices would be paid, however, no such payments were made. In fact, the Respondent Company has released some payments against the supplies of goods of the outstanding debt which is itself evidence of the existence of an unpaid operational debt. Such payments between the parties constitutes part of the proof that the amount claimed in fact is a debt which is due and in relation to which the Respondent is in gross, wilful and deliberate default. It is further submitted that there was a running account maintained for the transactions between the parties and there have been several acknowledgements of the debt from the Respondent therein as stated herein above. In light of the persistent and deliberate failure of the Respondent to pay the admittedly outstanding dues, on 08.04.2019 the Applicant sent a Demand Notice under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 to the Respondent/CD on its administrative office, registered office and residential address of the directors. The notice sent at the administrative office was returned with remark as "address left". The Notices sent at the registered office which is also residential address of the directors were received on 24.04.2019. A copy of the Notice was also sent on the last known mail id of the director Mr.Harish Gupta on 21.04.2019.

7. It is also submitted that the Petitioner/OC till date has not received any letter or communications raising any disputes with regards to claim of drawing attention to any existence of dispute. The total amount of Operational Debt admitted which was due and payable to the Petitioner/OC by the Respondent/CD, under the current, mutual



and running account between the parties is Rs.32,06,960/- (Rupees Thirty Two Lakhs Six Thousand Nine Hundred Sixty Only) and in addition to that interest is also payable at the rate of three times the bank rate from date of default to the date of payment.

8. It is submitted that, the present outstanding amount which the Respondent/CD is liable to pay excluding the claim of interest is Rs.32,06,960/- (Rupees Thirty Two Lakhs Six Thousand Nine Hundred Sixty Only) which far exceeds the threshold amount of Rs.1,00,000/- required to initiate the Corporate Insolvency Resolution Process (CIRP) under the Code.

9. It is also submitted that, as there is no mismatch in the amount claimed in Demand Notice and the amount claimed in the present application, the Petitioner/OC maintains that the total unpaid operational debt as on the date of the issuance of the Demand Notice

Under Section 8 of the Insolvency and Bankruptcy Code, 2016 is Rs.32,06,960/- and in addition to that interest is also payable at the rate of three times the bank rate from date of default to the date of payment.



10. It is submitted that there was a current, mutual and running account between the parties and the sums outstanding have all throughout been acknowledged to be outstanding by the Respondent/CD in its books which can be seen from the ledger of the Petitioner/OC in the books of accounts of the Respondent/CD attached with the Demand Notice duly stamped by the Respondent/CD as Annexure I/4.

11. It is further submitted that, in addition to such written acknowledgements of the operational debt in the books of the

Respondent/CD, the Respondent/CD has also made part-payments of the debt, the last of which was on 24.12.2018. Thus, in one form or another the Respondent/CD has always periodically acknowledged the debt to be outstanding.

12. It is also submitted that the Petitioner/OC has placed all the details of debt amount, details of transactions on account of which debt fell due. The following are some of the documents on which the Petitioner/OC placed reliance to prove the debt amount.

- Copy of Invoices raised for supply of Goods along with LR Copies.
- Copy of Ledger of Prisha Om Foods from the books of SRK Food Products Private Limited duly certifying amount outstanding along with stamp of the Company for the period 01.04.2017 to 08.05.2018.
- Copy of Ledger of SRK Food Products Private Limited from the books of Prisha Om Foods for the period of 01.03.2017 to 31.03.2019.
- Copy of dishonoured cheques along with the cheque return memos issued by the banker of the Petitioner/OC.
- Copy of Bank Statements of account maintained by the Petitioner/OC with HDFC Bank bearing A/c. No.50200013380628.

13. The matter was posted for hearing on various dates viz., 03.06.2019, 25.06.2019, 16.07.2019, 05.08.2019, 21.08.2019, and 27.08.2019. The PCS representing the Respondent/Corporate Debtor was present on 05.08.2019, filed Memorandum of Appearance and prayed time for filing counter. On 21.08.2019 PCS representing the Respondent/CD further requested time for filing counter and on 27.08.2019 he also



submitted that they are trying to settle the matter with the Petitioner/OC and prayed to grant short time for filing joint memo of settlement. However, finally on 30.08.2019, the PCS representing the Respondent/CD reported no counter and made oral submissions stating that they are admitting the claim made by the Petitioner/OC and prayed to pass appropriate orders.

14. Heard submissions of the Petitioner and perused the record.
15. It is the case of the Petitioner that it has supplied goods to the Corporate Debtor for which the Corporate Debtor was liable to pay. CD neither filed counter, nor denied the amount in default. Further, during the hearing held on 30.8.2019, the Corporate Debtor has orally admitted the debt and the same was recorded. Further the Petitioner has proved its case by placing evidence that default has occurred which the Corporate Debtor was responsible to pay. The Petitioner has also placed on record proof of sending notices and other material papers. The Petitioner has complied with all the requirement as stipulated under the provisions of Section 9 of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, this Adjudicating Authority is inclined to admit the instant Petition.
16. The instant petition is admitted and this Adjudicating Authority order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within the timelines laid down in Section 12 of the IB Code 2016, reckoning from the day this order is passed.
17. This Adjudicating Authority hereby appoint Mr. Kammmula Prabhakar Roa as IRP. 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 Insolvency and Bankruptcy Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

18. The moratorium is hereby declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purpose referred to in Section 14 of the I & B Code, 2016. It is hereby 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.*

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 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.*

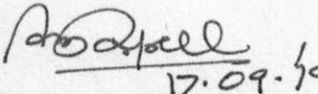
19. However, the Supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provision of Sub-section (1) of

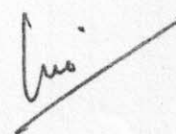


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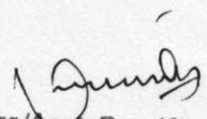
Section 14 shall not apply to such transaction, as notified by the Central Government.

20. The IRP shall comply with the provisions of Sections 13 (2), 15, 17, & 18 of the Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor is expected to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his function under Section 20 of the I & B Code, 2016.
21. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I & B Code, 2016.
22. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
23. The detailed address of the IRP is as follows:-
Mr. Kammula Prabhakar Rao
IBBI/IPA-001/IP-P01467/2018-2019/12339
39-4-1, S5, Koduru Enclave,
Picchaiah Street, Labbipeta,
Vijayawada, Krishna,
Andhra Pradesh ,520010
kammulaprabhakar@hotmail.com
+91 9848124608
24. The instant Petition is hereby admitted.


17.09.19
Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL


K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

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Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER.....CP (IB) No. 354/9/HDB/2019,
निर्णय का तारीख
DATE OF JUDGEMENT.....19/9/19
प्रति तैयार किया गया तारीख
COPY MADE READY ON.....25/9/19.