

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP(IB) No. 37/KB/2019

In the matter of:

Shri Sanjay Agarwal, Partner of Sri Laxmi Agro Products,
49, Kali Krishna Tagore Street, P.S. Posta, Kolkata - 700007

..Operational Creditor

Versus

M/s. GM Agro Allied Pvt. Ltd., Vill: Muidhara, PO: Uchalan, PS:
Khandaghosh, Dist : Burdwan Khandaghosh, PIN: 713427

.. Corporate Debtor

Coram: Shri Jinan K.R., Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

For the Operational Creditor:

1. Mr. Arnab Dutta, Advocate

Date of Pronouncement of the Order : 08-11-2019

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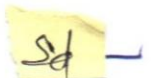
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ORDER

Per Shri Jinan KR, Member(Judicial)

1. Shri Sanjay Agarwal, Partner of Sri Laxmi Agro Products/ Operational Creditor, filed this application under Section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution process (in short CIRP) as against M/s. GM Agro Allied Pvt. Ltd. /Corporate Debtor, alleging that the Corporate Debtor committed default in payment of Rs. 7,83,228/- (Rupees Seven Lakh eighty three thousand two hundred twenty eight only) as the unpaid operational debt for supply of de-oiled rice bran to the Corporate Debtor.
2. The relevant facts for the consideration of the issues, are the following:

The Operational Creditor is engaged in business of trading and wholesale business of de-oiled rice bran, TIL Cake/Doc etc. The Operational Creditor used to supply de-oiled rice bran, TIL Cake/Doc etc. to the Corporate Debtor during the period between 06-12-2015 to 06-02-2016 on different dates and the Operational Creditor has issued the Tax invoices, Road challan of the materials delivered to the Corporate Debtor after payment of goods which was accepted by the Corporate Debtor without any objection regarding product quality and the supply of materials.



3. The Respondent made payment against supply of material between 30-06-2016 to 11-08-2016 on different dates in four parts through cheque drawn on Corporation Bank but all the cheques were dishonored by the Bank due to insufficient funds. Despite intimation about the dishonor of the cheque, the Corporate Debtor has neither taken any steps nor made the payment to Operational Creditor. The Operational Creditor, on several occasions, demanded the amount. However, the Corporate Debtor committed default in payment. Therefore, the Operational Creditor is entitled to realise the amount along with interest @ 12% per annum. The total outstanding amount due with interest, as on the date of filing of the Application, is Rs. 10,43,045/- (Rupees Ten Lakh forty three thousand forty five only). The Corporate Debtor, having failed in clearing the debt due to the Operational Creditor, the Operational Creditor issued demand notice under Section 8(1) of the Code in Form 3 dated 30-11-2018 through Speed post, which was duly received by the Respondent/Corporate Debtor on 15-11-2018. No reply from the Corporate Debtor was received by the Operational Creditor. The Applicant proposes the name of Mr. Ajay Kumar Agarwal, as the Interim Resolution Professional. Upon the above said contentions, the Applicant prays for admitting the Application.

4. When the case was taken up for consideration, notices were issued to the Corporate Debtor. The Corporate Debtor entered appearance. However, failed in filing the reply affidavit, despite opportunities given to the Corporate Debtor. The Application, thereafter, came up for final hearing on 05-11-2019. On that date,

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nobody also appears on the side of the Corporate Debtor. Accordingly, we heard the Ld. Counsel for the Applicant and perused the records.

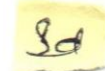
5. The Applicant, allegedly an Operational Creditor, filed this Application on account of default in payment of operational debt to the tune of Rs. 10,43,045/- inclusive of interest @ 12% per annum. To substantiate the case of the Operational Creditor, the Operational Creditor has produced the copy of demand notice with invoices marked as Annexure D. The invoices add strength to the submission on the side of the Ld. Counsel for the Applicant that the Operational Creditor has supplied material as described in the invoices to the Corporate Debtor. The Corporate Debtor did not turn up to object the Application and in the absence of evidence contrary to the contentions, attempted to establish on the side of the Applicant, we are satisfied that what is claimed by the Operational Creditor is an operational debt due from the Corporate Debtor. As per the invoices, the total unpaid amount comes to Rs. 7,83,228/- (Rupees Seven Lakh eighty three thousand two hundred twenty eight only).

6. The Ld. Counsel, however, failed to convince us that there is a contract either oral or in writing, making the Corporate Debtor liable to pay interest @ 12% per annum, as claimed by the Operational Creditor. This Application is not an Application filed for recovery of money found due from the Corporate Debtor. The purchase order, annexed at page 29 and the invoices annexed from pages 30 to 43, does not enable us to hold that there is any agreement to pay interest to the tune 12% per annum, as claimed by the Operational Creditor.



On the other hand, the supporting documents produced on the side of the Operational Creditor, are sufficient enough to prove that an amount of Rs. 7,83,228/- (Rupees Seven Lakh eighty three thousand two hundred twenty eight only) is the outstanding amount due to the Operational Creditor.

7. The Operational Creditor has issued a demand notice, Annexure D dated 13-11-2018. That demand notice was properly delivered upon the Corporate Debtor on 15-11-2018. Annexure E proves delivery. According to Ld. Counsel for the Operational Creditor, despite delivery of the notice to the Corporate Debtor, the Corporate Debtor did not send a reply and that the Operational Creditor filed the affidavit Annexure G swearing that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt, in compliance of requirement to be meted out under Section 9(3)(b) of the Code. In compliance of Section 9(3)(c) that no payment of an unpaid operational debt has been made, a statement of Bank account also seen produced on the side of the Corporate Debtor by way of filing supplementary affidavit dated 15-01-2019. So also, the Operational Creditor has proposed the name of Interim Resolution Professional, Mr. Ajay Kumar Agarwal, Insolvency Professional, a reference to Form 2 and written communication enabling us to hold that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional. Accordingly, we are satisfied that the Operational Creditor has succeeded in proving the default of an unpaid operational debt by the Corporate Debtor and complied of all the requirements to be meted out under Section 9(5) of the Code.



8. In view of what is stated above, this Application is liable to be allowed. Accordingly, the Application is allowed by admitting under Section 9 of the Code, upon the following among:-

ORDERS

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. GM Agro Allied Pvt. Ltd., is hereby admitted.

- ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15.

- iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
 - a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 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.
- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

- vii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- viii) **Mr. Ajay Kumar Agarwal, Insolvency Professional, an Insolvency Professional, registered with IBBI, having registration number IBBI/IPA-002/IP-N00608/2018-2019/11859, E-mail ID :cs.aaa.2014@gmail.com, Mobile No. 9883362775,** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date and follow Regulation 40A strictly.
- x) The Operational Creditor is directed to deposit Rs.2,00,000/- (Rupees Two Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar,



NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP within one week of the date of this order.

- xi) Registry is hereby directed under section 7 (4) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xii) List the matter on 12-12-2019 for filing of the progress report.

9. The free copy/certified copy of the Order may be issued to all the concerned Parties, if applied for, upon compliance with all requisite formalities.

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(Harish Chander Suri)
Member(Technical)


8/11/19

(Jinan K.R.)
Member(Judicial)



Signed on this, the 8th day November, 2019

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