

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI,**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 17/9/JPR/2022**

*(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:**

**ANKIT TRADERS THR. ITS SOLE  
PROPRIETOR MR. ANKIT KUMAR GOEL**

251, Narkulaganj, Nai Basti,  
Bareilly, Uttar Pradesh- 246005

**...Operational Creditor**

**VERSUS**

**SUPER SHINE AGROFOODS PVT. LTD.**

R/o: F-55-56, Agrofood Park  
Matshya Industrial Area, Alwar-  
Rajasthan- 301030

E-mail: [alwarsugar@gmail.com](mailto:alwarsugar@gmail.com)

**...Corporate Debtor**

**FOR PETITIONER (S) : Kunal Godhwani, Adv.**

**FOR RESPONDENT (S) : Akarsh Mathur, Adv.**

**Order Pronounced On: 01.06.2023**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application has been filed by Ankit Traders through its Sole Proprietor Mr. Ankit Kumar Goel ('Operational Creditor'/'Applicant') to initiate

Corporate Insolvency Resolution Process ('CIRP') against M/s Super Shine Agrofoods Pvt. Ltd. ('Corporate Debtor'), under Section 9 of the Insolvency and Bankruptcy Code ('IBC'/'Code'), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 alleging a default of Rs. 1,84,00,668/- (Rupees One Crore Eighty-Four Lakh Six Hundred and Sixty-Eight Only).

2. The Corporate Debtor is a Private Company incorporated on 07.06.2011 bearing CIN No. U01122RJ2011PTC035433 having registered office at F-55-56, Agrofood Park Matshya Industrial Area, Alwar- Rajasthan- 301030. The details of the transactions leading to the filing of this application averred by the Applicant are as follows:

- 2.1 The Operational Creditor supplied certain quantities of Sugar to the Corporate Debtor and subsequently raised invoices for the same which have been annexed as Annexure- 4 of the Application. The Operational Creditor supplied goods of Rs. 10,92,00,993/- (Rupees Ten Crores Ninety-Two Lakhs Nine Hundred and Ninety-Three Only) against which the Corporate Debtor has paid Rs. 9,07,00,325/- (Nine Crores Seven Lacs Three Hundred and Twenty-Five Only). The Corporate Debtor has not cleared the pending amount of Rs. 1,85,00,668/- (Rupees One Crore Eighty-Five Lakh Six Hundred and Sixty-Eight Only).

- 2.2 The Operational Creditor has contended that it is an MSME unit and the appointed day as mentioned in the Micro, Small and Medium Enterprises Development Act, 2006 ('MSME Act') is 07.11.2021 which is 15 days from the date of acceptance of goods i.e. 22.10.2021. The last invoice was dated 22.10.2021 and no goods have been supplied thereafter.
- 2.3 The Operational Creditor sent a notice to the Corporate Debtor dated 17.12.2021. On 18.12.2021, the Corporate Debtor paid an amount of Rs. 11,18,839/- (Rupees Eleven Lacs Eighteen Thousand Eight Hundred and Thirty-Nine Only). Thereafter, demand notice under Section 8 of the Code was preferred dated 27.12.2021 demanding Rs. 2,00,00,000/- (Rupees Two Crores Only). The Operational Creditor claims the date of default as 07.11.2021 (as per last invoice dated 22.10.2021) and 17.12.2021 (as per notice demanding payment).
- 2.4 On 30.12.2021 and 05.01.2022, the Operational Creditor purchased certain goods to the tune of Rs. 14,99,332/- (Rupees Fourteen Lacs Ninety-Nine Thousand Three Hundred and Thirty-Two Only) from the Corporate Debtor, however, the Corporate Debtor has failed to clear the remaining debt of the Operational Creditor within 10 days of receipt of the demand notice. Hence the present application has been filed.
- 2.5 The aforementioned details as reflected in Part IV of the Application are as follows:

**PART IV**  
**PARTICULARS OF OPERATIONAL DEBT**

1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	Rs. 1,85,00,668/- (One Crore Eighty-Five Lakh Six Hundred and Sixty-Eight Only) as on 20.01.2022 plus interest at the rate of 12.75% from 07.11.2021 till the repayment of the entire debt of Operational Creditor.
2.	Amount claimed to be in default and the date on which the default occurred.	Rs. 1,85,00,668/- (One Crore Eighty-Five Lakh Six Hundred and Sixty-Eight Only) as on 20.01.2022 plus interest at the rate of 12.75% from 07.11.2021 till the repayment of the entire debt of Operational Creditor.  The date of Default is 07.11.2021 and 17.12.2021

3. Consequent to the notice issued, the Corporate Debtor preferred its reply contending as below:

3.1 It is submitted that the Applicant does not fall within the ambit of definition of Operational Creditor as defined under Section 5(21) of the Code. In this case the Applicant has not rendered any services and the goods provided were of inferior quality against which the Corporate Debtor had repeatedly requested return. Moreover, the Applicant had supplied the said goods without order being placed by the Corporate Debtor.

- 3.2 The Corporate Debtor constantly denied the alleged debt raised by the Applicant through correspondences on cogent grounds which clarifies that there was a pre-existing dispute between the parties.
- 3.3 With regard to the facts, the Corporate Debtor submits that in the past, the parties herein had cordial business relations and the price of the specified goods was pre-determined. Later, the Applicant started supplying low quality sugar to the Corporate Debtor. Owing to the above, the Corporate Debtor informed the applicant that they do not want any supply to be made to the Corporate Debtor by the Applicant.
- 3.4 As the prices of sugar increased, the Applicant sent low quality sugar loaded in trucks to the Corporate Debtor which were rejected. The Applicant dumped the said product at the premises of the Corporate Debtor. Consequently, the Corporate Debtor sent back some of the quantity to the Applicant and asked the Applicant to remove the remaining sugar from the premises of the Corporate Debtor. The cost of transportation was also borne by the Corporate Debtor for return of the abovesaid goods.
- 3.5 The demand notice was replied to by the Corporate Debtor vide letter dated 22.02.2022. Despite service of demand notice and repeated request not to send more goods, the Applicant supplied additional sugar to the Corporate Debtor which was never ordered. The Corporate Debtor had returned the material so supplied and raised invoices dated

30.12.2021 and 05.01.2022. For no reason, the Applicant dumped sugar of more than Rs. 1 Crore with the Corporate Debtor within 2 days i.e. on 30.08.2021 and the amount due became Rs. 3,40,12,075/- (Rupees Three Crores Forty Lac Twelve Thousand and Seventy-Five Only). The Corporate Debtor requested the Applicant to remove the said material but to no avail, hence, the Corporate Debtor was forced to take GST input on the said sugar so supplied to avoid statutory non-compliance or undue penalty.

4. The Applicant filed its rejoinder denying that the Applicant supplied low quality goods to the Corporate Debtor. Further, no alleged dispute existed between the parties and after deducting the payments made along with the goods sold to the Corporate Debtor, the amount of Rs. 1,85,00,668/- (One Crore Eighty-Five Lakh Six Hundred and Sixty-Eight Only) is still outstanding.
5. The Corporate Debtor filed Written Submission vide Diary No. 1205/2023 dated 12.05.2023 wherein it has been contended that the Petitioner only issued Legal notice dated 17.12.2021 which cannot be categorised as a demand notice. Furthermore, no provision in the Code stipulates multiple dates of default. Moreover, the Applicant has neither annexed any purchase orders or e-way bills to prove its claim nor filed an Affidavit under Section 9(3)(c) of the Code.

6. The Applicant filed its written submissions vide Diary No. 1186/2023 dated 10.05.2023 wherein it has reiterated that the provisions of MSME Act, 2006 are applicable to the Operational Creditor, no dispute exists between the parties to the case and the Corporate Debtor has not denied the transaction of goods but only the due amount.
7. Before we delve in the matter at hand it is important to refer to the ingredients which have to be satisfied for the present matter to be admitted under Section 9 of the Code. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as follows: -

*“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

*If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

8. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder, written submissions and the documents enclosed with the application. For adjudication of this Application filed under Section 9 of the Code, we have to determine the existence of an Operational Debt, the said debt has become due and payable and existence of dispute, if any.
9. It is undisputed fact that the Operational Creditor had business relations wherein it was providing goods to the Corporate Debtor on regular basis and raising subsequent invoices. The Applicant has attached as many as 83 invoices amounting to a total of Rs. 10,92,00,993/- (Rupees Ten Crore Ninety-Two Lac Nine Hundred and Ninety-Three) starting from 24.04.2021 to 22.10.2021. The invoices have been tallied from the Ledger account of the Corporate Debtor maintained with the Operational Creditor.
10. The last invoice was dated 22.10.2021, thereafter the Operational Creditor sent two demand notices under Section 8 of the Code dated 17.12.2021 and 27.12.2021 demanding a payment of Rs. 2,11,18,839/- (Rupees Two Crores Eleven Lacs Eighteen Thousand Eight Hundred and Thirty-Nine Only) and Rs. 2,00,00,000/- (Rupees Two Crores Only) respectively. After the issuance of the first demand notice, the Corporate Debtor made a payment of Rs. 11,18,839/- (Rupees Eleven Lacs Eighteen Thousand Eight Hundred and Thirty-Nine Only), thereby reducing the debt to Rs. 2 Crores. Accordingly, the Applicant issued another demand notice demanding Rs. 2 Crores as

unpaid debt. Thereafter, the goods worth Rs. 14,99,332/- (Rupees Fourteen Lacs Ninety-Nine Thousand Three Hundred and Thirty-Two Only) were returned to the Applicant or purchased by the Applicant which is evident from invoices dated 30.12.2021 and 05.01.2022. Hence, the final amount claimed by the Applicant in this Petition is Rs. 1,85,00,668/- (Rupees One Crore Eighty-Five Lac Six Hundred and Sixty-Eight Only) plus interest. The difference in the amount of the demand notices and the Application is thus justified. Hence, there is clearly an Operational Debt owed by the Corporate Debtor to the Applicant which became due after issuance of demand notices.

11. The Corporate Debtor in its reply has contended pre-existing dispute with respect to the quality of goods supplied but there is no correspondence preferred before us to prove the same. The reply to the Demand notice dated 22.02.2022 was preferred to the Operational Creditor wherein the Corporate Debtor has acknowledged payment of Rs. 8,92,00,993/- (Rupees Eight Crore Ninety-Two Lac Nine Hundred and Ninety-Three Only). Moreover, the Corporate Debtor has also acknowledged claiming GST input on the goods supplied. No contention of the Corporate Debtor can explain the aforementioned action of taking GST input against goods which were bound to be returned or were faulty. It seems the defence raised by the Corporate Debtor are nothing but an afterthought to the Application filed before this Authority. Hence, there is no pre-existing dispute amongst the parties herein.

12. As stated above, the amount of debt against which the Corporate Debtor has defaulted is Rs. 1,85,00,668/- (Rupees One Crore Eighty-Five Lac Six Hundred and Sixty-Eight Only) after deducting the payment made by the Corporate Debtor and the goods returned/purchased by the Applicant. The Applicant has annexed copy of its UDYAM Registration Certificate as mandated by the MSME Act, 2006, wherein it has been categorized as a Medium Enterprise and the date of Registration is 12.11.2021. In the claim the Applicant is claiming interest @ 12.75% as per the MSME Act, 2006 whereas at of issuance of the invoices, the Applicant was not registered under the MSME Act, 2006. The last invoice issued by the Applicant was dated 22.10.2021 whereas the UDYAM Registration was received on 12.11.2021. It seems that the Applicant is trying to avail benefit under the Act even though it was not registered as an MSME at the time of supply of goods. Therefore, we are not inclined to provide interest to the Applicant on the said amount as it is neither mentioned in the invoices nor the Applicant was an MSME at the time of supply of goods.
13. During the hearing, the Corporate Debtor had contended that the Application is not maintainable as the Applicant has failed to file an Affidavit under Section 9(3)(c) of the Code. With respect to the issue raised, the Hon'ble NCLAT in *Shailendra Sharma v. Ercon Composites*, 2021 SCC OnLine NCLAT 3 relied on the Judgment of the Hon'ble Supreme Court in the case of *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.*, (2018) 2 SCC

674' wherein it was held that the requirement of Section 9(3) of the Code in producing a copy of the certificate from the financial institution accounts of the 'Operational Creditor' affirming the non-payment of debt is not a condition precedent for triggering the insolvency process under the Code. Suffice it to point out that the requirement u/s 9(3) of the Code is only 'Directory'. The Application is complete in other aspects enumerated under the Code.

14. It has very well been established that under Section 9 of the Code, to initiate CIRP proceedings, the Applicant is required to prove that the debt is due, it has not been paid and the debt is an undisputed debt. Correspondence between the parties is general proof of dispute in matters pertaining to Section 9 of the Code, whereas in the present matter, no correspondence has been annexed which conveys the dispute alleged by the Corporate Debtor regarding the low quality goods supplied. Therefore, we are inclined to initiate CIRP of the Corporate Debtor as all the ingredients of Section 9 of the Code are satisfied.
15. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP') but it is not obliged to do so. In the instant case, the Operational Creditor has not proposed a Resolution Professional to be appointed as IRP. Hence, this bench can appoint the RP from the pool of RPs empanelled with the IBBI.

16. In view of this Mr. Anoop Bhatia, duly registered with the Insolvency and Bankruptcy Board of India, with Registration No. IBBI/IPA-001/IP-P01142/2018-2019/11969 (email: [ip.anoopbhatia@gmail.com](mailto:ip.anoopbhatia@gmail.com); mobile no.+91 95710556666), is hereby appointed as the IRP. The said IRP is directed to file his written consent to act as a resolution professional in Form-2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.
17. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder.
18. Consequences of initiation of CIRP shall be inter-alia as follows:
- 18.1 The IRP appointed by the Adjudicating Authority, Mr. Anoop Bhatia, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
- 18.2 Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor

which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.

18.3 The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

18.4 In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

19. Accordingly, CP No. (IB)-17/9/JPR/2022 is admitted. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the RP nominated herein on his e- mail id.

*-Sd-*  
**DEEP CHANDRA JOSHI,**  
**JUDICIAL MEMBER**

*-Sd-*  
**ATUL CHATURVEDI,**  
**TECHNICAL MEMBER**