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IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.(IB)No.90/BB/2019

U/s 9 of IBC, 2016

R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

**M/s.Sycamore Foods and
Technologies Private Limited**

A-21, Maple, Tata Sherwood,
Basavanagar, Marathalli,
Bangalore - 560 037.

- Petitioner/Operational Creditor

Versus

M/s.Breadworks Gourmet Foods Private Limited

TR3, 4th Floor, Esteem mall,
Bellary Road,
Bangalore - 560 024.

- Respondent/Corporate Debtor

Date of Order: 23rd October, 2019

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties/Counsels Present:

For the Petitioner : Shri Raghuram Cadambi

Party-in- Person : Shri Philip Samuel (Manager-
Operations) of the Company

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.90/BB/2019 is filed by M/s.Sycamore Foods and Technologies Private Limited ('Petitioner/Operational Creditor') under Section 9 of the IBC, 2016, R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Breadworks Gourmet Foods Private Limited, on the ground that it has committed default for an amount of



Rs.23,00,000/- (Rupees Twenty Three Lakhs Only) along with interest thereon @18% per annum.

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

(1) M/s.Sycamore Foods and Technologies Private Limited (hereinafter referred to as 'Petitioner/Operational Creditor') is a Company incorporated under the provisions of the Companies Act, 2013, having CIN: U15125KA2016PTC092440.

(2) M/s.Breadworks Gourmet Foods Private Limited is a Company incorporated under the provisions of the Companies Act, 1956, on 26.05.2011, having CIN: U15316KA2011PTC058830. Its Authorized Share Capital is Company is Rs.2,00,00,000/-(Rupee Two Crores Only) and Paid-up Share Capital of Rs.2,00,00,000/-(Rupee Two Crore Only).

(3) It is stated that the Operational Creditor and the Corporate Debtor entered into a Contract Manufacturing and Supply Agreement dated 19.09.2016 ('Manufacturing Agreement') under which the Corporate Debtor was required to manufacture for the Operational Creditor, baked products ('Products') under the supervision of the Operational Creditor, at the facility of the Corporate Debtor situated in Bangalore. Towards the price payable for the Products, the Operational Creditor paid a sum of Rs.10,00,000/-(Rupees Ten Lakhs Only) to the Corporate Debtor by means of a cheque dated 29.09.2016. Further, the Operational Creditor paid the Corporate Debtor a total amount of Rs.20,00,000/- by means of demand drafts dated 06.09.2016 and 16.09.2016. This amount was received by the Corporate



Debtor as a deposit towards providing the Operational Creditor the first option to purchase the plant and machinery of the Corporate Debtor upon the expiry or earlier termination of the Manufacturing Agreement. The Manufacturing Agreement also expressly provided that if this option was not exercised by the Operational Creditor, the said amount would be adjusted towards the value of the Products to be supplied.

(4) It is stated that the Operational Creditor has paid the Corporate Debtor a total sum of Rs.30,00,000/- (Rupees Thirty Lakhs Only) under the Manufacturing Agreement. However, operations of the Corporate Debtor could not be commenced, and no Products were supplied to the Operational Creditor under the Manufacturing Agreement. The Corporate Debtor demonstrated its inability to adhere to its obligations under the Manufacturing Agreement even though payments had been received by it from the Operational Creditor. Therefore, the Operational Creditor had terminated the Manufacturing Agreement by way of a letter dated 12.11.2016 issued to the Corporate Debtor by inter alia stating that they have no obligations but the Operational Creditor was liable to pay to the Corporate Debtor for an amount of Rs.30,00,000/- that it had paid to the Corporate Debtor.

(5) It is also stated that in order to record the terms of the repayment of the aforementioned amount to the Operational Creditor, the Corporate Debtor and the Operational Creditor entered into a deed of cancellation dated 03.06.2017. The deed of cancellation records that the Corporate Debtor would pay the Operational Creditor, the entire amount of Rs.20,00,000/- received as deposit by means of demand



drafts dated 06.09.2016 and 16.09.2019. The amount of Rs.10,00,000/- received by means of a cheque dated 29.09.2016, the Corporate Debtor would return an amount of Rs.3,00,000/-, after deduction of costs. Hence, as against a total sum of Rs.30,00,000/-, the Corporate Debtor undertook to pay a sum of Rs.23,00,000/- in 3 (three) instalments within specified timelines i.e., (a) Rs.3,00,000/- by 30.06.2017; (b) Rs.10,00,000/- by 30.08.2017; (c) Rs.10,00,000/- by 30.09.2017. The deed of cancellation provided for a grace period of 30 days in respect of each of these payment milestones, during which no interest would be payable on these amounts.

- (6) It is further stated that the Corporate Debtor failed to honour its contractual obligations in accordance with these payment milestones. Thereafter, upon persistent follow-up by the Operational Creditor for payment of the due amount, in the month of November 2017, the Corporate Debtor issued 5 (five) cheques totalling to Rs.23,00,000/- with a repayment period spread over 3 months between 25.11.2017 and 05.02.2018. However, upon presentation by the Operational Creditor, all these cheques were dishonoured. Subsequently, upon continuous requests and reminders by the Operational Creditor, the Corporate Debtor continued to assure the Operational Creditor that it would make payment of the due amount. One such assurance was made in an email dated 18.08.2017 in which the Corporate Debtor agreed to make payment before 30.08.2017. Further, the Corporate Debtor even stated that it would pay not only the due amount of Rs.23,00,000/-, but also an additional amount of Rs.2,00,000/- towards interest and legal expenses. In fact, the Corporate Debtor even circulated the draft of a proposed



settlement agreement stating that it would pay the Operational Creditor a total amount of Rs.25,00,000/-. However, till date, no payment has been forthcoming at all.

(7) The Operational Creditor has issued Demand Notice dated 06.11.2018, by demanding the Corporate Debtor to pay Rs.23,00,000/-(Rupees Twenty Three Lakhs Only) along with interest thereon @18% per annum. However, the Corporate Debtor had not issued any response to the demand notice till date.

3. Heard Shri Raghuram Cadambi, learned Counsel for the Petitioner and Shri Philip Samuel (Party-in-Person), Manager-Operations of the Corporate Debtor Company. I have carefully perused the pleadings of the parties and the extant provisions of the Code and the law on the issue.
4. The case is filed before the Tribunal on 25.01.2019 and it stands listed for admission on various dates viz. 06.03.2019, 15.03.2019, 22.03.2019, 11.04.2019, 01.05.2019, 31.05.2019, 18.06.2019, 16.07.2019, 24.07.2019, 20.08.2019, 16.09.2019 & 30.09.2019. The case is adjourned on all these dates due to various reasons, at the request of the Petitioner for compliance of office objections, serving the notice etc. The Adjudicating Authority vide order dated 11.04.2019 issued notice to the MD of the Company as well as the Company. Accordingly, Shri Gopal K. Administrative Officer of the Corporate Debtor Company was present on 01.05.2019 and requested time for engaging the Counsel and also filing Statement of Objections. However, subsequent days viz. 31.05.2019, 18.06.2019, 16.07.2019 & 24.07.2019, none appeared for the Respondent. However, from 20.08.2019, Shri Philip Samuel (Party-in-Person) Manager-Operations was present and today also he is present. However, the Respondent has not filed any reply till date.

(Handwritten Signature)



Therefore, the Respondent failed to avail the opportunity given by the Adjudicating Authority to file Statement of Objections and settle the issue. Therefore, there is no other alternative for the Adjudicating Authority except to adjudicate the matter on merits.

5. Shri Raghuram Cadambi, the learned Counsel for the Petitioner, while reiterating various averments made in the Company Petitioner as well as summary of the case, as briefly stated supra, has further submitted that the Corporate Debtor not only received the amount in question but also failed to respond the Demand Notice and fail its Statements of Objections till date.
6. As stated supra, there is a Contract Manufacturing and Supply Agreement dated 19.09.2016 executed between the parties and one of the terms with regard to the Consideration and Payment Terms is mentioned under in Clause 4.1. & 4.2 which reads as under:

"4.1 Manufactures hereby acknowledges that it has already a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) vide Demand Draft No.085412 dated September 06, 2016 drawn on HDFC Bank, Old Airport Road Branch, Bangalore at the time of execution of the MoU. Further, in accordance with clause 4.1.1 of the MoU, Company hereby pays a further sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the Manufacturer by way of Demand Draft No.85525 dated September 16, 2016 drawn on HDFC Bank, the receipt of which Manufacturer hereby accepts and acknowledges. Manufacturer shall hold the aforesaid aggregate amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) as deposit towards providing Company a first option to purchase its plant and machinery upon the expiry or



earlier termination of this Agreement. If Company purchases such plant and machinery, the aforesaid aggregate amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) shall be set off against the purchase consideration therefore. If Company does not purchase such plant and machinery, the aforesaid aggregate amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) shall, at Company's option, be refunded to Company or set off against any invoices or any other amounts payable by Company to Manufacturer.

4.2 In accordance with clause 4.1.2 of the MoU and subject to clause 4.3 below, Company shall pay Manufacturer an additional sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) at the time of signing this Agreement as an advance towards the Price payable for the manufacture of Products including any applicable taxes pursuant to this Agreement ('Initial Price Advance'). The Initial Price Advance shall be set off against the monthly Price payable by the Company over a maximum period of three months or maximum amount of 6.5 lacs per month hereunder and only after the entire Initial Price Advances is set off will the Company be liable to pay amounts as Price to the Manufacturer. No further advance amounts are payable to the Manufacturer. The Initial Price Advance shall be set off against such payments made thereunder."

In pursuant to the failure of the terms and conditions of the Contract Manufacturing and Supply Agreement dated 19.09.2016, the parties have entered into a deed of cancellation dated 03.06.2017 wherein it is inter alia as stated as follows:



"The Second Party (Corporate Debtor) shall return to the First Party (Operational Creditor) the amount of Rs.23,00,000/- (Rupees Twenty Three Lakhs Only) in the following manner:

- a. The first instalment of Rs.3.00/- (Rupees Three Lakhs Only) by any mode of payment by 30th June, 2017;*
- b. The second instalment of Rs.10 Lakhs (Rupees Ten Lakhs Only) by any mode of payment by 30th August 2017;*
- c. The third instalment of Rs.10 Lakhs (Rupee Ten Lakhs Only) by any mode of payment by 30th Sept 2017;"*

7. Failing to comply the deed of cancellation agreement dated 03.06.2017, the Operational Creditor issued a Demand Notice by demanding the Corporate Debtor to pay Rs.23,00,000/- (Rupees Twenty Three Lakhs Only) along with interest @18% per annum. However, the Corporate Debtor failed to respond and it has not filed any Statement of Objections till date. Therefore, the respondent has no defence to oppose the claim in question and thus it is deemed that the debt and default is not in question is not in dispute. The instant Company Petition is filed in accordance with law, and also suggested a qualified Resolution Professional namely Shri B. Parameshwara Udpa, with Registration No.IBBI/IPA-002/IP-N00480/2017-18/11445, who has also filed written Consent in Form-2 dated 13.09.2019, by inter alia declaring that no disciplinary proceedings pending against him with the Board or ICSI Institute of Insolvency Professionals and he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor in accordance with provisions of the IBBI

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(Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Hence, I am of considered opinion that the instant Company Petition is a fit case to admit by initiating CIRP appointing an IRP and imposing moratorium etc. in respect of the Corporate Debtor.

8. In view of the above facts and circumstances of the case and the law on the issue and by exercising powers conferred on this Adjudicating Authority, U/s 9 (5)(i) of the Code, the Company petition bearing C.P.(IB)No.90/BB/2019 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Respondent/Corporate Debtor with the following consequential directions:

- 1) **Shri B. Parameshwara Udpa**, bearing **Registration No. IBBI/IPA-002/IP-N00480/2017-18/11445**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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 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;
- 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 supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
- f) 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.
- g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Tribunal from time to time.
- 4) The Board of Directors and all the staff of Respondent/Corporate Debtor are hereby directed to



extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.

- 5) Post the case for report of IRP on **25.11.2019.**

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Deputy/Asst. Registrar
National Company Law Tribunal
Bengaluru Bench

Puja

