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**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI SPECIAL BENCH**

**(IB)-1567(ND)2019**

**IN THE MATTER OF:**

**Sh. Brij Mohan Sharma**

**Proprietor of: M/s BEE EMM Distributors**

**Plot No.- 5D/50 N.I.T.,**

**Faridabad -121001, Haryana**

**...Operational Creditor**

**VERSUS**

**M/s Al-Nafees Proteins Pvt. Ltd.**

**6 Central Lane Bengali Market**

**New Delhi - 110001**

**... Corporate Debtor**

**Section: 9 of IBC, 2016**

**Order Delivered on: 16.10.2019**

**CORAM:**

**SHRI. CH. MOHD. SHARIEF TARIQ, HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

For the Petitioner : Mr. Mohit Nandwani, Ms. Snigdha Lal, Advocates

For the Respondent : Ms. Ekta Singh, Mr. Vivek Jain, Sunil Lal, Advocates



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**ORDER**

**PER SHRI L. N. GUPTA, MEMBER (T)**

The present petition 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 Sh. Brij Mohan Sharma (for brevity 'Operational Creditor'), with a prayer to initiate the Corporate Insolvency Resolution process against M/s Al-Nafees Proteins Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, M/s. Al-Nafees Proteins Pvt. Ltd. is a Company incorporated on 08.01.1998 under the provisions of Companies Act, 1956 with CIN No. U15116DL1998PTC019597, having its registered Office at 6 Central Lane Bengali Market New Delhi-110001.

3. The Authorised Share Capital of the Respondent Company is Rs. 15,00,00,000 Paid-up Share Capital of the Company is Rs. 13,14,22,500 as per the Master Data of the Company annexed.

4. It is the Petitioner's case that they had supplied Polythene, Poly-Propylene (H.M. HDPE) Bags, Tube Sheets and other Storage Bags and other Packaging Material to the Respondent Since 2017.





5. It is further submitted by the Petitioner that it had supplied goods as per the requirements made by the Respondent. It is stated by the Petitioner that it had raised certain invoices against the goods supplied. The details of the unpaid invoices are reproduced below :

DATE	INVOICE NO.	BALANCE AMOUNT
01.02.2017	128	Rs. 2,00,600
19.04.2017	4	Rs. 22,980
13.05.2017	16	Rs. 3,87,518
07.06.2017	24	Rs. 2,60,471
29.06.2017	30	Rs. 1,66,681
15.07.2017	8	Rs. 1,88,963
08.08.2017	18	Rs. 2,50,590
24.08.2017	24	Rs. 3,08,782
28.09.2017	43	Rs. 2,97,638
09.10.2017	48	Rs. 3,54,681
27.10.2017	56	Rs. 2,37,200
09.11.2017	62	Rs. 3,94,981
12.12.2017	77	Rs. 2,38,004
25.12.2017	83	Rs. 3,92,945
17.01.2018	90	Rs. 1,64,450
30.01.2018	94	Rs. 3,26,161
21.02.2018	101	Rs. 21,677
<b>Interest @ 21%</b>		<b>Rs. 13,50,181</b>
<b>Total outstanding</b>		<b>Rs. 53,40,989</b>

6. As per the Ledger Account Annexed by the Petitioner the last part payment received by it was of Rs. 2,00,000 on 21.03.2017.

7. It is stated by the Petitioner that the liability of the Respondent is of Rs.53,40,989 which includes interest @ 21% amounting to Rs.13,50,181.



8. That the Petitioner submits that it had sent a Demand Notice dated 17.05.2019, under Section 8 of IBC 2016 vide Speed Post at the Registered Office of the Respondent. It is further submitted by the Petitioner that the Respondent had replied the Demand Notice vide its letter dated 27.05.2019. The same has been averred in its Affidavit filed under Section 9(3)(b) of IBC, 2016. Further, the Petitioner has annexed the Bank Statement of Bank of India 01.04.2017 to 19.06.2019 in compliance of Section 9 (3)(c) of IBC 2016.

9. On entering appearance, the Respondent has filed its reply on 19.09.2019 and has raised certain objections. It has been pointed out that the Affidavit purported to have been filed in compliance of Section 9(3)(b) is defective as it does not disclose the true facts pertaining to the case.

10. It is further submitted by the Respondent :

*“That there exists a genuine/bonafide dispute with respect to the alleged outstanding amount of Rs. 53,40,989/- claimed by the Applicant which is not payable. It is submitted that the Applicant/Operational Creditor, which is in the business of manufacturing various types of printed and non-printed polythene, poly-propylene (H.M. HDPE) bags, tube sheets and other storage bags etc., supplied packing materials manufactured in Operational Creditor Company to Respondent, which was used by the Respondent for packing the frozen meat. It is submitted that the Applicant had*

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*supplied defective material vide Invoice dated 11.11.2017, Invoice no. 63 for rupees 2,90,535/- and Invoice dated 29.12.2017, Invoice no. 84 for rupees, 5,03,877/- to Al Nafees Frozen Food Exports Pvt Ltd which is a sister concern of Respondent Company: the packing material on being used for packing of material sent to M/s Al MUMAYAZ MEAT TRADING, P.O BOX. 717370, SHARJAH, UAE had been refused as defective/substandard and/or foul smell of packaging material, and destroyed; therefore, above mentioned sister concern of Respondent had to face loss of Total Amount 58165.20 in US DOLLER vide invoice no. and dated AN/FE/17-18/0134, 03.02.2018.”*

11. It is further stated by the Respondent that the sister concern of the Respondent had sent a notice dated 27.02.2018 to the Petitioner wherein a request was made to the Operational Creditor for adjusting at least 50% amount of the unpaid bills of the Respondent Company and its sister concern, on account of loss faced by the Respondent's sister concern due to defective material supplied by the Operational Creditor. To corroborate the said submissions, the Respondent company has placed Notice dated 27.02.2018 on record.

12. It is further submitted by the Respondent that the Operational Creditor had agreed to adjust 50% amount of the unpaid bills of Respondent Company as well as its sister concern for the loss caused to the sister concern due to defective material supplied by the applicant.

However, this assertion is not substantiated with any documentary evidence. During the proceedings, the Respondent Company could neither show any tripartite agreement for settlement of dues between the Operational Creditor on the one hand, the Respondent and its sister concern on the other hand.

13. That the Respondent Company has also placed on record a letter dated 10.09.2019 issued by Al Mamayaz Meat Trading to the Respondent Company, the contents of which are reproduced below:

*“10/09/2019*

*TO*

*AL NAFEEES FROZEN FOOD EXPORTS PVT. LTD.  
H.O.6, CENTRAL LANE, BENGALI MARKET, NEW DELHI-110001  
BRANCH: M-19, M.I.D.C IN. AREA, TALOJA DIST., RAIGAD,  
MAHARASHTRA-410208, INDIA*

*Dear Sir,*

*Sub: REJECTION OF YOUR INDIAN MEAT CONTAINERS BY THE HEALTH AUTHORITY OF SHARJAH, UAE*

*RE: Container Number MYRU-4519590*

*Your Invoice No: AN/FE/17-18/0134 Dated:03/02/2018*

*With reference to the above subject you have already been informed about the destruction of above said frozen Indian Meat container exported by you to us by the Health Authority of Sharjah, UAE.*

*The authority people found and confirmed bad pungent chemical odor emanating from all the cartons. They found that the packing material used to pack those goods were of inferior quality and had very strong smell. This smell has got imparted on the meat, thus making it unfit for human consumption. Hence, we were directed to destroy this full load. It appears that your packing materials are of very poor quality and many cartons were*

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*found broken at the time of opening of container. The Health Authorities were furious and they wanted to fine our Company as well. However, upon our request they gave us final warning.*

*For destruction of these said goods, the municipality authorities have charged us US\$ 2,500/-. We will debit this to your account and send you a debit note for this.*

*On the other hand, we also lost very important and profitable business period at that time due to which our losses have multiplied. However, we are not claiming anything from you for this.*

*With this letter of confirmation, we hereby confirm that we will not be able to send any payment to you for the above said container.*

*Thanking you*

*Yours Sincerely,*

*For Al Mumayaz Meat Trading L.L.C*

*Authorized Signatory”*

14. It is observed that the letter dated 10.09.2019 relied upon by the Respondent Company only depicts the rejection of containers of M/s. Al Nafees Frozen Foods Exports Pvt. Ltd. which is a separate concern. On the contrary, the Operational Creditor had emphasized on the default committed by the Corporate Debtor in making payments towards the invoices raised except part payment.

15. After hearing submissions of both the parties, this Bench is of the view, that the dispute raised by the Corporate Debtor pertains to the transactions carried out between the Operational Creditor and M/s. Al-



Nafees Frozen Foods Exports Private Limited, which being a separate legal entity, does not merit consideration.

16. In the given facts and circumstances, the Operational Creditor has established the default on the part of Corporate Debtor in payments of the operational debt. The Petition filed under Section 9 fulfills all the requirements of law. Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

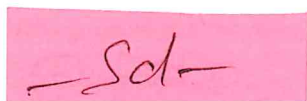
- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate 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.”



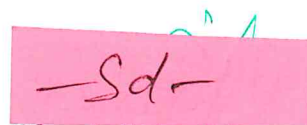
17. As proposed by the Petitioner, this Bench appoints Sh. Ram Phal Bhardwaj as IRP having his Office at 310/25, Onkar Nagar-B Tri Nagar New Delhi-110035 (email id- [bhardwajca@hotmail.com](mailto:bhardwajca@hotmail.com)) and Registration No. IBBI/IPA-001/IP-P01308/2018-19/12053, subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

18. The Petitioner Company is directed to deposit Rs. 1,00,000 (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

19. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



**(L. N. Gupta)**  
**Member (T)**



**(Ch. Mohd. Sharief Tariq)**  
**Member (J)**