

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (Court No –I)

KOLKATA

C.P (IB) No. 17/KB/2022

An application 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:

Mr.Mahavir Nimodia alias Mahavir Prasad Nimodia

...Operational Creditor

Versus

Nahorjan Tea Company Private Limited[CIN U15422WB1895PTC000975], a company incorporate under the Companies Act, 1956, having its registered office at33A, Chowringhee Road, Chatterjee International Centre, 20thFloor, Kolkata – 700071.

...Corporate Debtor

Date of Hearing: 04.11.2022

Date of pronouncing the order: 04.01.2023

Coram:

Shri Rohit Kapoor : ***Member (Judicial)***

Shri Balraj Joshi : ***Member (Technical)***

Appearances (through Video Conferencing/physical hearing)

For Operational Creditor : Ms. Sonal Saha, Adv.

Mr. Aniket Chaudhary, Adv.

ORDER

Per Rohit Kapoor, Member (Judicial)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*‘the Code’*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Mahavir Nimodia, sole proprietor of Chemico House (*‘Operational Creditor’*) for initiation of Corporate Insolvency Resolution Process (*‘CIRP’*) against Nahorjan Tea Company Private Limited (*‘Corporate Debtor’*).
3. The present Petition was filed on **31 December, 2021** before this Adjudicating Authority. The total amount claimed in default is Rs.1,46,17,598/- (Rupees One Crore Forty Six Lakh Seventeen Thousand Five Hundred Ninety Eight only) as on 16 September, 2021, along with interest @14% per annum. The date of default is stated to be as on 13 July, 2021, the date on which last supply was made on.
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs. 4,50,00,000/- (Rupees Four Crore Fifty Lakh only) with subscribed share capital of Rs. 4,32,00,000/- (Rupees Four Crore Thirty Two Lakh only). Part – IV of the Petition deals with the particulars of the Operational Debt.
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - 5.1 The Operational Creditor is engaged in the business of supplying agrochemicals, pesticides, insecticides and bio-fertilizers. The Corporate Debtor is in the business of Tea manufacturing. On several occasions the Corporate Debtor approached the Operational Creditor for supply of agrochemicals by placing various purchase orders upon the Operational Creditor.
 - 5.2 In pursuance of the aforesaid purchase orders/ requests goods were supplied to the Corporate Debtor through a transporter, at the address as specified in the Purchase orders or at times to be collected by the staff of tea estate. Accordingly on the specific communication of the Corporate Debtor the staff from the Tea Estate viz. Mr. Tarabir, Mr. Mahesh, Mr. Krishna, Mr. Funtoosh and/or Mr. Dinu collected the materials from the Operational Creditor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court No –I)**

C.P (IB) No. 17/KB/2022

Mr. Mahavir Nimodia alias Mahavir Prasad Nimodia v. Nahorjan Tea Company Private Limited

- 5.3 After each of the delivery, a tax-invoice was raised, which was received by the Corporate Debtor at its office, in Kolkata. The receipt of the invoice would be evident from the challans, as maintained by the Operational Creditor (*Annexure – B*). Against the supplies made by the Operational Creditor, the Corporate Debtor used to make on account payment as such making the account of the Corporate Debtor a running and continuous one.
- 5.4 However, despite several repeated requests made by the Operational Creditor, the Corporate Debtor has deliberately and negligently failed to make any payments whatsoever towards the outstanding tax- invoices raised. The date of the first default is the date of the last supplies made which was on July 13, 2021, while the last on account payment made against the supplies was on September 16, 2021 for a sum of Rs.20,000/- (Rupees Twenty Thousand only).
- 5.5 In 2019 the Ledger of the Corporate Debtor as maintained by the Operational Creditor was certified by the Corporate Debtor by affixing its stamp and signature thereupon. Therefore, confirming the unpaid liability of the Corporate Debtor. (*Annexure – E*). The Corporate Debtor had issued two cheques against part payment of its liability being Cheque no. 800056 dated August 25, 2021 for a sum of Rs.92,500/- (Rupees Ninety Two Thousand Five Hundred only) and Cheque no. 800057 dated August 26, 2021 for a sum of Rs. 48,000/- (Rupees Forty Eight Thousand only) but both the cheques were dishonored on presentation.
- 5.6 The Operational Creditor regularly sought for payments of the outstanding over Telephone, electronic mails and communications through WhatsApp, Although, none of the electronic mails were replied to by the Corporate Debtor but over telephone the Directors of the Corporate Debtor used to always assure that payments will be released shortly and by their WhatsApp correspondences of October 6, 2021, wherein Mr. Jayant Singhania, being one of the Directors of the Corporate Debtor assured the Operational Creditor that they will talk after the Durga Puja holidays and reconcile account statement. However, no such meeting was held in spite of several follow ups (*Annexure – G*).
- 5.7 Since there were no payments being made by the Corporate Debtor after September 16, 2021, the Operational Creditor a notice under the Insolvency and

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court No –I)

C.P (IB) No. 17/KB/2022

Mr. Mahavir Nimodia alias Mahavir Prasad Nimodia v. Nahorjan Tea Company Private Limited

Bankruptcy Code on November 1, 2021. The said Notice was received by the Corporate Debtor on November 16, 2021 and the same was replied to by a letter dated December 3, 2021 wherein, the Corporate Debtor admitted that they have not paid the amount as they are facing financial problems. They further stated that they would sit for a discussion after January 20, 2022 for making a payment schedule (*Annexure – I*)

- 5.8 Since past two years the Corporate Debtor has evaded the payment of the outstanding dues by seeking three weeks' /a month's time for a meeting to work out a repayment schedule, But the same was materialized due to the acts and conduct of the Corporate Debtor. This is a dilatory tactic used by the Corporate Debtor.

6. Issue

- 6.1 Is there any default by the Corporate Debtor?
6.2 Is the same is being acknowledged by the Corporate Debtor within the limitation period?

Analysis & Findings

7. We have heard the Ld. Counsel appearing on behalf of the Operational Creditor and perused the record.
8. Notice was issued to the Corporate Debtor on 25 January, 2022. As per the track report, the notice was served upon the Corporate Debtor on 04 April, 2022, however, the Corporate Debtor choose not to appear before this Adjudicating Authority.
9. The matter was listed for arguments on 18 July, 2022, where we deemed fit proper to direct the Operational Creditor to serve a notice for appearance to the Corporate Debtor, through publication in two newspaper one in English '*Business Standard*' and one in Bengali '*Aajkal*' for their appearances before this Adjudicating Authority.
10. Accordingly, service affidavit was filed by the Operational Creditor. The matter was set *ex – parte* on 23 August, 2022. *Vide* order dated 26 September, 2022, the matter was reserved for final Arguments and on 04 November, 2022, the matter was reserved for orders.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court No –I)**

C.P (IB) No. 17/KB/2022

Mr. Mahavir Nimodia alias Mahavir Prasad Nimodia v. Nahorjan Tea Company Private Limited

- 11.** On perusal of the letter date 03 December, 2021 (*at page 347 of the Petition*) it is observed that the Corporate Debtor has perused and acknowledged the letter of the Operational Creditor. Further, they also expressed in their letter that since the Tea Industry is passing through crisis for last five to six years, they are facing some financial problems, and because of which there is delay in making payments. They also agreed to sit for discussion on 20 January, 2020 for making payment schedule, but that meeting did not see the light of the day.
- 12.** With respect to the point of limitation, it is pertinent to say that several bills were raised between the period 05 May, 2017 to 13 July, 2021 and few payments were also made by the Corporate Debtor, details of which are as follows;

<i>Particulars</i>	<i>Amount (in Rs.)</i>
Gross Total	2,30,95,067.42
Payment received from 01 April, 2017 to 31 March, 2018 against previous opening balance	22,85,152.00
Payment received from 01 April, 2018 to 31 March, 2019 against previous opening balance	11,04,647.05
Payment received from 01 April, 2019 to 31 March, 2020 against previous opening balance	11,21,000.00
Payment received from 01 April, 2020 to 31 March, 2021 against previous opening balance	26,16,004.95
Payment received from 01 April, 2021 to 30 September, 2021 against previous opening balance	13,50,665.00
<i>Outstanding as on 30 September, 2021</i>	<i>1,46,17,598.42</i>

- 13.** In view of the above facts and circumstances, it is seen that the petition is within limitation and further we are satisfied that the present petition made by the Operational Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. Further, as envisaged under

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court No –I)

C.P (IB) No. 17/KB/2022

Mr. Mahavir Nimodia alias Mahavir Prasad Nimodia v. Nahorjan Tea Company Private Limited

section 9(3)(b) of the Code, an affidavit has also been filed by the Operational Creditor.

14. It is, accordingly, hereby ordered as follows:-

- a) The application bearing **CP (IB) No. 17/KB/2022** filed by Mr. Mahavir Nimodia, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Nahorjan Tea Company Private Limited, is **admitted**.
- b) There shall be a moratorium under section 14 of the IBC.
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Mr. Vasudeo Agarwal**, registration number **IBBI/IPA-001/IP-P00186/2017-18/10365**, email: **vdainfo@gmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court No –I)**

C.P (IB) No. 17/KB/2022

Mr. Mahavir Nimodia alias Mahavir Prasad Nimodia v. Nahorjan Tea Company Private Limited

documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) The Operational Creditor shall deposit a sum of **Rs.3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- 15. **CP (IB) No. 17/KB/2022** to come up on **07-02-2023** for filing the periodical report.
- 16. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on 04th day of January, 2023

SA [LRA]