

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

CP/862/IB/2018 filed under section 9 of
Insolvency and Bankruptcy Code, 2016
read with Rule 6 of the Insolvency and
Bankruptcy (Application to
Adjudicating Authority) Rules, 2016.

In the matter of M/s. Aambis Food Products Private Limited

M/s. SSMP Industries Limited
K-336, Saria Vihar, New Delhi-1100769

---Operational Creditor

Vs.

M/s. Aambis Food Products Private Limited
(CIN: U15134TN2007PTC065121)
3/39, Kodappa Naiken Patti Village,
Manavalli Post, Thirupattur TK,
Vellore Dist-635901.

---Corporate Debtor

CORAM

R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For Operational Creditor : *Shri. K.K. Murraltharan, Advocate*

For Corporate Debtor : *Shri.A.K. Balaji, Advocate*
Ms. S. Nithya, Advocate

ORDER

Per : R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on: 27.04.2021

Under consideration is an application filed pursuant to
section 9 of the Insolvency and Bankruptcy Code, 2016 read with



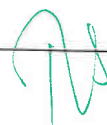
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (the AAA Rules, 2016) by M/s.SSMP Industries Limited (hereinafter referred to as **“Operational Creditor” – Under Liquidation**) for initiation Corporate Insolvency Resolution Process (in short **“CIRP”**) against M/s. Aambis Food Products Private Limited (**hereinafter referred to as “Corporate Debtor”**), on the ground that Corporate Debtor having defaulted in payment of operational debt to the tune of Rs.18,73,732.83/-

2. Learned Counsel for the Operational Creditor averred that the Operational Creditor being the purchaser of Mango pulp from the Corporate Debtor. In the crop year 2016, the Operational Creditor raised various Purchase Orders for the supply of Alphanso and Totapuri Mango Pulp along with the product specification. After completion of crop year 2016, both the parties had reconciled and finalized the account and accordingly the operational creditor sent full and final settlement of account



through e-mail dated 01.04.2017. The Corporate Debtor had confirmed the final settlement of account for the crop year 2016 and sent the acknowledgement through e-mail dated 03.04.2017.

3. The learned counsel for the Operational Creditor submitted that as per the said full and final settlement, the Operational Creditor had paid an amount of Rs.9,77,840/- on 05.04.2017 and Rs.14,66,760/- on 24.04.2017 in favour of the Corporate Debtor. After receiving amount from the Operational Creditor, the Corporate Debtor quoted huge rate for cans with pulp exceeding the prevailing market rate and hence the Operational Creditor through e-mail dated 07.09.2017 sought for return of the equivalent amount of the Cans and Cartons amounting to Rs.15,71,056.88 and also sent bank details to show no remittance of amounts by the Corporate Debtor. Despite admitting outstanding amount, the Corporate Debtor failed to clear outstanding operational debt. On 13.10.2017, the operational creditor sent demand notice demanding payment of outstanding debt and the same was delivered to the



Corporate Debtor on 16.10.2017. Till date, the Corporate Debtor had not sent reply nor raised any dispute against the said notice.

4. The learned counsel for the Corporate Debtor filed counter on 19.09.2018, it is submitted that the during crop year 2016, based on the purchase order given by the Operational Creditor, the Corporate Debtor completed the order and kept the goods ready. By a letter dated 05.08.2016, the Corporate Debtor requested the Operational Creditor asking for payment due (page.15). Since the Operational Creditor failed to procure the goods as per the terms and conditions, the stocks were stored at Corporate Debtor's company till the year 2017. Taking into consideration the goods being perishable in nature, the Corporate Debtor voluntarily negotiated with the Operational Creditor to fix a proper price to the said goods as the same was lying in the godown for a long time.

5. It is further submitted that the Operational Creditor instead of taking delivery of the goods at a mutually fixed price,

demanded to return the empty cans/cartons supplied by the Corporate Debtor knowing well that the cans were already filled up with the pulp and ready for procurement. The Operational Creditor is under liability to pay an amount of Rs.9,82,710/-towards 7 invoices raised between 08.09.2016 to 28.04.2017 with interest at the rate of 18% per annum. The Operational Creditor even after consumption of goods, delayed the payment as a result of which the Corporate Debtor Company faced huge financial crisis.

6. Further submitted that, it is not true that the goods supplied by the Corporate Debtor is of old materials and hence the payments were delayed by the Operational Creditor.

7. Thereafter, the learned counsel for the Corporate Debtor filed the **additional counter** on 16.10.2018, the Corporate Debtor enclosed auditor's report dated 05.10.2018 to show that the Company had to pay Tax and Penalty as the Operational Creditor did not furnish Form-H.



8. Heard both the parties and perused documents placed before this Adjudicating Authority. It is seen that there was business dealing between both the parties. The nature of goods being perishable commodity, slightest delay shall cause huge loss. Further, there were lots of discussions and reconciliation of the accounts between both the parties, as evident from the exchange of mails. There is also counter claim raised by the respondent, and the same is evident by auditor statement for the relevant years. The 'debt' as claimed by Operational Creditor is towards carton boxes and other packing material supplied by Operational Creditor along with purchase orders of the year 2016-2017. The packing materials are also perishable. Further, the onus of, who has to take back the unused materials, whether the same is adjusted towards payment are not clear.

9. Further, from the reply filed by the respondent, there is a counter claim of Rs.9,82,710/-. However, in the rejoinder filed by

Operational Creditor, there is no satisfying explanation. Hence, the applicant has failed to quantify the alleged 'debt' and the 'date of default'. Neither "debt" nor "default" is proved.

10. In view of observations supra, this Company Petition CP/862/2018 is hereby **dismissed**.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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