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IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI

IB-2158/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**ARUN KUMAR GOEL**  
Proprietor of: M/s Har Swaroop Traders  
4047, 3<sup>rd</sup> Floor, Naya Bazar,  
Delhi-110006

...Applicant

Versus

**M/s HI Tech Grain Processing Pvt. Ltd.**  
Having its Registered office at:  
G-5, Lawrence Road,  
Delhi-110035

...Respondent



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Arun Kumar Goel vs. M/s HI Tech Grain Processing Pvt. Ltd.

*[Handwritten signature]*  
11/11/2019

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**Coram:**

**DR. P.S.N. PRASAD**  
**Hon'ble Member (Judicial)**

**DR. V.K. SUBBURAJ**  
**Hon'ble Member (Technical)**

Counsel for Applicant: Mohit Nandwani, Kritika and Snigdha Lal  
Counsel for the Respondent: Iswar Mohapatra



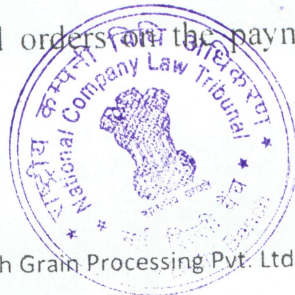
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## ORDER

Date:31.10.2019

1. This is an application filed by Shri Arun Kumar Goel ("Applicant"), proprietor of a firm, seeking to initiate corporate insolvency resolution process ("CIRP") of M/s HI Tech Grain Processing Pvt. Ltd. ("Respondent"), under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") for the alleged default on the part of the Respondent in settling the dues of Rs. 1,66,09,913/- towards the supply of grains and pulses. The details of the transaction leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant's proprietorship firm is engaged into trading and supplying of various types of grains and pulses to traders, processors and exporters in India.
- ii. The Respondent approached Applicant few years back to supply various types of grains and pulses for processing and further supply to its customers. Since then the Applicant is supplying various types of various types of grains and pulses to the Respondent based on their verbal orders on the payment terms of 45 days credit.



*[Handwritten Signature]*

During the initial period, the Respondent made payment on time but later on payments were delayed.

- iii. The Respondent verbally placed an order for supply of grains and pulses and promised to pay the outstanding amount of Rs. 1,15,12,503/- on that date.
- iv. The Applicant bases on verbal purchase order supplied the grains and pulses of Rs. 46,48,735/- vide invoice no. 1882 on 12.03.2018 and of Rs. 1,38,98,675/- vide invoice no. 1882 on 12.03.2018 and of Rs. 1,38,98,675/- vide invoice no. 1884 & 1888 on 13.03.2018.
- v. The Respondent made the following payments:

- a) Rs. 2,00,000/- on 27.03.2018
- b) Rs. 30,00,000/- on 31.03.2018
- c) Rs. 25,00,000/- on 04.04.2018
- d) Rs. 27,50,000/- on 05.04.2018
- e) Rs. 11,50,000/- on 07.04.2018
- f) Rs. 16,50,000/- on 10.04.2018
- g) Rs. 17,50,000/- on 11.04.2018
- h) Rs. 4,50,000/- on 16.04.2018

The total balance outstanding after above payments was INR 1,66,09,913/- (Indian Rupee One Crore Sixty Six Lacs Nine Thousand Nine Hundred & Thirteen Only).



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- vi. Applicant kept following up with Respondent for payment of outstanding but always got only verbal assurances. No payment was made by Respondent to the Applicant against the amount outstanding.
- vii. After no proper response, Applicant finally sent a Demand Notice in Form-3 on 17.07.2019, demanding payment under the Insolvency and Bankruptcy Code 2016 to the Registered Office addresses of the Respondent. The Demand Notice was served on Respondent on 20.07.2019.
- viii. Upon receipt of notice, the Respondent has sent a vague and frivolous reply on 30.07.2019 raising a dispute for delay in supply of material vide invoice no. 1134 dated 12.03.2018 amounting Rs. 46,48,735/- (Indian Rupee Forty Six Lacs Forty Eight Thousand Seven Hundred & Thirty Five Only), as the reason to for non-payment of operational debt. The Respondent has never raised any dispute in relation to the operational debt in past. Now only after receipt of Demand Notice the Respondent has raised the vague, frivolous and false reasons, in reply to the notice with malafide intention to create a dispute against the operational debt.



*[Handwritten Signature]*

ix. The Respondent failed to pay the outstanding debt within 10 days from the service of demand notice and the default is subsisting.

2. Consequent to the notices served by the Applicant and this Tribunal, the Respondent filed its reply on 19.09.2019 in which the following contentions are raised:

- i. The Respondent admitted the receipt of material supplied by the Applicant. However, the Respondent was not able to remit the amount on agreed dates due to lack of liquidity at his end.
- ii. The Respondent was not able to realize money from his customers on due dates due to bad market conditions and therefore unable to pay the amount to Applicant on due dates.
- iii. The Respondent has well informed the Applicant on probable delays in payment due to unfavorable market conditions, demonetization and application of taxes under GST on agro products which were not levied under the VAT regime.
- iv. The Respondent has made all payment, in past, on time and the present delay happened due to circumstances beyond its control.
- v. The Respondent has suffered heavy business losses and fall of reputation in the market due to sub-standard quality of material



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supplied by the Applicant, but never raised his concern or any dispute with Applicant due to their long business association.

- vi. The Respondent has never denied the outstanding towards Applicant and has requested multiple times to the Applicant to allow some more time for repayment.
  - vii. The Respondent has communicated to the Applicant about the planned payment schedule to be commenced after improvement in business conditions, however the Applicant has not reverted back on the proposal and instead filed this petition against the Respondent.
3. We have gone through the details of documents filed by both the parties and heard their arguments of both the counsels. Perusal of the reply filed by the Respondent clearly indicates the admission made by the Respondent and his inability to settle the amount to the Applicant due to lack of liquidity at his end consequent to bad market conditions. The issue of supply of substandard quality of material by the Applicant as contended by the Respondent is not supported by material evidence.
4. In view of the tacit admission made by the Respondent, this Tribunal initiates CIRP of the Respondent with immediate effect.



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5. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be



terminated or suspended or interrupted during moratorium period.

- (3) 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.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

6. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Amar Gopal Gambhir (Email – [aggandassociates@gmail.com](mailto:aggandassociates@gmail.com), Mobile – 9811386480) and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

7. Renotify this case for report of the IRP on 02.12.2019.

-Sd-

(Dr. V.K. SUBBURAJ)

MEMBER (TECHNICAL)



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(Dr. P.S.N. PRASAD)

MEMBER (JUDICIAL)

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Note: In terms of Rule 151 of NCLT Rules, 2016 and in view of Hon'ble Member (Judicial) sitting at the Jaipur Bench at NCLT, Rajasthan this order is being pronounced on behalf of Bench – VI by Hon'ble Member (Technical) Dr. V. K. Subburaj.



  
Deputy Registrar  
National Company Law Tribunal  
Complex, New Delhi-110003

