IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

IBA/284/2019

Under Section 9 r/w rule 6 of the IBC, 2016

In the matter of M/s. Shree Ambika Sugars Limited

M/s. Christy Friedgram Industry

---Operational Creditor

V/s

M/s. Shree Ambika Sugars Limited

---Corporate Debtor

Order delivered on: 01.08.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Operational Creditor: *Ms. T.V Muthu Abhirami, Advocate*
For the Corporate Debtor : **None-Present** on the date of hearing

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in the Open Court on 31.07.2019

It is an Insolvency and Bankruptcy Application (IBA) filed by Operational Creditor namely Mr. T.S Kumarasamy, Proprietor of Christy Friedgram Industry under u/s 9 of the Insolvency & Bankruptcy Code, 2016 ("**the Code**") for initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate

Debtor on the ground that the Corporate Debtor failed to pay ₹3,00,00,000.

2. On perusal of this application, it appears that it is the case of the Operational Creditor (M/s. Christy Friedgram Industry) that the Operational Creditor had issued Purchase Order No.COM/685/2017-2018 upon the Corporate Debtor on 10.11.2017 for supply of 2000 MT of Sugar (S30 Grade) at the rate of ₹36,500/- per MT, exclusive of GST @ 5%. Thereafter, on 10.11.2017, the Operational Creditor simultaneously made an advance payment of ₹3,00,00,000 to the Corporate Debtor vide RTGS effected on Indian Bank, Trichengode Branch.

3. Thereafter, on 13.11.2017, the Corporate Debtor acknowledged the receipt of advance amount of ₹3,00,00,000 against supply of 2000 MT of sugar from the Operational Creditor. Since the Corporate Debtor did not supply sugar, the Operational Creditor sent an e-mail on 06.12.2017 stating that it had already paid ₹3,00,00,000 vide Indian Bank transfer to lift the material from the Corporate Debtor on immediate basis but, till date, the Operational

Creditor did not receive Sugar from the Corporate Debtor even after continuous follow-up by the Operational Creditor.

4. Thereafter, despite e-mail correspondence exchanged between the parties, as the Corporate Debtor failed to supply sugar as agreed by it, to refund the advance received from the Operational Creditor toward supply of Sugar, on 24.05.2018 the Corporate Debtor sent six post-dated cheques, each for ₹ 50,00,000 drawn in favour of the Operational Creditor, on State Bank of India, Nungambakkam, as under:

Cheque Number	Date
505479	Oct 31,2018
505480	Nov 30, 2018
505481	Dec 31, 2018
505482	Jan 31, 2019
505483	Feb 28, 2019
505484	Mar 31, 2019

5. It has also been mentioned in the letter of Corporate Debtor dated 24.05.2018 that the aforesaid advance will carry interest @ 12% per annum from 10.11.2017 and the interest net of TDS will be paid to the Operational Creditor separately as on 31.03.2019. Though the Corporate Debtor sent Cheques to the Operational Creditor for

realisation of the advance given, the Operational Creditor could not encash the same since the above cheques were dishonoured with a Return Memo for the reason "INSUFFICIENT FUNDS". As the Corporate Debtor failed to supply sugar and also failed to refund the advance paid by the Operational Creditor, on 04.01.2019, this Operational Creditor issued section 8 notice (Form 3) to the Corporate Debtor demanding payment of ₹3,00,00,000 along with interest @ 12% per annum as agreed by the Corporate Debtor. Thereafter, since neither reply nor has advance come from the Corporate Debtor, this Operational Creditor has filed this application u/s 9 of IBC for initiation of CIRP against the Corporate Debtor.

6. It is evident from the record of the Corporate Debtor that though the Corporate Debtor appeared before this Bench several times, the Corporate Debtor has not come forward with any defence stating that dispute is existing in respect to the payment payable to the Operational Creditor. The Corporate Debtor has not even filed reply or written submissions raising defence against the claim made by the Operational Creditor.

7. Since it is an advance payment made by the Operational Creditor towards supply of sugar (goods) from the Corporate Debtor, it is to be construed as 'operational debt' relating to supply of goods, therefore, considering this claim as operational debt and there being no dispute in between the parties in respect to debt and default, we hereby admit this company petition by appointing Mr. Ajay S. Jain as IRP with a further direction to this Operational Creditor to pay remuneration of the IRP as well as other expenditure the IRP incurs in discharging his/her duties until CoC has been constituted by the IRP and with directions as follows:

(I) That Moratorium is hereby declared prohibiting all of the following actions, namely,

(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 (SARFAESI Act);

(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.

(II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from **31.07.2019** till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(V) That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints **Mr. Ajay S. Jain** having **Registration Number [IBBI/IPA-001/IP-P01684/2019-2020/12631], Flat -10G, 10th Floor, Bhavya Block, Sri Mahalakshmi UTSAV Apartments, No. 339, K.H Road, Ayanavaram, Chennai- 600023, Email:** ajaypagariya@gmail.com , **Mobile No: 9884211139** as Interim Resolution Professional with his consent to carry the functions as mentioned under The Insolvency & Bankruptcy Code.

8. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by way of e-mail.

-Sd-
(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

VS/TJS