IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P.No.57/BB/2017/
C.P.No.110/15
U/sec.9 of I&B Code

IN THE MATTER OF:

M/s Ruchi Soya Industries Ltd. …….. **Applicant/Operational Creditor**

Versus

M/s.Bhadravathi Balaji Oil Palms Ltd …….. **Respondent/Corporate Debtor**

Order Delivered on: 22nd November, 2017

Coram: Hon'ble Shri RatakondaMurali, Member (Judicial)
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Applicant: Mr. T Gajendra & Mr. Shravan Lokre, Advocate
Lokre Law Partners
#36, Brigade Road Cross, Bangalore- 560 901
Advocate for the Applicant Company

Per: **Hon'ble Shri RatakondaMurali, Member (Judicial) -** Author

O R D E R

Originally this Petition was filed before the Hon'ble High Court of Karnataka under Section 433(e) of the Companies Act, 1956 and was numbered as Co.P.No.110/2016. Subsequently vide Notification No. GSR.1119 (E) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said matter was transferred to this Tribunal and renumbered as T.P.No.57/2017 and in pursuant to the Notification, the Applicant Company was directed to comply with the relevant provisions of the Insolvency and Bankruptcy Code, 2016. The Corporate Applicant/Corporate Debtor filed the Application under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process as Operation Creditor.

The Applicant, Operational Creditor namely M/s Ruchi Soya Industries Limited, in its Application has stated that the Corporate Debtor Company M/s. Bhadravathi Balaji Oil Palms Limited has defaulted in repaying a sum of Rs.1,40,38,462/- and hence this Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("Rules") seeking for admission of this Application, declaring moratorium on the Corporate Debtor Company, direction for public announcement of initiation of corporate insolvency process and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

The Applicant Company is **RUCHI SOYA INDUSTRIES LIMITED** has filed the present Application. The Applicant Company was incorporated in the year 1986 bearing CIN No. L15140MH1986PLC038536. The Registered Office of the Applicant Company is 'Ruchi House' Royal Palms, Survey No.169, Arrey Milk Colony Near Mayur Nagar, Goregaon (East) Mumbai Maharashtra- 400 065.

The Corporate Debtor is **BHADRAVATHI BALAJI OIL PALMS LIMITED** incorporated on 26th December, 1991 bearing CIN No.U85110KA1991PLC012655. The Authorised Share Capital of the Corporate Debtor is Rs. 400,000,000/- and the paid up Share Capital is Rs.25.00,00,000/-. The Registered Office of the Corporate Debtor is No.8, Karehalli, B.H. Road, Bhadravathi, Karnataka – 577 245.

The Applicant Company i.e. Operational Creditor has proposed the name of Interim Resolution Professional Sh.Vinod Sunder Raman, Address: First Floor, 1433A, 22nd Main, 39th Cross, 4th T Block, Jayanagar, Bangalore 560 041; Email: vinod@vrcosulting.biz and bearing Registration No.IBBI/IPA-002/IP-N00075/2017-2018/10206.The Registered Address of the proposed Interim Resolution Professional is 318, 19th Main, 41st Cross, 5th Block, HBR Layout ,Bengaluru,Karnataka, 560043

The Applicant Company has averred that the Corporate Debtor came forward to purchase fresh fruit bunches of Palms for processing the same and supplying the Palm Oil to the Applicant Company. After negotiations in respect of terms & conditions, the Applicant Company and Corporate Debtor entered into an Agreement on 22nd February, 2012, a copy of said Agreement is shown as **Annexure 2**.

The Applicant Company and Corporate Debtor due to their scope of business had decided to enter into "1st Continuation of Business Agreement" on 21st August, 2012. The Applicant for the said purpose under the said 1st Continuing Business Agreement had agreed and paid advance amount of Rs.50,00,000/- to the Corporate Debtor which amount was agreed as per the Agreement to remain with the Corporate Debtor for a period of 2 years from the date of signing of the 1st Continuation of Business Agreement i.e. 21st August, 2012 and the said amount is agreed to be adjusted against the value of purchases made by the purchaser/Applicant Company commencing from the beginning of the 3rd year of the 1st Continuing business agreement or such earlier time which may be mutually agreed by the Applicant Company and Corporate Debtor. It was further agreed that the said advance amount of Rs.50,00,000/- (Rupees: Fifty Lakh only) paid by the Applicant Company to the Corporate Debtor will carry no interest in the first Two years and thereafter shall carry interest on the daily balances at the rate of 18 per cent per annum during 3rd year and on failure to pay the said interest there shall be penal interest at the rate of 4 per cent per annum on the outstanding due over and above 18 per cent annual which is agreed to be levied as liquidated damages.

In pursuance of the first Continuation of Business Agreement dated 21.08.2012 Mr.Ananthi, the Managing Director of the Corporate Debtor Company has also voluntarily pledged her fully paid up equity shares of the value of 5 per cent and as agreed with the said pledge to the extent of 5 per cent of the total paid up equity shares acquired out of her own income. A copy of the said Continuation of Business Agreement dated 21.08.2012 is shown as **Annexure-3**. It is further agreed that the Pledge made under the Agreement shall remain outstanding until the advance and interest thereon has been repaid and in the event of the failure of the Corporate Debtor to meet the conditions of the Agreement dated 21.08.2012. The Applicant Company shall be at liberty to appropriate the pledge in full and final payment of the then outstanding advance amount.

The Corporate Debtor received the sum of Rs.50,00,000/- (Rupees: Fifty Lakh Only) as advance and has held the same. In the meanwhile the Applicant Company continued to supply Fresh Fruit Bunches of Oil Palm from 21.08.2012 but on 31.07.2014 as per Agreement stated above, on an invoice value of Rs.33,69,976/- (Rupees: Thirty Three Lakh Sixty Nine Thousand and Nine Hundred Seventy Six only) the Corporate Debtor failed and declined to supply processed palm oil. The Applicant Company has produced a copy of the invoice raised in so far as the aforesaid supply of Fresh Fruit Bunches to the extent of Rs.33,69,976/- (Rupees: Thirty Three Lakh Sixty Nine Thousand and Nine Hundred Seventy Six only).

The Applicant Company submits that the Corporate Debtor had intentionally declined to deliver processed palm oil as agreed and after having carried out the process and have unjustly enriched this sum of Rs.50,00,000/- (Rupees Fifty Lakh only) which is the advance paid by the Applicant under the Agreement dated 21.08.2012 apart from the invoice amount of Rs.33,69,976/- (Rupees: Thirty Three Lakh Sixty Nine Thousand and Nine Hundred

Seventy Six only). The Corporate Debtor in breach of the terms become liable to pay interest at 24 per cent per annum on the invoice value, together with interest @18 per cent per annum along with 4 per cent penal interest on the sum of Rs.50,00,000/- (Rupees: Fifty Lakh only) being Rs.46,67,991/- (Rupees Forty Six Thousand Sixty Seven Thousand Nine Hundred and Ninety one only) as liquidated damages as per Agreement and hence made a total claim of Rs.1,40,38,462/- (Rupees: One Crore Forty Lakh Thirty Eight Thousand and Four Hundred Sixty Two only) and got issued a Legal Notice addressed both to the debtor company as well as director Mrs.Ananthi who had pledged her shares upto 2,00,000/- Equity share of Rs.10/- each issued by the debtor company to secure the repayment of Rs.50,00,000/- (Rupees Fifty Lakh only) to the Applicant Company, informing the Corporate Debtor that Applicant Company has found that the Corporate Debtor has fallen due of Rs. 1,40,38,462/- (Rupees One Crore Forty Lakh Thirty Eight Thousand and Four Hundred Sixty Two Only) as on 16.02.2016 and in liable to pay future interest on the invoice value amount as well as liquidated damages and issued the said notice of demand under the provisions of the Companies Act, 1956.

The Applicant further submits that the Corporate Debtor Company have intentionally received and defrauded the Applicant Company in failing to pay the outstanding amount due in a sum of Rs. 1,40,38,462/-(Rupees One Crore Forty Lakh Thirty Eight Thousand and Four Hundred Sixty Two only) together with future interest and costs as agreed to the Applicant Company with an intention to defraud and deceive the Applicant Company and Applicant Company being a Secured Creditor as come up with present petition to seek granting the order from this Tribunal to direct the winding up of the Corporate Debtor Company namely M/s.Bhadravathi Balaji Oil Palms Limited and direct the recovery for the sum of Rs.1,40,38,462/-(Rupees One Crore Forty Lakh Thirty Eight Thousand and Four Hundred Sixty Two only) together with costs and agreed future interest at 24% per annum and cost of this petition through the process of liquidation which is the only mode left for the Applicant to recover the sum of Rs. 1,40,38,462/- (Rupees One Crore Forty Lakh Thirty Eight Thousand and Four Hundred Sixty Two only) together with costs and interest. The Applicant Company has not initiated any other writ petition or legal proceedings before any other forum. The debt is due from:

21.08.2012 - Rs.50,00,000/-

31.07.2014 - Rs.33,69,976/- interest and liquidated damages - Rs.56,68,486

Total = Rs.1,40,38,462/- plus interest till date of actual payment. The Detailed calculation sheet is shown as **Annexure 4.**

The Applicant Company has filed Postal Acknowledgements for having served the notices to the Corporate Debtor/Respondent along with **Memo dated 20th April, 2017.** Further, the Applicant Company has filed Postal Receipt and returned Postal covers which were dispatched to the Respondent Company along with **Memo dated 31st May, 2017**. The Applicant Company has produced along with Memo dated 19th July, 2017, the extract from the Postal website to show the delivery of the notice sent under compliance to the Registered Address of the Respondent Company and the Managing Director of the Respondent Company.

The Applicant Company has further filed the copy of Demand Notice issued in Form III dated 23rd October, 2017 and also the Postal receipt for having served the notices to the Corporate Debtor/Respondent. The copies of Demand Notice and postal receipt are filed along with **Memo dated 27th October, 2017**. Further, the Applicant Company has filed the proof of delivery of notice to the Managing Director of the Corporate Debtor. The Track Consignment copy of the postal website is filed along with **Memo dated 22nd November, 2017.**

The Counsel for the Applicant Company has further produced the Consent letter issued by the Insolvency Professional along with **Memo dated 6th July, 2017**.

The Applicant Company has filed the Affidavit **dated 20th September, 2017** of the Authorized Representative of the Company stating that the Applicant Company has complied with filing of Form-V. It is further averred that the Statutory notices under the code has been issued to the Respondent addresses and have furnished the postal receipts to this Tribunal.

On Perusal of the documents filed by the Applicant Company, it is evident that the Corporate Debtor defaulted in repaying the said amount. None appeared on behalf of the Corporate Debtor despite issuance of notices.

Evidently, it is established by the Operational Creditor that the nature of Debt is a "Operational Debt" as defined under section 5 (21) of the Code. It has also been established that there is a "default" as defined under section 3(12) of the code on the part of the Corporate Debtor. On the basis of the material on record the Applicant/Operational Creditor has established in claim apart the Corporate Debtor and there is non-payment of Debt on the part of the Corporate Debtor.

Accordingly, this Bench hereby admits this Application declaring Moratorium with the following directions as mentioned below:

i. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; 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 22nd November, 2017 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, whichever is earlier.

v. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the code.

vi. The Applicant Company i.e. Operational Creditor has named Professional Sh.Vinod Sunder Raman; Address: First Floor, 1433A, 22nd Main, 39th Cross, 4th T Block, Jayanagar, Bangalore 560 041; Email: vinod@vrcosulting.biz and bearing Registration No. IBBI/IPA-002/IP-N00075/2017-2018/10206 and he is appointed as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code as Interim Resolution Professional.

Accordingly, this Petition is admitted.

22/11/17

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

22/11/17

(RATAKONDA MURALI)
MEMBER, JUDICIAL