

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No. 1326/IBC/NCLT/MB/MAH/2017

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

In the matter of
Saba Bahar Iranian Company
..... Operational Creditor

V.
M/s. Royal Agro Green Food Industries Pvt.
Ltd.
..... Corporate Debtor

Order delivered on: 03.04.2018

Coram:

Hon'ble M.K. Shrawat, Member (J)
Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner:

Adv. Pooja Batra.

For the respondent:

Adv. Disha Ponda a/w Nishitha Nambiar i/b India Law LLP

Per: Bhaskara Pantula Mohan, Member (J)



ORDER

1. This case is a classic example of an innocent Foreign Investor investing in India by innocently believing a person for the supply of certain material and parting a huge amount without there being any credible efforts to stick to the promises made by them by the other side i.e. the Corporate Debtor. The Corporate Debtor who is purportedly running a company had time and again cheated the applicant who was innocently kept on paying huge amounts of money in the hope of getting shipments of the Corporate Debtor, but without there being any supplies and shipments.
2. The Petitioner has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in the capacity of "Operational Creditor" on 18th August, 2017 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code.
3. In the requisite Form, under the Head "Particulars of Operational Debt" the total Principal amount in default is stated to be Rs. 5,40,00,000/- (Rupees Five Crores Forty Lakhs only).
4. Further under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as M/s Royal Agro Green Food Industries Private Limited having Registered office at, 2nd floor, Bhanu Mansion, Bhavani Shankar Road, Dadar (West), Mumbai, Maharashtra, India - 400028.

5. Learned Counsel of the Petitioner has described the "Nature of the Debt" that, Petitioner Company placed an order for purchase of 12,500 Mt of Yellow Corn to the tune of Rs. 22.35 crores and hence it is an Operational Debt. The Corporate Debtor vide a Performa Invoice dated 06.09.2012 bearing No. ROYAL/004/12-13 had agreed to export and supply 12,500 Mts of Yellow Corn to the tune of Rs. 22, 35,00 ,000/- to the Petitioner.
6. On 28.10.2012 Memorandum of understanding was signed by both the parties recording the terms on which the Yellow Corn would be supplied to the Petitioner.
 - 6.1 On 29.10.2012 vide an email, the Corporate Debtor requested the Operational Creditor to open a letter of Credit and make partial payment of Rs. 27 lakhs towards the deposit amount.
 - 6.2 Pursuant to the said email the Operational Creditor opened a Letter of Credit bearing No. 317/91743803 dated 18.11.2012 valid upto 15.03.2013 for an amount of Rs. 22,35,00,000/-.
 - 6.3 On 19.11.2012, the Corporate Debtor vide its letter confirmed receipt of the letter of Credit and requested the Operational Creditor to furnish a further deposit amount of Rs. 1 crore. In such letter, the Corporate Debtor also stated that the shipment would be ready for dispatch by the first week of the December, 2012.
 - 6.4 The Corporate Debtor failed to dispatch the yellow corn and after constant follow up by Petitioner, on 11.01.2013 the Corporate Debtor informed the Petitioner about the delay in loading on account of heavy congestion.
7. Despite its failure to comply with the contractual obligation, on 06.02.2013 the Corporate Debtor unilaterally decided not to ship the Yellow Corn till a further deposit of 7% is made by Corporate Debtor.
 - 7.1 Again both parties entered into an Agreement entered by which the Petitioner agreed to pay an additional amount of Rs. 1,63,00,000/- to the Corporate Debtor towards the unilateral increase in the deposit amount made by the Corporate Debtor. The Corporate Debtor in exchange agreed to supply the goods within 15 days of the receipt of the additional deposit amount.
 - 7.2 Failing to fulfil its obligation, on 17.05.2013 the Corporate Debtor entered into an agreement with the Petitioner where it was mutually agreed that the petitioner would, for the last time, extend the letter of credit till 05.06.2013 and that the Corporate Debtor shall supply yellow corn by such date failing which the Corporate Debtor will return the deposit amount of Rs.2,90,00,000/- to the Petitioner.
 - 7.3 Failing to comply with its obligation under the agreement dated 17.05.2013; the corporate debtor was given another chance. The assurances given by the Corporate Debtor were recorded in the minutes of meeting dated 15.06.2013 by which the Corporate Debtor once again sought extension in time to supply the goods and agreed to supply them latest by 22.06.2013.
8. Failing to fulfil its obligations, on 11.09.2013 the Corporate Debtor once again entered into an agreement with the petitioner vide which it was agreed between the parties that a partial shipment of 6000 Mts. Yellow Corn would be made by the Corporate Debtor as opposed to the 12,500 Mts. Of Corn for which the order was placed.



9. Failing to fulfil its obligations on 25.01.2014 once again the Corporate Debtor entered into an agreement in which it was agreed that since the Corporate Debtor had failed to deliver the yellow corn to the petitioner, the Corporate Debtor would compensate the Petitioner to the tune of Rs.4,21,00,000/- by supplying to the Petitioner other agricultural product.
10. Failing to fulfil its obligations, the Corporate Debtor gave one more written undertaking to the Iran Consulate to ship 2700 Mts. of Barley to the Petitioner instead of Yellow Corn before 10.08.2014.
11. Failing to fulfil its obligations on 25.08.2014, the Corporate Debtor entered into another agreement with the Petitioner and once again agreed to ship 2700 Mts. of feeding barley in bulk.
12. Failing to fulfil its obligations on 22.09.2014, the Corporate Debtor entered into another agreement with the Petitioner and agreed to supply 2650 Mts. of rapeseed by late November, 2014.
13. Failing to fulfil its obligations on 13.10.2014, the Corporate Debtor requested for an extension in time to supply the Rapeseed. It was agreed that the Corporate Debtor would supply the goods to the Petitioner latest by 22.11.2014. The Corporate Debtor in October, 2014 supplied on 487.445 Mts. of Rapeseed to the tune of Rs. 85,30,287/-.
14. On account of repeated failures on part of the Corporate Debtor, the Petitioner filed a complaint dated 11.03.2015 before the Additional Director General of Foreign Trade, Ministry of Commerce, and Government of India issued a summons dated 12.06.2015 to the Corporate Debtor.
15. Pursuant to the said summons issued to the Corporate Debtor at a meeting dated 11.08.2015 fixed by Additional Director General of Foreign Trade. It was mutually agreed between both the parties on 11.08.2015 that as a part of compensation towards the losses of the Petitioner, Corporate Debtor would ship Soya Meal to the value of Rs.4.30 Crores to the Petitioner in 90 days of the meeting.
16. Failing to fulfil its obligations despite the directions of the Additional Director General of Foreign Trade, vide an Email on 07.11.2015 the Corporate Debtor offered to supply Indian Basmati Rice.
17. After entering into aforesaid agreements and giving several chances to fulfil the agreements, on 12.09.2016, the Petitioner issued a Demand Notice on Corporate Debtor .
18. The statement of bank account dated 31.07.2017 of the Operational Creditor is furnished and stated that, in the account of the Operational Creditor payment of the claimed amount has not been credited by the Corporate Debtor till date. Also placed in the compilation of statement of account wherein the outstanding Debt Balance is confirmed by the Debtor.
19. **THE MAIN CONTENTION OF THE CORPORATE DEBTOR :-** It is the contention of the Corporate Debtor that Operational Creditor does not maintain



an account in India with the financial institutions as defined under the Code. It is further submitted that as per Section 9(3)(c) of the Code it is mandatory to furnish certificate from the financial institutions maintaining accounts of the Operational Creditor. Another point the Debtor puts forward is that the supplies are intended for Iran and that the Banks were not linked to grant loan facility.

20. **FINDINGS :-** Considering the above facts, it is established by the Operational Creditor that the nature of Debt is an "Operational Debt" as defined under section 5(21) of the Definitions under The Code. Even though it has been contended by the Corporate Debtor that, the Operational Creditor has not maintained any account with any financial institution, in view of the Judgement of the Apex Court in "**Macquarie Bank Limited Versus Shilpi Cable Technologies Ltd.**" categorically stated that the 9(3)(C) is only directive in nature but not mandatory. And the financial institution would include a bank outside the categories mentioned in Section 3(14) when it comes to an operational creditor who is a resident outside India. Therefore, the objection of the Corporate Debtor does not contain and required to be overruled.
21. It has also been established that admittedly there was a "Default" as defined under section 3(12) of The Code on the part of the Corporate Debtor. On the basis of the evidences on record the Petitioner has established that the advance was given against the goods to be supplied and invoices were raised to claim the amount but there was non-payment of Debt on the part of the Corporate Debtor.
22. We have perused the notice sent under Section 8 (2) of the Insolvency and Bankruptcy Code, 2016 and if the Respondent wanted to place on record evidence of 'dispute' then he could have raised the objection within 10 days as prescribed under section 8(2) of The Code which had also lapsed.
23. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.
24. The Operational Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Operational Creditor, Mr. Sekar Ananthanarayan, having address at, B 305, Sai Jyote, Lalubhai Park West, Vile Parle West Mumbai, Maharashtra, 400056 having Registration no. IBBI/IPA-003/IP-N00052/2017-18/10492 is appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
25. In Form No. 2 dated 22nd April, 2017, the Insolvency Resolution Professional has conveyed his willingness to accept his appointment in the above case. He has also given the necessary certificates/affirmation from his side to this Tribunal in this regard.
26. Having admitted the Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order. The same shall be applicable by prohibiting institution of any Suit before any Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective



till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

27. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
28. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench.
29. The IRP so appointed shall also comply with the other provisions of the Code including section 15 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
30. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the receipt of the Order.

SD/-
Bhaskara Pantula Mohan
Member (J)

SD/-
M. K. Shrawat
Member (J)

Dated :- 03.04.2018



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Assistant Registrar
National Company Law Tribunal Mumbai Bench