

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

CP (IB)-588/ND/2023

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016]

IN THE MATTER OF:

**RAM RATAN JAGATI
SOLE PROPRIETOR OF JJ TRADING FZE
P6-ELOB OFFICE NO. E-32G-34, P.O. BOX 51016,
HAMRIYAH FREE ZONE, SHARJAH, UAE**

**.... OPERATIONAL
CREDITOR/APPLICANT**

VERSUS

**M/S FUTURISTICS METAL TRADING PVT. LTD.
B-104, FOURTH FLOOR,
DDA SHEDS, NEW DELHI-110020**

**...CORPORATE
DEBTOR/RESPONDENT**

Order Delivered on: 02.07.2024

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Ms. Priyanka Sethia, Adv.

For the Respondent : Mr. Rohit Gandhi & Ms. Akshita Nigam, Advs.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This instant application was filed by Mr. Ram Ratan Jagati, being the sole proprietor of JJ Trading FZE (hereinafter referred as 'Applicant'/ 'Operational Creditor'), having office at P6-ELOB OFFICE NO. E-32G-34, P.O. BOX 51016, Hamriyah Free Zone, Sharjah, UAE and engaged in the business of production and trading of various goods and products such as crude palm oil, crude sunflower seed oil, HMS, PVC, Rubber Rolls, CR Sheet and steel scrap, etc., for sale in domestic and export markets, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s Futuristics Metal Trading Pvt. Ltd., (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of outstanding amount of [US\$ 153,347.39 @Rs. 82.08 per US\$ i.e. Rs. 1,25,86,753.8/- (Rupees One Crore Twenty-Five Lakhs Eighty-Six Thousand Seven Hundred Fifty-Three and Eight Paise only).
2. The Respondent Company M/s Futuristics Metal Trading Pvt. Ltd. having CIN: U51103DL2008PTC179514 was incorporated on 13.06.2008 under the provisions of the Companies Act, 1956 having its registered office situated at B-104, Fourth Floor, DDA Sheds, New Delhi-110020. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Adjudicating Authority having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution

Process in respect of Respondent Corporate Debtor under sub-section (1) of Section 60 of the Code.

3. The present petition was filed on 25.09.2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of [US\$ 153,347.39 @Rs. 82.08 per US\$ i.e. Rs. 1,25,86,753.8/- (Rupees One Crore Twenty-Five Lakhs Eighty-Six Thousand Seven Hundred Fifty-Three and Eight Paise only)] as on 15.07.2023 (i.e., the date of demand notice).

Submissions of learned Counsel appearing for the Applicant

4. The case of the applicant precisely is that the Corporate Debtor had approached the Operational Creditor in the year 2012 for purchasing various materials including but not limited to crude palm oil, crude sunflower seed oil, HMS, PVC, Rubber Rolls, CR Sheet and steel scrap, etc., During the persistence of the business relations between the parties from 2012-2014, the Operational Creditor had supplied the goods/materials to the Corporate Debtor from time to time and raised invoices against the same for which the Corporate Debtor had made some on account payments, however, despite having a running account wherein the Corporate Debtor were making regular payments, the Corporate Debtor failed to clear three invoices dated 24.07.2013, 31.10.2013 and 16.11.2013 raised by the applicant against the supply of HMS, Rubber Rolls and CR Sheets to the tune of US\$ 42,774.45. Apart from this, the Corporate is also liable to credit/reverse the refund

a sum of US\$ 110,135.10 paid to it by the Applicant under protest/protection on 16.04.2014.

5. It is submitted that in April 2014, the Corporate Debtor had raised an issue regarding the quality of the goods supplied to it during the period 01.04.2012 to 31.03.2014 by the Operational Creditor and demanded that a sum of US\$110,000 be refunded by the Operational Creditor on immediate basis against the faulty goods. The Applicant had refunded the sum of US\$110,135.10 under protest/protection to the Corporate Debtor on 16.10.2014 keeping in mind the long-standing business relations between the parties and on the assurance that a detailed report in respect of the faulty goods would be furnished in due course. However, the Corporate Debtor failed to furnish any such report and later, admitted to credit/ reverse the refund amount, paid under protest/protection, back to the Operational Creditor which is evident vide the various communications between the parties.
6. The Parties maintained a running account for their business transactions containing mutual entries of credit and debit. Thus, as per the ledger of the Operational Creditor, the total Operational Debt that remained unpaid by the Corporate Debtor amounts to US\$153,347.39 [or Rs.1,25,86,753.8/- (Rupees One Crore Twenty-Five Lakhs Eighty-Six Thousand Seven Hundred Fifty-Three and Eight Paise Only) calculated @Rs. 82.08 per 1US\$ x US\$153,347.39 as on 15.07.2023].
7. That the Applicant followed up on many occasions both telephonically and vide written communications sent to the Corporate Debtor for clearing the outstanding Operational Debt. The Operational Creditor

vide communications dated 13.02.2014, 06.01.2015, 15.06.2015, 17.04.2019, 12.06.2019, 23.12.2019, 10.03.2020, 14.12.2020 and 23.02.2021 requested the Corporate Debtor to pay the outstanding Operational Debt. The Operational Creditor also sought balance confirmation from the Corporate Debtor as per its books of accounts, as evident from communications/ letters dated 13.02.2014, 26.05.2015, 27.11.2015, 17.05.2017 and 13.12.2018. The Corporate Debtor vide its communications dated 28.11.2014, 29.10.2015, 09.05.2016, 04.12.2017, 06.08.2019, 06.05.2020, 01.02.2021 and 07.10.2021 confirmed that the aforesaid Operational Debt is due and payable to the Operational Creditor. Thus, Corporate Debtor on many occasions acknowledged and admitted its liability to pay the aforesaid Operational Debt, however, failed to make any efforts to clear the same. Despite the repeated requests by the Operational Creditor for clearing the outstanding payable, the Corporate Debtor's conduct became evasive.

8. The Applicant, therefore, issued a Demand Notice in Form 3 dated 15.07.2023 under section 8 of the IBC, which was duly served upon the Corporate Debtor via registered courier on 24.07.2023 and via email on 15.07.2023. However, no reply has been received from the Corporate Debtor to the aforesaid statutory demand notice, nor the payment due has been made.

Reply on behalf of the Corporate Debtor

9. It is submitted that the present petition is barred by limitation inasmuch as the alleged debt being agitated before this Adjudicating

Authority pertains to the 2013. The Operational Creditor cannot be permitted to raise disputes/insolvency proceedings under the IBC after 10 years of raising the alleged invoices.

10. It is submitted that the present Petition is not maintainable and is liable to be dismissed inasmuch as there exists no cause of action on the part of the Operational Creditor to file the present Petition as the 3 years have already lapsed from the date of invoices and as such the present Petition is barred under law.
11. It is submitted that the present petition is not maintainable and is liable to be dismissed inasmuch as the Operational Creditor attempts to turn this Hon'ble Tribunal into a recovery forum and under the garb of insolvency proceedings the Operational Creditor is pursuing a recovery proceeding. The said action of the Operational Creditor is in teeth of the preamble of the IBC and so also its legislative intent.
12. It is submitted that the Respondent company exerting losses due to slowdown in the economy and its business. The Respondent put their best efforts to streamline their business and always took steps to repay their liabilities incurred upon them not only by the Operational Creditor as mentioned in various communications so placed on record.
13. Further, the Respondent never defaulted in its liabilities and it is only on account of reasons beyond the control of the Respondent, that it could not honour its payments. The defaults on the part of the Respondent are neither intentional nor deliberate, but that is only incurred due the external reason which can not ordinarily foreseeable.

14. Moreover, the Respondent is trying best to settle all kind of their liability with the Operational Creditor herein. The Respondent is a bonafide business entity and their past track records are clean and they never defaulted in any repayment of their liability Therefore, the Respondent is only seeking time to recover from their loss accrued due to reason mentioned above and once the respondents will get out from this situation, they will repay all their liabilities.
15. The Respondent has placed reliance to the Judgment of Hon'ble Apex Court reported as Ramrameshwari Devi & Ors. Vs. Nirmala Devi & Ors [2011(8) SCC 249].

Analysis and Findings

16. We have heard both the parties and perused the averments made in the application, reply filed by the Corporate Debtor, and written submission presented by Operational Creditor and Corporate Debtor. Since, the registered office of the Respondent/Corporate Debtor is in Delhi, this Adjudicating Authority is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.
17. In the present case, the issue pertains to the question of limitation period for a petition to be filed under section 9 of the Code and whether acceptance of debt in writing giving rise to fresh limitation period.
18. The present petition by Operational Creditor is filed on 25.09.2023. As per the Corporate Debtor's contention, the present petition is barred by limitation, since the debt is of 2013. Therefore, the limitation period

is supposed to end in 2016. However, there had been several acknowledgments by Corporate Debtor vide communication letters dated 28.11.2014, 29.10.2015, 09.05.2016, 04.12.2017, 06.08.2019, 06.05.2020, 01.02.2021 and 07.10.2021. Such express limitation of operational debt would extend the limitation period and hence, the limitation period would end on 06.10.2024. The present petition is filed on 25.09.2023 and therefore, is under the period of limitation.

19. As per the decision of **Hon'ble Supreme Court in Laxmi Pat Surana Vs Union of India & Anr., Appeal No. 2734 of 2020 [Para 35, 36, 37]** has held that *if there is an acknowledgment of debt in writing within a limitation period, a fresh limitation period as per section 18 of Limitation Act commences from the date of the acknowledgment of debt.*
20. It would be appropriate to refer the statutory provisions. Section 18 of the Limitation Act provides that where acknowledgment in writing of the liability is made by a party against whom any right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment is so signed. The said Section is reproduced hereunder:

“18. Effect of acknowledgment in writing:—

1. *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time acknowledgment was so signed.*

2. Where the writing when containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation:—For the purposes of this section,—

- (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,
- (b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and
- (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

21. The Hon’ble Supreme Court in **B.K. Educational Services Private Limited Vs. Parag Gupta and Associates [Civil Appeal No.23988 Of 2017 And 439/2018, 436/2018, 3137/2018, 4979/2018, 5819/2018, 7286/2018]** and other cases had clarified that the period of limitation for filing applications for initiation of insolvency proceedings would be three years from the date of default, with Article 137 of the Limitation Act being applicable in case of Applications.

22. However, it is also trite now that an application under Section 9 of the Code, 2016 would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of default when the debt became due, if there were an acknowledgement of the debt or part payment by the Corporate Debtor before expiry of the

period of limitation of three years, in which case the period of limitation would get extended by a further period of three years as envisaged under Section 18 of the Limitation Act, 1963 or under Section 19 of the Limitation Act, 1963 respectively. It is pertinent to note that the effect and operation of Section 18 of the Limitation Act, 1963 or Section 19 of the Limitation Act, 1963 is not to revive a debt, the recovery of which is time barred as per the Limitation Act, but only to extend an existing period of limitation.

23. As regards the contention of the Applicant that there is a continuous acknowledgement of debt vide letters from 2014-2021, it is necessary to refer the judgment of Hon'ble Supreme Court in **Dena Bank (now Bank of Baroda) versus C. Shivakumar Reddy and Anr., [Civil Appeal No. 1650 of 2020]**, wherein the Hon'ble Supreme Court held and observed that: *“As per Section 18 of Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing a fresh period of limitation from the date on which the acknowledgement is signed. Such acknowledgement need not be accompanied by a promise to pay expressly or even by implication. However, the acknowledgement must be made before the relevant period of limitation has expired.”*

24. In so far as Section 18 of the Limitation Act 1963 pertaining to the effect of acknowledgement in writing under Limitation Act is concerned, it is to be taken note of that an acknowledgement of liability must be in writing and also to be signed by a party against whom the property or right is claimed and that too, the same must be within the Limitation period. It cannot be gainsaid that an acknowledgement

given after the expiry of the usual period is not sufficient to keep the “debt” alive. If a claim is barred, the fact that there was a subsequent acknowledgement of liability will by no means resuscitate a barred claim because of the reason that in any Law, there can only be an acknowledgement of an existing / subsisting liability.

25. Moreover, in the present case the Corporate Debtor has clearly admitted its debt in his reply that the Corporate Debtor put their best efforts to streamline their business and took steps to repay their liabilities incurred upon them not only by the operational creditor as mentioned in various communications so placed on record.
26. Further, the Corporate Debtor admitted in his reply that the Corporate Debtor never defaulted in its liabilities and it is only on account of reasons beyond the control of the Corporate Debtor, that it could not honour its payments. The defaults on the part of the Corporate Debtor are neither intentional nor deliberate, but that is only incurred due the external reason which can not ordinarily foreseeable. The Corporate Debtor is trying best to settle all kind of their liability with the Operational Creditor herein. Therefore, the Corporate Debtor is only seeking time to recover from their loss accrued due to reason mentioned above and once the Corporate Debtor will get out from this situation, they will repay all their liabilities. Further, the Corporate Debtor has not taken the defense of any pre-existing dispute, nor there is any intimation of any suit or arbitration proceeding regarding the present matter, pending before any forum.

27. The Operational Creditor has also filed an affidavit under section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016 which shows that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt.

28. Having considered the facts and circumstances and the material available on record, the Application filed by the Operational Creditor is complete in all respect. This authority is satisfied that an amount of [US\$ 153,347.39 @Rs. 82.08 per US\$ i.e. Rs. 1,25,86,753.8/- (Rupees One Crore Twenty-Five Lakhs Eighty-Six Thousand Seven Hundred Fifty-Three and Eight Paise only) towards unpaid invoices for the HMS, Rubber Rolls and CR Sheets supplied by the Operational Creditor, is due and payable by the Corporate Debtor to the Operational Creditor, which it failed to pay. Therefore, the Application is admitted and it is, hereby ordered as follows: -

- I. The Applicant in Part-III of the application has proposed the name of Mr. Chiranjib Chakraborty having Registration Number IBBI/IPA-001/IP-P-02782/2022-2023/14257, email: chiranjib2878@gmail.com. Mr. Chiranjib Chakraborty is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within five working days (5) of pronouncement of this order.

II. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Chiranjib Chakraborty, to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

III. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.

Thus, the following prohibitions are imposed:

(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, Adjudicating Authority, 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 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 corporate debtor.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in

force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

- IV. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- V. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.

- VI. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.
- VII. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
- VIII. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
- IX. Accordingly, the instant application bearing no. **C.P. (IB)/588/ND/2023 stands admitted.**

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)