

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

CP (IB) 145 (MB)2023

Under section 9 of the Insolvency and
Bankruptcy Code, 2016

IN THE MATTER OF

VISTA PROCESSED FOODS PVT. LTD.

M75, MIDC, Taloja, Po Bos No. 49,
Panvel, Raigad - 410208

... Operational Creditor

V/s.

GOLI VADA PAV PVT. LTD.

Shop No. 4, Citi Light CHS, Plot No. 25,
Sector – 1, Khoparkhairane, Navi Mumbai,
Thane - 400709

... Corporate Debtor

Order delivered on :- 05.09.2023

Coram:

Mr. Anil Raj Chellan

Member Technical

Mr. Kuldip Kumar Kareer

Member Judicial

Appearances:

For the Petitioner : Adv. Jehan Mehta

For the Corporate Debtor : Adv. S.K. Jain a/w Adv. Ricky Sampat

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by Vista Processed Foods Pvt. Ltd. (hereinafter called “**the Petitioner**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Goli Vada Pav Pvt. Ltd.** (hereinafter called “**Corporate Debtor**”) alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code, 216 (hereinafter called “**Code**”) on the ground that the Corporate Debtor had failed to make payment of a sum of Rs. 3,56,04,233/-.

The submissions by the Operational Creditor: -

2. The Operational Creditor has filed the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016. for total operational debt of Rs.3,56,04,233/- (Rupees Three Crores Fifty Six Lakhs Four Thousand Two Hundred and Thirty Three Only) payable by the Corporate Debtor to the Operational Creditor.
3. The Operational Creditor has duly provided goods and services to the Corporate Debtor from time to time under the Agreement dated 05.12.2016 and the purchase orders raised by the Corporate Debtor from time to time. The goods and services provided by the Operational Creditor were duly accepted, utilized and enjoyed by the Corporate Debtor without any dispute.
4. The Operational Creditor has duly raised invoices against the goods and services provided by the Operational creditor and the said invoices also have been duly received and accepted by the Corporate

Debtor without any dispute.

5. In the years 2020, 2021 and 2022, the Corporate Debtor provided signed balance confirmations to the Operational Creditor duly admitting and acknowledging the existence of undisputed operational debt.
6. The Operational Creditor upon numerous defaults of the Corporate Debtor in paying the outstanding dues of the Operational Creditor served upon the Corporate Debtor demand notice dated 15.10.2022 and revised demand notice dated 29.10.2022 under Section 8 of Insolvency and Bankruptcy Code, 2016.
7. Despite the debt being an admitted debt, the Corporate Debtor has failed to pay the same. Resultantly, the Operational Creditor has filed the present Application under section 9 of the Code.

Reply filed by the Corporate Debtor: -

8. The Corporate Debtor had filed their Affidavit in Reply (“Reply”) dated 08.03.2023.
9. At the outset, it is submitted by the Corporate Debtor that the Corporate Debtor replied to the revised Demand notice sent by the Operational Creditor vide letter dated 04.11.2022 and thereby raised the issue of limitation. The Corporate Debtor has stated that the Tax invoice as annexed to the revised Demand Notice for the period from 27.08.2018 to 30.06.2021 was for total amount of Rs. 2,61,29,857/- out of which the Tax invoices for Rs. 2,47,54,718/- are three years old and hence the claim for the said amount is barred by limitation.
10. Further, the Corporate Debtor has stated that out of the 10 Debit notes as issued by the Operational Creditor for non-receipt of Form C for the Financial Year, 2015-2016 & 2016-2017 for total amount of

Rs. 34,15,174/-, 8 Debit Notes for Rs. 21,59,604/- are also barred by limitation.

11. The total amount of the unpaid claim with respect to the invoices and debit note arrives at Rs. 2,95,45,031/- whereas in the revised Demand Notice, outstanding principal amount is shown as Rs. 2,68,20,867/-. Hence there is difference of amount of Rs. 27,24,164/- .
12. The Operational Creditor in the revised demand notice has claimed an interest of a sum of Rs. 80,65,081/- and in Part IV of the Company Petition, the interest amount is shown as Rs. 87,83,366/- @ 8.5% from the date of default. However, neither in the Purchase Order nor in the Invoices, there is a stipulation of the clause of interest in the case of default. Hence, no interest was to be paid by the Corporate Debtor to the Operational Creditor and the remaining amount which falls within the limitation period amounts to Rs. 7,67,300/- only which is less than the threshold limit of Rs. One Crore. Therefore, the Petition is liable to be dismissed on this ground also.
13. The Operational Creditor has annexed copies of Ledger Account for the period of 02.08.2018 to 30.06.2021 and the present Company Petition has been filed on or about 21.02.2023. From the said Ledger Account as on 24.01.2023, an amount of Rs. 2,60,53,567.11/- has been shown as due as on 12.02.2020. Hence, the claim of Rs. 2,60,53,567.11 is barred by limitation and hence the Petition needs to be dismissed.

FINDINGS

14. We have heard the contentions raised by the Counsel for the parties and have also gone through the records.

15. The only defense raised by the Counsel for the Corporate Debtor in this case is that the Application is barred by time. It has also been pointed out by the Counsel for the Corporate Debtor that the Operational Creditor has wrongly claimed interest as there is no mention of any interest clause either in the invoices or in the purchase orders. It has further been contended on behalf of the Corporate Debtor that the balance confirmations relied upon by the Operational Creditor are not signed or executed by on behalf of the Corporate Debtor and the said confirmations appear to have been forged and fabricated by the Operational Creditor to cover up the period of limitation.

16. As regards the agreement to pay interest in the event of nonpayment of invoice amounts by the Corporate Debtor within the due date, it is pertinent to point out that as per clause 18 of the manufacturing agreement dated 06.12.2016, the Operational Creditor was entitled to charge interest as per its prevailing borrowing bank rates for any overdue and unpaid invoices calculated from the due date to the date of payment. Therefore, It cannot be said that the Operational Creditor was not entitled to claim interest.

17. So far as the question as to whether the Application has been filed within the period of limitation is concerned, as per the ledger

(Annexure L) annexed with the Petition, the invoices were issued between 02.08.2018 and 30.06.2021. A perusal of the ledger further shows that some payments were made by the Corporate Debtor from time to time against the invoices raised by the Operational Creditor. The Operational Creditor has further relied upon three balance confirmations Annexed as Annexure F with the Application whereby the Corporate Debtor is purported to have acknowledged its liability to pay the outstanding amounts of Rs. 2,57,00,271/- as on 31.03.2020, Rs. 2,68,20,777/- as on 31.03.2021 and Rs. 2,68,20,867.11/- as on 31.03.2022. The balance confirmations are dated 18.08.2020, 12.07.2021 and 08.07.2022. If the balance confirmations are taken into consideration, whereby the outstanding amounts have been unequivocally acknowledged on behalf of the Corporate Debtor, the instant Application u/w 59 of the Code has to be held to have been filed within the period of limitation.

18. It has been contended on behalf of the Corporate Debtor that the said balance confirmations are bogus, forged and fabricated document which are not signed by any persons duly authorized by the Corporate Debtor. However, in the reply filed on behalf of the Corporate Debtor, no such plea has been taken that the balance confirmations were not executed on behalf of the Corporate Debtor or that the persons who signed the balance confirmations were not authorized to do so on behalf of the Corporate Debtor. In the absence of specific plea in the reply filed by the Corporate Debtor, the argument that the balance confirmations forged and fabricated by the Operational Creditor to cover up the period of limitation cannot be sustained in the eyes of law. It is pertinent to mention that the balance confirmations are duly referred to in the Application and copies thereof were also annexed with the Application u/s 9 of the

code. Therefore, it was imperative on the part of the Corporate Debtor to have denied specifically in the reply that the said confirmations were not executed or signed by duly authorized persons on behalf of the Corporate Debtor. It is well settled that if the facts pleaded in the Application are not specifically denied in the reply, the same are deemed to have been admitted. Therefore, this contention raised on behalf of the Corporate Debtor is also liable to be rejected.

19. No other points have been raised on behalf of the Corporate Debtor.
20. As a result of the foregoing discussion, we are of the considered view that the Operational Creditor has been able to establish the existence of the Operational debt due on account of supply of goods to the Corporate Debtor in respect of which default has been committed by the latter. It has also been established that the instant Application has been filed within the limitation. Therefore, we find the instant Application to be a fit one to be admitted u/s 9 of the Code, 2016. It is order accordingly in the following terms :

ORDER

- a. **The above Company Petition No. (IB) -145 (MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution -Process (CIRP) is ordered against **Goli Vada Pav Private Limited.**

- b. This Bench hereby appoints **Mr. Vinod Radhakrishnan Nair**, Insolvency Resolution Professional, having Registration No: **IBBI/IPA001/IP-P01352/2018-2019/12083** as the Interim Resolution Professional, having address at :- A-108, Om Rachna Cooperative Housing Society Ltd., Sector 17, Vashi, Navi Mumbai – 400705, and having email id :- vinod@nairca.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.3 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. 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 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; 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. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order 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.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**

Ankit