

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 190/Chd/Hry/2023

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

Saroj Bala, (A sole Proprietor of M/s Vijay Enterprises)

Shop No. 17, New Grain Market, Madlauda,
Panipat, Haryana-132113,

...Petitioner-Operational Creditor

Vs.

M/s AKM Foods Private Limited

(CIN:U15314HR2005PTC035907)
Siwan Gate Kaithal, Haryana-136027

...Respondent-Corporate Debtor

Judgment delivered on: 25.04.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L. N. GUPTA , MEMBER (TECHNICAL)**

Present:-

For the Petitioner- Operational Creditor : Mr. Nahush Jain, Advocate

For the Respondent-Corporate Debtor : Mr. Ajay Bhagwati, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

L. N. GUPTA, MEMBER (TECHNICAL)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Saroj Bala sole proprietor of M/s Vijay Enterprise (for brevity 'Operational Creditor' / 'Petitioner')**, with a prayer to initiate Corporate Insolvency Resolution

Process (**CIRP**) in case of **M/s AKM Foods Private Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor, namely, **M/s AKM Foods Private Limited**, is a Company incorporated on 28.08.2005 under the provisions of the Companies Act with CIN No. U15314HR2005PTC035907 with its registered office at Kaithal, Haryana. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition at Annexure-1.

3. It is averred that the operational creditor is engaged in the business of trading of rice/paddy and the corporate debtor is engaged in manufacturing of grain mill products, starches and starch products and prepared animal feeds. The operational creditor supplied goods from time to time and raised invoices from 21.12.2017 to 01.04.2021. The Operational Creditor purchased goods from the Corporate Debtor amounting to Rs. 87,24,950/- on March 29, 2021, and March 30, 2021. The Operational Creditor has times and again, reminded the Corporate Debtor to pay the said outstanding amount, but the same has been unpaid. The Operational Creditor received a letter dated June 15, 2020, from the Corporate Debtor, wherein the Corporate Debtor has acknowledged the liability of Rs. 2,92,93,385/-. However, the corporate debtor was unable to pay due to liquidity constraints.

4. It is submitted by the petitioner in Form 5, Part IV that the total amount claimed to be in default is Rs. 2,05,68,435/- (Rupees Two Crores Five Lakhs Sixty Eight Thousand Four Hundred and Thirty Five Only) alongwith an interest @18% per annum from the due date of invoices till

date of actual realisation and the date of default is 01.04.2021 i.e. last invoice no 29 was raised for Rs. 7,68,040/- on 30.03.2021. Copy of outstanding invoices (Annexure-3), computation showing the details of the outstanding amount (Annexure-4), information submitted by the operational creditor in Form-C with the Information Utility (Annexure-5), certified statement of bank account of operational creditor maintained with Yes Bank (Annexure-6), certificate from Yes Bank certifying that no payment has been received from the corporate debtor (Annexure-7), Ledger Account of Corporate Debtor (Annexure-8) letter dated 15.06.2020 received from corporate debtor (Annexure-9) are attached with the main petition.

5. A demand notice in Form 3 and 4 is stated to have been issued by the operational creditor on 02.02.2023 and the same has been delivered to the corporate debtor vide registered post as the postal receipts and tracking report is attached as Annexure-11 of the petition. The corporate debtor has not replied to the demand notice.

6. The notice of this petition was issued to the corporate debtor to show cause as to why this petition be not admitted. The Affidavit of Service was filed vide Dairy No. 01816/01 dated 30.10.2023. The corporate debtor filed a short reply vide diary No. 1816/2 dated 12.12.2023 wherein it is stated that the transactions with the petitioner are not denied however, the same is subject to reconciliation. The corporate debtor is willing to pay the amount, however, due to financial constraints and liquidity issues, it has not been able to make the payment in time. In its short reply, the corporate debtor has admitted the claim of the petitioner, however, a short time of ten months is

requested for making the payment. It is stated by the learned counsel for the operational creditor that it does not want to file a rejoinder.

7. The compliance affidavit has been filed vide Dairy No. 01816/4 dated 22.03.2024 wherein it is stated that the Petition filed by the Deponent CP (IB) No.190 / CHD / HRY/ 2023 is not a collusive one. It is further stated that the Petitioner is not related to Corporate Debtor in any manner. The petitioner has filed the present petition against the unpaid operational debt of the Corporate Debtor.

The compliance affidavit has been filed by the respondent-corporate debtor vide Dairy No. 01816/3 dated 20.03.2024 wherein it is stated that the respondent has not colluded with Petitioner and that the respondent is not related to the petitioner.

8. We have heard the learned counsel for the petitioner as well as the respondent and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 dated 02.02.2023 was properly served. The demand notice has been delivered to the corporate debtor vide registered post as the postal receipts and tracking report are attached as Annexure 11 of the petition. Therefore, a demand notice was duly served. However, the corporate debtor did not reply to the demand notice.

10. The other issue for consideration is whether this application is filed within limitation. The period of limitation would begin from the date of default 01.04.2021 i.e. last invoice no 29 was raised for Rs. 7,68,040/- on 30.03.2021. This application was filed vide Diary No.01816 on 26.06.2023

and was re-filed on 20.07.2023. Therefore, this Adjudicating Authority finds that this application is filed within the period of 3 years of limitation.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of the affidavit by learned counsel for the petitioner that no Suit or Arbitration proceedings have ever been initiated or pending in any Court or Tribunal on the date of Demand Notice i.e. February 2, 2023, or till even today between the Operational Creditor and Corporate Debtor regarding the above said outstanding payments (Page 127-131 of the petition).

The operational debt is not disputed by the respondent as during the course of the hearing the corporate debtor admitted the claim of the petitioner, however, a short time of ten months was requested for making the payment. This liberty is not granted as the CIR process is time-bound. Therefore, this is the case of admitted liability.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 2,05,68,435/- (Rupees Two Crores Five Lakhs Sixty Eight Thousand Four Hundred and Thirty Five Only) alongwith an interest @18% per annum from the due date of invoices till date of actual realisation still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Copy of outstanding invoices (Annexure-3), computation showing the details of the outstanding amount (Annexure-4), information submitted by the operational creditor in Form-C with the Information (Annexure-5), a certified statement of

the bank account of operational creditor maintained with Yes Bank (Annexure-6), a certificate from Yes Bank certifying that no payment has been received from the corporate debtor (Annexure-7), Ledger Account of Corporate Debtor (Annexure-8) letter dated 15.06.2020 received from corporate debtor (Annexure-9) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore by the respondent-corporate debtor.

13. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **M/s AKM Foods Private Limited & Ors** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. In Part-III of Form No. 5, Mr. Rajeev Lochan, Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Rajeev Lochan

and there is nothing adverse against him. In view of the above, we appoint Mr. Rajeev Lochan, Registration No. IBBI/IPA-002/IP-N00606/2018-2019/11885, E-mail: csrajeevlochan@gmail.com, Mobile No. +91-9518034467, the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Rajeev Lochan shall be in accordance with the provisions of Section 16(5) of the Code.

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of

Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and

its location, and also the address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with a request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Securitization and Reconstruction of Operational 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.

17. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. The order of moratorium shall have effect from the date of this order till 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.

19. The petitioner is directed to deposit an amount of ₹2,00,000/- (Rupees Two lakhs Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

21. This petition is accordingly admitted.

Sd/-

(L.N. GUPTA)
Member (Technical)

April 25, 2024

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Sd/-

(HARNAM SINGH THAKUR)
Member (Judicial)