

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
CP(IB)764(ND)/2023

Order 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:

M/s. Alpha Fertilizer (India) Pvt. Ltd.
Vs.

.... Operational Creditor

M/s. Ralph Agri Science Pvt. Ltd.

.... Corporate Debtor

Order Pronounced On: 25.04.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. Vivek R. Mohanty & Mr. Rahul Yadav, Advs.

For Respondent : Ms. Mahima Malhotra, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by M/s. Alpha Fertilizers (India) Private Limited, the Operational Creditor herein, under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of CIRP against M/s. Ralph Agri Science Private Limited, the Corporate Debtor herein on the ground that the Corporate Debtor has defaulted/failed to clear the total amount in default is Rs. 1,07,81,200/-.
2. The Applicant has claimed that it had raised several invoices on the Corporate Debtor for supplying goods as per the purchase orders issued by the Corporate Debtor. The details of the invoices are mentioned herein under:

Bill No.	Date of Invoice	Due Date	Invoice Amount	Outstanding Amount
60	08-Nov-2022		53,20,000.00	
65	12-Nov-2022		8,02,400.00	
66	12-Nov-2022		6,37,200.00	
67	16-Nov-2022		16,99,200.00	
80	29-Dec-2022		2,06,500.00	
86	17-Jan-2023		15,48,750.00	
94	30-Jan-2023		2,83,200.00	
114	14-Mar-2023		30,68,000.00	
144	21-Jun-2023		4,01,200.00	
147	04-Jul-2023		11,80,000.00	
Total			1,51,46,450.00	

3. The Applicant has claimed that a total amount of Rs. 1,51,46,450.00/- is outstanding to be paid by the Corporate Debtor. Out of the said amount, the Corporate Debtor has paid an amount of Rs. 43,65,250.00/- on 11.04.2023 and an amount of Rs. 1,07,81,200.00/- is in default.

4. The Operational Creditor sent a demand notice under Section 8 of the Code, 2016 on 02.08.2023 to the Corporate Debtor, however, the Corporate Debtor failed to repay the debt.

Hence this present application.

5. This Tribunal issued notice to the Respondents on 01.01.2024 and directed the Respondents to file the reply affidavit. On 30.01.2024, Ms. Mahima Malhotra, Ld. Counsel appearing for the Corporate Debtor submitted that due to financial crunch, the Corporate Debtor is not in a position to make the payment to the Applicant/Operational Creditor. She also submitted that the Corporate Debtor has admitted the liabilities. The Corporate Debtor was directed to file an affidavit in support of

the said statement made by the Ld. Counsel for the Respondent. The said order is extracted is extracted below:

“Heard Ld. Counsel appearing for the Applicant. Ms. Mahima Malhotra, Ld. Counsel appearing for the Corporate Debtor has submitted that pursuant to the order dated 17.01.2024, she has filed a Vakalatnama on behalf of the Corporate Debtor yesterday. She further submitted that due to financial crunch, the Corporate Debtor is not in a position to make the payment to the Applicant/Operational Creditor. She also submitted that the Corporate Debtor has admitted the liabilities. She shall file an affidavit to that effect within two days.

List the matter on 07.02.2024.”

- 6.** In compliance with the order dated 30.01.2024, the Corporate Debtor filed an affidavit on 17.02.2024. The relevant paragraph of the said affidavit are reproduced below:

“...6. I state that Operational Creditor requested the payments against various invoices mentioned in the petition and the same has not been paid till date due to our business expansion in the South India mainly Andhra Pradesh and Kamataka.

7. *I state that due Covid Lockdown and post covid the complete Agriculture and other related sector has faced various problems including financial problems due to which the receivables have become a task since then for the Corporate Debtor, which is slowly bening mobilized now and we are in the process of recovering our debts and pending dues*

8. *I state that Corporate Debtor will be clearing the dues of Operational Creditor if given some time, keeping in our long term business relation in consideration.”*

7. Subsequently, on 20.02.2024, the parties were directed to file an affidavit stating that the application under Section 9 of the IBC, 2016 is not a collusive one. Accordingly, the Operational Creditor as well as the Corporate Debtor filed affidavit stating therein that the present application is not collusive.
8. On perusal of the affidavit dated 17.02.2024 filed by the Corporate Debtor, it is clear that the Corporate Debtor has not only admitted its debt but also has expressed its inability to repay the debt and sought time to make the payments.
9. In compliance with the order dated 03.04.2024, the Corporate Debtor has filed a copy of the Master Data. We have perused the Master Data of the Operational Creditor and of the Corporate Debtor and found it to be in order.
10. Be that as it may, despite the concession made by the Corporate Debtor, we have examined the matter on merits and perused the records.
11. The Applicant has filed all the invoices raised which are not disputed by the Corporate Debtor. The Operational Creditor has also placed on record copies of the ledger account statement of the Corporate Debtor, statement of bank account showing the deposits made and credits received by the Operational Creditor in respect of the debt of the Corporate Debtor.
12. More importantly, the Operational Creditor has also filed a copy of the record of default dated 27.10.2023 issued by the National E-Governance Services Limited (NeSL) which has

been duly authenticated (Green Colour Code) and an amount of Rs. 1,07,81,200.00/- is shown to be outstanding.

13. Taking into consideration the above aspects, we are of the considered view that the Operational Creditor has established with all documentary evidence that the Corporate Debtor is in default of making payment of Rs. 1,07,81,200/- and therefore, this is a fit case for initiating CIRP against the Corporate Debtor.

14. In light of the above facts and circumstances, it is hereby ordered as follows: -

i. The Application bearing **IB-764(ND)/2023** filed by the Applicant, under Section 9 of the Code read with Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent/(CD) is **admitted**.

ii. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) and (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, 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 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.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period;]

- iii.** 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.

- iv.** The Applicant has proposed the name of Mr. Madasa Kumar as the Interim Resolution Professional (“IRP”) having address: Plot No. 48, 4th Floor Road No. 4, Petbasheerbad(V) Quthbullapur(M) Medchal Malkajgiri District, Hyderabad-500067. His Email id is kumarmadas@gmail.com. His registration number is IBBI/IPA-001/IP-P01590/2019-20/12465. The Applicant filed a copy of the Consent Issued by Mr. Madasa Kumar in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, Mr. Madasa Kumar is appointed as IRP.

- v.** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of

Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.

- vii.** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix.** The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the 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 IRP and shall be paid back to the Operational Creditor.

- x.** In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- xi.** The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xii.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- xiii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)