

(2019) 08 NCLT CK 0073

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Petition No. IB-1422/ND Of 2018

M/s Ganesh Rice & General Industries APPELLANT

Vs

M/s Umachi Foods And Commodities Pvt. Ltd. RESPONDENT

Date of Decision : 19-08-2019

Acts Referred:

Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 6

Insolvency And Bankruptcy Code, 2016 — Section 8, 8(1), 9, 9(3), 9(5), 14(1), 14(2), 14(3), 15, 17, 18, 20, 21

Citation : (2019) 08 NCLT CK 0073

Hon'ble Judges : Dr. Deepti Mukesh, J;Pradeep R. Sethi, Member (Technical)

Bench : Division Bench

Advocate : Sameer Dawar, A.K. Gupta

Final Decision : Allowed

Judgement

,PARTICULARS OF OPERATIONAL DEBT,

1. TOTAL AMOUNT OF DEBT,, "Rs.82,00,000/- (Rupees EightyTwo Lakhs only) plus interest @ 18% per annum till the date of realization of the debt.

Date on which it fell due:

23.06.2018 when the Operational Creditor supplied Pure Basmati Sella Rice to the Corporate Debtor.

2. AMOUNT CLAIMED TO BE IN DEFAULT

AND THE DATE ON WHICH THE DEFAULT

OCCURRED",, "Rs.82,00,000/- (Rupees EightyTwo Lakhs only) plus

interest @ 18% per annum till the date of realization of the debt.

The debt fell due on 23.06.2018.

In *Innoventive Industries Ltd.(Supra)*, the Hon'ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice",,

or invoices was received by the *Corporate Debtor*. Any subsequent dispute raised while replying to the demand notice under Section 8(1),,

cannot be taken into consideration to hold that there is a pre-existing dispute.,,

Therefore, the reply given by the *Corporate Debtor* only after the receipt of notice under Section 8 of the Code is to be ignored for finding out",,

whether there is pre-existence of dispute or not.,,

13. Further the Hon'ble Supreme of India in *Mobilox Innovations Private Limited vs. Kirusa Software Private limited* held that a dispute truly,,

exists in fact and is not spurious, hypothetical or illusory. Here there is no such dispute was pre-existing apart from that a hypothetical or illusory",,

dispute which has been raised by the *Corporate Debtor* while replying to the demand notice served under Section 8(1) by the *Operational*,,

Creditor.,,

14. In view of the aforesaid fact, we hold that there is no *pre-existing dispute* in the present case.",,

15. The applicant has attached the copy of the Bank statement issued by Oriental Bank of Commerce, Cheeka Branch for the period starting from",,

01.06.2018 to 04.09.2018 in compliance of Section 9(3).,,

16. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.,,

17. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in",,

payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is",,

admitted.,,

18. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section",,

14(1) shall follow in relation to the Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period",,

terms of Section 14(2) to 14(3) of the Code shall come in vogue.,,

19. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Ajit",,

Sood having registration no. IBBI/IPA-002/IP-N00709/2018-19/12146 having email address ajitsood14@gmail.com and contact number is 9955991001,,

as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections",,

15,17,18,20 and 21 of the Code.",,

20. The IRP is directed to file his report within the statutory period as required under Insolvency and Bankruptcy Code, 2016.",,

21. The applicant/Operational Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses to be incurred and,,

accounted for by the IRP. The amount shall be reimbursed to Operational Creditor after the COC has approved the expenses of the IRP before,,

appointing Resolution Professional.,,

22. A copy of the order shall be communicated to the Applicant as well as to the Respondent Company above named by the Registry. Further the IRP,,

above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for",,

its records.,,