**(2021) 06 NCLT CK 0029**

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

**Case No :** Company Petition No. IB-306/ND/2020

Ms. Sarada Ajarananda (Sole Proprietor) Madhu Gas Services APPELLANT

Vs

Ishu Foods Private Limited RESPONDENT

**Date of Decision :** 22-06-2021

**Acts Referred:**

Insolvency and Bankruptcy Code, 2016 — Section 9, 9(3)(b), 9(3)(c), 14, 15, 17, 18
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 5, 6

**Citation :** (2021) 06 NCLT CK 0029

**Hon'ble Judges :** Dr. Deepti Mukesh Hon’ble Member (J);Sumita Purkayastha Hon’ble Member (T)

**Bench :** Division Bench

**Advocate :** Pankaj Jain, Sneha Pandey

**Final Decision :** Allowed/Disposed Of

## Judgement

Sumita Purkayastha (Member Technical)

1. The present application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity â??codeâ??) read with Rules 6 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity â??the Rulesâ??) by Sarada Ajarananda sole proprietor of

MADHU GAS SERVICES (for brevity â??Applicantâ??) with a prayer to initiate the Corporate Insolvency process against ISHU FOODS

PRIVATE LIMITED (for brevity â??Corporate Debtorâ??).

2. Â The Applicant Sarada Ajardana sole proprietor of MADHU GAS SERVICES is engaged in the business of supplying commercial cylinders

having its registered office at 558/9, Shiv Puri Tehsil & District Gurgaon. The identification number of the Applicant being PAN: ABFPA8370D.

3. Â The Respondent Ishu Foods Private Limited is a company incorporated on 17/08/1999 under the Companies Act, 1956 having its registered office

at 9226 Gali No. 6 West Rohtas Magar Shahdra Delhi 110032 and CIN U15419DL1999PTC101193 and is engaged in Manufacture of food products.

4. Â As per the averments made in the application the Corporate Debtor had purchased commercial cylinders from operational creditor by issuing the

telephonically instruction to Operational Creditor & the same was supplied, further the said goods were received and accepted however, the

Corporate Debtor had failed to make the payment outstanding dues Rs.34,09,880/- with respect to the outstanding invoices from 23.06.2015 to

10.07.2019 along with interest @ 24% per annum as per the invoice i.e. Rs 19,76,406/ - .

5. The Applicant was constrained to issue demand notice dated 16.12.2019 under Section 8 of the Code read with Rule 5 of theInsolvency and

Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the Corporate Debtor to pay an amount of Rs. 34,09,880/- with respect

to the outstanding invoices from 23.06.2015 to 10.07.2019 along with interest @ 24% per annum as per the invoice i.e. Rs 19,76,406/- totaling to Rs.

53,86,286/- which is claimed by the Applicant from the Corporate Debtor. The notice was served upon the Corporate Debtor vide speed post as on

26.12.2019, on the registered address reflected on the MCA website The tracking Report reflects â??ITEM DELIVERY CONFIRMEDâ??.

6. Â The Corporate Debtor has not issued any reply/letter against the issue of the Demand Notice dated 16.12.2019. The Operational Creditor has

complied with the mandatory provisions of Section 9(3) (b) and (c) of the Code.

7. Â The Applicant has filed this application on 19.01.2020 as an Operational Creditor praying for initiation of Corporate Insolvency Resolution

Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 53,86,286/- towards unpaid invoices for the goods supplied by the

Operational Creditor.

8. Â Notice with respect to the application was issued to the Corporate Debtor vide order dated 23.01.2020 of the Adjudicating Authority. Further, it

has been observed that neither a reply to the Demand Notice nor to Section 9 application was filed by the Corporate Debtor. The Corporate Debtor

has never appeared before the Adjudicating Authority hence vide order dated

18.02.2020 the Corporate Debtor was proceeded ex-parte.

â??Learned counsel for the applicant states that as per service affidavit, Corporate Debtor is served at registered office and registered email ID as reflected in

MCA website as well as Corporate Debtor office. Proof of service is annexed. Service is complete. None appears for the Corporate Debtor. Matter is proceeded ex

parte against the Corporate Debtor. Let copy of this order be served to the Corporate Debtor. List on 20.03.2020. â??

9. Â The dates of default which are continuing from 2015 onwards till 2019. Considering the limitation period, the invoices from 2016 to 2019 will be

within limitation, the amount of which is more than 1 Lac and the default is continuing. The present application is filed on 19.01.2020. Â Hence the

application is not time barred and filed within the period of limitation.

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

11. 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 the Operational Debt which is due to the Applicant has remained unpaid and default has occurred.

Therefore, the Application is admitted and the commencement of the CIRP is ordered.

12. The Adjudicating Authority hereby appoints the interim resolution professional (â??IRPâ?), Mr. Saurabh Garg, IBBI/IPA-001/IP- P01753/2019-

2020/12811 mail id: garg.saurabh2007@gmail.com Phone No. 9818412630 as proposed by the Applicant. He shall take such other and further steps as

are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

13. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

â??(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any

court of law, tribunal, arbitration panel or other authority;

(b) Â transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

 

(c) Â any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) Â the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) Â The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector

regulator.

(4) Â The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.â??

14. Â The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the

IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

15. Â A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to

the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book

with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the

Master Data. ROC shall send compliance report to the Registrar, NCLT.

16. The Application is allowed and disposed off in terms of above order.