
(2020) 07 NCLT CK 0051

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

Case No : Company Petition No. IB-3502/Nd Of 2019

Pankaj Mohan Gupta

APPELLANT

Vs

Ouranos Food And Beverages Pvt. Ltd

RESPONDENT

Date of Decision : 29-07-2020

Acts Referred:

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

Insolvency And Bankruptcy Code, 2016 — Section 8, 9, 9(3)(b), 9(5), 14(1), 14(2), 14(3), 14(4)

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Person) Regulations, 2016 — Regulation 6

Citation : (2020) 07 NCLT CK 0051

Hon'ble Judges : Dr. Deepti Mukesh, J; Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Ravidra Kumar

Judgement

Dr. Deepti Mukesh, J

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by Mr. Pankaj Mohan Gupta being the proprietor of M/S. Pamper Polymers & Beverages (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/s. Ouranos Foods & Beverages Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Applicant Mr. Pankaj Mohan Gupta is the proprietor of M/s. Pamper Polymer & Beverages, which is a sole proprietorship firm incorporated under the provision of Companies Act 1956. The applicant has its registered office at 49/56, Golden Protein Compound Site-IV, Industrial Area Sahibabad, Ghaziabad, UP. Also, at 193, First Floor, Near Yadav Clinic, Guru Ramdas Nagar, Laxmi Nagar,

Delhi- 110092. The applicant is a polymer industry, involved in manufacturing of wide range of pet performs and bottles.

3. The Corporate Debtor is a company limited by shares, registered with Registrar of Companies, Delhi, incorporated on 01.01.2015 under the provisions of Companies Act, 2013 in the name of M/s. Ouranos Foods & Beverages Pvt. Ltd. bearing CIN-U15122DL2015PTC274900 with its registered office at 59-A/19, Plot No. 44, F/F Gali No. 3, Guru Nanakpura, Laxmi Nagar, East Delhi - 110092 and having registered Email Address: vibhashu.agarwal@hotmail.com. The Authorized Share Capital of the company is 1, 00,000/- and the paid-up share capital is Rs. 1,00,000/-.

4. It is submitted that applicant entered into business transactions of selling pre form pet bottle during the period of 23.03.2016 to 12.12.2016 to the corporate debtor and raised four VAT sales invoices bearing Nos.

- a) T-45 dated 23.03.2016 for Rs. 94,500/-,
- b) T-31 dated 25.06.2016 for Rs. 57,750/-,
- c) T-78 dated 21.11.2016 for Rs. 54,994/- and
- d) T-101 dated 12.12.2016 for Rs. 56,306/-

5. The applicant submits that the following part payments were made by the corporate debtor which was credited in accounts of the applicant.

- a) payment of Rs. 70,000/- was received vide cheque bearing No. 128027 dated 10.12.2016 drawn on ICICI Bank
- b) Rs. 50,000/- vide cheque bearing No. 128038 dated 18.12.2016 drawn on ICICI bank from the company, the said payment was received on 22.12.2016.

Hence, the corporate debtor made payment for the VAT sales invoice No. T-45 dated 23.03.2016 in full and a part payment of Rs. 25,500/- for the VAT sales invoice No. T-31. Thereafter, the corporate debtor has not paid anything, hence a part payment of Rs. 32,250/- is due and pending in Invoice T-31 and the total amount of invoice T-78 and T-101, the total amount due in respect of the invoices is Rs. 1,43,550/-

6. The applicant submits that as per the agreed terms between the parties, in the event of failure of payment of invoices, an interest @ 2% per month on unpaid invoices from the month next to the invoicing month shall be charged. The applicant further submits that the corporate debtor failed to make any payment after 22.12.2016, hence an interest of Rs. 99,713/- is further payable by the corporate debtor for the period of default till the month of September 2019.

7. It is stated that the applicant had requested for payment and sent various reminders for payment of said invoices but the corporate debtor failed to honour its obligation. Hence the applicant sent demand notice under Section 8 of the

code on 15.10.2019 along with working of the amounts due, calling upon the corporate debtor to pay the total amount of Rs. 2,43,263/- which includes the pending value of sales of Rs. 1,43,550/- and interest of Rs. 99,713 thereon calculated at the rate of 2% per month for the period of default till September 2019. The applicant submits that the said notice had been duly served upon at the registered office of the corporate debtor as well as at its two other addresses at Modi Nagar and Sahibabad. The Copy of postal receipts and its tracking report of the said notice have been annexed herein.

8. The corporate debtor never replied to the said notice. Therefore, the Applicant filed the present Application under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per service affidavit through speed post and email. The corporate debtor in spite of service has not appeared before this bench to present its defense. Hence, the corporate debtor has been proceeded ex-parte vide order dated 12.02.2020 of the Hon'ble Bench, NCLT.

9. As per Form V, the total debt outstanding is Rs. 2,43,263/- (Rupees Two Lakh, Forty-Three Thousand Two Hundred Sixty-Three only) till date of filling of application which is due and payable by the corporate debtor to the applicant.

10. It is pertinent to note that the corporate debtor has failed to appear and present his defense hence has been proceeded ex-parte vide order dated 12.02.2020.

11. The date of default is 22.12.2016 and the present application is filed on 17.12.2019. Hence the application is not time barred and filed within the period of limitation.

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

13. The Applicant has filed an affidavit in compliance of section 9(3) (b).

14. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete. Considering the submission of counsel and documents on record the applicant is entitled to claim its dues, establishing the default in payment of the operational debt. Hence, the application is admitted.

15. As a consequence of application being admitted and IRP name not suggested by the applicant, this Bench appoints Mr. Sanjay Garg, having email id: kronedelhi@gmail.com and registration No. IBBI/IPA-001/IP-P01865/2019-20/12919 as the Interim Resolution Professional, subject to the condition that no disciplinary proceedings are pending against him. The IRP is required to file consent Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons)

Regulation 2016, within a period of one week from this order.

16. 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 corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

17. We direct the applicant to deposit a sum of Rs. 1 lacs with the Interim Resolution Professional, namely Mr. Sanjay Garg to meet out the expenses and perform the functions assigned to him in accordance with regulation 6 of 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 applicant. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the applicant.

18. 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.