



Mr. T Saraf, Advocate

**For the Corporate Debtor:**

Mr. Gaurav Singh, Advocate

Date of pronouncement of Order: 18-09-2018

**ORDER**

Per Shri Jinan K.R., Member(Judicial)

1. This is an application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (In short, I & B Code, 2016) by the Operational Creditor, Shri Krishna Agri Projects Private Limited for initiating Corporate Insolvency Resolution Process (In short, CIRP) as against the Corporate Debtor/ Feedatives Pharma Private Limited, claiming that an amount of Rs. 7,06,839/- (Rupees Seven lac Six thousand eight hundred thirty nine only) is the outstanding amount due from the Corporate Debtor which has not been paid despite issuance of the demand notice.

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2. The brief facts for the consideration of the application are as follows:

The Operational Creditor is engaged in the business of dealing in grains, poultry feed ingredients etc. used for manufacturing poultry feeds. In the usual course of business, the Corporate Debtor from time to time purchased the said goods from the Operational Creditor for manufacture of poultry feeds in its mill. The Operational Creditor has all along been maintaining and running continuous accounts of all dealings and transaction with the Corporate Debtor. In view of the regular business relationship between the parties, the Operational Creditor sold the aforesaid goods on credit and from time to time part payment were made by the Corporate Debtor. After considering all part payments made by the Corporate Debtor, a principal sum of Rs. 7,06,839/- became due, outstanding and payable by the Corporate Debtor to the Operational Creditor. After adjustment of the part payments against previous invoices/transactions, the invoices against which the said sum is due, are given in a schedule annexed with the Application. The aforesaid debt has been duly acknowledged by the Corporate Debtor.

3. The Operational Creditor has claimed the above said principal sum of Rs. 7,06,839/- @ 18 per cent per annum and produced the invoices generated at the time of delivering the goods to the Corporate Debtor as

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**Annexure "A"**. Despite demand, the Corporate Debtor did not pay the amount and demand notice has been sent on 20-03-2017, which was delivered to the Corporate Debtor on 07-04-2017. A reply notice was issued by the Corporate Debtor and copy of the reply is annexed as **Annexure "H"**. The contention raised by the Corporate Debtor in the reply is untenable and thereby denied by the Applicant. The Corporate Debtor has acknowledged the amount due to the Operational Creditor vide balance confirmation statement dated 17-10-2016 and copy of the balance confirmation statement is annexed with the Application as **Annexure "B"**. Upon the said contention, the Applicant prays for admission of the Application.

4. The Respondent/Corporate Debtor entered appearance and filed the reply affidavit contending in brief, is the following:-

5. The demand of the Operational Creditor is under dispute. The goods supplied by the Operational Creditor was, on most occasions, rotten and unusable. In view of raising dispute, the alleged debt is not admitted. Rather, the same is outrightly denied and the Application is thus liable to be rejected.

6. The particulars given by the Applicant in the Application are insufficient. Shri Sourabh Rungta, who is the authorised signatory, who filed

the Application, is operating the Company belonging to Rungta family and this Rungta family is conducting their business under the name and style of three Corporate entities, namely, Basukinath Agro Pvt. Ltd., Shri Krishna Agri Projects Pvt. Ltd, Operational Creditor, Applicant, as well as Vishnupriya International, proprietorship firm of Mrs. Anita Rungta. Since they are running business in the name of different entities, the Corporate Debtor is exercising difficulty to indicate that all the quantities of goods under the cover of each entities are defective. The Rungta family is engaged in selling basic agriculture raw materials consumed by the Poultry in the name of the three different entities and by dealing with their customers, including the Respondent Company, the Rungta family used to attach their juristic relationship with either of the said three entities by exercising their own whims and interest but on random basis. It is difficult to indicate that the said Rungta family, while dealing with the customers including the Respondent Company, has delivered and sold which of the quantity of goods under the cover of each of the three Corporate entities. The Respondent Company had raised objection to the random supply of goods. Though the respondent objected, goods were forcefully sent by the Applicant to the Respondent Company without specific requisition and request being made by the Respondent Company. The Respondent Company used to pay the Applicant Company against the goods supplied in random. The Respondent Company was unable to assess as to how the Applicant's company adjusted



the amount paid towards the supply of goods or as to how the adjustment in the above three different entities were made. In addition to the above said, a detailed dispute is seen to be raised by the corporate debtor. It reads as follows:-

- a) Substantial quantity of goods supplied by the Applicant were of inferior quality that has substantially affected the business of the respondent Company. Not only loss in terms of money but also reputation was caused to the Respondent Company.
- b) In as much as the respondent company had always maintained cordial relationship with all its suppliers, including the Applicant Company, the respondent company had refrained from instituting any litigation to sour the cordial relationship, despite the fact that there exist disputes both on quality and quantity.
- c) The fact that the Applicant had supplied inferior quality of the goods would be evident from several mails which the Respondent Company sent to the Applicant Company on his electronic mail box. Despite having received the e mail, the Petitioner had never addressed and/or redressed grievances of the respondent company and such dispute remained unattended. Copies of such electronic mail are collectively annexed with the Reply and marked with the letter "C".

d) As a *bona fide* businessman before questioning and/or raising the dispute of supply of inferior quality, the respondent company had obtained test report from experts who had certified that the goods supplied by the Applicant Company are of inferior quality. The fact that the poultry feeding was prepared from the goods supplied by the Applicant Company had been the cause of poor production is evident from the test report which is annexed with the reply and marked with letter "D". Upon the above said contentions, the Respondent prays for dismissal of the Application.

7. The Operational Creditor filed the rejoinder denying the averments raised by the Corporate Debtor in his Reply affidavit and reiterates the contentions in the application. The Operational Creditor further submits that the dispute raised by the Corporate Debtor is not at all *bona fide*. The Applicant also contends that there are no random transactions as alleged and three entities referred to in the Reply affidavit are all in the nature of separate legal entities and the transactions between the above said three entities including the Applicant herein with the Respondent are all in the nature of separate and independent transactions without there being any connection with each other. There is no control of the aforesaid three entities by the alleged Rungta family. It is denied that the quality of goods supplied by the Applicant were found or could have found to be inferior as

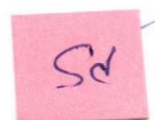
alleged or at all. It is also incorrect to say that Rungta family used to issue challan for supply by them in the name of the three entities as referred to in the said affidavit.

8. It is also incorrect to say that the Respondent faced difficulty to assess as to which of the aforesaid three entities have supplied the goods to the Respondent. It is also denied that the goods supplied by the petitioner were delivered forcefully or that against any forced delivery by the Applicant, the Operational Creditor is demanding the payment. Upon the above said contentions, the Operational Creditor prays for allowing the Application.

After hearing and reserving for orders, a supplementary affidavit, seen filed by the Respondent without leave by denying the contentions raised by the Operational Creditor in the rejoinder. It was brought to my notice from the registry. In the supplementary affidavit, the Respondent reiterated the contentions raised by the Corporate Debtor in the reply affidavit. For convenience sake, it is not repeated.

9. Heard both sides and perused the records.

10. This is an application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016. The Applicant is the manufacturer dealer in poultry



feeds. It is contended that the Corporate Debtor used to purchase the poultry feeds from the Operational Creditor and on the basis of the order of purchase, Annexure "A" invoices were generated after which an amount of Rs. 7,06,839/- is still unpaid and thereby the Operational Creditor issued the demand notice Annexure "G." The demand notice was admittedly received by the Corporate Debtor on 07-04-2017.

The Corporate Debtor sent a reply raising certain disputes. It is alleged that the Operational Creditor did not issue the credit note against the supply of raw materials as per the industry norms which has been intimated to the Applicant that the goods supplied was of low quality and because of low quality, unless the Operational Creditor takes back the materials supplied to the Corporate Debtor within seven days, the corporate Debtor informed in the reply notice that they are going to destroy.

11. To have a better understanding of the dispute raised in the reply notice, it is good to read it. It reads as follows:-

- i) Goods return Credit note not issued and accounted for
- ii) No credit note issued against supply of below quality raw materials as per industry norms already intimated to the Corporate Debtor
- iii) Loss incurred by the Corporate Debtor due to issuance of low quality ingredients not accounted for

- iv) Non-lifting of low quality material from the premises of Corporate Debtor which is already rotten. The Corporate Debtor is going to destroy the same unless the Operational Creditor takes back the same within next seven days
- v) The Operational Creditor made an intentional clumsy situation by supplying same materials through different company names which does not bear any batch no., manufacturing date or any make in the bags/packets
- vi) Maximum materials were supplied without the requisition of the Corporate Debtor
- vii) There was no pre-agreed payment terms, hence question of interest of delayed payment does not arise at all
- viii) The invoice /challan of the Operational Creditor does not carry any chargeable rate of interest in case of delayed payment
- ix) Moreover, after Income Tax raid at the Office of the Operational Creditor, the Operational Creditor have planned for a different schedule for credit note adjustment and payment schedule which till date has not been reflected
- x) There are several other matters with records available for ready references.

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12. To strengthen that the above said disputes were pre-existing before the date of receipt of the demand notice here in this case, no proof. On the other hand, what is requested as per the reply notice is that the applicant has to take back the goods as it is rotten, within 7 days of receipt of the reply notice. It is an indication that request for return was raised for the first time when the demand notice was received by the respondent. To prove the pre-existing dispute, what is relied upon by the Corporate Debtor is the two E-mails referred to in the reply affidavit. Annexure "C" is the E-mail copies referred to by the Corporate Debtor in the reply affidavit. It is good to read the contents in the E-Mail. It reads as follows:-

**"Dear Sir,**

***As per telephonic discussion with our Director Mr. Anirban Chatterjee we would like to inform you that the Soya DOC which was delivered by your Company by Vehicle No. WB 23A 8495 is very poor in quality and over toasted also. Kindly also be informed that because non other material is available we are bound to consume this material in our Poultry Feed. Therefore, requesting you to kindly look into this matter and oblige..."***

13. To whom the above said E-mail is addressed, is not clear. However, the E-Mail addressed to an E-mail ID reads as skapplrungta@gmail.com. Admittedly, the above E-Mail ID is the E-Mail ID of the Operational Creditor. Therefore, even if it is addressed to the Operational Creditor, the burden is on the side of the Corporate Debtor to prove that the said E-Mail is pertaining to the delivery of the goods referred to in the invoices given as



Annexure "A". There is no reference of invoices number in the E-mail. Even if it is taken as an E-mail referring to a dispute challenging the quality of goods related to the goods supplied in this case, then also it never discloses any serious challenge which could be investigated further. It reveals that the respondent utilised the goods received for the reason of shortage of goods. So the goods received were consumed by the respondent truly under a vague protest. The dispute, if any raised by the respondent, by way of E-mail prior to the receipt of demand notice, therefore not at all amounts to a pre-existing dispute as laid down in ***Mobilox Innovations Pvt. Ltd.v. Kirusa Software Pvt. Ltd [Civil Appeal No.9405 of 2017]***. In the above said case, the Hon'ble Supreme Court has held that "***So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application for initiation of CIRP***". In this case, existence of a true dispute as alleged is not established. The dispute raised is found hypothetical. Therefore, the E-Mail not at all strengthened the contentions of the Corporate Debtor that the goods delivered as per Annexure "A" invoices were of inferior quality or that the Corporate Debtor has raised dispute as against the goods delivered to Corporate Debtor by the Operational Creditor.

14. One another document which was relied upon is the test result for proving that the quality of the goods supplied to the Corporate Debtor is of

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inferior qualities.. Annexure "D" is the analytical report referred to on the side of the respondent. It is a test result of goods supplied on 05-09-2014. Mere production of the test result also does not improve the respondent's contention regarding the quality of goods. Whether it relates to the goods supplied as per the Annexure "A" invoices, there is no supporting proof. Moreover, there is no proof produced as to what is the quality of goods or standard prescribed at the time of purchase. Therefore, analytical report and the E-Mail produced on the side of the Corporate Debtor is not at all helpful to prove that the dispute raised by the Corporate Debtor in the reply to the demand notice as well as to the reply notice are raised by the Corporate Debtor in respect of the goods supplied by the Operational Creditor as per Annexure "A" invoices. Evidence being lacking on the side of the Corporate Debtor to strengthen the contention that there exists pre-existing disputes in respect of the goods supplied to the Corporate Debtor by the Operational Creditor, the objection raised by the Corporate Debtor is found devoid of any merit.

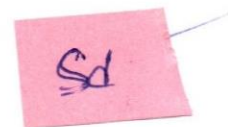
15. One another document also produced on the side of the Corporate Debtor is Annexure "E" to prove that there is payment towards the goods supplied and that the claim amount shown in the Application is incorrect. The Ld. Counsel for the Operational Creditor pointed out that the copy of the debit voucher produced as Annexure "A" does not refer to the supply

of goods by the Operational Creditor, namely, Shri Krishna Agri product Pvt. Ltd. but it is related to Basukinath Agro Private Limited, one other sister concern of the Applicant.

16. It is significant to note here that the Basukinathj Agro Pvt. Ltd. has also filed another Application bearing No. CP(IB) No. 225/KB/2018 as against the very same Corporate Debtor. The debit voucher seems to be related to the transaction of goods in between the Basukinath Agro Pvt. Ltd. and the Corporate Debtor. Similarly, I take note that the very same E-Mail copies referred to above were seen produced in the CP(IB) No.225/KB/2018 by the Corporate Debtor to show that the Corporate Debtor had raised disputes and challenged the quality of goods prior to the demand notice in the said case also. So these circumstances lead to a conclusion that the disputes raised on the side of the respondent is not *bona fide*. It is vague and unsupportive.

17. The Id. Counsel for the Corporate Debtor failed to give any explanation as to the inconsistent documents referred to in both cases. He was unable to convince this Bench as to whether any of the objections raised in the affidavit in reply are sustainable under law.

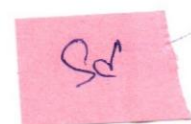
18. The contention that the Operational Creditor is doing business in different entities and it is run by one Rungta family and since the different



entities are sending bills, the Corporate Debtor is facing difficulty to assess which of the aforesaid entities have supplied the goods and thereby unable to raise the dispute, has no legal force at all. The contention that the Operational Creditor has delivered the goods to the Corporate Debtor faithfully is also proved by the Operational Creditor. Therefore, having failed in proving a pre-existing dispute, as laid down in Mobilok Innovations Pvt Ltd, I do not find any merit in the dispute raised on the side of the Corporate Debtor.

19. Since the respondent failed in proving a pre-existing dispute, the next question is whether the Operational Creditor has succeeded in proving the compliance of Section 9 (5) of the IB code, 2016. To maintain an application of this nature, the Operational creditor has to prove that the Application filed under Section 9 of the IB Code, 2016 is complete, that there is no repayment of the unpaid operational debt, that the invoices of which the claim is made, has been received by the Corporate Debtor, and that there is no disciplinary proceedings pending against the proposed Resolution Professional.

20. Here, in this case, no affidavit under Section 9(3)(b) has been filed because the Corporate Debtor has raised disputes. The dispute raised is found devoid of any merit. In compliance with Section 9(3)(b)(c), the



Operational creditor has produced a certificate issued from its Bank dated 27-12-2017 by way of Supplementary Affidavit dated 01-02-2018. However, no name of the Insolvency Resolution Professional is proposed. Therefore, the question of compliance with Section 9(5)(i)(e) does not arise. All other requirements as per Section 9(5)(i)(a) to (c) are seen complied with and since the dispute raised is found not *bona fide*, this Application is liable to be admitted.

21. Since no name of the Interim Resolution Professional is proposed, the Resolution Professional, Shri Sanjeev Jhunjhunwala, Mobile Number 9831248361 is hereby appointed.

22. In the result, the Application is admitted upon the following directions:-

### **ORDERS**

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Feedatives Pharma Private Limited is hereby admitted.

ii) I hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 (54 of 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.

v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

vi) 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.

vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the



moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x) Shri Sanjeev Jhunjunwala, **Registration No. IBBI/IPA-001/IP-P00325/2017-18/10595,** **E-mail ID: sanjeevjhunjunwala@gmail.com,** **Mobile no. 9831248361** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.


xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date. The Interim Resolution Professional is directed to produce **Form 2** and written communication within **one week** from the date of the receipt of the order.

xii) Registry is hereby directed under section 9(5) of the I.B.C., 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

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23. List the matter on 22.10.2018 for the filing of the progress report.

24. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(Jinan K.R.)

Member (Judicial)

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