

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

C.P. (IB) 32/BB/2018

U/s 9 of IBC, 2016  
r/w Rule 6 of the I & B (AAA) Rules, 2016

In the matter of

Shri Gurudatt Sugars Marketing Pvt. Ltd.  
18<sup>th</sup> Lane, Bhagyavijeta Building  
Jaysingpur, Tal: Shirol  
Dist: Kolhapur  
Maharsahtra 416 101

- Petitioner/Financial Creditor

AND

GM Sugar and Energy Ltd.  
22, Pamadi Towers  
1<sup>st</sup> Main Road, Gandhinagar  
Bangalore 560006

- Respondent/Corporate Debtor

Coram: 1. Hon'ble Shri Rajeswara Rao Vittalana, Member (Judicial)  
2. Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Date of Order: 1<sup>st</sup> June, 2018

For the Petitioner(s): 1) Mr. DP Singh, Advocate, with  
2) Mr. Manu Mishra, Advocate,

**Per: Rajeswara Rao Vittalana, Member (Judicial)**

ORDER

1. The Company Petition bearing C.P (IB) No. 32/BB/2018 is filed by Shri Gurudatt Sugars Marketing Pvt. Ltd., u/s 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of I & B (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate

Corporate Insolvency Resolution Process (CIRP) in respect of GM Sugar and Energy Ltd., (Corporate Debtor).

2. Brief facts of the case, which are relevant to the issue, are as follows:
  - a. Shri Gurudatt Sugars Marketing Pvt. Ltd. (Operational Creditor) is a Company incorporated under the provisions of Companies Act, 2013 are engaged in the business of sugar trading since 2016. GM Sugar and Energy Ltd., Respondent/Corporate Debtor, is a Company incorporated under the provisions of Companies Act, 2013 on 27.11.2007. Its Authorised Share Capital is Rs. 30,00,00,000/- and Paid-up Share Capital is Rs. 16,13,60,000/-.
  - b. The Operational Creditor and the Corporate Debtor entered into a commercial relationship vide sales confirmation dated 22.12.2016 and the sales confirmation constitutes a legally binding contract between Operational Creditor and the Corporate Debtor. Under this commercial relationship, the Corporate Debtor was to supply one Rake (26,500 quintals) of S-30 Sugar at the rate of Rs. 3,725/- per quintal for Dhankuni to the Operational Creditor in the second week of January 2017 against 100% advance payment discharging its obligation under the contract.
  - c. The Operational Creditor, accordingly, made a total payment of Rs. 9,87,12,500/- in furtherance of their business deal, as advance for the sugar to be supplied by the Corporate Debtor. However, the Corporate Debtor failed to supply the requisite quantity of sugar to the Operational Creditor. Therefore, the Operational Creditor has sought

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to refund advance payment in spite of several reminders by the Operational Creditor.

- d. M/s. Kejriwal Sugar Agencies Pvt. Ltd. having its Registered Office at Vinayak Complex, Kolkata, was broker, and also the consignee agent to the contract. Since the contract was against 100% advance payment, Kejriwal Sugar Agencies Pvt. Ltd. made a payment of Rs. 1,00,00,000/- to the Corporate Debtor on behalf of Operational Creditor and the same was duly acknowledged by the Corporate Debtor vide its correspondence dated 22.12.2016 and 23.12.2016. The remaining payment of Rs. 8,87,12,500/- was paid directly by the Operational Creditor to the Corporate Debtor from its account on 23.12.2016 vide Cheque No.33153490. Therefore, total 100% payment has been made for the supply of sugar as an advance. The Corporate Debtor did not supply the demanded quantity of sugar to the Operational Creditor within the stipulated time, and thus violated the terms and conditions as agreed upon. The Operational Creditor made several reminders with regard to the payment of outstanding dues vide letters dated 28.08.2017, 01.09.2017, 12.09.2017, 20.09.2017, 06.10.2017, etc. On several occasions, the officials of Operational Creditor have also met the officials of Corporate Debtor but to no avail. Accordingly, a demand notice dated 20.11.2017 was issued by the Corporate Debtor demanding to pay the total amount of Rs. 9,87,12,500/- with interest @ 15% p.a. from the date of which it became due till the date of its realisation. Having not paid the outstanding amount, the present Company Petition has been filed seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.



3. The Company Petition has been opposed by the Corporate Debtor by filing an objection statement dated 05.04.2018 by interalia stating as follows:
- a. The Corporate Debtor is a leading sugar Company, having its factory and office at Sandur, Haveri District, Karnataka and the same was established in the year 2007. The instant Company Petition is not maintainable either in law or on facts and the same is liable to be dismissed in limine. The petition is filed only with an intention to cause wilful loss to the Corporate Debtor and there is no contract between the Operational Creditor and the Corporate Debtor. However, it is denied that there is no contract between Operational Creditor and Corporate Debtor at any point of time and there is no business also.
  - b. M/s. Kejriwal Sugar Agencies Pvt. Ltd., has addressed a letter dated 10.02.2017 to GM Sugar and Energy Ltd. stating that the Operational Creditor received sale confirmation order dated 22.12.2016 on its advise. It is further stated that due to unforeseen reasons, Gurudatt Sugars does not want to receive sugar supplies and thus cancelled the same confirmation letter issued earlier. It is also stated that Corporate Debtor may retain the advance amount of Rs. 8,87,12,500/- received from Gurudatt Sugars Marketing Pvt. Ltd. for the time being and the advance of Rs. 1,00,00,000/- made by Kejriwal Sugar Agencies Pvt. Ltd. was already adjusted by the Kejriwal Sugar Agencies Pvt. Ltd. Therefore, it is contended that the Corporate Debtor has no direct link with the Operational Creditor and the instant transaction was done only through Kejriwal Sugar Agencies Pvt. Ltd. Therefore, Kejriwal Sugar Agencies Pvt. Ltd. is a necessary party to the litigation to

determine the real controversy between parties. It is stated that Kejriwal Sugar Agencies Pvt. Ltd. has written a letter stating that the supply order was cancelled due to market fluctuations and the outstanding amount of Rs. 8,87,12,500/- has been requested to adjust to the account of Kejriwal Sugar Agencies Pvt. Ltd. There is no direction or instruction given by Kejriwal Sugar Agencies Pvt. Ltd. to make payment to the Operational Creditor. Therefore, the Operational Creditor cannot claim to return the amount since the amount has already been adjusted into the account of Kejriwal Sugar Agencies Pvt. Ltd.

- c. In pursuance to the legal notice dated 20.11.2017, a reply dated 30.11.2017 was issued denying the claim of Operational Creditor. It is stated that Corporate Debtor never requested to pay the amount at any point of time, and Operational Creditor has followed the instructions of Kejriwal Sugar Agencies Pvt. Ltd. and even the Petitioner itself has followed the instructions of Kejriwal Sugar Agencies Pvt. Ltd. for the instant transaction. Therefore, it is contended that there is a dispute with regard to the claim and thus the present application is liable to be dismissed.
4. As stated supra, the Operational Creditor entered into a Commercial relationship for supply of Sugar (S-30). Accordingly, the Operational Creditor has to supply one rake (26500 MTs) of S-30 sugar at the rate of Rs.2735/quintals in the 2<sup>nd</sup> week of Jan 2017 against 100 percent advance payment. The sale has been confirmed by the Corporate Debtor vide letter No.GM/SE/Sales/2016-17 dated.22<sup>nd</sup> Dec 2017. The Consignee Agency M/s.Kejriwal Sugar Agencies Pvt. Ltd., paid an amount of Rs.

1,00,00,000/- (Rupees One Crore Only) to the Corporate Debtor. The remaining amount of Rs. 8,87,12,500/- (Rupees Eight Crore Eighty Seven Lakhs Twelve Thousand Five Hundred Only) was paid directly by the Operational Creditor to the Corporate Debtor from its Account on 23.12.2016 vide Cheque No.33153490. Therefore it is not in dispute that the amounts were paid by the Operational Creditor. Even Rs. 1,00,00,000/- (Rupees One Crore Only) paid by M/s. Kejriwal Sugar Agencies Pvt. Ltd., is deducted from this claim, and an amount of Rs. 8,87,12,500/- (Rupees Eight Crore Eighty Seven Lakhs Twelve Thousand Five Hundred Only) is still due to the Petitioner. It is not the case of the Respondent that it has paid the amount to the Operational Creditor; the only dispute raised by the Respondent is that only M/s. Kejriwal Sugar Agencies Pvt. Ltd., who has to repay to the Petitioner since the amount paid by the Operational Creditor was adjusted against dues of M/s. Kejriwal Sugar Agencies Pvt. Ltd. agency. Since the Corporate Debtor itself has received the money in question, directly from the Operational Creditor, and it is liable to pay to the Operational Creditor. The Corporate Debtor, cannot adjust the money of Operational Creditor in favour of Ms. Kejriwal Sugar Agencies Pvt. Ltd without the consent of the Operational Creditor. Even the Consignee has paid only Rs. 1,00,00,000/- (Rupees One Crore Only) as an advance, that too on behalf of the Operational Creditor.

5. The Respondent did not file any evidence to show the Operational Creditor has asked the Corporate Debtor to in his money in favour of M/s. Kejriwal Sugar Agencies Pvt. Ltd. In the absence of any consent given by the Operational Creditor to the Corporate Debtor. The

Corporate Debtor cannot adjust the money of Operational Creditor in favour of Consignee. The fact remains that Corporate Debtor is still due to the Operational Creditor. The other contention of the Respondent that M/s. Kejriwal Sugar Agencies Pvt. Ltd. who has to pay the amount to the Operational Creditor is not at all correct and it is hereby rejected. Admittedly M/s. Kejriwal Sugar Agencies Pvt. Ltd. is a consignee for the transaction and he acts for Operational Creditor.

6. The Company Petition is filed in accordance with provisions of Section 9 of IBC. The Operational Creditor has filed all materials documents with regard to dispute; demand notice, a copy of the Certificate given Banks showing that the Corporate Debtor did not pay outstanding payment. There is no dispute with regard to receipt of the payment in question and there was no repayment of the same till date as stated supra. Therefore we are satisfied that the present Company Petition is fit case to admit to initiate CIRP in respect of Corporate Debtor.
7. In the result, by exercising Powers conferred on the Adjudicating Authority U/s 9(5) of IBC 2016, the Company Petition, bearing CP(IB) No.32/BB/2018 is hereby admitted with the following directions:
  - a. Appointed Shri. Abhishek Anand, Insolvency professional, E-103, Greater Kailash Enclave-I, New Delhi -110048 [Mobile No. 9899000168] E-mail ID: irpepoch@gmail.com, to conduct CIRP.
  - b. We further declare the following moratorium prohibiting the following U/s 14 of IBC, 2016:



- i) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-
  - 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 Securitisation 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.
- ii) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- iii) 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.



- iv) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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.

8. The Operational Creditor and Corporate Debtor are directed to extend full co-operation to the IRP to discharge his statutory functions as IRP. The IRP is also directed to take all necessary action in accordance with the extant Provisions to IBC, 2016 and also IBBI Rules and file reports on the action taken by him to the Tribunal by way of an Affidavit from time to time.

Post the case on 16.07.2018 for submission of report by IRP.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RAJESWARA RAO VITTANALA)  
MEMBER, JUDICIAL

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