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**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (LB) No. 3/9/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.04.2017**

Name of the Company: Umiya Trading
V/s.
Stratus Foods Pvt. Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.	Nitin H. Parikh	PCS	Umiya Trading Operational Creditor	Nitin H. Parikh
2.				

ORDER

Learned Advocate Mr. Nitin H Parikh present for Operational Creditor. None present for Corporate Debtor.

Order pronounced in open Court. Vide separate sheet.

List the matter after the recommendation is received from Insolvency and bankruptcy board of India regarding the name of Interim Resolution Professional.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 10th day of April, 2017.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. (IB) 03/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 10th day of April, 2017

In the matter of:

M/s. Umiya Trading,
102, Sunmars Complex,
Navdurga Society,
Nizampura,
Vadodara-390 002

: Operational Creditor/
Applicant.

Versus

M/s. Stratus Foods Private Limited,
J.C. Patel Estate,
Bharath Baugh,
N.H. No.8, Ranoli Crossing,
P.O. Dashrath,
Vadodara-391740,
Gujarat.

: Corporate Debtor.


Appearance:

Mr. Nitin H. Parikh learned PCS for the Applicant.
None present for the Corporate Debtor.

FINAL ORDER

Pronounced on 10th day of April, 2017

1. M/s. Umiya Trading filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"].

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2. The claim of the Applicant is that Corporate Debtor, namely M/s. Stratus Foods Private Limited purchased goods from the Operational Creditor during the period from 1.4.2016 to 29.1.2017 vide Retail Invoices as per the following table;

Particulars		Credit Memo No.	Date of Credit Memo	Amount	Payment Terms	Due Date of Payment
P.O. No	P.O. Date					
PO/16/1	1/4/2016	1	1/4/2016	105000	Net 30 Days	1/5/2016
PO/16/69	6/4/2016	2	6/4/2016	12760	Net 30 Days	7/5/2016
PO/16/78	9/4/2016	3	8/4/2016	42000	Net 30 Days	7/5/2016
PO/16/152	15/4/2016	4	15/4/2016	105000	Net 30 Days	16/05/2016
PO/16/177	18/4/2016	5	18/4/2016	131250	Net 30 Days	19/05/2016
PO/16/315	30/4/2016	6	30/4/2016	110000	Net 30 Days	1/6/2016
PO/16/342	3/5/2016	7	3/5/2016	5200	Net 30 Days	4/6/2016
PO/16/375	7/5/2016	9	9/5/2016	37950	Net 30 Days	10/6/2016
PO/16/396	9/5/2016	10	10/5/2016	115000	Net 30 Days	11/6/2016
PO/16/476	14/5/2016	11	14/5/2016	115000	Net 30 Days	15/06/2016
PO/16/536	22/5/2016	12	22/5/2016	23000	Net 30 Days	23/06/2016
PO/16/597	28/5/2016	14	28/5/2016	115000	Net 30 Days	29/06/2016
PO/16/670	4/6/2016	15	4/6/2016	238000	Net 30 Days	5/7/2016
PO/16/811	16/6/2016	16	16/6/2016	122500	Net 30 Days	17/07/2016
PO/16/884	23/6/2016	17	23/6/2016	123750	Net 30 Days	24/06/2016
PO/16/959	30/6/2016	18	30/6/2016	122500	Net 30 Days	1/8/2016
PO/16/1024	6/7/2016	19	6/7/2016	122500	Net 30 Days	7/8/2016
PO/16/1094	14/7/2016	21	14/7/2016	129850	Net 30 Days	15/08/2016
PO/16/1156	20/7/2016	22	20/7/2016	121500	Net 30 Days	21/08/2016
PO/16/1240	27/7/2016	23	27/7/2016	121500	Net 30 Days	28/08/2016
PO/16/1325	3/8/2016	24	3/8/2016	17010	Net 30 Days	4/9/2016
PO/16/1326	4/8/2016	25	4/8/2016	121500	Net 30 Days	5/9/2016
PO/16/1382	10/8/2016	26	10/8/2016	121500	Net 30 Days	11/9/2016
PO/16/1467	19/8/2016	27	19/8/2016	122500	Net 30 Days	20/09/2016
PO/16/1557	29/8/2016	28	29/8/2016	122500	Net 30 Days	30/09/2016
PO/16/1623	6/9/2016	29	6/9/2016	122500	Net 30 Days	7/10/2016
PO/16/1698	13/9/2016	30	13/9/2016	122500	Net 30 Days	14/10/2016
PO/16/1764	20/9/2016	31	20/9/2016	122500	Net 30 Days	21/10/2016
PO/16/1824	27/9/2016	32	27/9/2016	6825	Net 30 Days	28/10/2016
PO/16/1835	28/9/2016	33	28/9/2016	123725	Net 30 Days	29/10/2016
PO/16/1905	4/10/2016	34	4/10/2016	122500	Net 30 Days	5/11/2016
PO/16/1970	12/10/2016	35	12/10/2016	122500	Net 30 Days	13/11/2016
PO/16/2031	19/10/2016	36	19/10/2016	122500	Net 30 Days	20/11/2016
PO/16/2079	25/10/2016	37	25/10/2016	9562	Net 30 Days	26/11/2016
PO/16/2080	26/10/2016	39	26/10/2016	127500	Net 30 Days	27/11/2016
PO/16/2152	4/11/2016	40	4/11/2016	127500	Net 30 Days	5/12/2016
PO/16/2201	12/11/2016	41	12/11/2016	137500	Net 30 Days	13/12/2016
PO/16/2256	18/11/2016	42	18/11/2016	137500	Net 30 Days	19/12/2016
PO/16/2296	22/11/2016	43	22/11/2016	225000	Net 30 Days	23/12/2016
PO/16/2295	22/11/2016	44	23/11/2016	140000	Net 30 Days	24/12/2016
PO/16/2372	30/11/2016	45	30/11/2016	140000	Net 30 Days	1/1/2017
PO/16/2446	7/12/2016	47	7/12/2016	23490	Net 30 Days	8/1/2017
PO/16/2451	9/12/2016	48	9/12/2016	137500	Net 30 Days	10/1/2017
PO/16/2513	16/12/2016	49	16/12/2016	139125	Net 30 Days	17/1/2017
PO/16/2594	24/12/2016	51	24/12/2016	132500	Net 30 Days	25/1/2017
PO/16/2655	30/12/2016	54	30/12/2016	130000	Net 30 Days	1/2/2017
PO/16/2790	6/1/2017	55	6/1/2017	130000	Net 30 Days	7/2/2017
PO/16/2761	12/1/2017	56	12/1/2017	130000	Net 30 Days	13/02/2017
PO/16/2805	20/1/2017	58	20/1/2017	130000	Net 30 Days	21/02/2017
		59	25/1/2017	10600	Net 30 Days	26/2/2017
		60	26/1/2017	4600	Net 30 Days	27/2/2017
PO/16/2883	29/1/2017	61	29/1/2017	130000	Net 30 Days	30/2/2017

3. The Corporate Debtor accepted the goods sold and supplied by the Applicant Operational Creditor without any complaint.

4. As per the Terms and Conditions of Invoices, payment has to be made within 30 days from the date of supply of goods. But Corporate Debtor failed to make payments.

5. Applicant issued Demand Notice dated 20th February, 2017 in Form No. 3 along with copies of Invoices as provided in sub-clause (a) of sub-Rule (1) of Rule 5 of the Rules, claiming Rs. 22,50,038/-. The said Demand Notice was served on the Corporate Debtor on 21st February, 2017. Even after the receipt of the Demand Notice, Corporate Debtor neither paid the said amount nor gave any reply as called upon in the notice within a period of 10 days of the receipt of the Demand Notice along with copies of invoices. Hence Applicant filed this Petition on 15th March, 2017. This Petition was listed before this Adjudicating Authority on 03.4.2017. On 3.4.2017, Operational Creditor offered to serve notice to the Corporate Debtor.

6. This Adjudicating Authority directed the Operational Creditor to file another set of Petition with Annexures by giving page numbers and listed the matter on 4th April, 2017.

7. On 4th April, 2017, Operational Creditor filed proof of service of notice on the Corporate Debtor.

8. Heard learned PCS on behalf of the Operational Creditor. None present on behalf of the Corporate Debtor.

9. In order to pass an order under Section 9 (5) of the Code, the Adjudicating Authority shall necessarily give a finding on the following aspects;

- (i) Whether the claim is an operational debt or not;
- (ii) Whether Applicant comes within the definition of "Operational Creditor";
- (iii) Whether M/s. Stratus Foods Private Limited, is a 'Corporate Debtor';
- (iv) The requirements of sub-sections (1) to (4) of Section 9 of the Code read with Rule 5 and 6 of the Rules 2016 have been followed by the Applicant.

10. (i) Sub-section (21) of Section 5 of the Code defines "Operational Debt" as under;

"(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

In the case on hand, the facts disclosed that Applicant supplied the goods to the Corporate Debtor. Therefore, the claim in respect of cost of goods supplied by the Applicant to Corporate Debtor is an 'operational debt'.

- (ii) "Operational Creditor" is defined in sub-section 20 of Section 5 of the Code. "Operational Creditor" means,

"(20) "operational creditor" means a person to whom an operational debt is owed and includes any

person to whom such debt has been legally assigned or transferred."

Since the amount due to the Applicant is an 'operational debt', the Applicant is an 'operational creditor'.

(iii) "Corporate Debtor" is defined in sub-section (8) of Section 3 of the Code which reads as follows;

"(8) "corporate debtor" means a corporate person who owes a debt to any person;"

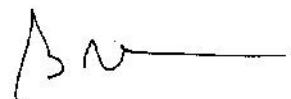
In the present case, Corporate Debtor, namely M/s. Stratus Foods Private Limited is a Company registered under the Companies Act and it is a "corporate person" within the meaning of sub-section (7) of Section 3 of the Code. Prima facie, the facts disclosed that a debt is due from Stratus Foods Private Limited to the Applicant. Therefore, Stratus Foods Private Limited is a "Corporate Debtor" within the meaning of sub-section (8) of Section 3 of the Code. The dates of Invoices commence from 1.4.2016 and up to 29.01.2017. Therefore, the operational debt is within limitation period.

"Operational Creditor" is required to deliver a Demand Notice along with copies of Invoices to the "Corporate Debtor". In the case on hand, 'Operational Creditor' complied with the said requirement.

(iv) In view of sub-section (1) of Section 9, the Corporate Debtor shall, within ten days from the date of receipt of notice or invoice demanding payment from the Operational Creditor, make payment or shall issue a notice of dispute under sub-section (2) of Section 8. In the case on

hand, the Corporate Debtor neither made payment nor issued notice of dispute as required under sub-section (2) of Section 8 of the Code.

11. In these facts, Applicant/Operational Creditor is entitled to file an application for initiation of corporate insolvency resolution process under Section 9 of the Code. A perusal of the Petition clearly goes to show that the Operational Creditor paid the required fee and enclosed the documents with the Application as required by sub-section (2) and (3) of Section 9 respectively of the Code. In the case on hand, Operational Creditor did not propose a Resolution Professional to act as an Interim Resolution Professional as required by sub-section (4) of Section 9 of the Code. Here, it is pertinent to refer to sub-section (3) of Section 16 of the Code. It says, in an application for corporate insolvency resolution process filed by an operational creditor, if there is no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board, namely Insolvency and Bankruptcy Board of India, for the recommendation of an insolvency professional who may act as an interim resolution professional within ten days from the date of receipt of the reference. Therefore, on the ground that Operational Creditor did not comply with sub-section (4) of Section 9 of the Code, the Petition cannot be rejected. This Adjudicating Authority shall follow the procedure laid down under sub-section (3) of Section 16 of the Code, and the Insolvency and Bankruptcy Board of India shall follow sub-section (4) of Section 16 of the Code. Therefore, this Adjudicating Authority, by this order passed under sub-section (5) of Section 9 of the Code, is admitting this Petition. This Adjudicating Authority is also of the view that it is necessary to make a Reference to the Insolvency and Bankruptcy Board of India established under the Code to recommend the name of an Insolvency Professional, against whom no disciplinary proceedings are pending, to this Adjudicating Authority, within ten (10) days from the date of receipt of the Reference.



12. No record of dispute is made available to this Adjudicating Authority. The Applicant has placed on record the Ledger Account of Applicant in the account books of Corporate Debtor.

13. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Resolution Professional. In the case on hand, simultaneous with the admission order, this Adjudicating Authority is not going to appoint Interim Resolution Professional because the Applicant did not propose the name of Interim Resolution Professional. But, this Adjudicating Authority will appoint Interim Resolution Professional after the same is recommended by the Insolvency and Bankruptcy Board of India under Section 16(4) of the Code.

14. (a) In view of the above discussion, the Petition is admitted.

(b) This Adjudicating Authority hereby order reference to Insolvency and Bankruptcy Board of India to recommend the name of Insolvency Professional against whom no disciplinary proceedings are pending to this Authority within 10 (Ten) days from the date of receipt of reference.

(c) This Adjudicating Authority hereby declares moratorium under Section 13(1)(a) prohibiting the following as laid down in Section 14 of the Code;

(i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including

execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

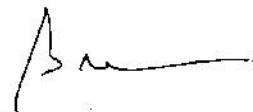
(ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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);


(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(d) However, the supply of goods and essential services to the corporate debtor shall not be terminated or suspended or interrupted during moratorium period. The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.

15. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14. This Adjudicating Authority shall give separate order for public announcement at the time of appointment of an Interim Resolution Professional after the proposal is received from the Insolvency and Bankruptcy Board of India.



16. This Petition is ordered accordingly.
17. Communicate a copy of this order to Operational Creditor and Corporate Debtor. List the matter after receipt of proposal from the Insolvency and Bankruptcy Board of India.


BIKKI RAVEENDRA BABU
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

*Pronounced by me in open court on
this the 10th day of April, 2017.*

RmR