



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**C.P. (IB) 1000/MB/2023**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

*In the matter of*

**M/s Charoen Pokphand Trading (India)  
Private Limited**  
Through its Authorised Signatory

Having its address at - 841/1, Binnamangala,  
100 Feet Road, Indira Nagar, Bangalore,  
Karnataka- 560038

**..... Petitioner/ Operational Creditor**

**Versus**

**M/s. Tirumala Oil Refinery Private Limited**

Having its address at:- Beed Taraf Khod,  
Survey No-15-AA-2, Village- Samnapur,  
Mochi Pimplagon Road, Beed,  
Maharashtra- 431122

**..... Respondent/Corporate Debtor**



**Order Delivered on :- 06/08/2024**

***Coram:***

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

***Appearances:***

For the Operational Creditor : Adv. Pulkitesh Dutt Tiwari  
i/b Menon & Mankava

For the Corporate Debtor : Adv. Vritee S Soni a/w Adv. Aman  
Kacheria i/b Adv. Rahul Agarwal

**ORDER**

***Per: Kuldip Kumar Kareer, Member (Judicial)***

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **M/s. Charoen Pokphand Trading (India) Private Limited** (hereinafter called Operational Creditor) praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Tirumala Oil Refinery Private Limited** (hereinafter called Corporate Debtor) by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Operational Debt of Rs. 4,60,40,638/- (Rupees Four Crores Sixty Lakhs Forty Thousand Six Hundred Thirty-Eight only).



**The submissions of the Operational Creditor are as follows:**

2. It is submitted by the Operational Creditor that it is involved in the business of manufacturing, wholesale/retail trading, exporting and supplying bran.
3. The Corporate Debtor approached the Operational Creditor and placed orders for cotton seed cake. On 17<sup>th</sup> March 2023, the Corporate Debtor issued a Purchase Order for the procurement of 1405.00 metric tons of Cotton seed cake at the rate of INR 35,607 per metric ton thereby aggregating to a total contractual value of INR 5,00,27,835 (Rupees five Crores Twenty-Seven thousand Eight hundred and thirty-five only). Upon receipt of the said purchase order, the operational creditor fulfilled its contractual obligation by supplying the specified materials and subsequently issued a sale order corresponding to the delivery of the materials. Subsequently, the Operational Creditor delivered the entire quantity of material specified in the Purchase Order to the Corporate Debtor in multiple lots. For each lot delivered, the operational creditor raised respective Tax Invoices. Upon the receipt of said tax invoices, it was agreed between the Operational Creditor and Corporate Debtor that the payment for the said invoices would be made in accordance with the terms stipulated in the Purchase Order and the Sale Order. The term explicitly provides for a credit period of 30 (thirty) days from the date of the Invoice or from the date of the Goods Receipt Note.
4. It is further submitted that the Corporate Debtor failed to adhere to the agreed terms and did not release the payment for the Tax Invoices within the stipulated credit period of 30 days for the purchase of cotton seed cakes. As per the terms agreed upon in the purchase order and the sale order, the last



date for payment was 22<sup>nd</sup> April 2023 which constitutes the date of default. Despite repeated reminders and follow-ups by the Operational Creditor, the Corporate Debtor made only a partial payment of INR 71,47,736 (Rupees Seventy-One Lakhs Forty-Seven Thousand Seven Hundred and Thirty-Six Only) in two separate tranches, which were received on 18<sup>th</sup> April 2023 and 7<sup>th</sup> June 2023. However, the remaining payment of INR 4,60,40,638/- (Rupees Four Crores Sixty Lakhs Forty Thousand Six Hundred Thirty-Eight only) which includes Principal Amount of INR 4,28,77,950/- and interest @24% amounting to INR 31,62,688/- is still due and payable.

5. The Operational Creditor, being aggrieved by the Corporate Debtor's failure to meet its payment obligations, served a legal notice dated 28<sup>th</sup> June 2023, through its Advocate, seeking release of the outstanding payment from the Corporate Debtor within 15 days from the receipt of the legal notice. However, the said legal notice has remained unanswered establishing that the Corporate Debtor failed to repay the operational debt which became due and payable on 13<sup>th</sup> July 2023 (15 days from the date of notice). In view of the foregoing the Corporate Debtor has committed a default in repayment of the operational debt on 13<sup>th</sup> July 2023.
6. Thereafter, on 10<sup>th</sup> August 2023, the Operational Creditor served a Demand Notice dated 10<sup>th</sup> August 2023 in the prescribed Form 3 and Form 4 under Section 8 of the Insolvency and Bankruptcy Code (IBC) to the Corporate Debtor requiring it to either repay the outstanding operational debt within 10 days or inform the Operational Creditor of any pending or pre-existing dispute regarding the debt. The Corporate Debtor failed to repay the outstanding debt within the specified 10-day period but responded to the Notice on 5<sup>th</sup> September 2023 citing unsubstantiated reasons for the delay



such as there was need for reconciliation of the outstanding invoices. However, the Corporate Debtor did not dispute its default in meeting the payment obligations. Despite multiple communications from the Operational Creditor urging reconciliation and settlement of the outstanding amount, the Corporate Debtor has not provided any positive response till date.

7. The Operational Creditor, through its Letter dated 12<sup>th</sup> September 2023, replied to the Corporate Debtor's Letter dated 5<sup>th</sup> September 2023. In this letter, the Operational Creditor stated that there is no scope for reconciliation of pending invoices but agreed to meet and discuss the matter with the Corporate Debtor if required. Despite this offer, the Corporate Debtor has not come forward for reconciliation of the invoices.

**Written Submissions filed by the Corporate Debtor:-**

8. The Respondent is one of the companies under the Kute Group of Companies, registered under Companies Act, 2013 engaged in the business of Edible Oils having expertise in the production of Filtered Groundnut Oil, Refined Soyabean Oil and other edible oil products.
9. The Respondent has further submitted that it is in the process of completing a securitization transaction, being carried out under the terms, conditions and provisions of the Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021.
10. The Respondent has received a Letter of Intent dated April 5, 2024, from Minventa Research, a securitization vehicle under Creatrust Sarl. Minventa Research plans to start a structured investment program by securitizing the



assets of the Kute Group to support their business. Subsequently, a final disbursement of funds raised through securitization was intimated by way of a Provisional Letter of confirmation of project funding dated 15.02.2024.

11. Further, Minventa Research, via the **“Letter Conveying the Status of the funds under Securitisation of the Assets”** confirmed that the Kute Group has met all legal and regulatory requirements in Luxembourg, as well as the mandatory compliance requirements under the laws of the Government of the Republic of India, thereby qualifying for the receipt of the funds. By the aforesaid letter, Minventa Research stated that the Kute Group is eligible to receive Rs. 10,000 crores through direct and synthetic securitization of their assets over 5 years.
12. By way of a “Letter of Acceptance of Kute Group’s request to issue Bank Guarantees on their behalf against Kute Group’s Securitized assets” dated April 17 2024, Minventa Research, upon careful consideration and review of the underlying compliance requirements, have determined that the request for issuance of Bank Guarantees/ Stand By Letters of Credit against Kute Group’s assets that have been securitized with them under the SPV can be accepted.
13. A decision has been made to work with Goldman Sachs and J.P. Morgan Chase to issue cash-backed, irrevocable, non-assignable, and non-transferrable Bank Guarantees. These will follow all necessary guidelines and regulations.
14. Furthermore, Minventa Research will convey the verbiage and full disclosure of the terms and conditions related to these Bank Guarantees to the Kute Group. Minventa Research clarified that these Bank Guarantees will be



strictly backed by funds raised against securitized assets and should not be treated as an additional credit facility, extension of any credit line, or provision of any further debt.

15. Upon receiving approval for their request to Minventa Research for issuing Bank Guarantees against their securitized assets, the Kute Group decided to form a strategic relationship with Goldman Sachs and J.P. Morgan Chase. These guarantees would be cash-backed, irrevocable, non-assignable, and non-transferable, subject to certain terms and conditions. The day after this approval, the Kute Group sent a proposal to the petitioner and other creditors.
16. By letter dated 18.04.2024, the Kute Group acknowledged to the Petitioner an outstanding debt of Rs. 4,60,40,638/- as of 31 March 2024. The letter also informed the Petitioner that the Kute Group had securitized its assets to address financial stress and liabilities.
17. The Petitioner was informed that the Kute Group had partnered with Goldman Sachs to issue a Bank Guarantee for Rs. 4,60,40,638/-, covering the outstanding amount as on 31 March 2024. The guarantee will be enforceable if the Kute Group does not repay the debt within 15 days of its issuance. If repaid on time, the guarantee lapses. The Petitioner was asked to countersign the letter to confirm acceptance of these terms, after which the guarantee would be issued within 15 days.
18. Thereafter, on 26.04.2024, the Kute Group provided the Petitioner with a copy of the proposed wording/draft of the Bank Guarantee intended for



issuance in the Petitioner's name to settle the outstanding amount due and payable by the Kute Group.

19. The Petitioner responded to the letter dated 18.04.2024 via email on 29.04.2024, explicitly rejecting the offer made by the Kute Group, acting on behalf of one of its companies, the Respondent herein, to accept the Bank Guarantee instead of the outstanding dues payable by the Petitioner.
20. The Petitioner's aforementioned response indicates that they have initiated these proceedings only to recover their dues, which is impermissible under the Code. Regardless of the merits of the case, the Petitioner's actions suggest a clear intention to conveniently pursue recovery of their dues through these proceedings. In fact, the Hon'ble Supreme Court has explicitly stated in the case of M/s Invent Asset Securitisation and Reconstruction Pvt. Ltd. v. M/s Girnar Fibres Ltd.:

*“Time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of recovery proceedings as such. The intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor. We find no fault in the Tribunal and the Appellate Tribunal having declined the prayer of the appellant.”*

21. The proposed Bank Guarantee/Stand by Letter of Credit would be an international guarantee, compliant with norms set by the Reserve Bank of India. The Respondent has approved a draft of this Guarantee, with the condition of additional legal costs. It is important to highlight that unlike a domestic bank guarantee, the Kute Group will not receive any funds directly.





Instead, Goldman Sachs / J.P. Morgan will transmit the funds directly to the Petitioner or other creditors of the Kute Group, as applicable.

22. Many lenders, suppliers, financial institutions, and banks, listed in Annexure 'A', are currently in the process of receiving the Bank Guarantees offered by the Kute Group on behalf of any/all of its companies. These entities have accepted the offer and are cooperating with the Kute Group in this regard.
23. The Respondent asserts that through the Kute Group, it is prepared and willing to issue a bank guarantee to settle the outstanding dues and the litigation costs incurred by the Petitioner, provided that the litigation costs are reasonable and nominal. Accepting this offer will not only ensure repayment of the Petitioner's overdue amount but also signify the culmination of the asset securitization with Minventa Research, subsequently facilitating repayments to all lenders, suppliers, financial institutions, and banks.
24. Lastly, the Respondent affirms its readiness and willingness to settle the overdue amount along with reasonable litigation costs to the Petitioner through the Bank Guarantee. The Kute Group, and consequently the Respondent, is financially solvent and capable of repaying the overdue amount to the Petitioner. Moreover, the Petitioner themselves acknowledged in their email dated 29.04.2024, that the Respondent is financially capable of making the repayment. Therefore, declaring the Respondent as insolvent and initiating Corporate Insolvency Resolution Process (CIRP) against them would be unwarranted.
25. Based solely on the aforementioned points, it is evident that the Respondent is a solvent entity, fully capable and willing to repay its debt. Conversely, the



Petitioner's apparent rejection of the settlement offer seems to be merely a demand for legal costs in addition to the outstanding dues payable. Considering that from an aggregate of 960 creditors more than 500 creditors have agreed to be paid in terms of the Bank Guarantee/ Stand by Letter of Credit.

26. In the end, the Corporate Debtor has prayed for the dismissal of the Petition.

**Analysis and Findings:**

27. We have heard the Counsel for the parties and gone through the record.
28. During the course of the arguments, Counsel for the Operational Creditor has referred to the sale order Annexure (A/5) dated 17.03.2023 and purchase order Annexure (A/4) dated 17.03.2023 on the basis of which, Operational Creditor supplied goods which were received by the Corporate Debtor vide receipt as per Annexure (A/6). The Operational Creditor further raised invoices as per Annexure (A/7) issued between 17.03.2023 and 21.03.2023 for a total value of Rs. 5,00,27,835/-. Counsel for the Operational Creditor has further pointed out that the Corporate Debtor released only an amount of Rs. 71,47,736/- against the outstanding dues by way of two tranches on 18.04.2023 and 07.06.2023. After adjusting the said amount, a total sum of Rs. 4,60,40,638/- is outstanding which includes principal sum of Rs. 4,28,77,950/- and interest @24% p.a. amounting to Rs. 31,62,688/-. Counsel for the Operational Creditor has further contended that the Corporate Debtor has not paid the outstanding dues despite the fact that legal notice dated 28.06.2023 and demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 dated 10.08.2023 was served upon the Corporate Debtor. According to the Counsel for the Operational Creditor since the



factum of existence of operational debt and its default has been proved on record and, therefore, the Petition deserves to be admitted as there is no pre-existing dispute between the parties.

29. No reply was filed on behalf of the Corporate Debtor despite last opportunity granted vide order dated 27.03.2024.
30. The Corporate Debtor has only filed written submissions wherein it has been, inter alia, pleaded that the Operational Creditor has filed the present Petition for recovery of the dues which is impermissible under the law. The Corporate Debtor has further relied upon the law laid down in *M/s Invent Asset Securitisation and Reconstruction Pvt. Ltd. Vs. M/s Girnar Fibers Ltd* whereby it has been held by the Hon'ble Supreme Court that the provisions of the Code are essentially not intended to bring the corporate debtor to its feet and are not of money recovery proceedings. On the strength of the law laid down in the cited case, it has been argued on behalf of the Corporate Debtor that since the present Petition has been filed only to recover the outstanding dues, the same is liable to be dismissed as the Corporate Debtor is a going concern and is financially sound to pay the outstanding dues. It has also been submitted in the written submissions that the Corporate Debtor is ready and willing to pay the overdues along with litigation costs, if any, by way of bank guarantee and further that the Corporate Debtor is insolvent and, therefore, should not be pushed into insolvency unnecessarily.
31. Having weighed the contentions raised by the Counsel for the parties, we are of the considered view that the Corporate Debtor has not denied the existence of the operational debt. It has also not been denied that the goods were supplied to the Corporate Debtor. No issue with regard to the quality or



quantity of the goods was ever raised on behalf of the Corporate Debtor. In its letter dated 05.09.2023 addressed by the Corporate Debtor to the Operational Creditor in response to the demand notice dated 10.08.2023, it is simply mentioned that Mr. Mahendra Khandale had various meetings from time to time to discuss and amicably resolve the outstanding payment issues as there were various reconciliation issues with regard the invoices raised. It is further stated in the said letter that mother of one of the directors of the company was in hospital due to which the process of reconciliation could not be completed. It is further stated that no reply is being sent to the notice in detailed and the Corporate Debtor reserves its right to do so at appropriate stage.

32. A perusal of the said letter dated 05.09.2023 reveals that no pre-existing dispute has been raised and the Corporate Debtor has simply referred to some meetings which allegedly took place to resolve the payment issues and some reconciliation issues in respect of some of the invoices without any further details. The delivery of the goods have not been denied nor anything has been mentioned in this letter with regard to quantity or quality of the goods. Therefore, on the basis of the letter dated 05.09.2023, it cannot be said that there was a pre-existing dispute between the parties at any point of time with regard to supply of goods by the Operational Creditor to the Corporate Debtor.
33. The goods were supplied in March 2023 and the present Petition was filed on 17.10.2023 and, therefore, the Petition has been filed within the period of limitation.



As a result of the foregoing discussion, we are of the considered view that the Operational Creditor has been able to establish the existence of operational debt and its default having been committed by the Corporate Debtor and further that the Petition is filed within the period of limitation and there is absolutely no pre-existing dispute between the parties. Therefore, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted and it is ordered accordingly in following terms:-

### **ORDER**

- a. **The above Company Petition No. (IB) 1000/(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Tirumala Oil Refinery Private Limited.**
  
- b. This Bench hereby appoints **ASC Insolvency Services LLP**, Registration No: **IBBI/IPE-0060/IPA-1/2022-2023/50012** as the Interim Resolution Professional having his address at 166, DDA SFS Flats, Hauz Khas, New Delhi – 110016 ; Email Id: **anju@insolvencyservices.in** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.



- c. The Operational Creditor shall deposit an amount of Rs. 3,00,000/- (Rupees three lakhs Only) towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.



35. **Accordingly, this Petition is admitted.**

36. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**

**Sd/-**  
**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**