

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB) No. 1303/KB/2019

In the matter of:

The insolvency and Bankruptcy Code, 2016

And

In the matter of:

**An application to initiate Corporate Insolvency Resolution Process by
Operational Creditor Under Chapter II of Part II of the Code**

And

In the matter of:

**M/s. Gagan Ferrotech Limited, having its registered office at 113/1B, Chittaranjan
Avenue, 7th Floor, Room no. 7C, Kolkata-700 073**

...Applicant/Operational Creditor

Versus

**M/s RDG Interior Decoration Exterior Architecture Private Limited, having its
registered office at 344/4, Ground Floor, NSC Bose Road Kolkata-700 047 and its
corporate office at 329, Ganguly Bagan, Naktala, Kolkata- 700 047.**





...Respondent/Corporate Debtor

Coram:

Shri Jinan K.R., Hon'ble Member [Judicial]

Shri H.C. Suri, Hon'ble Member [Technical]

For Applicant:

1. Abhishek Sikdar, Advocate
2. Sumit Biswas, Advocate

Date of pronouncement of Order: 19/12/2019

ORDER

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

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "I & B Code") by **M/s. Gagan Ferrotech Limited** (hereinafter referred to as the Petitioner/Operational Creditor) for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against **M/s RDG Interior Decoration Exterior Architecture Private Limited** (hereinafter referred to as the "Corporate Debtor") as the Corporate Debtor has defaulted in paying INR 7,69,415/- (Indian National Rupees Seven Lakhs Sixty Nine Thousand Four Hundred Fifteen Only).

2. It is submitted that the Corporate Debtor had placed order for purchase of TMT Bars vide two Purchase Orders bearing same number i.e. RDG/KOL/Steel/WO/2017/003, both dated 19.10.2017. The Operational Creditor supplied the said goods and raised a Tax Invoice No GFL/17-18/03804 dated 24.10.2017 for Rs. 6,07,608/-. However, no payment was made towards it. Although, the Corporate Debtor had issued two post dated cheques towards payment, both the cheques were dishonoured due to insufficient balance.
3. It is submitted that for the goods supplied and invoice raised, despite agreeing to pay within specified period as per its Purchase Order, the Corporate Debtor was negligent in making the payment in spite of repeated verbal reminders and persuasions. The Operational Creditor was compelled to send a Demand Notice dated 16.04.2019 under Form 3 of the Code to the Corporate Debtor upon its failure to make payment of the due amount of Rs. 7,69,415/-, inclusive of principal dues and interest. The said notice was received by the Corporate Debtor on 20.04.2019. Despite its receipt, there was no reply from Corporate Debtor. It is submitted that the date of default is the day invoice was raised i.e. 24.10.2017.
4. The notice of this Petition was served in advance however nobody appeared on behalf of the Corporate Debtor. Operational Creditor was directed to serve the notice again by post as well as by e-mail. The Petitioner filed an affidavit proving service of notice to the Corporate Debtor. Though the postal notice returned un-served, the e-mail was delivered successfully. Since nobody appeared despite

repeated notice, the Corporate Debtor was called, absent and declared *ex-parte* vide order dated 30.10.2019.

5. All the compliance for initiation of CIRP have been met with. The Applicant has produced and relied upon various documents to prove its case. Following are the documents relevant for the consideration of the case in hand:-

(a) An Affidavit under Section 9 (3) (b) of the "I & B Code" affirming on oath that no notice regarding the prior dispute has been received by the Operational Creditor from the Corporate Debtor;

(b) Copies of Purchase Orders issued by the Corporate Debtor upon Operational Creditor;

(c) Copy of tax invoice for supply of goods issued by the Operational Creditor upon the Corporate Debtor;

(d) Two dishonoured cheques along with return memos issued by Corporate Debtor in favour of Operational Creditor;

(e) Copies of Ledger statements;

(f) Copy of statutory demand notice; and

(g) Copy of Bank Statement of the Operational Creditor.

6. Heard the Ld. Counsel appearing for the Petitioner and perused the records. In the Light of the above said discussions, the application is hereby admitted under section 9 of the "I & B Code" upon the following directions:-

ORDER

Gagan Ferrotech Ltd. v. RDG Interior Decoration Exterior Architecture Pvt. Ltd.

- a) 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, M/s. RDG Interior Decoration Exterior Architecture Private Limited is hereby **admitted**.
- b) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- c) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. 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.
- d) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- 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;

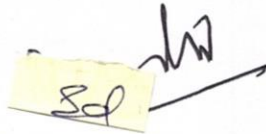
- iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
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- e) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
 - f) 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.
 - g) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
 - h) 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 the 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.
 - i) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

- j) Mr. Tapan Chakraborty, having **email: tapanchakraborty2611957@gmail.com**, **Mobile No. 8407004004** and registration number being **IBBI/IPA-003/IP-N000173/2018-1019/12121** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- k) The Interim Resolution Professional/Resolution Professional to conduct CIRP of the Corporate Debtor as per time line prescribed under Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- l) The Interim Resolution Professional/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.
- m) The Operational Creditor / Petitioner is directed to deposit Rs. 1,00,000/- (Rupee One Lac only) within one week from the date of this order, in the ESCROW account in SBI maintained by the Registrar, NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional before the constitution of the CoC and the fees and cost can be withdrawn by the IRP/RP after the approval of CoC. Balance, if any, can be withdrawn by the Operational Creditor.

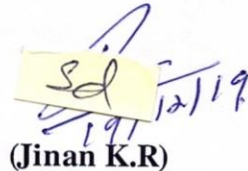
n) Registry is hereby directed under Section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.

7) List the matter on **03.02.20²⁰19** for the filing of the progress report.

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



(Harish Chander Suri)
Member (Technical)



(Jinan K.R)
Member (Judicial)

Signed on this 19th day of December, 2019.

/hb/.