

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

**C.P (IB) No.1699/KB/2019**

**In the matter of**

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

**In the matter of:**

**M/s The Mining Industrial Corporation,** PAN No. AFKPP8910M a Proprietorship having its office at 36A, Pratapaditya Road, Flat No. 1B, 1<sup>st</sup> Floor, Kolkata-700026, West Bengal.

*... Financial Creditor*

Versus

**In the matter of:**

**M/s Madhushree Industries Pvt. Ltd.** CIN: U27209WB1963PTC025901 and having its registered office at Flat No. 2B, 2<sup>nd</sup> Floor, 36A, Pratapaditya Road, Kolkata-700026, West Bengal.

*...Corporate Debtor*

Date of hearing : 05/08/2021

Order Pronounced on : 13./08/2021

**Coram:**

***Mr. Rajasekhar V.K., Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***

**Counsels appeared through Video Conference**

- |                                    |                              |
|------------------------------------|------------------------------|
| 1. Mr Shaunak Mitra, Advocate      | } For the Financial Creditor |
| 2. Mr.Saurav Jain, Advocate        | }                            |
|                                    |                              |
| 1. Mr. Sailendra Kumar Tiwari,Adv. | } For the Corporate Debtor   |
| 2. Mr.Ajay Dubey, Advocate         | }                            |

**ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.
2. This Petition 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, has been filed by **M/s The Mining Industrial Corporation**, (PAN No. AFKPP8910M) a proprietorship concern, having its office at 36A, Pratapaditya Road, Flat No. 1B, 1<sup>st</sup> Floor, Kolkata-700026, West Bengal (hereinafter referred as Operational Creditor), seeking initiation of Corporate Insolvency Resolution Process in respect of **M/s Madhushree Industries Private Limited**, CIN: U27209WB1963PTC025901, having its registered office at Flat No. 2B,2<sup>nd</sup> Floor, 36A, Pratapaditya Road, Kolkata-700026, West Bengal (hereinafter referred as the Corporate Debtor).
3. The Operational Creditor herein has submitted in the application that the Corporate Debtor had hired the Operational Creditor to supply the coal at the premises of the Corporate Debtor. The Operational Creditor had raised invoices against the goods supplied to the Corporate Debtor and as per the invoices raised the Corporate Debtor had cleared some invoices amount but there are several invoices due and yet to be cleared till date.
4. It is submitted that due to the non-payment of the invoices, the Operational Creditor had sent the Demand Notice dated 9<sup>th</sup> August, 2019 to the registered office of the Corporate Debtor through speed post and the same was delivered to their address on 14<sup>th</sup> August,2019. It is

submitted that the Corporate Debtor has neither replied nor raised any disputes regarding the debt amount claimed by the Operational Creditor and due to the non-payment, the Operational Creditor has filed the present application 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. It is submitted that the total amount of debt due from the Corporate Debtor is Rs. 21,89,769.54 (Rupees Twenty One Lakhs Eighty Nine Thousand Seven Hundred Sixty Nine and Fifty Four Paise only) on account of supplying Coal to the Corporate Debtor. The aforesaid amount is inclusive of interest amount to the tune of Rs.1,25,283.91 (Rupees One Lakh Twenty Five Thousand Two Hundred Eighty Three and Ninety One Paisa) calculated @ 24% till 31.07.2019. The details of the transaction between the Operational Creditor and the Corporate Debtor have been mentioned in **‘Annexure-C’** to the application.

5. It is further submitted that the Operational Creditor was supplying Coal to the factory of the Corporate Debtor, which was duly acknowledged by the Corporate Debtor. The Operational Creditor was regularly raising the invoices and the Corporate Debtor was paying the amount of invoices in “on account basis”. So after adjusting all the part payment received, some of the invoices still remain outstanding. The details whereof have been mentioned in ‘Annexure-C’. The Operational Creditor further submitted in the application that various invoices along with few E-way bills evidencing the receipt of the goods by the Corporate Debtor at its premises are annexed as **‘Annexure-D’** (Colly) to the petition. It is submitted that as per the terms of the invoice, the Corporate Debtor was required to make the payment of the invoices immediately on the date of issue of invoice by the Operational Creditor. The Ledger of the Operational Creditor for the period 01/04/2017 to 27/08/2019, depicting the transactions between the parties is annexed as ‘Annexure-E’. It is submitted that the Corporate Debtor had confirmed the books of accounts from time to time and copy of the Ledger of Operational

Creditor in the books of accounts of the Corporate Debtor confirming the outstanding balance for the period of 01/04/2016 to 31/03/2019 are annexed as 'Annexure-F'. The Operational Creditor has also annexed a copy of the Bank Statement for the period 01/04/2017 to 27/06/2017 and 01/07/2017 to 31/03/2019 as 'Annexure-G'.

6. The Operational Creditor further submits that in spite of regularly reminding the Corporate Debtor through verbal communications and requesting payment of the outstanding amount. The Corporate Debtor failed to pay the outstanding amount to the Operational Creditor, and the outstanding has accumulated to a huge amount. The Operational Creditor further submits in the application that S.P. Paper Board Mills (1990) being a unit of M/s Madhushree Industries Private Limited, all the invoices raised and books of accounts prepared are in the name of S.P. Paper Board Mills (1990). The Operational Creditor further submits that the dates of payment due and the dates of default thereof are mentioned against each of the invoices listed in '**Annexure-C**'.
7. An affidavit of the sole proprietor of the Operational Creditor Mr. Anup Poddar has also been filed in support of application, deposing the authenticity of its averments.
8. The Operational Creditor also placed on record copies of the following documents for perusal of this Adjudicating Authority :-

- i. *Copy of master data of Corporate Debtor downloaded from MCA Website is annexed here and marked as "**Annexure-H**".*
- ii. *The Demand Notice dated 09.08.2019 sent by Operational Creditor under section 8 of the Insolvency and Bankruptcy Code, 2016 to the registered office address of the Corporate Debtor through speed post on 14.08.2019 and the same got delivered on 14.08.2019. Copy of the demand notice along with speed post acknowledgement and track report copy is annexed here and*

collectively marked as **“Annexure-I”**.

iii. Copy of Demand draft dated 30.08.2019 in favour of “Pay and Accounts Officer, Ministry of Corporate Affairs, payable at Kolkata” for an amount of Rs.2000 to proof the specified application fees has been paid is annexed here and marked as **“Annexure-J”**.

iv. Copy of written communication in Form 2 by the proposed interim resolution professional as set out along with Certificate of Registration of proposed Insolvency Resolution Professional (IRP) are annexed here and collectively marked as **“Annexure-K”**.

v. Copy of Affidavit in compliance to section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016 is annexed here and marked as **“Annexure-L”**.

9. The Operational Creditor has proposed the name of Mr. Jitendra Lohia, bearing Registration No. IBBI/IPA-001/P00170/2017-18/10339, to act as the Insolvency Resolution Professional in case CIRP is initiated in respect of the Corporate Debtor.
10. The Corporate Debtor, however, in its reply affidavit dated 3<sup>rd</sup> January, 2020, sworn by Mr. Vinod Jain, an authorized signatory of the Corporate Debtor submitted that the Operational Creditor M/s The Mining Industrial Corporation has filed the application against M/s Madhushree Industries Private Limited, the Corporate Debtor, which is in the business of paper board mills. It is submitted that the Corporate Debtor had appointed the Operational Creditor to supply coal to the Corporate Debtor at its factory situated at 88B, Ghola Kachery Road, Barasat, Kolkata and the supplies were made. It is submitted that the present application is an abuse of the process of law and is a mala fide and vexatious proceeding, which is not maintainable. It is submitted by the Corporate Debtor that application suffers from gross suppression of material facts and ex-facie not maintainable in law under the Code and that compliance of mandatory provisions of Section 9 of IBC and

Regulations framed thereunder has not been done.

11. The CD further submitted that there is also no compliance with the mandatory provisions of Section 9 of the IBC and regulations framed thereunder. The application is ex-facie defective and not in compliance with the rules prescribed in the IBC and regulations framed thereunder, including the mandatory provisions of Sections 9(3)(b) and 9(3)(c). There is also no record of default with any information utility, which is a mandatory pre-condition.
12. It is submitted that the application is also otherwise barred by the principles of waiver, estoppel, acquiescence and / or principles analogous thereto. It is further submitted in the reply affidavit that applicant is wrongfully misusing the provisions of IBC as a mechanism for recovery of its alleged dues which is contrary to and in derogation of the provisions and objectives of IBC. The application has been filed with fraudulent and malicious intent and for purposes other than to resolve any purported insolvency of the Corporate Debtor.
13. It is stated that the business of the Corporate Debtor is suffering from heavy cash crunch due to weak response from the market in the business and the promoters or officers of the respondent are trying to revive the company with every possible circumstance. The respondent doesn't have any funds as of now to run the company or to pay to its creditors. The respondent herein has already shown its inability to pay the debt at this time due to the weak financial position of the Corporate Debtor.
14. It is further submitted in the reply affidavit that the debt amount of Rs.21,89,769.54 ( Rupees Twenty One Lakhs Eighty Nine Thousand Seven Hundred and Sixty Nine and Fifty Four paisa only) on account of supply of coal services provided to the Corporate Debtor has been taken by the respondent. In this context, the Corporate Debtor requested the Operational Creditor for delaying the payment of the debt amount as the

financial position of the company is not good or not in a situation to pay off the debt amount of the creditors. That due to weak response from the market and economic condition, the respondent is unable to pay the debt as of now. The Operational Creditor filed the application under section 9(1) of IBC,2016 without acknowledgement of the Corporate Debtor. The Corporate Debtor had already requested the applicant to give some time to repay the debt, as due to sudden events, the Corporate Debtor is facing heavy financial crunch.

15. It is stated that the respondent is trying to resolve its financial problem and clear the dues of the applicant as soon as possible, but at present, the Corporate Debtor is not in a good condition to pay any amount.
16. In the Rejoinder, the Operational Creditor has more or less reiterated all material averments made in the application. The Operational Creditor submitted that the Corporate Debtor has clearly acknowledged the debt and is giving the excuse of having a cash crunch, which cannot be a reason to keep the Operational Creditor waiting for the debt to be made good. It is denied that the application is not maintainable under the Code. The Operational Creditor further submits that just because the market scenario is not favourable, the Corporate Debtor cannot take time to pay the debt amount. It is stated that the Corporate Debtor had agreed that the payment of the invoice would be made on the date of issuance of invoice but it failed to make payment of outstanding invoices to the tune of Rs. 21,89,769.54.
17. It is submitted that the Corporate Debtor has received considerable time to retrieve its business and thus no further time can be allowed to the Corporate Debtor.
18. It would be seen from the pleadings of the parties, that a sum of Rs. 21,89,769.54 is due as outstanding debt from the Corporate Debtor to the Operational Creditor and as per the Demand Notice dated 9<sup>th</sup> August, 2019 (**Annexure-I**), which has duly been served upon the

Corporate Debtor and an affidavit dated 11<sup>th</sup> September, 2019 having been filed alongwith the application deposing that no reply to the said notice under section 8 of the Code has been received by the Operational Creditor within the stipulated period from the Corporate Debtor. The date of default has been mentioned by the Operational Creditor as 7<sup>th</sup> March, 2019 because the Corporate Debtor has not paid the outstanding amount after adjusting part payment since that date. The Bank Statement (**Annexure-G**) has also been annexed to that effect. Since, the Operational Creditor has filed copies of the invoices alongwith Ledger of the Corporate Debtor, whereby the Corporate Debtor has confirmed the books of account from time to time. The Operational Creditor has been able to make out a case for initiation of CIRP in respect of the Corporate Debtor. The plea of the Corporate Debtor that it had suffered heavy losses or is having cash crunch due to market response in the business or that it is trying to resolve the financial problems is in a way admission on the part of the Corporate Debtor. The Corporate Debtor had never raised any dispute prior to receipt of notice under section 8 of the Code. The Corporate Debtor has failed even to response to the Demand Notice sent under section 8 of the Code, whereby the dispute, if any existed, could have been raised, there is no hindrance in the admission of the application filed by the Operational Creditor.

19. That application having complied with the provisions of Section 9(3)(b) and 9(3)(c) of the Code, is complete in all respect.
20. Having heard Ld. Counsel for both the sides and having considered all the pleadings alongwith all the Annexures filed therewith by the parties, we are very much convinced that it is a clear case for admission of the application under section 9 of the Code and we hereby 'Admit' the petition in the following orders:-



## **O R D E R S**

- 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, **M/s Madhushree Industries Pvt. Ltd.** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) 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.
- 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 judgment, 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.
- v) The supply essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the 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 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.
- ix) **Mr. Jitendra Lohia**, registered with Insolvency and Bankruptcy Board of India, having Registration No **IBBI/IPA-001/P00170/2017-2018/10339**, E-mail ID: **jitulohia@knjainco.com**, and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a 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.

- x) 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.
- xi) The Operational Creditor/Applicant is directed to deposit **Rs. 1,00,000/- (Rupees One Lakh only)** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on **01.11.2021** for filing of **Progress Report**.
- xiv) 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)**

**(Rajasekhar V.K.)**  
**Member (Judicial)**

Order signed this 13<sup>th</sup> day of August, 2021

Pj.