

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD**

MP/CP (IB) 21/9/NCLT/AHM/2019

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the matter of:

M/s Radha Krishna Acua Private Limited

Having addressed at:

C-59 Industrial Area,
Mathura, Uttar Pradesh,
UP-281001

.....Operational Creditor.

Versus

M/s Digital Micron Roto Print Private Limited.

(CIN: U00202MP2005PTC018001)

Having addressed at:

102, Shri Krishnas Times Square (1st Floor),
Scheme No. 47,
Sneh Nagar Main Road,
Indore, MP-452001

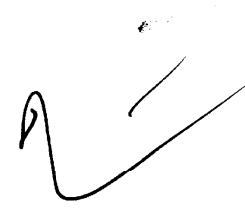
.....Corporate Debtor.

Order Reserved on: 08.01.2021
Order Pronounced on: 11.01.2021

**Coram: MADAN B. GOSAVI, MEMBER (J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance:

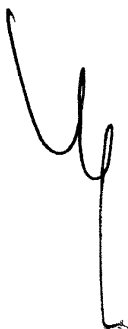
Learned Counsel Mr. Tirth Nayak appeared for the Operational Creditor.



ORDER

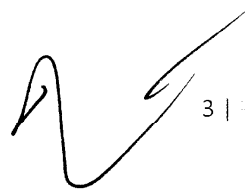
[Per: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. This application has been filed by Operational Creditor namely M/s. Radha Krishna Acua Private Limited under Section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as **"CIRP"**) against the Corporate Debtor namely M/s Digital Micron Roto Print Private Limited. The amount in dispute has been claimed at 16,79,221/- plus interests thereon.
2. The facts, in brief, are that the Operational Creditor supplied the material during period from July, 2018 to June, 2019 and raised bills to the tune of Rs. 21,21,702/-. Only part payment was made. Balance amount as stated hereinbefore remained outstanding. The Corporate Debtor had also provided Post Dated Cheques (in short "PDC") which were not honoured. Consequent to this situation, the applicant issued notice under Section 8 of IBC, 2016

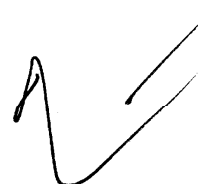


on 30.08.2019 which was delivered by way of e-mail and also on 11.09.2019 along with copies of all invoices.

3. Learned counsel for the Operational Creditor appeared and submitted that Corporate Debtor did not appear in spite of service of notice by way of paper publication and the matter had to be heard ex-parte as per order of this Adjudicating Authority. It was also brought to the notice that notices under Section 8 of IBC, 2016 was submitted on 30.08.2019 and thereafter cheques were issued by the Corporate Debtor which were deposited but got dishonoured. Thereafter, this application had been filed. The name of Interim Resolution Professional (hereinafter referred to as "**IRP**") has also been proposed. It was claimed that there was a debt which was due and payable and no dispute had been raised; hence, this application was liable to be admitted.
4. We have considered the submissions made by the Operational Creditor and material on record. It is noted that Corporate Debtor has not participated in this proceeding and, therefore, we proceed to decide this application after hearing the learned counsel Mr. Tirth



Nayak for the Operational Creditor and material on record. From the perusal of MCA data, it is noted that there are open charges on the assets of the Corporate Debtor which are of significant value. Thus, non participation of Corporate Debtor leads to an inference that Corporate Debtor in fact wishes to be admitted into CIRP. We, as Adjudicating Authority, have got limited options in such situations. The Corporate Debtor is not MSME; hence, any attempt by the management/owners of the Corporate Debtor to complete in a hidden manner needs to be prevented. No data has been provided to us as to whether there is any Financial Creditor who has classified the account of the Corporate Debtor as NPA and, if so, then from which date? This is particularly important from the aspect that management of the Corporate Debtor should not come back indirectly. The role of COC would be clearly important to prevent the misuse of provisions of Section 29A of the CODE. With these observations, we hold that application is liable to be admitted as there is a debt which is due and payable i.e. not barred by limitation and there is no pre-existing dispute. The application is otherwise



4 | Page

complete and defect free and complies with the all requirements of provisions of IBC, 2016 r.w. relevant Regulations. The name of the IRP has also been proposed though not mandatory in case of application filed under Section 9 of IBC, 2016. Consent of such IRP is on record and it appears that there is no disciplinary proceeding against such proposed IRP; hence, we appoint Mr. Satyendra Sharma as IRP to conduct the CIRP as per rule. Accordingly, we admit this application and order as under:

ORDER


1. The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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;

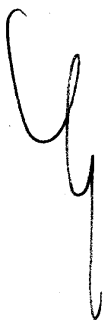
- (d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
2. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
3. The Operational Creditor has proposed the name of the Interim Resolution Professional(IRP). Therefore, this Adjudicating Authority hereby appoint **Mr. Satyendra Sharma having Registration No: IBBI/IPA-002/IP-N00737/2018-2019/12260 and having addressed at: M-3, Block No. 51, Anupam**



6 | Page

Plaza-II, First Floor, Above Axis Bank, Sanjay Place, Agra-282002, Email Address: satyendrasirp@gmail.com to act as an IRP under Section 13(1) (c) of the CODE.

4. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
5. This Adjudicating Authority directs the IRP to



make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the CODE.

6. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.
7. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of Rs. 50,000/- (Rupees Fifty Thousand Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency



Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.

8. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.
9. Accordingly, CP (IB) No. 21/9/NCLT/AHM/2019 is allowed.
10. The matter to be listed on 19.02.2021 for further consideration.



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)



(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Signed on this, the 11th January, 2021.

Rajeev Sen/Stenographer