

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

**Before Shri Madan B. Gosavi, Hon'ble Member (J)**

**CP (IB) No. 702/KB/2018**

**In the matter of:**

**An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;**

-And-

**In the matter of:**

**M/s. Firstchoice Ready Mix**, a registered partnership firm having its office at "Diamond Prestige", 6<sup>th</sup> floor, Suit No.617, 41A, Acharya Jagadish Chandra Bose Road, Kolkata- 700 017;

**... Operational Creditor**

-Versus-

**In the matter of:**

**M/s. MAF Infra Projects Private Ltd.**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4, Circus Avenue, Ground floor, Kolkata- 700 017 within the aforesaid jurisdiction;  
CIN : U70109WB2012PTC185713

**....Corporate Debtor**

**Counsel appeared:**

- |                                     |                        |
|-------------------------------------|------------------------|
| 1. Shri Ajay Gaggar, Advocate       | ]                      |
| 2. Ms. Rakhi Purnima Paul, Advocate | ] Operational Creditor |
|                                     |                        |
| 1. Md. Aftabuddin Mondal, Director  | ] Corporate Debtor     |

**Date of Pronouncement of Order: 09.01.2019**

**ORDER**

**M/s. Firstchoice Ready Mix** - the Operational Creditor filed this application under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against M/s. MAF Infra Projects Private Ltd.- Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor because the Corporate Debtor failed and neglected to pay the debt of Rs.3,17,603/- inspite of demand.

2. It is stated that the Corporate Debtor placed several orders to the Operational Creditor for supply of ready mix concrete which was supplied and delivered by the Operational Creditor and the same has been accepted by the Corporate Debtor. Operational Creditor raised seven invoices for the period 12.02.2016 to 29.02.2016 showing that the materials have been sold and supplied to the Corporate Debtor. Despite their repeated demand, the Corporate Debtor did not pay the dues. Hence, on 12.04.2018, demand notice under section 8 of I&B Code was served on the Corporate Debtor. Inspite of receipt of demand notice, the Corporate Debtor did not pay the dues nor send any reply pointing out any dispute about their claim. Hence, this application is filed.

3. Notice of this application is served on the Corporate Debtor. One of its Director, Md. Aftabuddin Mondal appeared in the matter and filed reply affidavit. It appears that he admitted the debt and its default also. He stated that the Corporate Debtor is ready to pay a sum of Rs.2,13,133/- towards full and final settlement of the matter in five instalments commencing from 30.09.2018. The

amount would be repaid by equal instalment of Rs.42,627/-. In view of this, the Operational Creditor may be directed to withdraw the matter.

4. I have gone through the records and proceedings. I heard the Ld. Counsel for the Operational Creditor and Ld. Director of the Corporate Debtor in person. From perusal of the affidavit-in-reply filed by the Corporate Debtor, it is clear that the Corporate Debtor did not dispute that it has to pay to the Operational Creditor the debt of more than Rs.1 lakh. The dispute appears as the Operational Creditor claimed an amount of Rs.3,17,603/- and the Corporate Debtor is ready to pay the amount of Rs.2,13,133/-, that too by instalments. It is seen from perusal of the affidavit-in-reply filed by the Corporate Debtor that they admitted default in paying dues of more than Rs.1 lakh. It is not in dispute that the Operational Creditor has served the demand notice on the Corporate Debtor. Even otherwise, copy of notice (Annexure-D) is produced alongwith the track report issued by the postal authorities at page 68. There is no dispute to the fact that the Corporate Debtor received demand notice but did not clear the dues nor raised any dispute about the claim.

5. The Operational Creditor did not suggest the name of IRP to be appointed. They have left it to the Tribunal to decide. The Operational Creditor has also filed affidavit stating that he did not receive any reply from the Corporate Debtor raising dispute about the claim and he did not receive the amount claimed. Both the facts are not otherwise in dispute. Since the application filed by the Operational Creditor is defect-free and complies all requirements under the law, I allow this application and proceed to pass the following order:

## ORDER

- (i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process in respect of M/s. MAF Infra Projects Private Ltd. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.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 judgement, 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 Securitization 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 possession of the corporate debtor.
- iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v) 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.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- vii) 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 Sec.31 or passes an order for liquidation of 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.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.

(ix) As the Operational Creditor has not proposed any name for the appointment of Interim Resolution Professional (IRP), Mr. Rajiv Kumar Agarwal (Mob. No.9831040319) having Email id: rajiv@kvrassociates.in and Registration No. IBBI/IPA-001/IP-P00552/2017-18/10982 is appointed as the Interim Resolution Professional from the panel of Insolvency Professionals recommended by IBBI for appointment as IRP/Liquidator for Corporate Debtor for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan. IRP is directed to submit his consent along with written Communication in Form-2 within two weeks of the order.

x) As per the amended provision of the I&B Code, he has to finalise the Resolution Plan on or before 105 days from the date of admission of CIRP.

xi) Registry is hereby directed to communicate the order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **25.02.2019** for filing the progress report.

Sd/-  
(Madan B. Gosavi)  
Member (J)

*Signed on this, the 9<sup>th</sup> day of January, 2019.*