

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

C.P. (IB) No. 1077/KB/2019

In the matter of:

An application for initiation of corporate insolvency resolution process by an Operational Creditor 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.

And

In the matter of:

M/S. ARIHANT TECHNO PACK PRIVATE LIMITED, CIN: U74900DL2009PTC188317, having its office at DSM-216, Second Floor, DLF Tower, 15, Shivaji Marg, Najafgarh Road, New Delhi – 110015.

... Operational Creditor

Versus

In the matter of :

M/S. MATASHREE SNACKS PRIVATE LIMITED, Village South Kumarkhali (Karbala), Rajpur Sonarpur Municipality, Narendrapur, Kolkata 700 103. CIN: U15410WB2010PTC150670, having its registered office at Duncans House, 2nd Floor, 31, Netaji Subhash Road, Kolkata 700001.

.....Corporate Debtor

Date of pronouncement of order : 02/01/2020

Coram: Shri Jinan K.R, Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record :

1. PR. PRATYUSH PATWARI, Advocate] For Operational Creditor.

ORDER

Per Shri Harish Chander Suri, Hon'ble Member (T).

1. This application under Section 9 of the Insolvency & Bankruptcy Code, 2016 has been filed by M/s. Arihant Techno Pack Private Limited, through Mr. Girish Kumar Verma, Accounts Head of the Company, who have been authorized vide Board resolution dated 10th April, 2019, hereinafter referred to as the Operational Creditor, seeking initiation of Corporate Insolvency Resolution Process against M/s. Matashree Snacks Private Limited, a Corporate entity having its registered office at Kolkata, hereinafter referred to as the Corporate Debtor.
2. It is submitted that the Operational Creditor is engaged in the business of manufacturing and selling packaging materials and in terms of the request made by the Corporate Debtor, had sold and delivered different quantities of packaging films to the Corporate Debtor from January, 2016 to July, 2016 and the Corporate Debtor had received and utilized the materials without raising any demur and/or





protest as regards its quality or quantity. The Operational Creditor has raised Nine test invoices along with transport delivery challans. The Corporate Debtor had made certain payment to the Operational Creditor.

3. It is stated that the Operational Creditor after due reconciliation of the invoices raised upon the Corporate Debtor and payments received from time to time, found that as on 11th October, 2016, the Operational Creditor was entitled to receive from the Corporate Debtor a total sum of Rs. 46,41,122/- (Rupees Forty Six Lakhs Forty One Thousand One Hundred Twenty Two Only) on account of Three invoices, (a) Invoice No. 2176 dated 26.02.2016, (b) Invoice No. 500 dated 31.05.2016 and (c) Invoice No. 896 dated 11.07.2016. The Operational Creditor sent e-mail demanding payment due on 2nd December, 2016, 21st December, 2016 and 16th January, 2017 but the Corporate Debtor had not paid the legitimate dues of the Operational Creditor.
4. It is further submitted that when repeated requests were made the Corporate Debtor issued two cheques of Rs. 10,00,000/- (Rupees Ten Lakhs Only) dated 10th October, 2017 and Rs.14,76,178/- dated 25th October, 2017 which were dishonoured. It is stated that the Operational Creditor sent a notice demanding payment of the aforesaid cheques amount but, instead of sending the payment, the Corporate Debtor sent an e-mail dated 20th December, 2017 contents thereof are reproduced below:-

“Ref: legal notice dated 07.12.2017 to Matashree Vinimay Pvt. Ltd. (on behalf of your client M/s. Arihant Technopack (P) Ltd.)

Dear Mr. Talwar,

The cheques issued to Mr. Jain (vide cheque numbers 000026 dated 10.10.2017 amounting to Rs. 10,00,000/- and cheque number 000027 dated 25.10.2017 amounting to Rs.14,76,178/-) got returned due to financial stress suffered by our Company post demonitisation and GST.

We are experiencing collection of coins towards our sales in huge numbers which is again making our position weak. However, we assure that the settlement amount of Rs. 24,76,178/- will be cleared as:

- Rs. 10,00,000/- in the month of January, 2018 and
- Rs. 14,76,178/- in the month of February, 2018.

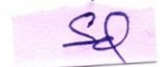
We intend to pay interest on delayed payment by us post return of cheques @ 12% p.a.

Sir, we will appreciate your co operation in this.

Regards,”

5. The Operational Creditor has further demanded interest @ 18% p.a. on the principal amount from 26th May, 2016. The Corporate Debtor however, had agreed to pay 12% interest from the date of the return of cheques. The Operational Creditor has filed affidavit under Section 9(3)(b) dated 10th July, 2017 and bank statement in lieu of an affidavit under Section 9(3)(c).
6. The Operational Creditor has also proposed the name of Mr. Mahesh Chand Gupta, Insolvency Professional, who has sent a written communication dated 10th July, 2019 to perform as IRP, in case the application is admitted.





7. It is submitted that since both the aforesaid cheques issued by the Corporate Debtor had been dishonoured, followed by notice sent by the Operational Creditor, the e-mail dated 7th December, 2017 would be taken as the date of acknowledgement of the debt since the present application has been filed on 10th July, 2019, the application is within the time. Having gone through all the papers we are convinced that the application is complete in all respect.
8. The notice of the application was ordered to be sent to the Corporate Debtor on 15th July, 2019. The Corporate Debtor was represented by a Counsel on 18th September, 2019 when time was sought by the Corporate Debtor to file Vakalat Nama and reply affidavit. On 5th November, 2019 it was noticed that no reply has been filed. On 28th November also nobody appeared on behalf of the Corporate Debtor and another 3 days time was given for filing reply or else it was directed that the Corporate Debtor will be proceeded ex-parte. On 20th December, 2019 it was noticed that neither the reply was filed nor anybody appeared on behalf of the Corporate Debtor. The matter was thus heard in the absence of any reply or representation on behalf of the Corporate Debtor. We are constrained to hear the Ld. Counsel for the Operational Creditor and proceeded ex-parte against the Corporate Debtor.
9. Having heard the Ld. Counsel for the Operational Creditor and after having gone through all the documents placed on record

accompanying the application, we are convinced that the Operational Creditor has been able to make out good case for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. We, therefore admit the application upon the following :-

ORDERS

- 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. Matashree Snaks Private Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) 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 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 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 the possession of the corporate debtor.
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during 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.

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- 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. Mahesh Chand Gupta**, of FE-202, Salt Lake City, Sector-III, 1st Floor, Kolkata 700106, registered with Indian Institute of Insolvency Professionals of ICAI(IIPI), having registration number **IBBI/IPA-001/IP-P01489/2018-2019/12304**, **E-mail ID: mcgupta90@gmail.com**, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- 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.

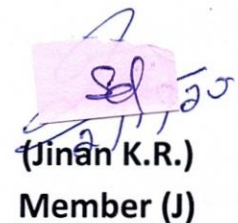




- xi) The Operational Creditor is directed to deposit Rs.3,00,000/- (Rupees Three Lakhs Only) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP. IRP can claim the preliminary 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 and to the I.R.P. by Speed Post as well as through E-mail.
- xiii). List the matter on **16.03.2020** for filing of the progress report.
- xiv) Certified copy of the order/Free copy may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 2nd day of January, 2020.

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