

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

**CP(IB)No.1493/KB/2018**

**In the matter of:**

An 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.

**And**

**In the matter of:**

**M/s Sree Tycofab Private Limited**, a company registered under the Companies Act, 2013, having its registered office at 137, Netaji Subhas Road, 2<sup>nd</sup> Floor, Kolkata, West Bengal-700001.

**Operational Creditor**

**Versus**

**M/s. Serampore Belting Works Private Limited**, a having its registered office at 52, J.N. Lahiri Road, Serampore, Hooghly-712201.

**-Corporate Debtor**

**CORAM: 1. Shri Jinan K.R., Member (Judicial)  
2. Shri Harish Chander Suri, Member (Technical)**

**Counsels on Record:**

For Operational Creditor

1. Mr. Reetobroto Mitra, Advocate
2. Mr. Sankarsan Sarkar, Advocate
3. Ms. Labanyasree Sinha, Advocate

**Date of pronouncement of Order: 09<sup>th</sup> August, 2019.**

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## ORDER

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

1. This is an application filed by **M/s Sree Tycofab Pvt. Ltd./the Operational Creditor** for initiating Corporate Insolvency Resolution Process (in short "CIRP") under Section 9 of Insolvency and Bankruptcy Code, 2016 ( in short "I & B Code, 2016") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as against **M/s Serampore Belting Works Private Limited/the Corporate Debtor** on the allegation that the Corporate Debtor has committed default in payment of Rs. 76,47,154.31 (Rupees Seventy Six Lacs Forty Seven Thousand One Hundred Fifty Four and Paise Thirty One Only) along with interest @ 18% per annum from 14<sup>th</sup> October, 2014.
2. The Operational Creditor is engaged in the business of manufacture and sale of fabrics of diverse qualities. According to the Operational Creditor, in the usual course of business of the operational creditor(OC), the Corporate Debtor engaged Operational Creditor in a series of commercial transactions involving the sale and purchase of cotton fabrics for the period commencing from 10.06.2013 to 16.10.2015 for a total sum of Rs. 76,69,186/- (Rupees Seventy Six Lakh Sixty Nine Thousand One Hundred Eighty Six Only) and invoices were generated (Annexure "A") demanding payment. The Corporate Debtor though received the goods and utilised the same, defaulted in payment other than Rs. 2,40,640/- (Two Lakhs Forty Thousand Six Hundred and Forty Only) on 14.10.2015. The repeated request and demand to the Corporate Debtor to pay off its outstanding amount has been unheard by the Corporate Debtor and therefore, the Operational Creditor issued demand notice on 19.09.2018 in compliance of Section 8 of the Code. The demand notice was delivered on the Corporate Debtor on 22.09.2018. The

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Corporate Debtor did not send their reply nor raised any dispute so far. It is further contended that all the requirements to be meted out in an application of this nature has been complied. An affidavit of compliance under Section 9(3)(2)(b) and statement of bank account produced to prove that there was no payment made by the Corporate Debtor. Upon the said contentions, the Operational Creditor prays for passing an order of admission.

3. Though notice was served upon the Corporate Debtor, nobody turned up. We heard the Ld. Counsel appearing for the Corporate Debtor and perused the record.
4. Upon perusal of the record, we are satisfied that the Operational Creditor was engaged in the business of manufacture and sale of the fabrics of diverse qualities have had an understanding between the Corporate Debtor for supply of goods. The OC have generated invoices of which copy has been produced and there were transactions as per invoices from the period of 2013-14 till 2016. The last transaction being on 17.10.2015 and it is a running account as claimed by the OC the claim is filed with in the period of limitation, submitted by the Id. Counsel for the CD.
5. The applicant/OC has succeeded in proving that the requirement to be metted out to initiate CIRP as against the Corporate Debtor has been complied. An affidavit in accordance with Section 9(3)(b) that there is no notice given by the Corporate Debtor relating to a dispute of unpaid operational debt seen filed on the side of the Operational Creditor. To prove that there was no payment even after demand notice delivered on the CD statement copies of bank account seen produced. OC also proposed the name of an insolvency professional. Form 2 produced on the side of the OC proves that there is no disciplinary proceeding pending against the RP and therefore, this is an application fit for admission. Accordingly, we admit it upon the following directions.

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## **O R D E R**

- 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. Serampore Belting Works Pvt. Ltd.** 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);

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- (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.
- 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. Joydev Sengupta**, an Insolvency Professional, registered with Insolvency and Bankruptcy Board of India, having **registration number IBBI/IPA-002/IP-N00405/2017-18/11177, E-mail ID: joydevsengupta@jsglegal.in**, 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

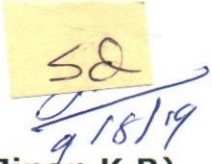
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resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

- xi) The Applicant/OC is directed to deposit Rs.5,00,000/- (Rupees Five Lacs 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/RP with in one week from the date of this order. IRP/RP can withdraw the amount for his fees and resolution cost subject to the approval of the CoC.
- xii) 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 I.R.P. by Speed Post as well as through E-mail.
- xiii). List the matter on 16<sup>th</sup> **September** for filing of the 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(T)

  
(Jinan K.R)  
Member(J)

Signed on this, the 09<sup>th</sup> day of August, 2019.

Deeksha(steno)