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

**Coram : (1) Shri Madan B. Gosavi,
Hon'ble Member (J)
&
(2) Shri Virendra Kumar Gupta,
Hon'ble Member(T)**

CP (IB) No. 638/KB/2019

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. Punjab Goods Transport Private Limited, a company incorporated under the provision of Companies Act, 1956 having its registered office at 10-A, Ashutosh Mukherjee Road, P.S. Bhowanipore, Kolkata, West Bengal- 700 012;

...Applicant/Operational Creditor

-Versus-

In the matter of:

M/s. Bhattacharyya Bottling Plant Private Limited, a company incorporated under the provisions of Companies Act, 1956 having its registered office at Wellesley House, 7, Red Cross Place, 3rd floor, Kolkata, West Bengal- 700 001, CIN: U15520WB1988PTC 044954;

....Corporate Debtor

Counsel appeared:

Mr. Saurav Jain, Advocate

] Operational Creditor

Date of Pronouncement of Order: 20.12.2019

ORDER

Per Shri Madan B. Gosavi, Member (J):

M/s. Punjab Goods Transport Private Limited - the Operational Creditor, filed this application under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **M/s. Bhattacharyya Bottling Plant Private Limited** - Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor stating that the Corporate Debtor committed default in paying the operational debt of Rs.40,90,800/-.

2. It is stated that for the period in between 31.10.2015 to 31.03.2016, the Operational Creditor provided the corporate debtor transport services to its various bottling plants and raised invoices claiming transportation charges. Corporate Debtor paid some amount towards debt leaving balance of Rs.40,90,800/- to be unpaid. Hence, on 02.05.2018, the operational creditor served on the corporate debtor demand notice under section 8 of IBC. In spite of receipt of notice, the corporate debtor did not pay the debt. Hence, this application is filed by the operational creditor to start its CIRP.

3. Notice of this application could not be served to the corporate debtor either by speed post or by email as the registered address of the corporate debtor on MCA Portal and email address are found to be incorrect. Hence, we directed the operational creditor to publish notice of this application in newspaper having wide circulation in the area where registered office of the corporate debtor is situated. Accordingly, the operational creditor published notice in Business Standard dated 13.07.2019. In spite of due publication of notice of this application, none appeared

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on behalf of the corporate debtor. Hence, hearing of this application proceeded *ex parte* against the corporate debtor.

4. Operational Creditor produced on record all relevant invoices of transportation charges claimed from the corporate debtor. It has also produced on record as Annexure "D", the statement of account dated 01.04.2016 duly signed and acknowledged by the corporate debtor, thereby admitting the operational debt of Rs.40,90,800/- due and payable by it to the operational creditor.

5. It is seen from the evidence on record that the operational creditor served notice under section 8 of IBC to the corporate debtor by hand delivery dated 07.05.2018 and produced on record evidence thereto. It has filed affidavit stating that in spite of receipt of demand notice, corporate debtor did not pay the debt. It did not point out existence of any dispute about the services rendered for the amount claimed. It has complied with the provisions of section 9(3)(b) and 9(3)(c) of IBC.

6. Operational Creditor has also suggested name of Ms. Beena Jajodia of 862, Jessore Road, Block-A, Ground floor, Kolkata, West Bengal- 700 055 having registration no. IBBI/IPA-001/IP-P00630/2017-2018/11084 and email no. bjajodia73@gmail.com. We have observed that IRP, whose name is suggested by the operational creditor, has declared that no DE is pending against him. The application is defect free. The operational creditor proved both the facts that there is debt due and payable by the corporate debtor and the corporate debtor committed default, we admit the corporate debtor in CIRP. Hence, we pass the following order.

ORDER



- (i) The application filed by the Operational Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **M/s. Bhattacharyya Bottling Plant Private Limited**. 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

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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 per proposal given by the Operational Creditor, Ms. Beena Jajodia of 862, Jessore Road, Block-A, Ground floor, Kolkata, West Bengal- 700 055 having registration no. IBBI/IPA-001/IP-P00630/2017-2018/11084 and email

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no. bjajodia73@gmail.com. is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

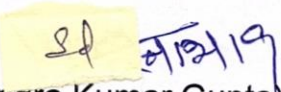
x) The Operational Creditor to pay to IRP a sum of Rs.1,00,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

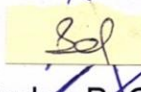
xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

xii) 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 **30.01.2020** for filing progress report.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 20th day of December, 2019.

Taksh...