IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB)No. 477/KB/2018
-IN-
TP No. 25/CTB/2019

CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)

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 Wasmake Industries, having its registered office at 67/41, Strand Road, Cross Road, Kolkata-700 006.

.... **Operational Creditor/Applicant**

-Versus-

In the Matter of:
M/s Utkal Builders Limited, having its registered office at, Virayntan, 2nd Floor, 777, Saheed Nagar, Bhubaneswar – 751 007.

....**Corporate Debtor/Respondent**

Counsels appeared for the Petitioner

1. Abhishek Sikdar

Counsels appeared for the Respondent

2. Debasis Panda

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Date of pronouncement of Order: 27th day of September, 2019.

ORDER

Per: Ms. Sucharitha R. Member (J)

1. The applicant Operational Creditor/M/s Wasmake Industries, proprietorship concern is represented by its proprietor **Mr. Shubh Karan Jhajharia**. This application is filed under Section 9 Insolvency and Bankruptcy Code, 2016 **(for brevity IBC Code, 2016)**. The Corporate Debtor is Utkal Builders Limited Company registered under Companies Act.

2. The applicant/Operational Creditor had supplied aluminium fossils towards a Purchase Order Dated 08.12.2016. As per the Purchase Order Dated 08.12.2016 the total amount towards the supply of goods are sum of Rs. **14,33,550/- (Fourteen Lakh Thirty-Three Thousand Five).**

3. As per the terms and conditions of this purchase Order. The Corporate Debtor had paid 50 % of the value as advance. The Corporate Debtor through NEFT Banking dated 29.12.2016 paid sum of Rs. **7,16,775/- (Seven Lakh Sixteen Thousand Seven Hundred Seventy-Five)** to the Applicant/Operational Creditor as advance towards the Purchase Order. The Operational Creditor had supplied the goods under three Invoices.

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(i) Invoice No. dated 35, 06.05.2017 for sum of Rs. **60,099/- (Sixty Thousand Ninety-Nine).**

(ii) Invoice No. dated 8, 24.07.2017 Rs. **8,09,698/- (Eight Lakh Nine Thousand Six Hundred Ninety-Eight).**

(iii) Invoice No. 89 dated 19.09.2017 for sum of Rs. **85,109/- (Eighty-Five Thousand One Hundred Nine).**

4. According to the applicant the total amount due and payable is sum of Rs. **7,78,131/- (Seven Lakh Seventy-Eight Thousand One Hundred Thirty-One).** The Corporate Debtor in **Exhibit D**, the Corporate Debtor has given "Handing Over Certificate" dated 31.07.2017 in the said letter, the Corporate Debtor has clearly stated "the materials have been satisfactorily handed over to us in good order and condition by Mr. Wasmake Industries."

5. The applicant submits that as per the terms and conditions of the Order, the Corporate Debtor ought to pay the balance sum of Rs. **7,78,131/- (Seven Lakh Seventy-Eight Thousand One Hundred Thirty-One Only)** towards Invoice dated 24.07.2017. Since, the Corporate Debtor failed to repay the debt, the Corporate Debtor issued Demand Notice under Section 8 read with

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Rule 5 of Insolvency and Bankruptcy Code, 2016 (Applicant to Adjudicating Authority) Rules 16 dated 30.12.2007.

6. The Applicant submits that the Corporate Debtor defaulted in payment of the principal amount of Rs. **7,781,31/- (Seven Lakh Seventy-Eight Thousand One Hundred Thirty-One Only).** Hence, claims interest over and above said principal amount. The total outstanding due and payable is sum of Rs. **8,36,459/- (Eight Lakh Thirty-Six Thousand Four Hundred Fifty-Nine Only).**

7. The Corporate Debtor submits that materials supplied by Operational Creditor is not as per the specification asked by the Corporate Debtor and technical people of Corporate Debtor found that the materials supplied were not suitable for the operation of the Corporate Debtor. Further, the Corporate Debtor submits that aluminium fossils supplied by the Operational Creditor is damaged due to manufacturing defect. The expert team of the Operational Creditor communicated to the engineers of the Corporate Debtor for the manufacturing defect in the aluminium fossils. The products were damaged within a short span of time and the Operational Creditor assured the Corporate Debtor that they will replace the materials, however, till date, the Operational Creditor did not replace the same. There is no pre-existing claim for dues over the dispute pending in this matter.

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8. The Corporate Debtor did not file any document to show that materials were damaged and he has asked the Operational Creditor to take back the materials. The submissions that the product is damaged, hence, goods to be returned/replaced was raised by the Corporate Debtor only in the reply. The Corporate Debtor has not filed any documents or mails to substantiate its stand. The supply of goods is in good condition towards the purchase order has been established by applicant. The Corporate Debtor has not filed any reply of the expert opinion regarding the goods supplied to them. All the averment stated by the Corporate Debtor was only in the reply filed herein. There is no correspondence on record by the Corporate Debtor regarding quality of goods supplied in the reply, denying the payment to Operational Creditor is purely an after thought. Hence, it is clear that the applicant supplied goods under 3 Invoices to the Corporate Debtor and the Corporate Debtor also paid 50 % of the amount at the time of placing order and has also received the goods in good condition. When the applicant raised bills and demanded payment towards the supplies, the Corporate Debtor failed to pay the amount till date. Hence, the amount claimed by Operational Creditor is due and payable by the Corporate Debtor.

9. The Registered Office of the respondent is situated in Odisha and therefore, this Adjudicating Authority has jurisdiction to entertain and try this application.

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10. The payment due and payable are out of the invoices dated 06.05.2017, 24.07.2017 & 19.09.2017. Hence, the claim is within the period of limitation. The applicant has issued notice under Section 8 of IBC, 2016 dated 30.12.2017. The applicant has also attached statement of accounts.

11. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the Operational creditor beyond doubt and fulfilment of requirement under Section 9 (5) of the Code. Hence, the present application is admitted.

12. The applicant has not proposed the name of any IRP. In view of the same, this Adjudicating Authority appoints **Mr. Suresh Chandra Pattanayak** resident of Gkv-38, gati Krushna Villa, Tankapani Road, Brahmeswar Bagh, Bhubaneswar, Khordha, Orissa ,751 018 having **Registration No.: IBBI/IPA-002/IP-N00759/2018-2019/12384** and **E-mail Id.: suresh_pattanayak@yahoo.co.in** as **IRP**. The IRP is directed to take all such steps as are required under the statute more specifically in terms of Sections 15, 17, 18, 20 & 21 of the IBC, Code.

13. In view of the above this Adjudicating Authority is inclined to admit this application and accordingly initiate the process of "Corporate Insolvency

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Resolution Process" (CIRP) of respondent/Corporate Debtor by the following Order.

ORDER

(i) The application filed by the Operational Creditor under Section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **M/s Utkal Builders 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

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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 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.

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(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 Sec. 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) **Mr. Suresh Chandra Pattanayak** resident of Gkv-38, gati Krushna Villa, Tankapani Road, Brahmeswar Bagh, Bhubaneswar, Khordha, Orissa ,751 018 having **Registration No.: IBBI/IPA-002/IP-N00759/2018-2019/12384** and **E-mail Id.: suresh_pattanayak@yahoo.co.in** is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a Resolution Plan.

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(x) We direct the Operational Creditor to deposit a sum of Rs. One Lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

(xi) Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in their knowledge within a period of one week from the date of admission of this petition to the IRP, otherwise coercive steps to follow.

(xii) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

(xiii) Registry is hereby directed to communicate the Order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.

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Interim Resolution Professional to file 1st progress report on **30.10.2019.**

List the Matter on **30.10.2019.**

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

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Shri Satya Ranjan Prasad
Member (T)

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Ms. Sucharitha R.
Member(J)

Signed on this, the 27th day of September, 2019.

Kaushal Steno