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IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (IB) No.1118/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 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;
And

In the Matter of:

Surya Alloy Industries Limited, registered under the provisions of Companies Act, 1956, having its registered office at 1/1, Camac Street, 3rd Floor, Kolkata - 700 016.

.....Operational Creditor

And

In the Matter of:

Jay Prestressed Products Limited, registered under the provisions of Companies Act, 1913, having its registered office at 113, Netaji Subhas Road, 4th Floor, Room No.59, Kolkata - 700 001, West Bengal and also at C-47, Wazirpur Industrial Area, Delhi - 110 052.

..... Corporate Debtor

Date of Hearing: 4th November 2019

Order Delivered on 8th November 2019

Coram:

Madan B Gosavi, Member (J)

Virendra Kumar Gupta, Member (T)

For the Operational Creditor : 1. Mr. Tanoy Chakraborty, Advocate
2. Mr. Siddharth Sharoff, Advocate

For the Corporate Debtor : 1. Mr. Avik Banerjee, Advocate
2. Mr. Diptangshu Basu, Advocate

ORDER

Per Virendra Kumar Gupta, Member (Technical)

This petition has been filed under Sec.9 of the Insolvency & Bankruptcy

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Code, 2016 by the operational creditor, viz., Surya Alloy Industries Limited for initiation of corporate insolvency resolution process against the corporate debtor, viz., Jay Prestressed Products Limited. The amount of default has been claimed at Rs.83,27,646/- including interest of Rs.9,16,960/-.

2. The facts, in brief, are that the operational creditor, on receipt of purchase orders for supply of SGCI Inserts and metal liners as per specifications, supplied materials after due inspection by RITES Ltd. from 19/12/2015 till 24/8/2016. The corporate debtor has also made part payment to the tune of Rs.34 lakh from time to time. The balance amount remains unpaid.

3. The operational creditor also filed a civil suit being CS No.16/2017 before the Hon'ble High Court, Calcutta. The Hon'ble High Court, Calcutta granted decree vide its order dated 7/3/2018 in favour of the operational creditor, directing the corporate debtor to make payment of Rs.74,10,686/-. The operational creditor is also entitled to interest @ 9% per annum in terms of the said decree. The corporate debtor, however, did not make payment as per order of the Hon'ble High Court, Calcutta.

4. On 30/6/2018, a demand notice under 8 of the Insolvency & Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was sent to the corporate debtor.

5. Corporate debtor replied to the said demand notice wherein the only point raised by the corporate debtor was that the corporate debtor had filed an application before the Hon'ble High Court, Calcutta for recalling of the said decree. The reply was given on 11/7/2018.

6. Ld. Counsel appearing on behalf of the operational creditor drew our attention to the purchase order placed by the corporate debtor, copy of

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inspection certificate issued by RITES Ltd., payment of fees by the operational creditor, copies of invoices raised, the documents relating to payment received to substantiate the basic facts. He also drew our attention to the letters dated 19/10/2016 and 2/12/2016 written by the operational creditor requesting the corporate debtor and its directors to make payment along with interest.

7. Ld. Counsel thereafter, contended that the decree had been passed in favour of the operational creditor. There existed no dispute and the point raised in the reply to the demand notice had not been substantiated by bringing any materials on record, hence, no cognizance to such dispute/allegation was to be given.

8. Ld. Counsel appearing on behalf of the corporate debtor initiated his arguments by stating that the operational creditor had suppressed the fact that an application has been filed by the corporate debtor for recalling the order of the Hon'ble High Court, Calcutta. In this regard, he submitted that such application was filed by the corporate debtor in May 2018 whereas the petition under Sec.9 of the Insolvency & Bankruptcy Code, 2016 had been filed by the operational creditor in June 2018 and this fact was not mentioned. Thus, for this material suppression, the petition was liable to be dismissed. He drew our attention to pages 132 to 135 containing reply to the notice of demand delivered on the corporate debtor under Sec.8 of the Insolvency & Bankruptcy Code, 2016, wherein issues of quality of materials as well as non-submission of invoices were raised. Ld. Counsel for the corporate debtor also submitted that due to quality issues, the supplies made by the corporate debtor to the railway were rejected and the corporate debtor suffered financial loss for that reason.

10. On a query from the Bench whether any material, such as written document/communication were exchanged between the parties in this regard,

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Ld. Counsel submitted that the communications were verbal/oral. He, thereafter, referred to the documents wherein supplies were made in 2015-16 and a suit had been filed instead of invoking of provision of of the Insolvency & Bankruptcy Code, 2016 hence, it could be inferred that it was an instance of recovery. Ld. Counsel culminated his arguments on the point that existence of a suit and filing of a recalling application prior to filing of this petition proved that there existed some prior dispute, hence, this petition was not liable to be admitted.

11. Ld. Counsel for the operational creditor in the rejoinder stated that the recalling application had been dismissed by the Hon'ble High Court, Calcutta. It was also pointed out that at page 9 of the application, the fact of recalling application being filed by the corporate debtor had been mentioned while taking note of reply of corporate debtor to notice delivered under Sec.8 and, therefore, it could not be said that it was a case of suppression of fact.

12. Ld. Counsel further contended that even the claim of rejection of goods by the railway was not correct and in this regard he drew our attention to page 6 of the rejoinder to show that an application was filed under RTI Act with the railways wherein information regarding rejection of any goods was sought for and it was revealed that no such rejection for quality issue ever took place in the instant case.

13. We have considered the submissions made by both sides and materials on record. It is noted that the supplies have been made by the operational creditor to the corporate debtor who has used such supplies to make the final products for consumption of its client i.e. the railway. It is also noted that such supplies were made by the operational creditor after inspection and approval by RITES Ltd., which is the competent authority, hence, there cannot be a dispute

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regarding the quality of material supplied by the operational creditor. It is further noteworthy that the operational creditor filed a civil suit for recovery of its amount before the Hon'ble High Court, Calcutta which passed a decree in favour of the operational creditor which remained non-complied by the corporate debtor. Even, application for recalling of said decree filed by the corporate debtor has been dismissed by the Hon'ble High Court. In the petition, the operational creditor had referred to this fact while dealing with the reply dated 11/7/2018 given by the corporate debtor to the notice of demand. Thus, there is no case of suppression of any material fact. We further noted that no material of whatsoever nature has been brought on record to show that there exists some dispute except making oral allegations within the meaning of Sec.5(6) of the Insolvency & Bankruptcy Code, 2016 prior to initiation of this proceedings. Thus, there is an operational debt which is due and a default has occurred, hence, on merits the case of operational creditor succeeds. The petition is otherwise complete in all respects and complies with the requirements of provisions of Insolvency & Bankruptcy Code, 2016 read with regulations thereto.

14. It reveals from the record that the applicant has not proposed any name of Interim Resolution Professional which is not necessary in case of application filed under Sec.9 of the Insolvency & Bankruptcy Code, 2016. Hence, we approve the name of Shri Nitesh Kumar More, IP Registration No.IBBI/IPA-001/IP-P01087/2017-18-11785 email id nmore2091@gmail.com Mob. No.8336087901 as IRP as he/she is on the panel approved by Insolvency & Bankruptcy Code, 2016 and no disciplinary proceedings are pending against him.

15. In view of the above discussion, we admit the application and order as

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under:-


ORDER


- 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, Jay Prestressed Products Limited is hereby admitted.
- ii. We 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 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 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 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. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x. Shri Nitesh Kumar More, IP Registration No.IBBI/IPA-001/IP-P01087/2017-18-11785 email id nmore2091@gmail.com Mob. No.8336087901 is appointed as Interim Resolution Professional for

ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

- xi. The Operational Creditor to pay a sum of Rs.1,00,000/- (Rupees One lakh only) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate Insolvency Resolution Process and, if not provided by Committee of Creditors, then IRP/RP can approach this Tribunal for that purpose.
 - xii. The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xiii. 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.
16. List the matter on 30/12/2019+ for the filing of the progress report.
 17. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Virendra Kumar Gupta)
Member (T)


(Madan B Gosavi)
Member (J)

Signed on 8th November 2019