

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

**C.P. (IB) No. 185/KB/2018**

**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. SAINT GOBAIN INDIA PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Sigapi Achi Building, Floor No. 7, 18/3, Rukmini Lakshmi pathy Road, Egmore, Chennai – 600008, within the aforesaid jurisdiction.

**... Applicant/Operational Creditor**

**Versus**

**In the matter of :**

**M/S. GLAZE INFRASTRUCTURE PRIVATE LIMITED**, a Company incorporated and registered under the Companies Act, 1956 and having its registered office at 591, Block-O, New Alipore, 3<sup>rd</sup> Floor from Back Gate, Kolkata 700053, West Bengal, within the aforesaid jurisdiction.

**.....Company/Corporate Debtor**

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**Date of pronouncement of order : 25/11/2019**

**Coram: Shri Jinan K.R, Hon'ble Member (Judicial) &**

**Shri Harish Chander Suri, Hon'ble Member (Technical)**

**Counsel on Record :**

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|---------------------------------|----------------------------|
| 1. Mr. Avirup Mondal, Advocate  | ]                          |
| 2. Mr. Nin dem Dorjee, Advocate | ] For Operational Creditor |
| 1. Mr. Pranay Agarwal, Advocate | ]                          |
| 2. Ms. Ankita Baid, Advocate    | ] For Corporate Debtor.    |

**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. Saint Gobain India Private Limited through Mr. L. Venkateswaran, Team Leader – Finance & Company Secretary authorized vide Board Resolution dated 31<sup>st</sup> March, 2010, hereinafter referred to as the “Operational Creditor” seeks initiation of Corporate Insolvency Resolution Process in respect of M/s. Glaze Infrastructure Private Limited, a Corporate entity having its registered office at Kolkata, hereinafter referred to as the “Corporate Debtor”.
2. It is submitted in the application that the Operational Creditor is one of the leading float manufacturer of glass in the world and make





solar control glass, fire resistant glass and other various types of float glasses in India. The Corporate Debtor had approached the Operational Creditor with its requirement of glass in its ordinary course of business and expressed its intent to purchase glass manufactured by the Operational Creditor pursuant to their assurances of prompt payment, the Operational Creditor supplied goods to the Corporate Debtor. The Corporate Debtor used to issue purchase orders from time to time with regard to the detailed terms and conditions as to specifications of glass required, the pricing for each contract, general terms and conditions and also the manner of raising invoices by the Operational Creditor and mode of payment by the Company.

3. It is further submitted that when the Corporate Debtor failed to clear the dues, the Operational Creditor issued a demand notice dated 7<sup>th</sup> August, 2017 to the Corporate Debtor and its Directors. The Operational Creditor has not annexed proof of delivery but since the Corporate Debtor vide its reply dated 17<sup>th</sup> August, 2017 acknowledged the receipt of notice, the requirement of proof of delivery stands waived.
4. In its reply the Corporate Debtor has unsuccessfully tried to raise a sort of dispute even though in fact there is none. The relevant paragraph of the reply is as under:-

*“Meanwhile the issue regarding C Forms provision is also being actively pursued and it is most disappointing for us that such an*

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*issue is creating roadblocks. We are hoping to be able to provide you those C Forms at the earliest in this month. We hence also differ in respect to the amount of debt mentioned in the notice received – apart from the cst differential which would be resolved when we procure the C forms. We also have many claims about which we have emailed Saint Gobain representatives many times over the last 1.5 years.”*

5. The Operational Creditor has also filed an affidavit as required under Section 9(3)(b) of the Code and submitted that the Corporate Debtor in reply to the demand notice dated 7<sup>th</sup> August, 2017 has not disputed the existence of the unpaid operational debt. The Operational Creditor has filed a consolidated statement of all the invoices indicating the aggregate amount due to be Rs. 1,91,52,681/- (Rupees One crore Ninety One Lacs Fifty Two Thousand Six Hundred Eighty One Only). The Operational Creditor filed copies of all the invoices, TDS Certificates, etc. The application, in our view, fulfils all the requirements of the provisions of Section 9 of the Code.
6. The Corporate Debtor has enclosed with its reply affidavit copies of e-mails dated 1<sup>st</sup> April, 2016, 7<sup>th</sup> April, 2016, 18<sup>th</sup> April, 2016 going upto 21<sup>st</sup> August, 2017 wherein the Corporate Debtor has claimed various amounts on account of wastage compensation, claim for breakage etc. with an attempt to bring the case within the purview of Section 9(5)(ii)(d).
7. We have heard the Ld. Counsel for both the parties at length. During the course of discussions both of them took us through the

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relevant documents filed and being relied upon by them. While the Corporate Debtor tried to defend itself on the basis of the so called pre-existing disputes and counter claims on account of breakages and wastage compensation, the whole argument and the plea of the Corporate Debtor was demolished by the letter dated 12<sup>th</sup> March, 2018 having been admittedly written by the Corporate Debtor to the Operational Creditor which superseded all the correspondences between the parties. The relevant portion of the said letter is reproduced here under:-

*“ We, M/s. Glaze Infrastructure Private Limited, hereby confirm and acknowledge an outstanding balance of Rs. 1,05,17,735/- as on 12<sup>th</sup> March, 2018.*

*As per our earlier proposal made vide e-mail dated February 23, 2018, our company, being M/s. Glaze Infrastructure Private Limited, intends to make payment of Rs. 1,05,17,735/- (Rupees One crore Five lakh Seventeen Thousand Seven Hundred Thirty Five Only) to your company, being Saint Gobain India Private Limited in the following manner.*

.....  
.....”

8. From the aforesaid discussions it is clear that the Corporate Debtor has acknowledged, admitted and confirmed its outstanding liability of Rs. 1,05,17,735/- towards the Operational Creditor as on 12<sup>th</sup> March, 2018. Moreover, this letter has been written by the Corporate Debtor to the Operational Creditor during the pendency of this application.

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9. From the aforesaid discussions and the pleadings and documents placed on record by both the parties, it can safely be deduced that there is an admitted outstanding debt of Rs. 1,05,17,735/- payable by the Corporate Debtor to the Operational Creditor which was to be paid by the end of 31<sup>st</sup> August, 2019 in instalments as per its own acknowledgment which the Corporate Debtor has failed to discharge.
10. The Operational Creditor has, however, not proposed the name of any resolution professional.
11. This Adjudicating Authority is therefore of the view that Corporate Insolvency Resolution Process has to be initiated 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. Glaze Infrastructure 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) of Section 14 of IBC 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. Krishnaswami C.V.R.** registered with Insolvency and Bankruptcy Board of India, having registration number **IBBI/IPA-001/IP-P01302/2018-2019/12217**, **E-mail ID: rpcvrkswami@gmail.com**, **Mobile No. 9433060003**, is hereby

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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 subject to production of written consent within one week from the date of receipt of this order.

- 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 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. 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.


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- xiii). List the matter on **31<sup>st</sup> December, 2019** 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 25<sup>th</sup> day of November, 2019.

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