

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

C.P. (IB) No. 1681/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. PARAG SALES CORPORATION, 17, Neelkamal Housing Society, Renukamata Nagar, Hudkeshwar Road, Nagpur 440034 and Sales Office at Shop No. G-2, Sagarta Complex, Near Octroi Naka No. 9, Hingna Road, Nagpur 440016.

... Operational Creditor

Versus

In the matter of :

M/S. HVR PROJECTS PRIVATE LIMITED, CIN: U70102WB2012PTC189246, having its Registered Office at 103/20, Foreshore Road, Near Jain Mandir, Bus Stop, Howrah, West Bengal – 711102 IN.

.....Corporate Debtor

SD 1

SD

Date of pronouncement of order : 30/10/2019

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

Counsel on Record :

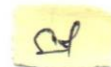
MR. ANIKET CHAUDHURY, Advocate] For Operational Creditor

ORDER

Per Shri Jinan K.R., Hon'ble Member (J).

1. This application under Section 9 has been filed by **M/s. Parag Sales Corporation**, a sole Proprietary concern, hereinafter referred to as the "Operational Creditor" through its Proprietor Mr. Subhash D. Lambat, for initiating Corporate Insolvency Resolution Process as against **M/s. HVR Projects Private Limited**, hereinafter referred to as the "Corporate Debtor" on the allegation that the Corporate Debtor committed default in making the payment of unpaid operational debt of Rs. 7,84,260/- (Rupees Seven Lacs Eighty Four Thousand Two Hundred Sixty Only) plus interest @ 24% per annum despite the repeated demand. Lastly issuing demand notice under Section 8 (1) of the Code, the Corporate Debtor failed in payment of the unpaid operational debt as demanded, hence filed this application for initiating the CIRP.





2. The brief fact for consideration of the application is the following:-
- (a) The Operational Creditor is a Dealer/Trader/Manufacturer of Industrial Paints and Chemicals. The Corporate Debtor placed purchase orders for purchasing Industrial Paints and Chemicals, more specifically mentioned in the Tax Invoices annexed with the Application on various instances.
- (b) On the basis of the purchase orders the Operational Creditor sold the goods as mentioned in the Tax Invoices. The Corporate Debtor thereafter failed in paying the amount to the tune of Rs. 7,84,260/-. Despite repeated request the Corporate Debtor did not pay the outstanding debt and thereby the Operational Creditor issued demand notice to the Corporate Debtor dated 09.06.2018 under Section 8 of the Code. The demand notice is served on the Corporate Debtor but in spite of due and proper service of the demand notice the Corporate Debtor did not pay the outstanding amount with an intention to deceive and cheat the Operational Debtor.
- (c) The Operational Creditor relied upon the documents inclusive of **Annexure 'A' to Annexure 'F'** Tax Invoices, **Annexure 'G'** purchase orders, **Annexure 'H'** delivery memo of supplied goods with acknowledged receipts from Corporate Debtor, **Annexure 'I'** Ledger statement of Operational Creditor for the period from

SP 3

SP

01.04.2017 to 30.08.2018, **Annexure 'J'** Copy of e-mail proving correspondences from Operational Creditor for payment of unpaid Operational Debt, **Annexure 'K'** copy of demand notice, **Annexures 'L' & 'M'** postal receipt and acknowledgement card, and **Annexure 'N'** Online delivery tracking Report.

3. Upon the above said contentions the Applicant prays for passing an order of admission for initiating the Corporate Insolvency Resolution Process as against the Corporate Debtor.
4. The Corporate Debtor though entered appearance, not turned up for contesting the case and not chosen to file reply affidavit despite granting opportunity and when the case was finally taken up for hearing nobody turned up on the side of the Corporate Debtor. Accordingly, heard the Ld. Counsel appeared for and on behalf of the Operational Creditor and perused the records.
5. This is an application filed under Section 9 of the Insolvency & Bankruptcy Code for initiating CIRP process as against the Corporate Debtor who had committed default in making the payment of unpaid operational debt to the tune of Rs. 7,84,260/-. The Applicant submits that the Corporate Debtor used to purchase Industrial Paints and Chemicals by placing purchase orders and that the Operational Creditor generated Tax Invoices after supplying the goods ordered by the Corporate Debtor and despite demand the Corporate Debtor failed in paying the outstanding amount to the tune of Rs. 7,84,260/-.

VSD

Ref

According to the Ld. Counsel for the Operational Creditor, the Corporate Debtor is liable to pay interest @ 24% p.a. as agreed, for delayed payment at various instances from the Corporate Debtor and accordingly prays for passing an order for admission.

6. The claim attempted to prove on the side of the Operational Creditor stand proved upon production of the Tax Invoices, copies of Purchase Orders, delivery memo and the e-mail correspondences. Annexure 'J' is the e-mail correspondences adding strength that the Operational Creditor had requested the Corporate Debtor to pay off the outstanding amount, to which the Corporate Debtor acknowledges the outstanding debt and assured for payment. Annexure 'J' dated 6th December, 2017 submitted on the side of the Operational Creditor further proves that the Corporate Debtor admitted the credit balance to the tune of Rs. 10,27,608/-, payable to the operational creditor. So Corporate Debtor has evidently committed default in payment of the outstanding amount found due to the operational creditor.

7. In compliance of Section 8(1) of the Code, the Operational Creditor issued demand notice which was seen delivered on the Corporate Debtor on 11th June, 2018 vide copy of track consignment Annexure 'N'. It is alleged that the Corporate Debtor despite receipt of demand notice not even sent any reply. The Operational Creditor has established compliance of the Code under Section 9 (3) of the

Sd/-

Sd/-

Code. In compliance of Section 9(3)(b) an affidavit seen produced along with the application to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt, so also to prove that the Corporate Debtor has not paid the unpaid Operational debt despite the demand produced copy of statement of bank accounts along with supplementary affidavit dated 16th October, 2019. Therefore, the requirement under Section 9(3)(c) also seen meted out. The Applicant has not proposed any name to act as Interim Resolution Professional, accordingly compliance with the requirement under **Section 9(3)(e)** not arises for consideration.

8. Being satisfied that despite demand the Corporate Debtor failed in making the payment of unpaid operational debt and that the requirement to be meted out by the Operational Creditor in an application of this nature is meted out, this application is liable to be admitted under Section 9 (5)(i) of the Code upon the following among the directions/orders:-

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. HVR Projects Private Limited** is hereby **admitted**.

SA

pd

- 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

Sel

Sel

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 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.

SD

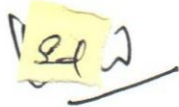
SD

- ix) **Mr. Sabir Kanti Mazumder**, an IRP professional registered with Insolvency and Bankruptcy Board of India, having Registration No. IBBI/IPA-001/IP-P01161/2018-2019/11903, Mobile No. 9433679591, E-mail ID: sabirk01@gmail.com, 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 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 Corporate Applicant is directed to deposit Rs. 2,00,000/- (Rupees Two 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 within one week of the date of this order.
- 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.

Sel 

Sel 

- xiii). List the matter on 02/12/2019 for filing of the progress report.
- xiv) Certified copy / free 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 30th day of October, 2019.

VC