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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Madan B. Gosavi, Hon'ble Member (Judicial)

CP (IB) No. 1614/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:

Prism Johnson Limited [RMC (INDIA) Division], a company registered under the Companies Act, 1956, having its registered office at 305, Laxmi Niwas Apartment, Ameerpet, Hyderabad-500 016 and having its Regional Office at Unit 4N, 4th floor, New Town Square, Near City Centre-II, Chinara Park, Atghara, Rajarhat, Kolkata- 700 136, West Bengal;

;
... Operational Creditor/ Applicant

-Versus-

In the matter of:

M/s. RNM Infra Private Ltd., a company registered under the Companies Act, 1956, having its registered office at 30, Mukherjee Para Lane, P.O. Serampore, Hooghly, West Bengal- 712201;

.... Corporate Debtor

Counsel appeared:

Mr. Vijay Nath Jha, Advocate

] Operational Creditor

Date of Pronouncement of Order: 21.01.2020

Sd

ORDER

M/s. Prism Johnson Limited - the Operational Creditor, filed this application under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **M/s. RNM Infra Private Ltd** - Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor on a ground that the Corporate Debtor committed default in paying the operational debt of Rs.20,62,726/- (including interest).

2. Notice of this application was served to the corporate debtor by email but notice sent by speed post could not be served and hence this Tribunal directed the operational creditor to publish a notice in the leading newspaper having wide circulation in the area where the registered office of the corporate debtor is situated. Accordingly, the operational creditor published a notice in daily "Business Standard" dated 18.12.2019 and filed affidavit on record. In spite of due publication of notice, none appeared on behalf of the corporate debtor. Hence, this bench passed order to hear this application ex parte against the corporate debtor.

3. I perused the record. I heard the Ld. Counsel, Mr. Vijay Nath Jha for the Operational Creditor.

4. As per purchase order dated 28.04.2018, operational creditor supplied some materials to the corporate debtor in September, 2018. Invoices are produced on record at page 150. It is seen from the record that the corporate debtor made last payment on 06.07.2018. Not only that, corporate debtor executed balance confirmation letter of the debt and it is produced at page 121.



5. Since the corporate debtor did not pay outstanding dues, operational creditor sent notice under section 8 of IBC (at page 124). Notice appears to be served by email. Copy of email is produced on record. In spite of issue of service of notice, corporate debtor neglected and failed payment of due debt. Hence, this application is filed.

6. Operational Creditor produced on record all relevant documents to prove existence of debt and its default by the corporate debtor. Operational Creditor has also produced on record copy of notice under section 8 of IBC and evidence shows that it was served on the corporate debtor. In spite of service of notice of this application, corporate debtor did not appear to contest the claim. Hence, on the basis of evidence on record, I hold that the operational creditor proved existence of debt and its default by the corporate debtor, in spite of demand notice. Hence, I am inclined to admit in CIRP.

7. Operational Creditor did not suggest name of any Resolution Professional for appointment as the I.R.P. and left the matter at the discretion of this authority. Operational Creditor filed affidavit stating that he did not receive the amount claimed and notice from the corporate debtor pointing out the existence of any dispute about the amount claimed. He thereby complied provisions of section 9(3)(b) and 9(3)(c) of IBC. The application is defect-free. In view of the facts and evidence on record, I hold that the application deserves to be admitted. I admit the same by passing the following order:

ORDER

- (i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process in respect of Corporate Debtor, **M/s.**

Sd



RNM Infra 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 action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

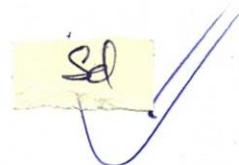
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

Sd



- 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 the Operational Creditor has not suggested any name for the appointment of Interim Resolution Professional (IRP) and requested this Tribunal to appoint, Mr. Kanchan Dutta having registration no. IBBI/IPA-001/IP-P00202/2017-18/10391 and Email Id. kanchan@kgrs.in is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan. The IRP is directed to file his consent in form no.2 alongwith the declaration that no disciplinary proceeding is pending against him.

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- x) The Operational Creditor to pay to IRP a sum of Rs.50,000/- 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 as per provisions of IBC.

Matter to appear on 05.03.2020 for filing progress report.

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


(Madan B. Gosavi)
Member (J)

Signed on this, the 21st day of January, 2020.