

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

C.P. (IB) No. 223/KB/2019

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. J.D. (INDIA) CORPORATION, a Sole Proprietary concern of Pankaj Kakrania, 14/3, Rupchand Roy Street, Saraswati Plaza, 2nd Floor, Kolkata 700017, India.

... Operational Creditor

Versus

In the matter of :

M/S. NARESH RETAIL MART LLP, having its Registered Office at 37, Bhagwan Ganguly Lane, Police Station – Howrah, Howrah – 711 101.

.....Corporate Debtor

Date of pronouncement of order : 22/10/2019

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

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

Counsel on Record :

1. MR. ZEESHAN HAQUE, Advocate]
2. MR. SAKET CHAUDHARY, Advocate] For Operational Creditor

ORDER

Per Shri Harish Chander Suri, Hon'ble Member (T).

1. This application under Section 9 has been filed by **M/s. J.D. (India) Corporation**, a sole Proprietary concern of Pankaj Kumar Kakrania, hereinafter referred to as the "Operational Creditor" seeks initiation of Corporate Insolvency Process in respect of M/s. Naresh Retail Mart LLP, having its registered office at Howrah, hereinafter referred to as the "Corporate Debtor".
2. It is stated in the application that the Operational Creditor is engaged in the business of ready-made garments, dealing with the Corporate Debtor since September, 2017 and used to supply ready-made garments to the Corporate Debtor and raised invoices against such supplies strictly in terms of the agreement. The supplies were duly accepted without demur and/or raising any objections as regards quality or quality of the goods.
3. It is submitted that the Corporate Debtor has admitted and acknowledged the legitimate dues of the Operational Creditor owed

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by it and had issued balance confirmation statement and that the Ledger Account of the Corporate Debtor maintained by the Operational Creditor also clearly shows the liability of the Corporate Debtor in relation to the transactions in question.

4. It is submitted that the Corporate Debtor had issued 8 cheques to the tune of Rs. 34,89,073/- (Rupees Thirty Four Thousand Eighty Nine Thousand and Seventy Three Only) in furtherance of the admission and acknowledgment of debt but the cheques were dishonoured by the Bankers of the Corporate Debtor with the remarks "Funds Insufficient".

5. The Operational Creditor has submitted that a sum of Rs. 37,69,893/- (Rupees Thirty Seven Lacs Sixty Nine Thousand Eight Hundred Ninety Three Only) along with interest @ 18% p.a. amounting to Rs. 7,05,685/- is due till November, 2018 which comes to Rs. 44,75,578/- (Rupees Forty Four Lacs Seventy Five Thousand Five Hundred Seventy Eight Only) which remains outstanding. It is stated that the notice under Section 8 of the Code, dated 5th December, 2018, was issued calling upon the Corporate Debtor for payment of the unpaid operational debt of the Operational Creditor, and was duly delivered on 10th of December, 2018. The Corporate Debtor, however, did not send any reply to the demand notice of the Operational Creditor. The Operational Creditor has also filed affidavit under Section 9 (3) (c). The Operational Creditor has not proposed any name of the Interim Resolution Professional.

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6. When the matter was listed before this Tribunal, notice was issued to the Corporate Debtor and was duly served on the Corporate Debtor and on 19th June, 2019 the Ld. Counsel for the Corporate Debtor appeared and filed Vakalatnama and sought time to file reply affidavit. Time was granted but on the next date i.e. 21st August, 2019 there was no appearance on behalf of the Corporate Debtor nor was any reply affidavit filed. The matter was once again listed on 19th September, and on 1st October, 2019. On both these dates, nobody turned up on behalf of the Corporate Debtor. The Corporate Debtor was thus directed to be proceeded ex-parte. The matter was once again heard on 17th October, 2019.
7. The Operational Creditor has filed all the requisite documents as are required to be filed with such an application i.e.:-
- a) Master Data of the Corporate Debtor as downloaded from the MCA21 website of the Ministry of Corporate Affairs marked as **Annexure "A"**.
 - b) Various invoices raised by the Operational Creditor collectively marked as **Annexure "B"**.
 - c) Balance Confirmation Statement dated November 27, 2018 by the Corporate Debtor, marked as **Annexure "C"**.
 - d) Ledger account of the Corporate Debtor maintained by the Operational Creditor, marked as **Annexure "D"**.
 - e) Details of the Eight cheques which were returned unpaid and

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eight intimation issued by the banker of the Corporate Debtor dishonouring all the cheques, marked as **Annexure "E"**.

f) Copy of the said statutory demand notice dated December 05, 2018 along with all Annexure and delivery track report marked as **Annexure "F"**.

g) Summary sheet showing the calculation of dues along with interest payable, marked as **Annexure "G"**.

8. Having gone through all the documents produced before us and the statements made by the Ld. Counsel for the Operational Creditor, we are fully satisfied that the Operational Creditor has been able to make out a good case for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor. We therefore admit the petition with the following directions/Orders:-

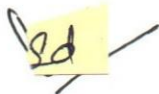
ORDER

- 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, **M/s. Naresh Retail Mart LLP** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

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- 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) 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. Uttam Sarkar** of 5/2E Bediadanga 1st Lane, Kolkata 700039, having Registration No. IBBI/IPA-001/IP-P01154/2018-19/11833, Mobile No. 9433045702, E-mail ID:

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usarkar@usarkar.com registered with Insolvency and Bankruptcy Board of India, 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. 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.
- 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.

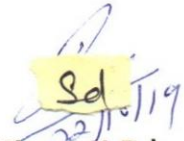
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- xiii). List the matter on **25th November, 2019** for filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 22nd day of October, 2019.

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