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

**CORAM: Shri Madan B. Gosavi,
Member (Judicial)
&**

**Shri Virendra Kumar Gupta,
Member(Technical)**

CP(IB)No.620/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:

Anita Bhalotia carrying on the business in the name and style of **M/s. Reliable Coal Carriers**, a proprietorship concern having its office at 23A, Netaji Subhas Road, 2nd Floor, Room No. 6, Kolkata-700001, West Bengal, India.

.....Operational Creditor

In the Matter of:

M/s Todi Tea Company Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Todi Chamber, 2, Lal Bazar Street, Kolkata-700001, West Bengal, India.

..... Corporate Debtor

Counsels appeared:

For Operational Creditor

1. Mr. Shaunak Mitra, Advocate
2. Mr. Avik Chaudhuri, Advocate
3. Mr. Ayush Bhalotia, Advocate
4. Mr. Tanay Saraf, Advocate

For Corporate Debtor

1. Mr. Arnab Dutta, Advocate
2. Mr. Saurav Jain, Advocate

Date of pronouncement of order: 23rd October, 2019.

ORDER

Per Shri M.B. Gosavi, Member (J):

1. **Smt. Anita Bhalotia** the proprietor of **M/s. Reliable Coal Carriers** (Operational Creditor) filed this application under Section 9 of Insolvency and Bankruptcy Code, 2016 against **M/s Todi Tea Company Limited** (Corporate Debtor) to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying operational debt of Rs. 27,40,402/- (Rupees Twenty-Seven Lakh Forty Thousand Four Hundred and Two Only).
2. The following facts are not in dispute.

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- 2.1. The Operational Creditor sold and supplied the goods (Coal) to the Corporate Debtor in between June 2013 to December 2015 and raised various invoices against the Corporate Debtor.
- 2.2. The Operational Creditor stated that out of outstanding of Rs. 42,15,828/- (Rupees Forty Two Lakh Fifteen Thousand Eight Hundred and Twenty Eight Only), the Corporate Debtor only paid Rs. 14,75,426/- (Rupees Fourteen Lakh Seventy-Five Thousand Four Hundred and Twenty Six Only). The Corporate Debtor committed default in paying the debt of Rs. 27,40,402/- (Rupees Twenty Seven Lakh Forty Thousand Four Hundred and Two Only). The Operational Creditor produced on record the statement of credit account at **Annexure C.**
- 2.3. Since Corporate Debtor committed default in paying the operational debt, on 18.01.2018 Operational Creditor served the notice of demand under Section 8 of Insolvency and Bankruptcy Code, 2016. Notice appeared to be served to the Corporate Debtor by speed post as per track report dated 27.01.2018. According to the Operational Creditor, the Corporate Debtor did not reply the notice. The Corporate Debtor committed default in paying the operational debt, hence this proceeding is filed.
- 2.4. Operational Creditor suggested name of on Mr. Ananda Rao Karoda, having registration no. IBBI/IPA-002/IP-N00286/2017-2018/10844, contact no. 8240740353, email id. raoka55@gmail.com for appointment as the Interim Resolution Professional (IRP). It is nothing on record to show that any disciplinary proceeding is pending as against the IRP.
3. The Corporate Debtor is served with the notice of this application. One Mr. Niranjan Prasad Todi, director of the Corporate



Debtor appeared on behalf of the Corporate Debtor and filed affidavit-in-reply. Perusal of the affidavit-in-reply shows that the Corporate Debtor raised defense that there is a pre-existing dispute. According to the Corporate Debtor, in 2014-15, parties entered into settlement. Accordingly, Corporate Debtor paid entire amount. As per their account, only sum of Rs. 16,853/- (Rupees Sixteen Thousand Eight Hundred and Fifty-Three Only) is due and payable by them to the Corporate Debtor. Hence, this application is not maintainable. It may be rejected.

4. We heard Ld. Counsel for the Operational Creditor and Ld. Counsel for the Corporate Debtor. Although the Corporate Debtor took two defenses-

- (1) That there exists a dispute about the above claim.
- (2) Only amount of Rs. 16,853/- (Rupees Sixteen Thousand Eight Hundred and Fifty-Three Only) is due and payable by the Operational Creditor.

Corporate Debtor did not produce and document to sustain its defense. It is not in dispute that the Corporate Debtor paid part payment of Rs. 25,000/- (Rupees Twenty-Five Thousand Only) on 07.01.2019 i.e. pending this application but did not clear the entire operational debt. It is not in dispute that the Corporate Debtor did not reply demand notice, there appear no dispute about the debt claimed. It is seen from the evidence on record that the Corporate Debtor committed default in paying operational debt or more than Rs. 1,00,000/- (Rupees One Lakh Only). On the basis of evidence on record, we hold that the Operational Creditor succeeded in proving the fact that there is operation debtor of more than Rs. 1 Lakh due and payable by the Corporate Debtor which the Corporate Debtor committed default in paying in spite of receipt of demand notice. Corporate Debtor could not prove that there is a dispute

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about the amount claimed or the quality of good. Hence, we admit the Corporate Debtor in CIRP and pass the following order: -

ORDER

- i) The application filed by the Operational Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s Todi Tea Company 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 Operational 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 Operational 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) Mr. Ananda Rao Karoda, having registration no. IBBI/IPA-002/IP-N00286/2017-2018/10844, contact no. 8240740353, email id. raoka55@gmail.com, is appointed as Interim Resolution Professional for

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

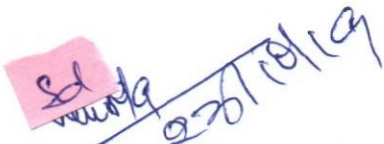
xi) The Operational Creditor to pay sum of Rs. 50,000/- (Rupees Fifty Thousand Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

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.

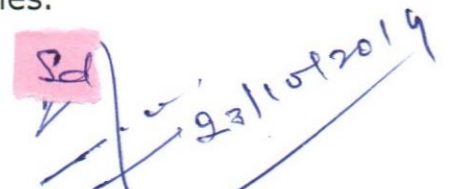
xiii) Registry is hereby directed under section 7(7) of the I.B. Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **11.12.2019** for the filing of the progress report.

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 this, the 23rd day of October, 2019.

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