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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram : (1) Shri Madan B. Gosavi,
Hon'ble Member (J)
&
(2) Shri Virendra Kumar Gupta,
Hon'ble Member(T)

CP(IB) 1566/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:

M/s.KDG Projects Private Ltd., having its registered office at 23A, Netaji Subhas Road, 6th floor, Room no.17, Kolkata-700001;

...Applicant/Operational Creditor

-Versus-

In the matter of:

M/s. Progressive Endeavours Private Ltd., having its registered office at Sutahata, Haldia, Midnapore(E), West Bengal, Pin-721635;

....Corporate Debtor

Counsel appeared:

Mr. Abhishek Sikdar, Advocate	]	Operational Creditor
Mr. Sumit Biswas, Advocate	]	

Date of Pronouncement of Order: 17.02.2020

ORDER

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

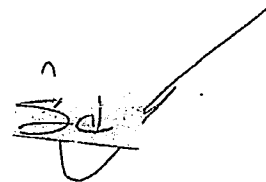
M/s. KDG Projects Private Ltd.- the Operational Creditor filed this proceeding under section 9 of Insolvency & Bankruptcy Code, 2016 (for short, IBC) against **M/s. Progressive Endeavours Private Ltd.-** Corporate Debtor to start Corporate Insolvency Resolution Process (for short, CIRP) of the corporate debtor on a ground that corporate debtor committed default in paying operational debt of Rs.18,43,067/-.

2. Operational Creditor stated that as per the verbal order placed for several times, it sold and supplied the corporate debtor TMT bars under various invoices. They are produced on record at Exhibit 'C' onwards. The operational creditor also produced on record the details of outstanding amount as Exhibit 'B', which shows that the total amount of Rs.18,43,067/- was due and payable by the corporate debtor to the Operational Creditor.

3. On 20.06.2019, demand notice under section 8 of IBC was sent to the corporate debtor. Its copy is produced at Exhibit 'F'. Notice appears to be received by the corporate debtor as seen from the track report at page 34. The operational creditor stated that in spite of receipt of demand notice, corporate debtor failed and neglected to pay the operational debt. Hence, this proceeding is filed.

4. Operational Creditor filed affidavit to comply the provisions of sections 9(3)(b) and 9(3)(c) of IBC. Notice of this proceeding was served on the corporate debtor. One, Mr. Dwip Raj Basu appeared for the corporate debtor on the basis of the resolution passed by the Board of Directors of the corporate debtor but he did not file any affidavit-in-reply. We have again allowed the corporate debtor to





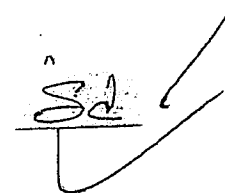
affidavit-in-reply within seven days subject to payment of cost of Rs.25,000/-, while setting aside the ex parte order, which was already passed against it. That order was not complied. Hence, ultimately the proceeding proceeded ex parte against the corporate debtor.

5. We perused records. The operational creditor has produced all relevant invoices to show that goods were sold and supplied to the corporate debtor. It has also produced cumulative statement to show that operational debt of Rs.18,43,067/- was due and payable by the corporate debtor to the operational creditor and corporate debtor committed default in paying the same. Demand notice under section 8 of IBC, which is the requirement of filing this proceeding is also appeared to be duly served on the corporate debtor but the corporate debtor did not reply the notice. It appears from the record that corporate debtor committed default in paying the operational debt of more than Rs.18 lakhs and in spite of receipt of demand notice. This application is defect-free. Hence, the corporate debtor deserves to be admitted in CIRP.

6. Operational Creditor has not suggested any name for appointment as the Interim Resolution Professional. However, while admitting this application, we are giving name from the latest list given by the IBBI for appointment as IRP. application is defect free. The operational creditor proved both the facts that there is debt due and payable by the corporate debtor and the corporate debtor committed default, we admit the corporate debtor in CIRP. Hence, we pass the following order.

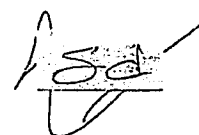
ORDER

- (i) The application filed by the Operational Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the

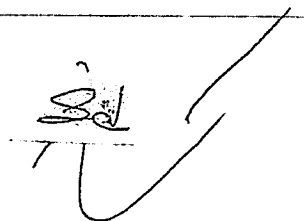


Corporate Insolvency Resolution Process in respect of **M/s. Progressive Endeavours Private Limited**. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

- (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.
- 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 appointment as the IRP, Mr. Ashok Kumar Agarwal having registration no. IBBI/IPA-002/IP-N00626/2018-2019/11898 and email id. ashokkragarwal@hotmail.com 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 submit his written consent in form-2, as per the proforma, within seven days to the Tribunal.

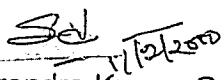
x) The Operational Creditor to pay to IRP a sum of Rs.50,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

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.

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

List the matter on 27.03.2020 for filing progress report.


(Virendra Kumar Gupta)
Member (T)

 17/2/2020
(Madan B. Gosavi)
Member (J)

Signed on this, the 17th day of February, 2020.

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