

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 650/KB/2018

In the matter of:

An application U/S. 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:

Anand Carbo Private Limited, having CIN: U27104WB1999PTC089844, represented by its Director, Mangi Lal Bhutoria, having its Registered office at 11, Clive Row, Ground Floor, Kolkata- 700001, in the State of West Bengal, within the aforesaid jurisdiction;

... Operational Creditor

-Versus-

Kampilya Builders Private Limited, having CIN: U51102WB1995PTC072597, having its registered office at 24 & 26 Mangalam Building, Ground Floor, Hemant Basu Sarani, Kolkata- 700001, in the State of West Bengal, within the aforesaid jurisdiction;

So

... Corporate Debtor

Coram: Shri Madan B. Gosavi, Hon'ble Member [Judicial]

Counsel appeared:


1. Mr. Deepak Agarwal]
2. Mr. Prasun Mukherjee] for the Operational Creditor

3. Mr. Shounak Mitra]
4. Ms. Amrita Pandey]
5. Ms. Anamika Pandey] Corporate Debtor

Order pronounced on 26/07/2019

ORDER

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "I & B Code"] by the Operational Creditor viz., **Anand Carbo Pvt. Ltd.** for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] as against the Corporate Debtor viz., **Kampilya Builders Pvt. Ltd.** claiming that an amount of **Rs. 1,03,33,687/- [Rupees One Crore Three Lakhs Thirty-Three Thousand Six Hundred and Eighty-Seven only]** is the unpaid operational debt due from the Corporate Debtor including interest @24% p.a. That despite demand, the Corporate Debtor did not



pay the outstanding amount and hence defaulted in payment of the operational debt and therefore, the Operational Creditor has filed this application.

2. The facts in brief, as stated by the Operational Creditor are the following: -

a. That the Operational Creditor sold, supplied and delivered diverse quantities and specifications of coal [hereinafter referred to as the "said goods"] to the Corporate Debtor pursuant to the orders placed by the Corporate Debtor, the said goods were delivered and duly received by/ or on behalf of the Corporate Debtor.

b. Accordingly, the Operational Creditor raised bills/invoices in respect of the said goods that were sold, supplied and delivered to the Corporate Debtor.

c. That in spite of several requests and reminders, the Corporate Debtor failed and neglected to pay the operational debt, therefore the Operational Creditor issued a Demand Notice dated 26.03.2018 under Section 8 of the I & B Code calling upon the Corporate Debtor to pay the operational debt. The Demand notice was sent to the Registered Office as well as the Regional Office of the Corporate Debtor. The Corporate Debtor replied to demand notice, admitting the dues but failed to make the payments.

3. Notice was served on the Corporate Debtor/ Respondent who entered an appearance on 27.07.2018.

4. The facts in brief, as stated by the Corporate Debtor in its affidavit of reply filed on 27.11.2018 are the following: -

- a. That the Corporate Debtor had from time to time sources and supplies of coal from the Operational Creditor and had made payments against the invoices raised by the Operational Creditor and after adjusting the said payments, a sum of Rs. 96,63,693/- [Rupees Ninety-Six Lakhs Sixty-Three Thousand Six Hundred and Ninety-Three only] remains due and outstanding to the Operational Creditor.
 - b. The Corporate Debtor admits the default in the payment of dues to the Operational Creditor to the tune of Rs. 96,63,693/- [Rupees Ninety-Six Lakhs Sixty-Three Thousand Six Hundred and Ninety-Three only] and not Rs. 1,03,33,687/- [Rupees One Crore Three Lakhs Thirty-Three Thousand Six Hundred and Eighty-Seven only].
 - c. The Corporate Debtor submits that it is unable to pay the outstanding dues due to circumstances and factor wholly beyond the control of the Corporate Debtor and undertakes to pay the dues of the Operational Creditor within the earliest possible time.
5. The Corporate debtor has failed and neglected to make payment of Rs. 1,03,33,687/- [Rupees One Crore Three Lakhs Thirty-Three Thousand Six Hundred and Eighty-Seven only] including interest @24% p.a., in spite of demand made. The Operational Creditor/Applicant has produced certain documents to prove the existence of operational debt with regard to the said goods supplied and the amount of default. The following are the documents relevant for the consideration of the case in hand: -

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- a. Copies of waybills are annexed to the application and are collectively marked as **Annexure "A"**;
 - b. Copies of tax invoices are annexed to the application and are collectively marked as **Annexure "B"**;
 - c. Copy of Ledger Account is annexed and marked to the application as **Annexure "C"**;
 - d. Copy of the Demand Notice in the prescribed under Section 8 of the I & B Code along with the postal receipt and track report has been annexed with the application and marked as **Annexure "E"** and **Annexure "F"** respectively;
 - e. Copy of the reply of the Demand Notice is annexed with the application and marked as **Annexure "G"**;
 - f. An affidavit under Section 9 [3] (b) of the I & B Code has been filed which has been affirmed by Sri Mangi Lal Bhutoria on 04.05.2018 is annexed with the application and marked as **Annexure "H"**;
 - g. Copies of Bank statements till 29.02.2016 have been annexed with the application in Pp. 180-190.
6. Heard the Ld. Counsel for the Operational Creditor and Ld. Counsel for the Corporate Debtor and perused the records. This is an application filed under Section 9 of the I & B Code for initiating CIRP against the Corporate Debtor alleging that the Corporate Debtor failed to make payments for the said goods sold and supplied to the Corporate Debtor. The Corporate Debtor, despite demand has committed default in payment of Rs. Rs. 1,03,33,687/- [Rupees One Crore Three Lakhs Thirty-Three Thousand Six Hundred and Eighty-Seven only] including interest @24% p.a. payable to the Operational Creditor.

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7. The Operational Creditor issued a demand notice U/S 8 of the I & B Code, dated 26.03.2018 upon the Corporate Debtor calling for payment of the debt. The Corporate Debtor replied to the said Demand Notice admitting the default in payment of dues to the Operational Creditor.
8. The Operational Creditor has also filed an affidavit under Section 9 [3](b) of the I & B Code that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt.
9. The Corporate Debtor has admitted to the default in payment of dues to the Operational Creditor stating that the Corporate Debtor is unable to pay the outstanding dues of the Operational Creditor due to circumstances and factors wholly beyond the control of the Corporate Debtor.
10. The Operational Creditor has not proposed the name of an Interim Resolution Professional [hereinafter referred to as the I.R.P.]. The Operational Creditor in the case in hand, succeeds in proving all the ingredients of Section 9 (5)(i) of the Code and therefore, the application is liable to be admitted.
11. In view of the above-said discussion, the application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is admitted upon the following orders: -
 - a. 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, Kampilya Builders Private Limited is hereby **admitted**.
 - b. I hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

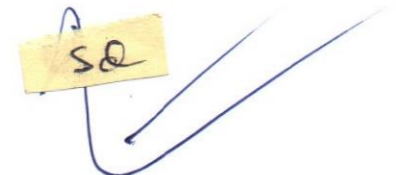
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- c. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission 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.
- d. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

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- e. The services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- f. 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.
- g. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- h. 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.
- i. Necessary public announcement as per Section 15 of the I & B Code, 2016 may be made.
- j. **Sri Shashi Agarwal**, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having **Registration No. IBBI/IPA-001/IP-P00470/2017-18/10813**, email i.d.: **shashiagg@rediffmail.com** is appointed as Interim Resolution Professional for ascertaining the particulars of

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

- k. The Operational Creditor/Applicant to pay Rs. 50,000/- [Rupees Fifty Thousand only] to the I.R.P. as payment of his fees as advance, as per Regulation 33 [3] of the IBBI [Insolvency Resolution Process for Corporate Persons] Regulations, 2016, the same shall be adjusted towards total fees.
 - l. 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.
 - m. Registry is hereby directed under section 9(5) 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 email.
12. List the matter on 16.09.2019 for the filing of the progress report.
13. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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Madan B. Gosavi

Member (J)

Signed on this, the 26th day of July, 2019.