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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) 738/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:
Aurora Carton House, represented by its Sole Proprietor, Sri Pradyumna Chatterjee, having its registered office at 36/D, Sitalatala Lane, Kolkata- 700 001;

...**Operational Creditor**

-Versus-

In the matter of:
M/s. Nobile Ice Cream Company Private Ltd., having its registered office at 715, Large Sector, Phase-VIII, Srirampur, Gamharia-832 108, CIN: U15544WB2010PTC145947;

....**Corporate Debtor**

Counsel appeared:

Rajarshi Dutta, Advocate] Operational Creditor
Ms. Madhurima Das, Advocate]

1. Mr. Shovan Ghosh, Advocate] Corporate Debtor
2. Mr. Rajdip Roy, Advocate]

Sd

Sd

Date of Pronouncement of Order: 21.02.2020

ORDER

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

Mr. Prodyumna Chatterjee, proprietor of **M/s. Aurora Carton House** has filed this application under section 9 of Insolvency & Bankruptcy Code, 2016 (for short, IBC) against **M/s. Nobile Ice Cream Company Private Ltd.**- Corporate Debtor to start Corporate Insolvency Resolution Process (for short, CIRP) of the corporate debtor alleging that the corporate debtor committed default in paying the operational debt of Rs.6,25,384/-.

2. The following facts are not in dispute.

2.1 The Operational Creditor used to sell and supply of corrugated cartons to the corporate debtor and their transactions went on smoothly from period in between 09.10.2013 to 13.10.2018. According to the operational creditor, from 05.06.2018 to 13.10.2018, they had sold and supplied the cartons to the corporate debtor of which the price of Rs.5,92,097/- has not been paid by the corporate debtor, in spite of repeated demands. Hence, on 02.03.2019, he sent demand notice under section 8 of IBC to the corporate debtor. Notice was received but corporate debtor did not pay the amount. Hence, this application is filed to start CIRP of the corporate debtor.

2.2 The corporate debtor is served with the notice of this application. It appeared through one of its authorised representative, Mr. Amitabh Dey. He filed affidavit-in-reply.

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Sd

3. We have gone through the contents of the affidavit-in-reply of the corporate debtor very minutely. We find that corporate debtor has raised defence that operational creditor's calculation about the debt due and payable by it is wrong and nothing is due and payable by him to the operational creditor.

4. We heard the Ld. Counsel for the operational creditor and Ld. Counsel for the corporate debtor. At page 24 of the petition, operational creditor produced on record confirmation of account for the period in between 01.04.2018 to 20.11.2018. It bears signature of the corporate debtor confirming the accounts, thereby admitting the operational debt of Rs.5,92,097/-. In our considered opinion, it is enough evidence to hold that the above amount is the operational debt due and payable by the corporate debtor to the operational creditor. Although the corporate debtor contended that the calculation of debt amount is wrong but corporate debtor did not produce the statement of accounts to support his above contention. From evidence on record, we hold that the operational debt of Rs.5,92,097/- is still due and payable by the corporate debtor to the operational creditor.

5. Operational Creditor sent notice under section 8 of IBC to the corporate debtor. It was sent by Mr. Prodyumna Chatterjee, proprietor of M/s. Aurora Carton House. Notice appears to have been received by the corporate debtor, as Speed Post acknowledgement is produced at Annexure-G. It bears signature of some officer of the corporate debtor having received the notice. It is not in dispute that the corporate debtor did not reply the notice within ten days pointing out the fact that it had paid the operational debt or there is a pre-existing dispute about the debt claim. Operational creditor filed on record affidavits complying the provisions of section 9(3)(b) and 9(3)(c) of IBC.

Sd

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6. Operational Creditor has not suggested any name for appointment as the Interim Resolution Professional and left the matter at the discretion of this authority. This 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 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **M/s. Nobile Ice Cream Company 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. Sandip Kumar Kejriwal, FCS (Mob.98310 74124) having registration no. IBBI/IPA-002/IP-N00236/2017-2018/10687 and email id. sandipkej2@gmail.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 **08.04.2020** for filing progress report.

21/2/2020

(Virendra Kumar Gupta)
Member (T)

21/2/2020

(Madan B. Gosavi)
Member (J)

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

Talwadar