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IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

TP No. 03/CTB/2019

-IN-

CP (IB)No.197/KB/2019

CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)

In the Matter of:

An application 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. Prism Johnson Limited [RMC (INDIA) Division], having its Registered Office at 305, Laxmi Niwas Apartments, Ameerpet, Hyderabad-500016 and having its Regional Office at Unit 4N, 4th Floor, New Town Square, Near City Centre-II, Chinar Park, Atghara, Rajarhat, Kolkata: 700136, West Bengal.

.... Operational Creditor/ Applicant

-Versus-

In the Matter of:

M/s. Aryan Infraprojects Limited, having its Registered Office at Plot No-540, Sahid Nagar, Bhubaneswar, Odisha: 751007.

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.....Respondent/Corporate Debtor

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Counsels appeared for the Petitioners: -

1. Vijay Nath Jha, Adv.
2. Saswat K. Acharya, Adv.
3. Ashish K. Dey, Adv.

Date of pronouncement of Order: 14th day of November, 2019.

ORDER

Per: Ms. Sucharitha R. Member (J)

1. This Petition is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (for brevity IBC) read with Rule, 6 of the IBC (Application to Adjudicating Authority) Rules, 2016. The petitioner **M/s. Prism Johnson Limited [RMC (INDIA) Division]**, is the Operational Creditor/ Applicant is a Registered Company under the provisions of Companies Act, 2013. The Application is filed against the Corporate Debtor **M/s. Aryan Infraprojects Limited**, to initiate Corporate Insolvency Resolution Process of M/s Aryan Infra projects Limited.

2. The Respondent/Corporate Debtor **M/s. Aryan Infra projects Limited**, is registered under Companies Act, 1956 and CIN: **U45201OR2007PLC009694**.

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3. This application was originally filed before NCLT Kolkata Bench numbered as **CP (IB)No.197/KB/2019**. After Constitution of this Bench, the matter was transferred and re-numbered as **TP No. 03/CTB/2019**.

4. The Petitioner/Operational Creditor submits that Vide Purchase Order Dated 18.09.2013 and 20.10.2013, for settled 144CUM and 72CUM of various grades of Ready-Mix Concrete was placed by the Corporate Debtor. The Operational Creditor has duly supplied the materials under three invoices: -

- (i) **Invoice No. 000434 and Dated 24.09.2013** for sum of Rs. Two Lac Eighty-Eight thousand one only.
- (ii) **Invoice No. 000446 and Dated 27.09.2013** for sum of Rs. Two Lac Ninety-Six Thousand only.
- (iii) **Invoice No. 000504 and Dated 23.10.2013** for sum of Rs. Two Lac Ninety-Two Thousand only.

5. The Petitioner/ Operational Creditor submits that last such supplies were made on 22.10.2013. The parties maintain a running and continuous accounts, the last payment was made on 01.11.2018 for sum of Rs. 20,000. After all the adjustments the Corporate Debtor owes a sum of Rs. 6,35,633/- towards principal amount. The Operational Creditor submits that the

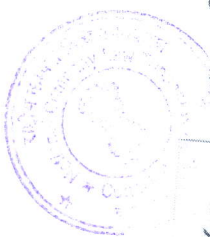
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corporate debtor executed a Balance Confirmation letter dated 07.03.2014. Thereby acknowledged the debts it owed to Operational creditor. The Operational Creditor repeatedly called upon the Corporate Debtor for settlement of the outstanding dues, however, as on date of filing this application sum of Rs. 6,35,633/- is due and payable by the Corporate Debtor.

6. The Petitioner/Operational Creditor had sent statutory demand notice dated 27.12.2018 in Form 3 under Section 8 of IBC Code, 2016 which was duly served on the Corporate Debtor on 01.11.2019. However, the Corporate Debtor did not respond to the notice. The Operational Creditor is also claiming interest at the rate of 18% per annum from 01.11.2018. The Operational Creditor has filed Statement of Accounts of Kotak Mahindra Bank.

7. The Respondent/Corporate Debtor has filed this reply in the registry on 08.08.2018. The reply has been executed by Mr. Antaryami Badu Managing Director of the Corporate Debtor. In the said reply, the Corporate Debtor submits that the payment towards three invoices is due and payable, amounting to sum of Rs. 6,35,633/-, the Corporate Debtor had issued 4 Cheques towards payment of the same. However, the same was dishonoured and Criminal Prosecution against the dishonour of the cheque is pending. This fact has not been stated in the application by the petitioner.



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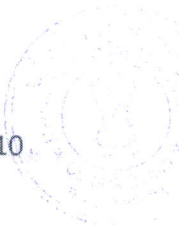
Further, the Corporate Debtor stated that it was amicably decided that the entire claim will be settled to the tune of Rs. 4,00,000/-. The Corporate Debtor issued Cheque for sum of Rs. 4,00,000/- towards full and final settlement of this claim. This cheque was also returned for “insufficient funds”. The corporate debtor did not withdraw the proceeding, as agreed upon. We are of opinion that it is well settled Principle of Law that issuance of Cheque is acknowledgment, and not pre existence of a dispute.

8. At the time of argument, there was no representation on behalf of the Corporate Debtor. The invoices are of the period in 2013, the acknowledgement is date 2014. The last part payment was paid on 01.11.2018 for sum of Rs. 20,000. Hence, the claim is well within the period of limitation.

9. It is clear that the “Debt” is due and payable by the corporate debtor. The Operational Creditor has also filed invoices and documents to prove the same. The Corporate Debtor has also accepted the outstanding due and payable in their reply statement. Hence, we are inclined to ADMIT.

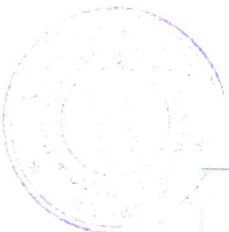
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ORDER

- (i) The application filed by the Operational Creditor under Section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **M/s. Aryan Infraprojects Limited** Moratorium Order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) Moratorium Order is passed for a public announcement as stated in Sec. 13 of the IBC, 2016. 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 judgment, decree or order in any Court of law, Tribunal, Arbitration Panel or other authority;



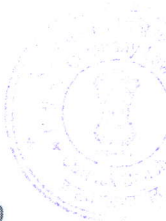
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- b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- c) Any action to foreclose, recover or enforce any security interest created by the Corporate 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.

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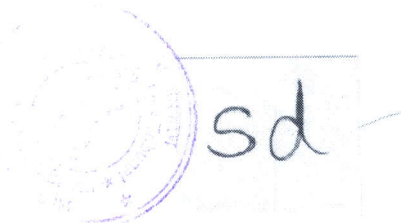


- (vi) The order of moratorium shall commence from the date of admission till the completion of the Corporate Insolvency Resolution Process.

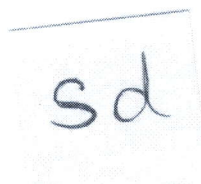
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- (vii) 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.

- (viii) **Mr. Debadatta Mohapatra** is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency having **its registration No. IBBI/IPA-002/IP-N00424/2017-18/11273** and **email Id: - ip.csdeba@gmail.com** as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.



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(ix) We direct the Operational Creditor to deposit a sum of Rs. One Lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

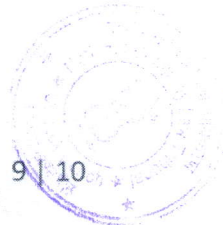
(x) Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petitioner to the IRP, otherwise coercive steps to follow.

xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

xii) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor,

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Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.

Interim Resolution Professional to file 1st Progress Report on **18.12.2019**

List the matter on **18.12.2019**

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

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**Shri Satya Ranjan Prasad
Member (T)**

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**Ms. Sucharitha R.
Member(J)**

Signed on this, the 14th day of September, 2019.



Kaushal Steno

Agreed

DR / AR / Court Officer
National Company Law Tribunal
Cuttack Bench

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