

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP(IB) No. 1690/KB/2018

IN THE MATTER OF

An application Under Section 9 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy ((Application to Adjudicating Authority) for initiation of Corporate Insolvency Resolution Process.

And

IN THE MATTER OF

Guiltee Industries Ltd., having its Reg. Office at 31, Netaji Subhas Road , 1st Floor, Duncan House, Kolkata-700001, West Bengal.

.....Operational Creditor

Versus

Shakti Sudha Agro Ventures Pvt. Ltd. , having its registered office at C-23 &24, Patliputra Industrial Area, Patna- 800013,Bihar.

.....Corporate Debtor

Date of Hearing : 30.10.2019

Order Delivered on : 31.10.2019

Coram:

Madan B Gosavi, : **Member (J)**

Virendra Kumar Gupta, : **Member (T)**

For the Operational Creditor : 1. Mr. Shiv Shankar Banerjee, Advocate

2. Mr. A.Banerjee,

Advocate

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ORDER**Per Virendra Kumar Gupta, Member (T)**

This application Under Section 9 IBC has been filed by the Operational Creditor namely Guilteree Industries Ltd to initiate Corporate Insolvency Resolution Process against Corporate Debtor namely New Shakti Sudha Agro Ventures Pvt. Ltd. The amount of default has been claimed at Rs. 22,30,470/- (Rs. Twenty Two Lakhs Thirty Thousand Four Hundred Seventy) including interest and date of default has been stated as 28.03.2018.

2. The facts, in brief, are that the Operational Creditor gave an advance to the Corporate Debtor for procuring supplies of Makhana. The amount of advance given of Rs. 1, 28,72,000/-, against which, goods worth Rs. 1,09,55,433/- were supplied. The supplies were not made thereafter, inspite of several reminders nor balance amount was refunded back.

3. The learned counsel appearing on behalf of the Operational Creditor narrated these basic facts and contended that notice under section 8 of IBC,2016 had been delivered to the Operational Creditor and drew our attention to pages having record of service of notice. He also pointed out that a sum of Rs. 19,14,567/- was to be received and drew our attention of page 97 to paper book containing the details of amount paid, supply received and balance outstanding amount during the period 22.11.2017 till 27.3.2018. The learned counsel contended that

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the petition was liable to be admitted as there was a debt due and payable and a default had occurred.

4. We have considered the submissions made by the Operational Creditor and also perused the material on record. It is noted that Operational Creditor gave an advance for procuring supplies from the Corporate Debtor. Generally operational debt means an outstanding amount in respect of goods or service provided. Here is a case whose contract is of provision of goods by the Corporate Debtor which has not been fully performed resulting into a claim of advance. Thus, essentially contract remains between the parties of provision of Goods. In our view, under section 5(21) non performance of a contract of supply can also be covered as the restricted meaning if given to the definition of operational debt would defeat the object of IBC to promote to credit culture. Having said so, there is no dispute that amount has been given by the Operational Creditor to the Corporate Debtor and supplies equivalent to the outstanding amount were not made. Compliance of section 9(3)(b) of IBC has been done. Notice under section 8 has also been delivered. No reply has been submitted by the Corporate Debtor neither to the notice nor to the petition filed by the Operational Creditor.

5. The application filed by the Operational Creditor under section 9 of IBC is complete in all respects. The Operational Creditor has also proposed the name of IRP from the approved list maintained by IBBI, who has also given his consent. It has been pleaded that no disciplinary proceeding is pending against him. Accordingly, we approve his name.

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6. We admit this petition, and order as under:-

ORDER

- i) 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, Shakti Sudha Agro Ventures Pvt. Ltd is hereby **admitted**.
- ii) We declare a moratorium and cause public announcement in accordance with Sections 13 and 15 of the I&B Code, 2016.
- iii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional 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

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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 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 financial 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. Soumendra Poodar, IRP Registration No. IBBI/ IPA-001/IP-P00446/2017-2018/10789, E-mail: soumenpoddar@gmail.com, mobile no.8584947677, is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.**

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- v. The Operational Creditor to pay a sum of Rs. 50000/- (Rs. Fifty Thousand) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.
- 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) List the matter on **17.12.2019** for the filing of the **progress report**.
- 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 IRP by Speed Post as well as through e-mail.

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 31.10.2018 October, 2019