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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**C.P. (IB) No. 312/KB/2018**

**IN THE MATTER OF:**

An application under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and Bankruptcy Code 2016 (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process.

-And-

**In the matter of:**

**Jeco Agrovet Private Limited**, having its registered office at Chitrakoot, 230A, AJC Bose Road, Kolkata 700020.

Operational Creditor /Applicant

-Versus-

**Amrit Agrovet Private Limited, (Safidon)** having its registered office at 158, Lenin Sarani, 2<sup>nd</sup> & 3<sup>rd</sup> Floor, Kolkata 700013.

Corporate Debtor / Respondent

Date of hearing 04 March 2020

Order Delivered on 12 March, 2020

**Coram :**

**Madan B. Gosavi, Member (Judicial)**

**Virendra Kumar Gupta, Member (Technical)**

For the Operational Creditor : Mr. Ratul Das, Advocate

For Corporate Debtor : Mr. Nirmalya Dasgupta, Advocate  
: Mr. Shwetank Nigam, Advocate

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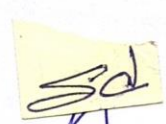
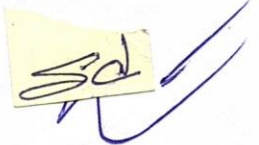
**Per Shri Virendra Kumar Gupta, Member (T)**

1. The facts, in brief, are that the operational creditor supplied goods worth Rs. 10,68,372/- vide invoice dated 19.06.2015 out of which Rs. 3,00,000/- was paid and the balance remained outstanding.

2. The Ld. Counsel for the operational creditor appeared and drew our attention to the bank statement wherein the payment was normally credited to show that the outstanding amount remained to be received. Our attention was also drawn to the invoice raised and delivery challan. On query regarding delivery of notice under Section 8 of IBC, the Ld. Counsel drew our attention to page 19 to 25 containing copies of despatch and fact reports. It was pleaded that there was an admitted debt which was not paid and thus, this petition was liable to be admitted.

3. The Ld. Counsel for the corporate debtor appeared and submitted that the said operational creditor had filed a number of petitions against the corporate debtor and/or its associate group companies which had been dismissed, hence, it was an instance of abuse of the process of law. It was further contended that the corporate debtor had not received the goods and documentary evidence to this effect was not brought on record. In support of this, he drew our attention to show that in the copies of delivery challans no acknowledgement by the corporate debtor or its authorised person existed. Therefore, it was pleaded that whatever payment was due, that had been done, hence, there existed no jural relationship between the parties as of now. It was further pleaded that notice under Section 8 of IBC has not been delivered to the

  
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corporate debtor which was an incurable defect and for this reason alone, the application was liable to be dismissed. The Ld. Counsel also referred to page 30 of its reply to show that how many petitions had been filed against the corporate debtor or its associates / group companies. Our attention was also drawn to the decision of this Tribunal in the case of Jeco Agrovet Private Limited vs Amrit Hatcheries Private Limited in CP (IB) No. 254/KB/2018 order dated 30.07.2019 wherein the following decision was taken :

*“12. In this case also, the operational creditor produced on record track report which only shows that notice was delivered at Varanasi RSTM Office (Post Office). There is no clear proof of delivery of the notice to the corporate debtor. The presumption of service of notice cannot be raised against provision of law as stated above under section 8 and 9 of IBC Code. The delivery of demand notice under section 8 of IBC to the corporate debtor is a precondition to maintain application under section 9 of Insolvency & Bankruptcy Code, 2016. In this case, there is no clear proof of delivery of the notice to the Corporate Debtor. Hence, I am not inclined to admit the corporate debtor in CIRP”*

It was also contended that in the case of Ramco Systems Vs. Spicejet Limited, the application was dismissed for want of clear proof of delivery of the notice under Section 8 of IBC to the corporate debtor. It was further contended that the Board Resolution authorising this application was also not proper and for this reason also this application was not maintainable.

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4. In the rejoinder, the Ld. Counsel for the operational creditor drew our attention to page 23 to show that notice under Section 8 of IBC had been sent to the two available addresses of the corporate debtor and it could not be denied that it had been received by Amrit Hatcheries Pvt. Ltd. as per records of the postal department. It was further contended that our such mention that the operational creditor had no control but when the address of the corporate debtor was correctly mentioned and that company was also a group / associate company of the corporate debtor, the delivery of notice stood properly effected. As regards to the validity of the supplies, it was contended that the goods were supplied and on account payment had been given, hence, it could not be said that supplies were not made.

5. We have considered the submissions made by both sides and material on record. First issue is regarding delivery of notice under Section 8 of IBC 2016. It is not in dispute that address of the corporate debtor to which such notice has been despatched is as per records of MCA. It is also not in dispute that corporate debtor and its other group / associate companies exist and operate from the same address. It is also not in dispute that one of the group company's acknowledgement is on record. Once a common place is being used by a number of companies belonging to the same group, and when the addressee and the address is correct, then, in our considered view it cannot be said that notice under Section 8 of IBC if received by one of the group companies on behalf of the corporate debtor is not a proper delivery. If such practice is allowed, then it can easily defeat claims of all creditors because the corporate debtor in such situations can adopt this device knowing fully well from whom such letter has come, and, accordingly it can instruct

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other group companies to receive the same and later on take the plea of non service of notice under Section 8 of IBC. Thus, this argument of the Counsel for corporate debtor fails.

6. We find that in the case relied on by the corporate debtor, it was observed that there was no clear proof of delivery of notice under Section 8 whereas in the present case delivery of notice at the address of the corporate debtor is not at all in dispute. In this regard, we further find that even in its reply affidavit, the corporate debtor has referred to the group companies as corporate debtor itself and has also averred that 8 (eight) petitions were filed against corporate debtor's associate / group companies which also goes to show that the fact is admitted by corporate debtor itself as regard to operating of such companies from the same space and belonging to one group only. For this reason also, the contention of the corporate debtor regarding non delivery or improper service of notice under Section 8 of IBC is rejected.

7. As far as supply of material is concerned, it is not in dispute that it has been made through only one invoice though different challans are enclosed - different delivery challans exist. Thus, logical inference is that supplies have been made in part. It is also not in dispute that an adhoc payment of Rs. 3,00,000/- in round figure has been made against such invoice. Now, considering the real business situations, we don't find any merit in the contention of the corporate debtor that whatever payment was due and payable has been made because normally in such types of supplies, the supplies cannot be in round figure. Further, corporate debtor has also failed to bring any material on record to support its claim that such payment was made against other invoices or claims made against the impugned invoice was totally fake. It is also not in

dispute that several petitions have been filed by the same operational creditor against corporate debtor and its group companies, hence, it cannot happen that all the supplies are not made and such invoices are a case of paper invoices only. Thus, considering the overall situation of the present case, we are of the view that there is no merit in the contention raised by the corporate debtor as regards to non supply or all payments being made.


8. As far as the authenticity of Board Resolution is concerned, merely because name of several group companies in addition to the corporate debtor, such resolution does not become void particularly when it is not in dispute that the resolution has been passed in the Board Meeting of the Corporate Debtor itself.

9. Name of IRP has not been proposed which is not mandatory for application made under Section 9 of IBC. Hence, we will appoint the IRP from the approved list maintained by IBBI. In case such person does not accept the assignment, then another person would be appointed. Thus, considering the overall facts and above discussions, we are of the view that this application is liable to be admitted.

10. The application is otherwise complete in all respects and stands admitted. We order as under :

**ORDER**

- i. The application filed by the Operational Creditor under section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, namely Amrit Agrovet Private Limited (Safidon) is hereby admitted.

  
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- ii. We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. 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 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 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 the possession of the corporate debtor.

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- 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. Uttam Sarkar** IBBI Regn. No. IBBI / IPA--001/ IP- P01154/ 2018-19/11833 email - usarkar@usarkar.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi) The Operational Creditor to pay a sum of Rs. 50,000/- ( 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

  
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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) 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 I.R.P. by Speed Post as well as through e-mail.

11. List the matter on 28<sup>th</sup> April, 2020 for the filing of the **progress report**.

12. 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 12 March, 2020