NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP(IB) No. 1617/KB/2019

In the matter of:

An Application by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of :

Air Com Travels Private Limited

..Operational Creditor

Versus

Mohan Motor Udyog Private Limited

.. Corporate Debtor

Coram: Shri Jinan K.R., Member(Judicial)

For the Operational Creditor:

1. Mr. Shaunak Mitra, Advocate
2. Ms. Suchita Sharma, Advocate

For the Corporate Debtor :

1. Mr. Shamik Chakraborty, Advocate
2. Mr. Ishaan Saha, Advocate
3. Mr. S Manot, Advocate

Date of Pronouncement of the Order : 17-03-2020

ORDER

Per Shri Jinan K.R., Member(Judicial)

1. This is an Application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution process (in short CIRP) as against the Corporate Debtor, Mohan Motor Udyog Pvt. Ltd., who has committed default in payment of Rs. 6,16,976/- (Rupees Six Lac sixteen thousand nine hundred seventy six only) with interest @ 24% per annum compounded on the above said amount to the tune of Rs.

1,47,232/- (Rupees One Lac forty seven thousand two hundred thirty two only.

2. The Corporate Debtor had availed the services of the Operational Creditor in respect of travel bookings. The understanding between the Operational Creditor and the Corporate Debtor was that the Corporate Debtor would pay upfront payment for the booking and thereafter, the Operational Creditor would raise invoices to the Corporate Debtor. The business transactions in between the Operational Creditor and the Corporate Debtor has been continuing for several years. However, on and from 2018, the Corporate Debtor became irregular in payment and committed default in payment of the amount claimed vide invoices issued by the Operational Creditor from 04-07-2018 to 20-08-2018, to the tune of Rs. 6,16,976/- towards rendering the services to the Corporate Debtor. The copies of the invoices raised by the Operational Creditor are annexed with the Application and marked as Annexure "H". Despite availing of the services of the Operational Creditor, the Corporate Debtor has failed to make payment of the outstanding amount as shown above. Despite demand, the Corporate Debtor has failed to pay and accordingly, the Operational Creditor had issued demand notice in accordance with Section 8 of the Code on 02-08-2019 and copy of the demand notice was annexed with the Application and marked as Annexure "H". The default occurred from 03-08-2018 and despite demand the Corporate Debtor has not paid the outstanding amount due and payable by the Corporate Debtor and accordingly, the

Operational Creditor filed this Application for initiating CIRP as against the Corporate Debtor.

3. The Corporate Debtor entered appearance. Although, several opportunities have been given to the Corporate Debtor to file reply affidavit, the Corporate Debtor has chosen not to file any reply affidavit and the case was lastly heard on 13-03-2020.

4. The Ld. Counsel, appearing for the Corporate Debtor, submits that he is opposing this Application, however, has not given any explanation as regards non filing of reply affidavit in time.

5. This is an Application filed by the Operational Creditor claiming that an amount of Rs. 7,64,208/-(Rupees Seven Lac sixty four thousand two hundred eight only) which includes interest @ 24% per annum is due from the CD. It is submitted by the Ld. Counsel for the Operational Creditor that the Corporate Debtor has committed default and despite repeated demands, the Corporate Debtor has failed to pay and accordingly, this Application deserves admission.

6. The Applicant has not proposed any Insolvency Resolution Professional. It is further submitted that as per the invoices, the Corporate Debtor is liable to pay interest @ 24% per annum, in case outstanding bill amount has not been paid. A look at the invoices indicates that the Operational Creditor can claim interest as well. The tax invoice seen delivered to the CD and it contains signatures of authorised representative of the Corporate Debtor. Accordingly, the claim for interest is also found sustainable. The Operational Creditor has issued demand notice. The copy of the demand notice is annexed

Sd/-

along with the Application as Annexure "H". The demand notice has been issued on 02-08-2019. No reply to the demand notice and no written objection seen filed by the CD.

7. The Ld. Counsel for the Operational Creditor, on the other other hand, has brought to my notice confirmation of the account signed and accepted by the Corporate Debtor in its ledger extract. It is dated 01-04-2019. Therefore, the Operational Creditor succeeded in proving that the CD is liable to pay the amount as claimed by the OC for the service rendered by the Operational Creditor. The evidence led in on the side of the OC also proves that Corporate Debtor has not paid the amount found due, despite receipt of the demand notice. The requirement to be meted out by the Operational Creditor in an application of this nature also seen complied by the OC. An affidavit in compliance of Section 9(3)(b) of the Code seen annexed with the application and also produced statement of Bank Account in compliance of Sect6ion 9(3)(c) of the Code. Since the Operational Creditor has not proposed the name of Insolvency Resolution Professional, the requirement to be meted out under Section 9(5)(i)(e) does not arise.

8. Being satisfied that all the requirements to be met under Section 9(5) have been complied with by the Operational Creditor and that the CD having failed in payment of the outstanding amount found due to the OC, this Application deserves to be allowed.

9. In the result, this Application is allowed, upon the following orders :

O R D E R

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, Mohan Motor Udyog Private Limited is hereby **admitted.**

ii) We hereby 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

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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.

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 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.

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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 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.

ix) Mr. Surendra Kumar Agarwal, Resolution Professional, having IBBI Regn. No. IBBI/IPA-001/ IP-P00825/2017-18/11401, e-mail ID surendraca@gmail.com, Mobile No. 7003660854, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

x) 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.

xi) The Operational Creditor is directed to deposit 1,00,000/- (Rupees One lack Fifty Only) within one week from the

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date of this order, in the ESCROW Account in SBI maintained by the Registrar NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional before the constitution of the CoC and the fees and cost can be withdrawn by the IRP/RP after the approval of CoC. Balance, if any, can be withdrawn by the Operational Creditor. The said amount shall be deposited with in 15 days from the receipt of the order by the OC.

xii) 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 E-mail.

10. List the matter on 30-04-2020 for filing of the progress report.

11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

17/3/20

(Jinan K.R.)
Member (Judicial)

Signed on this, the 17th day of March, 2020

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