

**In the National Company Law Tribunal**

**Kolkata Bench**

**Kolkata**

**C.P. (IB) No. 1221/KB/2018**

**In the matter of:**

An application for initiation of corporate insolvency resolution process by an Operational Creditor 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. S. SEN & SONS**, represented by its Proprietor, Samir Kumar Sen, Office and residence at No. 5, Rabindra Pally, Second Lane, P.O. Nimta, Kolkata 700049.

**..... Operational Creditor**

**Versus**

**In the matter of:**

**M/S. V.S.P. UDYOG PRIVATE LIMITED**, having its office at Centre Point No. 21, Hemanta Basu Sarani, 4<sup>th</sup> Floor, Suit No. 437, Kolkata 700001;

**... Corporate Debtor**

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**In the matter of :**

M/S. S. SEN & SONS, represented by its      ] OPERATIONAL CREDITOR  
Proprietor Samir Kumar Sen  
M/S. V.S.P. UDYOG PRIVATE LIMITED      ] CORPORATE DEBTOR

**Date of pronouncement of order : 07/08/2019**

**Coram: Shri Jinan K.R, Hon'ble Member (Judicial) &**  
**Shri Harish Chander Suri, Hon'ble Member (Technical)**

**Counsel on Record :**

1. MR. MOUSAMJIT SARKER	]
2. MR. MADHUSUDAN SARKAR	] OPERATIONAL CREDITOR
1. MR. S.K. SINGHI	]
2. MS. RITI BASU	] OPERATIONAL DEBTOR
3. MR. PRASHANT KUMAR TRIPATHI	]
4. MR. SOHIL AGARWAL	]

**ORDER**

**Per Shri Harish Chander Suri, Member (T).**

1. This petition under section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application

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to Adjudicating Authority) Rules, 2016 is filed by **M/s. S. Sen & Sons**, represented by its Proprietor Mr. Samir Kumar Sen, hereinafter referred to as the Operational Creditor against **M/s. V.S.P. Udyog Private Limited**, a Corporate entity, having its Registered office at Kolkata, hereinafter referred to as the Corporate Debtor through its authorised Director Mr. Varun Patwari.

2. It is submitted in the petition that the Corporate Debtor is engaged in the business of Steel, and manufacturing of TMT bars and Billets. It is submitted that the Operational Creditor had supplied MS Billets and other items to Corporate Debtor against various purchase orders and various bills from 4<sup>th</sup> July, 2016 to 29<sup>th</sup> July, 2016 which are still outstanding for payment by the Corporate Debtor to the operational Creditor. A sum of Rs. 1,47,008/- (Rupees One Lakh Forty Seven Thousand and Eight Only), being the principal amount as on 20<sup>th</sup> October, 2016 along with interest of Rs. 45,425.48 (Rupees Forty Five Thousand Four Hundred Twenty Five and Paise Forty Eight Only) up to 4<sup>th</sup> July, 2018, is due and outstanding. Thus the Corporate Debtor having failed to make the payment to the Operational Creditor as per the goods supplied, the default has occurred on 20<sup>th</sup> October, 2016.
3. It is submitted that the Operational Creditor issued a demand notice dated 9<sup>th</sup> July, 2018 demanding payment of unpaid operational debt which was posted on 12<sup>th</sup> July, 2018 and was delivered to the Corporate Debtor on 13<sup>th</sup> July, 2018 as per the track report consignment report.

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4. It is submitted that the Corporate Debtor did not respond to the demand notice nor did it make any payment. The Operational Creditor has filed Bank Certificate along with Bank Statement proving that no payment has been received from 16<sup>th</sup> February, 2018 to 15<sup>th</sup> July, 2018.
5. The Operational Creditor has further filed an affidavit u/s 9(3)(b) to the effect that there is no notice given by the Corporate Debtor relating to a pre-existing dispute as regards the unpaid Operational Debt.
6. The Operational Creditor has proposed the name of **Mr. Sudipta Ghosh**, an insolvency professional registered with Indian Institute of Insolvency professionals of ICAI having registration No. IBBI/IPA-001/IP-P00484/2017-18/10872, to be nominated as IRP in this matter Mr. Sudipta Ghosh also by way of a written communication addressed to this Tribunal has given his consent to be appointed as the IRP if order admitting the present application is passed. It has also been mentioned in the communication that he is not serving as IRP in any other proceedings and that no disciplinary proceedings are pending against him.
7. When the matter was listed for admission, this Tribunal issued notice to the Corporate Debtor on 7<sup>th</sup> September, 2018 and the Counsel for the Corporate Debtor appeared on 22<sup>nd</sup> January, 2019 through its authorized representative Mr. Varun Patwari and Counsel Ms. Riti Basu and Mr. S.K. Singhi. The matter

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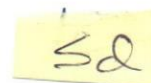
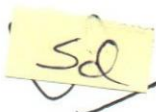
was thus listed for hearing on 2<sup>nd</sup> August, 2019. The Corporate Debtor filed its reply affidavit to which the rejoinder affidavit was also filed by the Operational Creditor.

8. In the reply affidavit, the Corporate Debtor submitted that the application is not maintainable and that due to down-fall in the Steel and manufacturing units, the Corporate Debtor was unable to render its full service. It is further submitted that the Corporate Debtor is facing short term/temporary financial crisis in the current prevailing adverse environment in the Country and in steel industry globally. The Corporate Debtor further submitted that it has been trying to resolve its crisis with the support of the Bankers and seeking co-operation from other stake holders and that the admission of the application would bring the Company to a situation with no resolution, which would be against the interest of the Corporate Debtor and its employees, associates and of course the creditors as well. The Corporate Debtor has further submitted that the allegations made in the application are denied. It is further denied that there is any default of Rs.1,92,433.40 (Rupees One Lakh Ninety Two Thousand Four hundred Thirty Three and Paise Forty Only) or any part thereof. The claim is disputed by the Corporate Debtor.
9. In the rejoinder to the reply affidavit, the Operational Creditor has reiterated the facts, averments and the Operational Creditor has denied the allegations made in the reply. It is submitted that there is no pre-existing dispute as regards the outstanding dues. The Corporate Debtor has failed to



make any specific denial in respect of the transactions and has admitted that they are facing short term financial crisis which is an admission on their part. The Operational Creditor has further denied and disputed that the application is not maintainable or mala fide one or filed only to coerce the Company. The Operational Creditor has denied all the allegations made by the Corporate Debtor mentioning that the application is harrasive or filed with selfish motive to destroy the Company or is liable to be rejected or that the amount mentioned as outstanding is not correct. The Operational Creditor has reiterated the facts and averments mentioned in the application.

10. We have heard the Ld. Counsel for both the parties and have gone through all the documents on record. The Operational Creditor has placed on record all the purchase orders, and bills and complied with all the requisite provisions of the Code, demand notice has also been duly delivered to the Corporate Debtor. There was no mention in the reply as regards any dispute of the outstanding amount. The Operational Creditor has also placed on record the Bank Statement and Certificate to the effect that no payment has been received from the Corporate Debtor in the account of the Operational Creditor.
11. From the aforesaid facts it is proved that the amount is due and default has taken place. In the reply affidavit the Corporate Debtor has admitted that they are undergoing financial crisis. This Tribunal is satisfied and has no



hesitation to declare that the Corporate Debtor has failed to clear its operational debt payable to the Operational Creditor. The petition is thus admitted. The following orders are therefore bound to follow:-

### **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, M/s. V.S.P. 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:-

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- 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.
- 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.

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- 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 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. Sudipta Ghosh of 8, N.N. Mukherjee 3<sup>rd</sup> Lane, Uttarpara, Hooghly – 712258, West Bengal, registered with Indian Institute of Insolvency Professionals of ICAI having registration No. IBBI/IPA-001/IP-P00484/2017-18/10872, E.mail ID:sudipta\_ghosh08@yahoo.com, Mobile No. 7003384289, 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.**
- 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.

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- xi) The Corporate Applicant is directed to deposit Rs. 50,000/- (Rupees Fifty Thousand Only ) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP.
- 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.
- xiii). List the matter on **16<sup>th</sup> September, 2019** for filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(Harish Chander Suri)  
Member (T)

  
(Jinan K.R.)  
Member (J)

Signed on this, the 7<sup>th</sup> day of August, 2019.

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