IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,
KOLKATA

C.P (IB) No.04/KB/2020

In the matter of

An application under 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:

Arvinder Singh, Sole proprietor of the Proprietorship concern, M/s A.B.Singh & Associates, having its registered office at SCO: 59-60, Phase-3B2, SAS Nagar(Mohali) .

... Operational Creditor

Versus

In the matter of:

M/s Supersonic Dealcom Private Limited (CIN: U51109WB2007PTC113832), having its registered office at 10/1/1C, Kalakar Street, 2nd Floor, Kolkata, West Bengal, 700007.

...Corporate Debtor

Date of hearing : 24/02/2022

Order Pronounced on :. 20/04/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr.Ritoban Sarkar, Adv.] For Operational Creditor
1. Mr. Satyaki Chaudhuri, Adv.] For Corporate Debtor

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This petition under section under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by **Arvinder Singh,** Sole proprietor of the Proprietorship concern**,** M/s A.B.Singh & Associates having its registered office at SCO: 59-60, Phase-3B2, SAS Nagar(Mohali) (hereinafter referred to as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **M/s Supersonic Dealcom Private Limited (CIN: U51109WB2007PTC113832),** having its registered office at 10/1/1C, Kalakar Street, 2nd Floor, Kolkata, West Bengal, 700007 (hereinafter referred as the Corporate Debtor).

3. It is submitted that the Operational Creditor, sole proprietor of the proprietorship firm i.e. M/s A.B.Singh & Associates was engaged by the Corporate Debtor to provide auditing services to the Corporate Debtor since 2015-2016 and he provided the said services till the date of filing of the petition and raised bills accordingly. It is submitted that the Corporate Debtor did not make regular payment to the Operational Creditor which accumulated, and the outstanding audit fee till the financial year 2019-2019 was Rs.4,00,000/- (Rupees Four Lacs Only) out of which, the Corporate Debtor has made payment of only Rs.49,000/- and no further payment was made by the Corporate Debtor. The Operational Creditor, therefore, was constrained to issue a Demand Notice dated 21st August, 2019 in Form -3 and Form-4 under Section 8 of the Insolvency and Bankruptcy Code, 2016.It is further submitted that the Corporate Debtor has admitted that their existed an

outstanding of Rs.3,51,000/- through their letter dated 5th September, 2019 but they have shown inability to pay because according to the Corporate Debtor their company is experiencing liquidity crunch.

4. It is submitted that in view of the continued default and neglect on the part of the Corporate Debtor in making payment of the legitimate dues/ the Operational debt, the Operational Creditor has filed the present petition for initiation of CIRP.

5. The Operational Creditor has filed various documents in support of its claim, which are under:-

a. Working Sheet
b. Lodger account of M/s Supersonic Dealcom Private Limited is annexed as Annexure-I.
c. Copies of invoices.
d. Bank Statements of the Operational Creditor for the relevant period.
e. Audited Balance Sheet of the Corporate Debtor as at 31-03-2019 (Financial year 2018-19) signed by the Operational Creditor as on 30.05.2019 showing that the Corporate Debtor owes Rs.3,51,000/- towards audit fee payable and has no source of income in the present financial year is annexed as Annexure-J.

6. ***On being served with the notice of the Court,*** the Corporate Debtor has filed its reply affidavit of one of its Directors Mr. Shivraj, who submitted that the application is not maintainable and liable to be dismissed as there are suppression of material facts. It is submitted that the Operational Creditor was informed by the Corporate Debtor through letter dated 5th September, 2019 that the Corporate Debtor was facing financial crunch and was not in a position to pay the amount of debt that is outstanding. However, the Corporate Debtor is taking all possible measures to make the payment at the earliest and clear the outstanding fee in a phased manner as soon as the financial condition is improved. A copy of the letter dated 5th September,2019 has been enclosed with the reply affidavit of the Corporate Debtor as

Annexure-A.

7. It is submitted that the Corporate Debtor has cash crunch and is unable to clear the outstanding.

8. During the course of arguments, the Ld. Counsel for the Operational Creditor has taken us through all the documents and has been able to prove outstanding debt against the Corporate Debtor on the basis of all the documents placed on record. On the other hand, the Ld. Counsel for the Corporate Debtor very candidly, on instruction, admitted that the Corporate Debtor has no defence in the present matter, and the Corporate Debtor has no funds to clear the outstanding debt of the Operational Creditor to the tune of Rs.3,51,000/- and does not have any objection if the company is ordered to undergo CIRP.

9. The Operational Creditor has proposed the name of **Mr. Debasis Bhattacharya,** to act as an IRP having Registration No. **IBBI/IP-N00682/2018-19/12139,** who has consented vide his affidavit and Form-2 and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.

10. The application is otherwise complete in all respects.

11. On the basis of the pleadings of the parties and after hearing Ld. Counsel in Court, we are of the opinion that since the Corporate Debtor has committed default in payment of the outstanding debt of the Operational Creditor, we are satisfied that the petition under section 9 of the Code filed by the Operational Creditor deserves to be admitted and we ,therefore , pass the following orders:-

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O R D E R S

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, is hereby **admitted**.

ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. 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 Securitisation 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 rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the 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 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. Debasis Bhattacharya, IRP**, registered with Insolvency and Bankruptcy Board of India, having Registration No **IBBI/IP-N00682/2018-19/12139,** and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a 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/Applicant is directed to deposit **Rs. 50,000/- (Rupees Fifty Thousand only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

12. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

13. List the matter on **06/06/2022** for filing of **Progress Report**.

14. 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 (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on the 20th day of April, 2022

PJ.