

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, NEW DELHI
COURT-III

CP (IB)-2311(ND)/2019

IN THE MATTER OF:

M/S. ZEP INFRATECH LIMITED

.... *Operational creditor*

Versus

M/S. EARTH WATER LIMITED

.... *Corporate debtor*

SECTION

U/s 9 IBC code 2016

Order delivered on 15.02.2021

CORAM:

CH. MOHD. SHARIEF TARIQ, MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

PRESENT:

For the Applicant/OC : Mr. Anuj P. Agarwala, Advocate.

For the Respondent/CD : Mr. Sandeep Gosh, (AR).

ORDER

(Through Video Conference)

1. The Learned Counsel for the Operational Creditor is present. Authorize Representative for the Corporate Debtor is present. It is submitted by the Authorize Representative for the Corporate Debtor that the Corporate Debtor is admitting the liabilities.
2. Under Consideration is an application CP (IB)-2311(ND)/2019 filed under Section 9 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor Viz., *M/s. Earth Water Limited*, declare the Moratorium and appoint the Interim Resolution Professional.

3. It is stated in Part IV of the application that the total amount of debt is Rs.53,02,732.28/- as on the date of notice. The breakup of amount is also given which includes the principal amount of Rs.33,18,945.00/- and an amount of Rs.19,83,787.28/- as interest component @ 24% per annum.

4. It is on record that at an earlier point of time CP (IB) -1772/ND/2018 was filed by the Operational Creditor and vide settlement deed dated 15.02.2019 the parties have settled the matter and an order was passed by this Authority on 20.02.2019. The settlement deed dated 15.02.2019 is placed on record at page 72-75 of the typeset.

5. Further, the Corporate Debtor had handed over some cheques to the Operational Creditor, which had been dishonored due to insufficient funds in the account. The detail with regard to the dishonor of the cheques is placed on record at Page 77-79 of the typeset.

6. Thereafter, the present petition i.e., CP (IB) -2311(ND)/2019 has been filed and the Corporate Debtor has been given the opportunity to file reply but no reply was filed. However, an admission has been made about the liabilities by the Authorized Representative for the Corporate Debtor in this matter.

7. It is submitted by the Ld. Counsel for the Operational Creditor that the Corporate Debtor Viz., M/s. Earth Water Limited had approached the Operational Creditor for supply of PUF Panels and other materials manufactured by the Applicant/ Operational Creditor and various purchase orders were issued by the Corporate Debtor to the Operational Creditor for supply of such goods which were duly supplied and various invoices were raised upon the Corporate Debtor. The claim of the Operational Creditor has

been admitted by the Corporate Debtor vide settlement deed dated 15.02.2019 to the extent of Rs. 49,18,945/-.

8. It is already noted hereinabove, that the Authorize Representative for the Corporate Debtor namely Mr. Sandeep Gosh has accepted the liabilities on behalf of the corporate debtor. The Operational Creditor has not proposed the name of the IRP. The documents placed on record shows that the Corporate Debtor has defaulted in making the payment of the outstanding along with interest. The Operational Creditor has also fulfilled the requirement of Section 9 (3) (b) and the liability is already admitted by the Authorize Representative for the Corporate Debtor. Therefore, all the legal requirements are fulfilled, the application is **admitted**, and the commencement of the CIRP is ordered for the corporate debtor viz., M/s. Earth Water Limited, which ordinarily shall be completed within 180 days, reckoning from the day this Order is passed.

9. The Operational Creditor has not proposed the name of any Resolution Professional for appointment as Interim Resolution Professional ('IRP'), therefore, **Mr. Akhil Ahuja, registered with IBBI having Registration No: IBBI/IPA-001/IP-P02072/20520-2021/13213, Address: D-65, Ground Floor, ZBC - 001, Defence Colony, South, NCT of Delhi-110024 email id akhil@ahujainsolvency.com and mobile No. 9911331599** is hereby appointed as IRP. The IRP is directed to take charge of the CD's management immediately including Bank account. The IRP is also directed to cause public announcement as prescribed under Section 15 of IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.

10. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:-

- (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 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.

11. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

12. We hereby direct the Operational Creditor to pay a sum of Rs. 2,00,000/- to the IRP upon filing necessary declaration Form. It is with a view to meet out the initial expenses to perform the functions assigned to IRP in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The public

announcement shall be made by the IRP with in three days on receiving the copy of the order.

13. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the IBC, 2016.

14. The Learned Counsel for the Operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016.

15. The OC is also directed to communicate this Order to the Corporate Debtor, and the concerned RoC.

16. The Order is dictated and pronounced in open court through video conferencing in the presence of Ld. Counsel for the Operational Creditor and the Authorized Representative of the Corporate Debtor.

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(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

-Sdr

(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

Shammy

15.2.21