



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 5/CB/2023

In the matter of:

An application 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:

Chandan Lal Sahu, (Prop. Barbarik Transportation), having registered office at Shop No. 6, Near CMO Office, Bhagwanpur Road, Raigarh (C.G.) – 496 001;

...Petitioner/Operational Creditor

And

In the matter of:

Ecomaister Beads India Private Limited; having its registered office at B-3, Vrindavan Colony, Bhagwanpur, Dhimrapur, Bypass Road, Raigarh (C.G.) – 496 001.

...Respondent/Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances:

For Petitioner (s) : Mr. Sahasransu Sourav, Adv.
For Respondent(s) : Mr. Saswat K. Acharya, Adv.
Ms. S. Pholgu, Adv.
Mr. J. Joshi, Adv.
Mr. A. Agarwal, Adv.
Ms. J. Sahoo, Adv.
Mr. S. Agarwal, Adv.

Order reserved on: 09.05.2023
Order pronounced on: 15.05.2023



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ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. This petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“**IBC, 2016**” for brevity) by the Petitioner/Operational Creditor(**OC**) herein i.e., **Chandan Lal Sahu**, Proprietor of M/s Barbarik Transport for initiation of Corporate Insolvency Resolution Process (in short “**CIRP**”) against Respondent/Corporate Debtor (**CD**) i.e., **Ecomaister Beads India Pvt. Ltd.** on the basis of an alleged Operational debt of ₹ 2,60,98,019/- (Rupees Two Crore Sixty Lakhs Ninety Eight Thousand and Nineteen only)) as on 01/12/2021, due and payable by the Corporate Debtor to the Operational Creditor.
2. OC submits that on the request of CD, they had provided Hot Slag Transportation, Freight Services of PS Ball to CD i.e., Ecomaister Beads India Pvt. Ltd. Pursuant to services of transportation, corresponding invoices were issued to the CD. Details of invoices are as follows:

SL No.	Invoices No.	Dates	Amounts
1	PS1	01/04/2021	Rs.10,05,903.00
2.	PS2	01/05/2021	Rs. 9,91,775.00
3.	SLAG1	01/05/2021	Rs. 7,78,103.00
4.	SLAG2	01/06/2021	Rs. 29,08,584.00
5.	PS3	01/06/2021	Rs. 12,72,019.00
6.	PS4	01/07/2021	Rs. 7,76,348.00
7.	SLAG3	01/07/2021	Rs. 33,66,777.00
8.	PS5	01/08/2021	Rs. 6,43,968.00
9.	SLAG4	01/08/2021	Rs. 29,87,935.00
10.	SLAG5	01/09/2021	Rs. 33,87,514.00
11.	PS6	02/09/2021	Rs. 9,96,606.00
12.	SLAG6	01/10/2021	Rs. 30,57,366.00



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13.	PS07	02/10/2021	Rs. 8,17,750.00
14.	SLAG7	01/11/2021	Rs. 23,95,202.00
15.	PS08	02/11/2021	Rs. 7,12,169.00

3. OC states that the CD failed to make payments under the aforementioned invoices despite repeated reminders, pursuant to which the demand notice under Form 3 have been served on the CD dated 12/10/2022. Also, that the CD also accepted the due amounts of abovementioned invoices.
4. CD contends that the contents of the captioned application are false, frivolous and devoid of any merit and hence, the contents of the said application are wrong and denied in *toto*.
5. CD submits that it is a fact that the respondent has taken the services of Hot Slag Transportation and Freight Services of PS Ball from the OC, but the services which were provided by the OC was not up to the standard as decided between the CD and OC. At the time when services of transportation were received by the CD, issue was raised by the CD on the quality of services and the same was also accepted by the OC.
6. That also the demand raised by the OC is of Rs. 2,60,98,019/- but the said amount is disputed inasmuch as, the records and books maintained by the CD reveal the outstanding amount of only Rs. 2,04,83,733.83/- which was accepted by the CD, and who has assured that the due amount will be paid only in the near future. It is only since the CD is facing some financial issue, the OC has filed this application only as a means of recovery mechanism by taking advantage of the situation.
7. We heard the learned counsel appearing for the parties. Perused the case records. CD has not denied the debt. Its contention is that as per their books the outstanding amount of debt is only Rs. 2,04,83,733.83/- and not Rs. 2,60,98,019/- as has been claimed by the OC. CD has not produced any document/detail that any disputes have been raised by them prior to



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issuance of the Section 8 Notice. It is also apparent from their submissions that CD is facing certain financial issues.

8. We note that Debt and default to the tune of Rs. Rs. 2,04,83,733.83/- has not been denied by the CD.
9. Therefore, it is a fact that default, which is not in dispute, is of more than Rs.1.00 crore. Also, that CD has not denied the default. It has also mentioned about the financial issues being faced by them. There is nothing on record to establish that any prior dispute exists between the parties. The application is in order as per the Section 9 of the Insolvency and Bankruptcy Code, 2016. Hence, we are inclined to **ADMIT** this application.
10. The OC has proposed the name of IRP **Mr. Prasad Dharap** having **Registration No. IBBI/IPA-001/IP-P00702/2017-2018/11228** and **E-mail Id.: dharap65@rediffmail.com** residence at Plot No.47, "Prasad", Opposite Lendhra Park, New Ramdaspath, Nagpur- 440 010. There is nothing on record to show that any disciplinary proceeding is pending against the proposed IRP. This application is defect free.
11. We, therefore, consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor i.e., Ecomaister Beads India Pvt. Ltd.
12. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders: -

ORDERS

- (a) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **Ecomaister Beads India Private Limited.**



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- (b) Moratorium Order is passed for a public announcement as stated in Sec. 13 of the IBC, 2016. The 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 Sec.15. The public announcement referred to in clause (b) of sub-Section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (c) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (d) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (e) 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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- (f) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- (g) 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.
- (h) Necessary public announcement as per Section 15 of the IBC, 2016 may be made by the Resolution Professional upon receipt of the copy of this order.
- (i) **Mr. Prasad Dharap** having **Registration No. IBBI/IPA-001/IP-P00702/2017-2018/11228** and **E-mail Id.: dharap65@rediffmail.com** residence at Plot No.47, “Prasad”, Opposite Lendhra Park, New Ramdaspath, Nagpur- 440 010 is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency, as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- (j) We direct the Operational Creditor to deposit a sum of ₹ 2.00 lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.



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- (k) Directions are also issued to the suspended management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petition to the IRP, otherwise coercive steps to follow.
- (l) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
- (m) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.
13. **CP (IB) No. 5/CB/2023** to come up on 26.06.2023 for 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.

SATYARANJAN PRASAD

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Date: 2023.05.15 16:22:15 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN
RAJ

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MOHAN RAJ
Date: 2023.05.15 16:04:47 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this 15th day of May, 2023.

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