

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

C.P. (IB) No. 1573/KB/2019

In the matter of:

The Insolvency and Bankruptcy Code, 2016

And

In the matter of:

An application by Operational Creditor to initiate Corporate Insolvency Resolution Process under Sections 8 and 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:

Mr. Vinod Kumar Agarwal

...Operational Creditor/Petitioner

Versus

Quantum Concrete LLP

...Corporate Debtor/Company

Coram:

Shri Jinan K.R., Hon'ble Member (Judicial)

Shri H.C. Suri, Hon'ble Member (Technical)

For Applicant:

1. Mr. G. Kumar, Advocate
2. Ms. Pooja Jewrajka, Advocate

Date of pronouncement of Order: 01/01/2020

O R D E R

Per Shri Jinan K.R. Hon'ble Member (Judicial)

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "I & B Code") by Mr. Vinod Kumar Agarwal (hereinafter referred to as the Petitioner/Operational Creditor) for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against Quantum Concrete LLP & Ors. (hereinafter referred to as the "Corporate Debtor") as the Corporate Debtor has defaulted in paying INR 40,91,527/- (Indian National Rupees Forty Lakhs Ninety One Thousand Five Hundred Twenty Seven Only).
2. It is submitted that the Operational Creditor had supplied raw material to the Corporate Debtor from August 2017, namely, stone chips and sand at its RMC Plant and raised invoices/bills for the said material. For the entire period from 14.08.2017 to 31.12.2018, bills were raised amounting to Rs. 69,74,888/- which were accepted by the Corporate Debtor. The parties maintain a running and continuous account and on few occasions the Corporate Debtor made "on account" payments to the Operational Creditor to the tune of Rs. 28,83,361. Deducting the on

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account payments made by the Corporate Debtor, last of which was paid on 20.12.2018, a sum of Rs 40,91,527/- only is due and payable.

3. The Operational Creditor got the statutory notice dated 24.06.2019, under section 8 of the I & B Code, delivered upon the Corporate Debtor. The track report reflects that the said notice was duly delivered to the Corporate Debtor on 27.06.2019, however, the Operational Creditor did not receive any reply or notice of dispute from the Corporate Debtor.
4. The notice of this Petition was served in advance. However nobody appeared on behalf of the Corporate Debtor. Operational Creditor was directed to serve the notice again by post as well as by e-mail. The Petitioner filed an affidavit proving service of notice to the Corporate Debtor by post as well as e-mail. Since nobody appeared despite repeated notice, the Corporate Debtor was called absent and declared *ex parte* vide order dated 04.12.2019.
5. All the compliance for initiation of CIRP have been met with. The Applicant has produced and relied upon various documents to prove its case. Following are the documents relevant for the consideration of the case in hand:- An Affidavit under 9 (3) (b) affirming on oath that no notice regarding the prior dispute has been received by the Operational Creditor from the Corporate Debtor; Copies of Purchase Orders issued by the Corporate Debtor upon Operational Creditor; Copy of tax invoice for supply of goods issued by the Operational Creditor upon the Corporate Debtor; Copies of Ledger statements; Copy of statutory demand notice; Copy of Bank Statement of the Operational Creditor.

6. Heard the Ld. Counsel appearing for the Petitioner and perused the records. In the Light of the above said discussions, the application is hereby admitted under section 9 of the I & B Code upon the following directions:-

O R D E R

- a) 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, Quantum Concrete LLP is hereby admitted.
- b) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- c) 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.
- d) 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 Securitisation 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 the possession of the corporate debtor.
- e) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- f) 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.
- g) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- h) 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

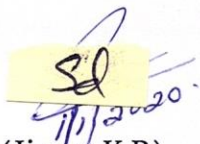
liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- i) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- j) Mr. Satish Patodia, having e-mail [spaindia@yahoo.com](mailto:spaindia@yahoo.com) and registration number being IBBI/IPA-001/IP-P-0127/2018-2019/12227, telephone no.9331045679 is 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.
- k) The Interim Resolution Professional/Resolution Professional to conduct CIRP of the Corporate Debtor as per time line prescribed under Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- l) 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.
- m) The Operational Creditor/Petitioner is directed to deposit 3,00,000/- (Rupees Three Lakhs Only) within one week from the 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.

- n) 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 IRP by Speed Post as well as through email.
- 7) List the matter on 03.02.2019 for the filing of the progress report.
- 8) 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)

  
(Jinan K.R.)  
Member (Judicial)

*Signed on this 1<sup>st</sup> day of January, 2020.*

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