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**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**Coram : (1) Shri Madan B. Gosavi,
Hon'ble Member (J)
&
(2) Shri Virendra Kumar Gupta,
Hon'ble Member(T)**

CP(IB) 1116/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Dayanand Agarwal carrying on the business in the name and style of **M/s.Sharadha Trading Co.**, a proprietorship concern having its office at P-48, Strand Bank Road, Kolkata-700007;

... Petitioner/Operational Creditor

-Versus-

In the matter of:

Nekka Oil and Fats Private Ltd., a private limited company incorporated under the Companies Act, 1956 and having its registered office at 17/A Ratan Sarkar Garden Street, 2nd floor, Kolkata- 700 007, West Bengal;

.... Respondent/ Corporate Debtor

Counsel appeared:

1. Mr. Amritam Mandal, Advocate] Corporate Debtor

2. Mr. A. Chaudhuri, Advocate]
3. Mr. A. Bhalotia, Advocate] Operational Creditor
4. Mr. T. Saraf, Advocate]

Date of Pronouncement of Order: 19.02.2020

ORDER

Per Shri Madan B. Gosavi, Member (J):

Dayanand Agarwal, proprietor of **M/s.Sharadha Trading Co.-** the Operational Creditor filed this application under section 9 of Insolvency & Bankruptcy Code, 2016 (for short, IBC) against **M/s. Nekka Oil and Fats Private Ltd.-** Corporate Debtor for initiating Corporate Insolvency Resolution Process (for short, CIRP) of the corporate debtor on a ground that corporate debtor committed default in paying operational debt of Rs.31,23,264/-.

2. Operational Creditor stated that it has sold and supplied rice refined oil to the corporate debtor by various invoices in between 02.05.18 to 21.05.2018. The corporate debtor received goods but did not pay the debt. Hence, on 27.05.2019, notice under section 8 of IBC was sent to the corporate debtor. It has been received by the corporate debtor on 31.05.2019 but the corporate debtor did not reply the notice pointing out any dispute nor paid the amount of debt. Hence, this proceeding is filed to start CIRP of the corporate debtor.

3. Corporate Debtor was served with notice of this application. It has appeared in the matter but did not file affidavit-in-reply, in spite of opportunities. On the date of hearing, none appeared for the corporate debtor. Hence, hearing of this application was proceeded ex parte against the corporate debtor.

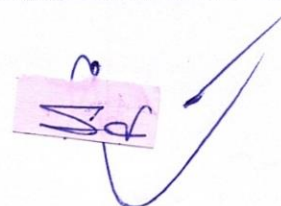




4. We have perused the materials on record. We heard the Ld. Counsel for the operational creditor. Operational Creditor produced on record all invoices at Annexure-C whereunder goods were sold and supplied to the corporate debtor. The operational creditor has also produced on record the work-sheet for calculation of outstanding dues as Annexure-A, which shows that by 31.05.2018, the amount of Rs.31,23,246/- was due and payable by the corporate debtor to the operational creditor. Operational Creditor also produced on record copy of demand notice dated 27.05.2019 sent under section 8 of IBC to the corporate debtor. The postal track report produced on record at page 28 shows that notice was duly served on the corporate debtor. Corporate Debtor did not reply the notice pointing out that the amount claimed is paid or there is a pre-existing dispute about the quality of goods supplied. All the above facts as stated by the operational creditor remain uncontroverted. From evidence on record, we hold that the corporate debtor committed default in paying the operational debt of more than Rs.31 lakhs, in spite of receipt of demand notice. Operational Creditor filed affidavit complying provisions of section 9(3)(b) and ((3)(c) of IBC.

5. Operational Creditor has suggested name of Mr. Neeraj Kejriwal of 56, Metcalfe Street, 2nd floor, Room No.2E, Kolkata-700013 having registration no. IBBI/IPA-001/IP-P00392/2017-18/10710 and Email Id. nkejriwal.ca@gmail.com for appointment as the Interim Resolution Professional. Application is defect free. The operational creditor proved both the facts that there is debt due and payable by the corporate debtor and the corporate debtor committed default, we admit the corporate debtor in CIRP. Hence, we pass the following order.

ORDER



- (i) 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 in respect of **M/s. Nekka Oil and Fats Private Ltd.- the Corporate Debtor**. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) 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.
- (iii) Moratorium under Sec.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 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);

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- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- iv) 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.
- v) 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.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- vii) 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 Sec.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.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.
- (ix) As the Operational Creditor has suggested name for appointment as the IRP, Mr. Neeraj Kejriwal of 56, Metcalfe Street, 2nd floor, Room No.2E, Kolkata-700013 having registration no. IBBI/IPA-001/IP-P00392/2017-18/10710 and Email Id. nkejriwal.ca@gmail.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and

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convening a Committee of Creditors for evolving a resolution plan. The IRP has submitted his written consent dated 14th June, 2019 in form-2, as per the proforma, wherein he has declared that there is no disciplinary proceeding pending against him.


x) The Operational Creditor to pay to IRP a sum of Rs.50,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

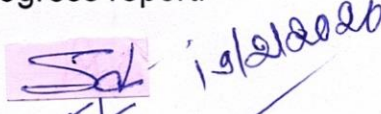
xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

xii) Registry is hereby directed to communicate the order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **07.04.2020** for filing progress report.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 19th day of February, 2020.