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IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

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C.P. (IB) No. 910/KB/2018

IN THE MATTER OF:

An application under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of Insolvency and Bankruptcy Code 2016 (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency process.

And

In the matter of:

M/s Bitumen Corporation (India) Pvt. Ltd., 27/28A, 2nd Floor, Nariman Bhavan, Backbay Reclamation, Nariman Point, Mumbai 400021.

Operational Creditor /Applicant

-Versus-

M/s Jangipur Bitumen Pvt. Ltd., Banipur, P.O. Miyapur, P.S. Raghunathganj, Murshidabad, Pin - 742235.

Corporate Debtor / Respondent

Date of hearing 27 January, 2020

Order Delivered on 04 February, 2020

Coram :

Madan B. Gosavi, Member (Judicial)

Virendra Kumar Gupta, Member (Technical)

For the Appellant / Petitioner : Mr. Suvam Sinha, Advocate

For Respondent : Mr. Pratyush Ghosh, Advocate

: Mr. Indradeep Basu, Advocate

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Per Virendra Kumar Gupta, Member (T)

1. This application has been filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016.

2. The facts, in brief, are that the Operational Creditor is primarily engaged in the business of supply of bitumen. The Corporate Debtor placed order for the supply of 100 MT of bitumen with payment term within 15 days. Interest was payable @ 24% for 16-30 days and @ 36% thereafter. The total supplies were made for a sum of Rs. 30,43,345/- for which part payment has been made and an amount of Rs. 19,43,345/- remain unpaid. The last payment was made by the Corporate Debtor on 16.4.2016. The outstanding debt including interest as on date of filing this application was Rs. 36,05,314/-. Notice under section 8 of IBC was issued by registered post which returned back with the comments "refused". A copy of the notice was served on e-mail as per records of MCA. The Corporate Debtor did not reply to such notice and after expiry of 10 days, this petition was filed.

3. The Ld. Counsel appearing on behalf of the Operational Creditor narrated the facts and drew our attention to the relevant pages of the paper book giving documents in support of his contention. On query regarding service of notice which is mandatory under section 8 of IBC 2016, the Ld. Counsel said that it was sent by post which was not taken by the Corporate Debtor. However, this was sent through e-mail id as per MCA records and hence, proper service of such notice had been executed.

4. On the other side, the Ld. Counsel on behalf of the Corporate Debtor pointed out specifically that the correspondence between the parties used to happen on the mail id of the Corporate Debtor (jangipurbitumen007@gmail.com) and the impugned notice had been sent on mail id 'saddambitumensale@gmail.com.'" which was his son's email id and not accessed by Corporate Debtor on a regular basis. It was also pleaded that this fact was known to the Operational Creditor and because of this, such email id was deliberately used to show proof of service of notice under

section 8 of IBC. It was also contended that the impugned invoices had been cancelled and withdrawn and hence, no debt was payable. Allegations regarding fabrication of documents were also made.

5. In the rejoinder, the Ld. Counsel for the Operational Creditor reiterated the earlier submissions.

6. We have considered the submissions made by both the sides and material on record. It is not in dispute that as per material records, the correspondence between the parties used to happen on the email id "jangipurbitumen007@gmail.com" However, the impugned notice is claimed to have been sent on "saddambitumensale@gmail.com" The Corporate Debtor has also not denied the receipt of such notice on this email id but as claimed that such email id was not accessed on a regular manner so that the claim of the Operational Creditor that notice under section 8 had been served in a proper manner was not valid. As per section 8 (1) demand notice of operational creditor with a copy of invoice demanding payment of amount involved in default has to be served in prescribed form and manner. As per Rule 5 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules 2016, the demand notice or copy of the invoice may be delivered to the Corporate Debtor at the Registered Office by Registered Post which was done but it has admittedly been refused by the Corporate Debtor. Thereafter, it has been served through electronic mail on the mail id of the son which has not been disputed. The only grievance which has been raised is that the mails received in this id were not checked regularly by the Corporate Debtor, which cannot be a plausible reason as this email id appears in the MCA record. Further, no material has been brought to the notice that the email id is not connected with the business of the Corporate Debtor. It has also not been claimed that his son was not connected with the Corporate Debtor either as Full Time Director, or Designated Director or Key Managerial Personnel. Thus, in our considered view, notice under section 8 has been served on the Corporate Debtor in terms of Rule 5 of IBBI (Application to Adjudicating Authority) Rules 2016. As regards the merit of the claim, no material has been brought on record to show that there

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really existed any dispute or that the amount of debt claimed, in fact, was neither due nor payable.

7. The application is otherwise complete and defect-free. Operational Creditor is not required to mention the name of the IRP under section 9 of the IB Code 2016. Hence we shall appoint Ms. Savita Agarwal, IP Registration No. IBBI/IPA-001/IP-P00101/2017-18/10201 email id savita_22@hotmail.com as IRP from the approved list of IBBI. The petition is admitted.

7. We order as under :

ORDER

- i. The application filed by the Financial Creditor under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, namely Jangipur Bitumen Pvt. Ltd. is hereby admitted.
- ii. We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. 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 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 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;

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- 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.
- v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during 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 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. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x. Ms. Savita Agarwal, IP Registration No. IBBI / IPA-001 / IP-P00101 / 2017-18 / 10201 email id savita_22@hotmail.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi) The Financial Creditor to pay a sum of Rs. 50,000/- (Rs.Fifty Thousand) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate

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Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.

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

xiii) Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

8. List the matter on 17.03.2020 for the filing of the **progress report**.
9. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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4/2/2020

(Virendra Kumar Gupta)

Member (T)

Signed on 04 February, 2020

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4/2/2020

(Madan B. Gosavi)

Member (J)