

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

C.P. (IB) No. 1733/KB/2018

In the matter of:

An application for initiation of corporate insolvency resolution process by an Operational Creditor 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:

M/S. GAINWELL COMMOALES PRIVATE LIMITED (Formerly Tractors India Private Limited), Godrej Waterside Tower-II, 7th Floor, Unit No. 705, Block-DP, Sector-V, Salt Lake, Kolkata 700091.

... Operational Creditor

Versus

In the matter of :

M/S. ROCKWELL RESOURCES EARTHMOVERS PRIVATE LIMITED, CIN: U10300wb2016ptc218562, having its registered office at h. No. 5, B.L. No. 17, P.O. + P.S. Jagatdal, 24 Parganas (North), Kolkata 743125.

.....Corporate Debtor

Date of pronouncement of order : 25/11/2019

sd

sd

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

Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record :

- | | | |
|------------------------------------|---|---------------------------|
| 1. Ms. Manju Bhuteria, Advocate |] | |
| 2. Mr. Saubhik Chowdhury, Advocate |] | For Operational Creditor. |
| 3. Ms. Meenakshi Manot, Advocate |] | |
| 4. Mr. Utsav Biswas, Advocate |] | |

ORDER

Per Shri Harish Chander Suri, Hon'ble Member (T).

1. By way of this application CP (IB) No. 1733/KB/2018, under Section 9 of the Insolvency & Bankruptcy Code, 2016 filed by M/s. Gainwell Commosales Private Limited through its Company Secretary and Head-Legal Mr. Saikat Bardhan, authorised vide Board Resolution dated 13th July, 2018, hereinafter referred to as the "Operational Creditor" seeks initiation of Corporate Insolvency Resolution Process in respect of M/s. Rockwell Resources Earthmovers Private Limited, a Corporate entity having its registered office at Kolkata, hereinafter referred to as the "Corporate Debtor", submitting that by order dated 7th May, 2018, this Tribunal had sanctioned the Scheme of Amalgamation between M/s. Goodearth Minetech Private Limited, M/s. Tractors India Private Limited, M/s. Impact Industrial Components Private Limited and M/s. Gainwell Commosales Private Limited, whereby all these entities had merged into M/s. Gainwell Commosales Private Limited, the operational creditor herein.





2. It is submitted that a sum of Rs. 1,17,74,231/- (Rupees One Crore Seventeen Lacs Seventy Four Thousand Two Hundred Thirty One Only) inclusive of agreed interest @ 18% p.a. had fallen due pursuant to transactions with the Corporate Debtor from 28.02.2017 till 28.06.2017. In response to the various Purchase Orders issued by the Corporate Debtor, the Operational Creditor had supplied CAT Oil and related products vide various invoices from time to time, details whereof have been mentioned in the application.
3. The Corporate Debtor M/s. Rockwell Resources Earthmovers Private Limited is the parent company amongst the other subsidiaries of Rockwell group, which are controlled by the same Directors. These invoices had been issued by Tractors India Private Limited which after its merger is known as Gainwell Commosales Private Limited, the Operational Creditor. This debt has arisen out of the supplies made on the basis of different purchase orders and invoices detailed in entry No. 1 of Part IV of Form 5.
4. The Operational Creditor has placed on record a copy of the master data of the Corporate Debtor indicating that the Company is sound and active. The Operational Creditor has filed a copy of demand notice issued in Form 3 to the Corporate Debtor demanding the outstanding debt to the tune of Rs.1,63,97,453.51 along with a sum of Rs. 40,42,795/- being interest accrued @ 18% p.a. from the date of

Sd/

Sd/

default till date of the notice. The notice was duly received by the Corporate Debtor and a reply dated 27th August, 2018 was sent by the Counsel for the Corporate Debtor whereby the amount claimed was disputed by the Corporate Debtor because a sum of Rs.29.00 lacs was stated to have been paid partly because a machine worth Rs.1,30,82,744/- was stated to have been unauthorisedly retained by the Operational Creditor due to which the Corporate Debtor claimed to have suffered a great loss because that machine was lying blocked in the custody of the Operational Creditor.

5. The Operational Creditor has also filed in support of its claim, copies of various purchase orders, confirmation of outstanding dues as on 2nd January, 2018 as per DIPL Limited, Bank statements of the Operational Creditor as issued by Kotak Mahindra Bank, copy of the demand letter and reply thereto etc. The Operational Creditor has not filed an affidavit under Section 9(3)(b) because according to the Ld. Counsel the Corporate Debtor has tried to raise unnecessary dispute which according to law cannot be entertained. To substitute, an affidavit under Section 9(3)(c), the Operational Creditor has filed copies of bank statements to prove that no payment has been received after service of demand notice.
6. The Corporate Debtor in reply affidavit has submitted that there is no debt due or payable by the Corporate Debtor to the Operational Creditor. There are serious disputed issues pre-existing between the

Sd

Sd

parties and the Corporate Debtor reserves its rights to initiate appropriate proceedings. It is submitted that the Corporate Debtor is engaged in the business of mining and excavation activities and have regular business with Eastern Coalfields Limited which is a Government of India concern. It is submitted that in order to execute the work, the Corporate Debtor has leased various machinery and equipment from various parties and had taken one CAT Excavator 349D2 on lease, which was damaged due to sudden water run down erupting from the cutting area at the work site on or about March 22, 2017, for which the Operational Creditor was called for repairing of the said machinery as it was still under the warranty period. The Operational Creditor took custody of the said machine for the purpose of repairing and replacement of the parts and a payment of Rs. 29.00 lacs has already been made to the Operational Creditor but the machine has not been returned in spite of various requests. It is stated that the Operational Creditor has created a monopolistic market with regard to the availability of the spare parts of the machine and their demands of higher prices are malicious, unjustified and arbitrary. The Corporate Debtor has further mentioned that the machinery is worth Rs.1,30,82,744/- and they are incurring a substantial amount of money payable on account of lease since April, 2017.

7. In its rejoinder the Operational Creditor has denied and disputed the various allegations made in the reply affidavit. It is submitted that the CAT Excavator 349D2 belongs to another entity namely Vijay





Construction Company and not an asset of the Corporate Debtor. Therefore, it is denied that the Corporate Debtor suffered any loss. It is submitted that the Corporate Debtor is trying to mislead this Tribunal with ulterior motive and mala fide intention. It is stated that in fact there is no defence to the claim of the Operational Creditor and the Operational Creditor has submitted that the application might be admitted.

8. We have gone through the pleadings and all the documents placed on record and referred to by the Ld. Counsel for the Operational Creditor. The Ld. Counsel for the Corporate Debtor has not been appearing in the proceedings after filing the reply. He neither appeared on 16th October, 2019 when the matter was listed for hearing, nor has he appeared on 21st November, 2019. So, in the absence of the Ld. Counsel for the Corporate Debtor, the matter had to be heard for being disposed of on its merits as the matter relates to the year 2018. The Operational Creditor has, however, not proposed the name of any resolution professional.
9. After hearing the Ld. Counsel for the Operational Creditor, we are convinced that the application is complete in all respect and the operational debt of Rs.1,17,74,231/- is due and payable by the Corporate Debtor to the Operational Creditor. The Corporate Debtor in its reply has not been able to establish any believable ground nor has any document or evidence been annexed with the reply to justify

its version of facts. We are however deprived of an opportunity to hear the Ld. Counsel for the Corporate Debtor for which two dates had been given for hearing, and finally finding nobody to argue on behalf of the Corporate Debtor it was decided to hear the matter and dispose it of on its merits and on the basis of the documents placed on record by the parties.

10. We find sufficient material on record to admit this petition and order initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor. We are also not convinced to uphold the contentions on the side of the corporate debtor regarding existence of dispute in the absence of supporting evidence available on the side of the corporate debtor. We, therefore admit the application upon the following :-

ORDERS

- i) 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, **M/s. Rockwell Resources Earthmovers Private Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

201

201

- 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;
 - (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);

Sd

Sd

- (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 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.
- ix) **Mr. Amit Choraria**, registered with Insolvency and Bankruptcy Board of India, having registration number **IBBI/IPA-001/IP-P01345/2018-2019/12129**, **E-mail** **ID:** **hmcsamitchoraria@gmail.com**, **Mobile No. 9830858715**, is

hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of 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.

- x) 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.
- xi) The Operational Creditor is directed to deposit Rs.3,00,000/- (Rupees Three Lakhs Only) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xiii). List the matter on **31st December, 2019** for filing of the progress report.

sd

sd

- xiv) Certified copy of the order/Free copy may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the, 25th day of November, 2019.

vc