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

**CORAM: Shri Madan B. Gosavi,
Member (Judicial)
&
Shri Virendra Kumar Gupta,
Member(Technical)**

CP(IB)No.1028/KB/2018

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 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

Pawan Kumar Nagraj Mehta, carrying on business under the name & style M/s. Rose Metals as a proprietorship concern having his head and principal office at Shop No. 1, Gagangiri Tower, Ground Floor, 1, Dr. Deshmukh Lane, V.P. Road, Mumbai-4;

..... Operational Creditor

In the Matter of:

M/s Mehrotra Engineering Works Pvt. Ltd., Bela Industrial Estate, P.S. Bela, Mauzafferpur, Bihar-842005;

..... Corporate Debtor

Counsels appeared:

For Operational Creditor

1. Mr. Susanta Dutta, Advocate
2. Mr. Sib Sankar Das, Advocate

For the Corporate Debtor

1. Mr. Sayan Roy Chowdhury, Advocate
2. Mr. Shashwat Mayak, Advocate

Date of pronouncement of order: 20TH December, 2019.

ORDER

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

1. This application under Section 9 of Insolvency and Bankruptcy Code, 2016 is filed by the **Mr. Pawan Kumar Nagraj Mehta – the proprietor of M/s. Rose Metals** and the Operational Creditor against **M/s. Mehrotra Engineering Works Private Limited – Corporate Debtor** to start Corporate Insolvency Resolution Process (in short "CIRP") of the Corporate Debtor on the ground that the Corporate Debtor committed default in paying operational debt of Rs. 48,65,178/- (Rupees Forty-Eight Lakh Sixty-Five Thousand One Hundred and Seventy-Eight Only).
2. The following facts are not in dispute: -
 - 2.1. The Operational Creditor filed various invoices to show that goods were sold and supplied to the Corporate Debtor. The goods i.e. non-ferrous metals and zinc ingots in the year 2016-17. The Operational Creditor raised the invoices. It is not in dispute that the goods were received by the Corporate. Corporate Debtor made a payment of the part of the debt leaving balance of some

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of Rs. 48,65,178/- (Rupees Forty-Eight Lakh Sixty-Five Thousand One Hundred and Seventy-Eight Only).

- 2.2. Since the Corporate Debtor did not pay the outstanding debt, demand notice dated 30.05.2018 under Section 8 IBC was served on the corporate debtor. It was received by the Corporate Debtor on 12.06.2018. The Corporate Debtor did not pay the debt nor pointed out any dispute, hence this proceeding is filed to start CIRP of the Corporate Debtor.
 - 2.3. The Operational Creditor did not suggest name of any Interim Resolution Professional and left the matter at discretion of this Authority.
3. Corporate Debtor served with the notice of this application. It appears though one Mr. Surendra Singh Prasad. He filed affidavit in reply.
 4. We have gone through that reply. At para 28 of the reply, the Corporate Debtor admitted that it has withheld 38,39,893/- (Rupees Thirty-Eight Lakh Thirty-Nine Thousand Eight Hundred and Ninety-Three Only) and not the amount of Rs. 48,65,178/- (Rupees Forty-Eight Lakh Sixty-Five Thousand One Hundred and Seventy-Eight Only). The Corporate Debtor in explanation for withholding the amount is that the goods supplied is of sub-standard quality. In short, the Corporate Debtor admitted the debt but raised dispute about the quality of the goods.
 5. We heard Ld. Counsel for the Operational Creditor and Ld. Counsel for the Corporate Debtor at length. We have gone through the evidence on record.
 6. To initiate CIRP of the Corporate Debtor under Section 9 IBC, it is mandate of law that the Operational Creditor has to serve on the

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Corporate Debtor notice of demand under Section 8 IBC. The law permits the Operational Creditors to reply the notice within 10 days by pointing out any existing dispute about the quality of goods/service rendered and it is to be done within 10 days of the receipt of the demand notice from the Operational Creditor.

7. In this case, record reveals demand notice received by the Corporate Debtor on 12.06.2008. It did not reply the notice within 10 days. The reply was sent one month thereafter i.e. on 12.07.2008. Moreover, evidence on record also shows that the Corporate Debtor raised the dispute about the quality of goods for the first-time during reply of notice. It also appears to us that the goods were sold and supplied to the Corporate Debtor in three consignments. Although the Corporate Debtor raised a dispute about the quality of goods after receipt of the first consignment, they ordered supply of further goods and Operational Creditor supplied the goods accordingly. From above facts, it appears to us that the dispute about the quality of goods as raised by the Corporate Debtor does not appear to be genuine and substantive.
8. The Operational Creditor has served notice of demand under Section 8 on the Corporate Debtor and thereafter filed this application. It is not in dispute that there is no real dispute exist in between the parties either about amount claimed or the goods received. The Operational Creditor complied with provisions of Section 9(3)(b) and 9(3)(c) of IBC. The application is defect free. It has not suggested name of any resolution professional for appointment of IRP but we appoint IRP from the list provided by the Insolvency and Bankruptcy Board of India. We pass the following order.

ORDER

- 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 Mehrotra Engineering Works 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 judgment, 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 Operational 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.

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- 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 operational 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) **Mr. Rajesh Kumar Jain**, E-Mail:-rkjain11@hotmail.com having registration no. IBBI/IPA-001/IP-P00179/2017-18/10358 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 Operational Creditor to pay sum of Rs. 1,00,000/- (Rupees One Lakh Only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.
- xii) In case, further funds are required by IRP/RP and in the event of non-provision thereof, IRP/RP can approach this Tribunal so that CIRP would not be hampered for want of funds.

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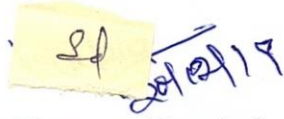
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xiii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

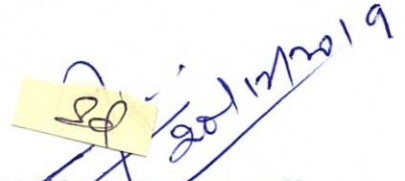
xiv) Registry is hereby directed under section 9(5) of the I.B. Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on **10.02.2020** for the filing of the progress report.

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



(Virendra Kumar Gupta)
Member(Technical)



(Madan B. Gosavi)
Member(Judicial)

Signed on this, the 20th day of December, 2019.

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