IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA

CP (IB) No. 745/KB/2020

In the matter of:

A petition under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Macwire Traders LLP
[IN: AAM-5145]

...Operational Creditor

Versus

P. Sarkar Fabricators Private Limited
[CIN: U45400WB2014PTC200763]

...Corporate Debtor

Order reserved on: 04 April, 2022

Order pronounced on: 26 April, 2022

Coram:

Shri Rajasekhar V.K.	**:**	**Member (Judicial)**
Shri Balraj Joshi	**:**	**Member (Technical)**

Appearances (through video conferencing):

For the Operational Creditor : Ms. Swapna Choubey, Advocate
Ms. Shreya Chaudhury, Advocate

ORDER

Rajasekhar V.K., Member (Judicial)

1. This Court convened through videoconferencing.

2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") by Macwire Traders LLP ("Operational Creditor"), a company incorporated under the provisions of the Companies Act, 1956 and represented by its Partner, Mr. Ajay Khemka, authorised by a Partner's Resolution dated 16

January 2020, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against P Sarkar Fabricators Private Limited (“Corporate Debtor”).

3. The Corporate Debtor is a private company limited by shares incorporated on 10 March 2014, having CIN: U45400WB2014PTC200763, under the Companies Act, 2013, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at 119(Old), 161 (New), Rafi Ahmed Kidwai Road, Kolkata-700055, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.

4. The present petition was filed on 17 March, 2020 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.10,24,470/- (Rupees Ten Lakh Twenty-Four Thousand Four Hundred and Seventy only) upto 20 January 2020.

5. The learned Counsel for the Operational Creditor states as follows:-

    a. The Operational Creditor supplied Ready Mix Concrete (“RMC”) of M10 and M25 Grade and the services of Pump (model 1405D) to the Corporate Debtor pursuant to the Purchase Order dated 15 December 2018 was placed for the supply of the RMC and Pump.

    b. The Corporate Debtor has defaulted in payment of Rs.10,24,470/- (Rupees Ten Lakh Twenty-Four Thousand Four Hundred and Seventy only) [principal sum of Rs.9,43,009/- (Rupees Nine Lakh and Forty-Three Thousand and Nine only) along with interest of Rs.81,461/- (Rupees Eighty-One Thousand Four Hundred and Sixty-One only) calculated at 18% p.a.] upto 20 January 2020.

c. Operational Creditor raised an invoice for Rs.12,93,009/- (Rupees Twelve Lakh Ninety-Three Thousand and Nine only). The Corporate Debtor made part payments but failed to pay Rs.9,43,009/- (Rupees Nine Lakh and Forty-Three Thousand and Nine only).

d. A demand notice under section 8 of the Code was issued on 20 January 2020, *via* post which delivered on 21 January 2020 and email on 21 January 2020 which was delivered. The Demand Notice was also sent to the Directors of the Corporate Debtor.

e. The Corporate Debtor replied to the Demand Notice on 03 March 2020.

f. The Date of Default has been given as 15 September 2019.

6. Apart from the aforementioned documents, the Operational Creditor has placed the following documents on record:

   a. Copies of Master Data of the Operational Creditor and the Corporate Debtor.

   b. Copies of purchase order dated 15 December 2018 and invoices; annexed to the petition and marked as Annexure A5 to Annexure A6 at pages 27 to 87.

   c. Copy of Bank Statement of the Operational Creditor from 27 February 2019 to 31 March 2019 and 14 May 2019 to 31 May 2019 ; annexed to the petition and marked as Annexure A13 at pages 179 to 183.

7. We have heard the learned Counsel for the Operational Creditor. On perusal of the record it is seen that the Corporate Debtor had entered appearance on 28 July 2021 and was directed to file affidavit-in-reply. The Corporate Debtor failed to appear on 24 September 2021 and 29

November 2021, the Corporate Debtor was declared *ex-parte.* Thereafter, Court notice dated 23 February 2022 was issued to the Counsel on record for the Corporate Debtor as a last opportunity to appear and file affidavit-in-reply. There was no representation for the Corporate Debtor and the Company Petition was heard *ex-parte* on 04 April 2022.

8. The Corporate Debtor had replied to the Demand Notice on 03 March 2020 and has raised certain disputes such as the quantity of material and delay in supply of material. Despite several opportunities given to the Corporate Debtor, the Corporate Debtor did not file an Affidavit-in-reply hence, it is difficult for us to ascertain whether there the dispute raised in the reply is genuine or not.
9. Further, if the quality of material was bad, the question is why did the Corporate Debtor make part payments on three dates i.e. 28 February 2019, 22 March 2019 and 16 May 2019. There appears to be no doubt that goods were provided and the Corporate Debtor has failed to make the payments.
10. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respects as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, at the relevant time.

11. It is, accordingly, hereby ordered as follows:-

    a. The application bearing CP (IB) No. 745/KB/2020 filed by Macwire Traders LLP, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **P. Sarkar Private Limited**, the Corporate Debtor, is **admitted**.

    b. There shall be a moratorium under section 14 of the IBC.

c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

e. **Mr. Tarun Kumar Ray,** registration number **IBBI/IPA-001/IP-P-01411/2018-2019/12228, email: tarun.ray123@yahoo.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

h. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

i. The Operational Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

j. The Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

k. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

12. **CP (IB) No. 745/KB/2020** to come up on 22 July 2022 for filing the periodical report.

13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

BALRAJ JOSHI

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Date: 2022.04.26 16:19:49 +05'30'

Rajasekhar V K

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Date: 2022.04.26 15:05:05 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

26 April, 2022

GGRB(LRA)