NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB) 1541 (ND) 2018

In the matter of

M/s Navkar Traders, Mr.Sanat Kumar, Proprietor .... Petitioner

V/s

M/s TDI INFRASTRCUTRE Ltd. .... Respondent

SECTION: 9 of IBC, 2016

Order delivered on02.01.2019

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

MS. DEEPA KRISHAN, HON'BLE MEMBER (T)

For the Petitioner (s) : Ms.Ajay Kumar Jain, Advocate

For the Respondents (s): None

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The petitioneras Proprietor of his business carried out under the name & style of M/sNavkar Traders , has prayed for initiation of the Corporate Insolvency Process of the Respondent/Corporate Debtor on grounds of its inability to liquidate its Operational Debt. As per averments, the Operational Creditor supplied building material for construction to the Corporate Debtor, a company, engaged in the business of developing Real Estate Property. The contention of theOperational Creditor is that they had supplied building material worth of Rs.2,93,14,869/- against which the Corporate Debtor has made the payment of Rs. 2,75,18,328/-. The last payment of Rs.7,90,764/- was made by the Corporate Debtor on 25.02.2016. As per the terms of supply, payment received after 30 days would attract interest @ 18% p.a. In acknowledgement of the subsisting liability the Corporate Debtor issued two cheques dated 28.10.2016 & 16.11.2016.The first cheque no. 979965 returned dishonoured on 29.10.2016. Thereafter, the Corporate Debtor asked the applicant not to present the second cheque and assured him that it would transfer the amountthrough RTGS, However no such step was taken.

2.In view of the failure of the Corporate Debtor to liquidate the outstanding liability, the Applicant/Operational Creditor issued a notice dated 10.10.2018 under Section 8 of the Code which was not replied to. This was followed by filing the present petition in the required format, along with an affidavit affirming that no notice of dispute has been raised. Compliance of the provision of Section 9(3)(c) has also been made.

3. The respondent was served through the process of the Bench and put in appearance through Mr. Aditya Sharma, Advocate.However no reply was filed on their behalf. Given the facts of the case that the averments made by the Operational Creditor remain unrebutted and in

the absence of any prior dispute the prayer made by the Operational Creditor merits consideration.

4. Accordingly, the petition is Admitted,Amoratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith, staying

> *(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 debt 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.*
>
> *Further,*

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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."

5. The Operational Creditor has not proposed the name of Insolvency Resolution Professional.

6. Accordingly, Mr. Aditya Kumar, Registration No.IBBI/IPA-001/IP-P0038/2017-18/10609 Email ID: aditya@ashwaniassociates.inMobile: 9855400428 is appointed as the IRP from the panel of eligible Resolution Professionals as submitted by IBBI. He is directed to take all steps as are statutorily required of him under the Code, specifically u/s 15, 17 & 18, 20 &21 and shall file his report before the Adjudicating Authority at the end of his tenure as an IRP..

7. To meet the immediate expenses, the Operational Creditor is directed to arrange a sum of Rs. 2 lakhs at the disposal of the IRP to be disbursed against the actual expenses incurred. Copy of the order be given/emailed to the Operational Creditor, Corporate Debtor and the IRP.

8. To come up for the report on 8th February, 2019

-Sd-

(Deepa Krishan)
Member (T)

-Sd-

(Ina Malhotra)
Member (J)