IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 1193/KB/2019

In the matter of:

An application by the Operational Creditor to initiate 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:

M/S. JJ PLASTALLOY PRIVATE LIMITED, CIN No. U24139UP1995PTC017711, of A-2, Badshah Bagh Colony, Maldahiya, Varanasi, Uttar Pradesh – 221002.

...Operational Creditor

Versus

In the matter of:

M/S. PRAYAAS PACKAGINGS PRIVATE LIMITED, CIN: U25200WB2009PTC137784, having its registered office at "Vijay Bhavan", 100, Diamond Harbour Road, Kidderpore, Kolkata 700023.

...Corporate Debtor

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

Counsel Present

1. **MR. SHAILENDRA JAIN, Advocate**]
2. **MS. SWATI AGARWAL, Advocate**] **For Operational Creditor**
3. **MR. SAUMYA KEJRIWAL, Advocate**]

MR. RUDRA PRASAD MOTILAL, Advocate] For Corporate Debtor

Sd

Date of pronouncement of Order: 13/03/2020

ORDER

Per Jinan K.R., Member (Judicial)

1. This is an Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") by **JJ Plastalloy Pvt. Ltd., (**hereinafter referred to as the "Operational Creditor") for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against **M/s. Prayaas Packagings Pvt. Ltd., (**hereinafter referred to as the Corporate Debtor/Respondent).

2. Brief facts of the case as per Form V is that, the Operational Creditor had supplied a total of 2500 Kg. of Colour Master Batch JJ Bend. Two invoices were raised by the Operational Creditor one each on 15.12.2017 and 29.01.2018 amounting to a total sum of Rs.5,79,970/- (Rupees Five Lakh Seventy Nine Thousand Nine Hundred Seventy Only). The Corporate Debtor had made a part payment leaving an amount of Rs. 3,79,970/- (Three Lakh Seventy Nine Thousand Nine Hundred Seventy Only) outstanding. The Corporate Debtor failed to pay the said outstanding amount in spite of various reminders from the Corporate Debtor. On 10.11.2018, statutory demand notice under section 8 of the Code was sent to the Corporate Debtor which was received by the Corporate Debtor on 20.11.2018. The debt fell due from 30.03.2018.

3. Notice of this application was served on the Corporate Debtor upon which the Corporate Debtor entered appearance. In spite of availing several opportunities, the Corporate Debtor failed to file reply affidavit and submitted that as per the Operational Creditor's invoices, all disputes

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under the respective invoices were to be subject to Varanasi Jurisdiction only.

4. Heard both the sides.

5. The Operational Creditor has produced and relied upon various documents to prove its case. Following are the documents relevant for the consideration of the case in hand:- An Affidavit under 9 (3) (b) affirming on oath that no notice regarding the prior dispute has been received by the Operational Creditor from the Corporate Debtor; Copies invoices, consignment notes/challans issued by the Operational Creditor upon the Corporate Debtor; Copy of Ledger statements; Copy of statutory demand notice; Copies of various emails demanding payment.

6. All the compliance for initiation of CIRP have been met with. Further, there is no payment of the unpaid operational debt and a certificate from the HDFC Bank has been produced by the Operational Creditor in that regard. The invoice along with a demand notice for payment to the Corporate Debtor had been delivered by the Operational Creditor and the proof thereof is annexed to the Application. The Corporate Debtor has not replied to the demand notice, neither had the Operational Creditor received any notice of dispute from the Corporate Debtor, an affidavit affirming the same is on record.

7. The only defence that the Corporate Debtor has raised orally during the arguments is that of jurisdiction. As per the Corporate Debtor, this Tribunal has no jurisdiction to entertain this application since, by virtue of a clause in the invoices raised by the Operational Creditor, all disputes under the respective invoices were to be subject to Varanasi Jurisdiction, therefore, the Operational Creditor should have filed a civil suit at

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Varanasi. However, I am of the Opinion that the said clause does not bar this Tribunal from proceeding further in the present Application since the nature and purpose of proceedings under the Code is entirely different from that of a civil suit. An application under the Code is filed for resolution of a debtor Company whereas, the remedy sought for in Civil Courts is entirely of a different nature. The provisions of the Code are attracted when there is a debt and its default, it has been established from the aforementioned discussions that there exists a debt and the Corporate Debtor has defaulted in its payment, therefore, the Code is applicable and this Tribunal has the jurisdiction to entertain the present application.

8. Moreover, the Tribunal can entertain like application as long as the registered office of the Corporate Debtor falls within its jurisdiction. In view of the evidence on record, it is seen that the amount became due and payable is on 30.03.2018. The present application has been filed within the period of limitation. I also hold that the oral defence taken by the Corporate Debtor is not at all tenable. The Operational Creditor has proved the debt as well as its default by the Corporate Debtor.

9. For all the above reasons, I allow this application and admit the Corporate Debtor in Corporate Insolvency Resolution Process by the following order.

ORDER

i) The Petition filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **Prayaas Packagings Pvt. Ltd.** is hereby **admitted**.

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ii) I hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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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 services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the 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) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x) **Mr. Sandip Kumar Kejriwal**, having IBBI Registration No. IBBI/IPA-002/IP-N00236/2017-18/10687, Email: sandipkej2@gmail.com, Mobile No.: 9831074124, is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of

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Creditors for evolving a resolution plan, subject to production of written consent within one week from the date of receipt of this order.

xi) The Interim Resolution Professional/Resolution Professional to conduct CIRP of the Corporate Debtor as per time line prescribed under Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

xii) 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.

xiii) The Operational Creditor/Petitioner is directed to deposit Rs.50,000/- (Rupees Fifty Thousand Only) within one week from the date of this order, in the ESCROW Account in SBI maintained by the Registrar NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional before the constitution of the CoC and the fees and cost can be withdrawn by the IRP/RP after the approval of CoC. Balance, if any, can be withdrawn by the Operational Creditor.

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 IRP by Speed Post as well as through email.

10. List the matter on **28.04.2020** for the filing of the progress report.

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11. 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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13/3/2020

(Jinan K.R)

Member (Judicial)

Signed on this 13th day of March, 2020.

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