

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

C.P. (IB) No. 1543/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. EXCEL TUBES INDIA PRIVATE LIMITED, 16, B.R.B. Basu Road, Canning Street, Kolkata 700001.

... Operational Creditor

Versus

In the matter of :

M/S. EASTERN NAPHTHA-CHEM LIMITED, having its registered office at Phase III, Plot No. 3, B/3P, Bokaro Industrial Area, Bokaro Steel City – 827 014.

.....Corporate Debtor

Date of pronouncement of order : 20/11/2019





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

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

Counsel on Record :

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|-------------------------------------|------------------------|
| 1. MR. GAURAV PURKAYASTHA, Advocate |] For Operational |
| 2. MR. ABHISHEK SIKDAR, Advocate |] Creditor |
| 3. MR. SUMIT BISWAS, Advocate |] |
| 1. MR. AWADHESH KUMAR RAI, Advocate |] |
| 2. MR. S. KHAN, Advocate |] For Corporate Debtor |

ORDER

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

1. This Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, has been filed by **M/s. Excel Tubes (india) Private Limited**, through its Authorised Representative Mr. Pankaj Saraf, hereinafter referred to as the "Operational Creditor" seeking initiation of Corporate Insolvency Resolution Process in respect of **M/s. Eastern Naphtha-Chem Limited**, a Corporate entity, having its registered office at Bokaro Steel City, hereinafter referred to as the "Corporate Debtor".
2. The Operational Creditor in its application submitted that it had supplied Seamless/Heavy Pipe/MS Black ERW in terms of verbal purchase orders placed and specifications provided by the Corporate Debtor and accordingly tax invoices and challans were issued by the Operational Creditor for which payment was made on ad hoc basis. In

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support of the transactions the Operational Creditor has placed on record copies of the invoices, challans, transport consignment notes and ledger sheets etc.

3. It is submitted that a sum of Rs. 2,53,569.78 (Rupees Two Lacs Fifty Three Thousand Five Hundred Sixty Nine and Paise Seventy Eight Only) had fallen due along with interest @ 18% p.a. thereby aggregating the total sum to be Rs.3,67,488.78 (Rupees Three Lacs Sixty Seven Thousand Four Hundred Eighty Eight and Paise Seventy Eight Only) as on 10th August, 2018. The Operational Creditor has filed a computation sheet having the details of debt and interest payable marked as **Exhibit "B"**.
4. It is further submitted that when the amount was not paid by the Corporate Debtor, the Operational Creditor issued a demand notice in Form 3 on 17th August, 2018 demanding the aforesaid amount which was duly received by the Corporate Debtor on 25th August, 2018 and a reply thereto was also sent by the Corporate Debtor. The Operational Creditor has also filed affidavit as prescribed under Section 9(3)(b) in which it is submitted that "although they tried to raise dispute with regard to the due amount but the same is false, frivolous and the same can be illustrated by way of documents available."
5. The Operational Creditor has also filed a certificate as required under Section 9(3)(c) of the Code to the effect that no payment of

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Rs.2,53,569.78 and any applicable interest has been received from the Corporate Debtor in the account maintained with ICICI Bank Limited from June 28, 2005. The Operational Creditor has not proposed the name of any Insolvency Professional.

6. In reply to the application, the Corporate Debtor has submitted that the application filed by the Operational Creditor is not maintainable as the Operational Creditor has failed to explain the inordinate delay in approaching this Hon'ble Tribunal and that the alleged debt includes time barred and disputed debt of Rs.2,44,236.78.

7. The Ld. Counsel for the Operational Creditor has taken us through all the documents placed on record in support of the claim. We find that the documents placed on record by the Operational Creditor are convincing and complete in all respect to meet the requirement of such a petition under the Code. The account between the parties was a running account and payments were being made periodically, bills of which are reflected in Exhibit 'B". According to the said calculation the interest has been charged @ 18% p.a. from the date of last invoice i.e. 10th August, 2018 onwards, even though the interest rate has been mentioned on the invoice as 30% p.a. "if the bills are not paid on due date." The last of such payment being on 29.02.2016, filing of this application on 16.11.2018, i.e. within 3 years and therefore this application is not barred by limitation. So also no

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pre-existing dispute falls under the purview of section 5 (6) of the Code stands proved in this case on the side of the corporate debtor.

8. In our view the Operational Creditor has been able to make out a good case for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor. We therefore, have no hesitation but to admit the petition with the following directions/Orders:-

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. Eastern Naphta-Chem 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.
- 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.

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- 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);
 - (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.

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- 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) **Ms. Meena Sureka, an Insolvency Professional registered with Insolvency and Bankruptcy Board of India, having Registration No. IBBI/IPA-001/ IP-P01422/2018-2019/12163, e-mail ID: ipmeenasureka@gmail.com, Mobile No. 9331011654 is 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

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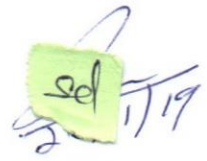
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identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

- xi) The Corporate Applicant is directed to deposit Rs. 50,000/- (Rupees Fifty Thousand 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.
- 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 **30/12/2019** for filing of the progress report.
- xiv) Certified copy of the order 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 20th day of November, 2019.

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