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**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA**

Coram:

Madan B. Gosavi, Member (Judicial)

Virendra Kumar Gupta, Member (Technical)

CP(IB) No. 992/KB/2019

Connected with

CA(IB) No.1615/KB/2019

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 & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

- And -

In the matter of:

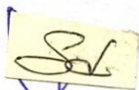
M/s Alipurduar Tea Co. Ltd. [CIN: L01132WB1912PLC002308], a company registered under the provisions of Companies Act, 1956, having its registered office at 2, Church Lane, 3rd Floor, Kolkata - 700 001.

... .. **Corporate Debtor**

- And -

M/s Jai Trading Company, a partnership firm duly registered under the provisions of the Indian Partnership Act, 1932, having its business premises at 16, Bonfields Lane, Kolkata - 700 001.

... .. **Operational Creditor**



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Counsels on Record:

- | | | |
|-----------------------------------|---|--------------------------|
| 1. Ms. Sonal Shah, Advocate | } | |
| 2. Ms. Kusharga Shah, Advocate | } | For Operational Creditor |
| 3. Mr. Aniket Chaudhury, Advocate | } | |
| | | |
| 1. Mr. Subhojit Saha, Advocate | } | For Corporate Debtor |
| 2. Mr. A.K. Awasthi, Advocate | } | |

Date of Hearing: 12th February, 2020

Date of Pronouncement of Order: 14th February, 2020

ORDER

Per Virendra Kumar Gupta (T)

1. This application has been filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short, "IBC, 2016") by M/s. Jai Trading Company - the operational creditor for initiation of Corporate Insolvency Resolution Process (in short "CIRP") against M/s. Alipurduar Tea Co. Ltd. - the corporate debtor as the corporate debtor has committed default in payment of outstanding debt. The amount claimed in default is Rs.8,00,428/- along with interest @ 14% per annum from the date of default till realisation of the dues.
2. The facts, in brief, are that the operational creditor supplied goods to the corporate debtor during financial year 2016-2017 and 2017-2018 to the tune of Rs.9,35,053/-. Corporate debtor made part payment. The net amount remains outstanding is Rs.8,00,428/-. The operational creditor sent a letter on 30th October, 2017 which was replied by the corporate debtor wherein certain disputes were raised and the corporate debtor agreed to pay Rs.4,00,214/- in full and final settlement of the account.
3. The Learned Counsel appearing on behalf of the operational creditor narrated the basic facts and drew our attention to the copies of the invoices and correspondence exchanged between the parties. It was also contended that notice


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under section 8 was duly served and replied by the corporate debtor. Our attention was also drawn to the Affidavit filed u/s 9(3)(b) of the IBC, 2016. It was also contended that the amount of debt had been admitted by the corporate debtor and which was more than Rupees One Lac, hence, this petition was liable to be admitted.

4. The Ld. Counsel appearing on behalf of the corporate debtor made twofold arguments. Firstly, it was contended that there existed dispute regarding quality as well as quantity prior to delivery of notice u/s 8 of IBC, 2016 and for this reason alone, the application filed by the operational creditor was liable to be dismissed. In this regard, he drew our attention to an email dated November 11, 2017 whereby the fact of dispute and offer made by the corporate debtor to settle such disputes by making full and final payment of Rs.4,00,214/- had been mentioned. In this regard, he further contended that the operational creditor had itself offered a discount of 20% and the corporate debtor merely asked for increase of the discount to 50% and worked out the amount which could be paid as full and final settlement. It was also pleaded that since the said settlement fizzled out, therefore, the dispute remained unresolved. The second argument was taken that in point no.6 of part-II of the Form 5 read with Board Resolution (copy at page 8), it was mentioned that the application had been filed for recovery of outstanding dues, hence, for this reason also, the application was liable to be dismissed as it was settled principle that IBC, 2016 was enacted for resolution of insolvency and not for recovery of dues. In this regard, he placed reliance on the decision of the Hon'ble NCLAT in the case of *Munish Kumar Bhunsali & Anr. Vs. Kotak Mahindra Bank Limited & Anr. - Company Appeal (AT) Insolvency No.1349 of 2019, paragraphs 51 & 52.*
5. The Ld. Counsel for the operational creditor contended that the correspondence referred to by the corporate debtor was, in fact, in support of its claim as it amounted to admission of debt and default. She further argued that the undisputed amount was more than Rupees One Lac, being the threshold limit for


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filing application u/s 9 of the IBC, 2016, hence, this application was well within the four corners of law. She also contended that the application was defined and filed by the people not legally trained and in commercial sense, hence, the mere use of the word 'recovery' at one place and which was picked from the column relating to authority of a person would not make this application liable for quashing as requisite conditions of IBC, 2016 were met.

6. We have considered the submissions made by both the parties and material on record. From the perusal of the correspondence between the parties, the dispute of the fact which emerges is that corporate debtor has offered to settle the dues at 50% of the outstanding amount as against offer of 20% discount by operational creditor. It is also not in dispute that in spite of the claim of defective goods, the goods have been retained and consumed by the corporate debtor. The amount offered in settlement is Rs.4,00,214/- which is more than Rs. One Lac, being the threshold limit to file an application u/s 9 of IBC, 2016, thus, we do not find any merits in the contentions of the corporate debtor as regards the pre-existing dispute since the undisputed amount makes the application eligible for admission. In this regard, we further hold that this document is relevant for the purpose of acknowledgement and merely because settlement is fizzled out as claimed, this document does not loses its significance or value for treating the same as an acknowledgement of liability of a debt in terms of provisions of Explanation (a) to Section 18 of Limitation Act, 1963. As regards the reliance placed by the corporate debtor on the decision of the Hon'ble NCLAT in the case of *Munish Kumar Bhunsali & Anr. Vs. Kotak Mahindra Bank Limited & Anr.*, is concerned, we find that the issue involved in that case was regarding acknowledgement of debt and the manner in which such acknowledgement of debt could be considered to be made and, therefore, the said decision has been given in the context of entirely different facts. Thus, the said decision in no way is applicable to the present case. As regards the other contention, we find that notice u/s 8 of IBC, 2016 has been duly served in accordance with the provisions of law and the application has been filed

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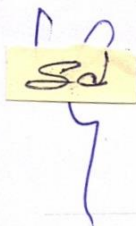
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in the prescribed form. Thus, one sentence from a column, in our considered view, does not make this application as filed for recovery.

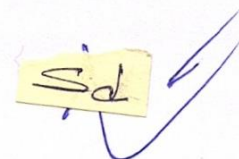
7. The application is otherwise complete in all respect and defect-free. The name of the IRP is not proposed as it is not mandatory in applications filed u/s 9 of IBC, 2016. We shall appoint IRP from the panel approved by IBBI.
8. Accordingly, we admit this application and order as under:-

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, Alipurduar Tea Co. Ltd., is hereby admitted.
- ii) We declare a moratorium and cause 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;



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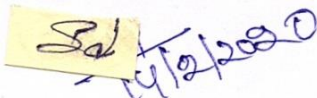
- b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action 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.
- 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) Mrs. Savita Agarwal, IRP Registration No.IBBI/IPA-001/IP-P00101/2017-18/10201, E-mail: savita_22@hotmail.com, is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a 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.

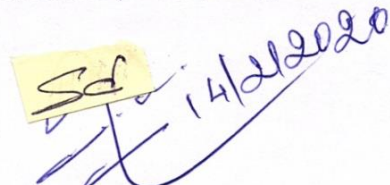
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- xi) The Financial Creditor to pay sum of Rs.50,000/- (Rupees Fifty Thousand only) to IRP as advance fees as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.
- xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- Xiii) List the matter on 8th April, 2020 for the filing of the progress report.
- xiv) Registry is hereby directed under section 7(7) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.
- xv) 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 14th February, 2020.