

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

C.P. (IB) No. 1685/KB/2018

In the matter of:

An application by 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. Soufflet Malt Alwar Private Limited, CIN: U15122DL2014FTC267278 with its address for correspondence being R.K. Khanna Stadium, Delhi Lawn Tennis Association, Gate No. 03, Africa Avenue, New Delhi-110029.

...Petitioner/Operational Creditor

Versus

M/s. Celebrity Breweries Private Limited, CIN: U15520BR2006PTC011911 having its registered office at Binoshiba House, Plot No. 655, Fraser Road, Patna, Bihar-800001.

...Respondent/Corporate Debtor

Sd

Sd

2. It is submitted that the Operational Creditor and the Corporate Debtor had entered into a Long Term Agreement dated 09..05.2018 for the period of 01.04.2017 to 31.05.2021, *inter alia*, for the purposes of conversion of barley into barley malt and related Job-work services. The Operational Creditor duly issued a total of 21 invoices against each completed deliverable arising out of the 6 purchase orders which were payable within 90 days from the receipt of each invoices.
3. That the Operational Creditor issued demand notice dated 12.11.2018 through post as well as email. There is no proof of delivery of the said notice, however, the Corporate Debtor has replied to the email stating that they had the intention to pay and that the payments were being made.
4. Notice of admission was served upon the Corporate Debtor. The Applicant filed an affidavit of service proving delivery of notice to the Corporate Debtor via post. So, delivery of notice to the Corporate Debtor is declared sufficient. Since nobody on the side of the Corporate Debtor appeared, thereby, the Corporate Debtor was called absent and declared *ex-parte* vide order dated 15.02.2019.
5. That during the course of proceeding it was submitted that the Corporate Debtor has made part-payment of Operational Debt to the tune of INR 80,69,288.00 (Indian Rupees Eighty Lakhs Sixty Nine

Sd

Sd

Thousand Two Hundred and Eighty Eight Only) on 09.01.2019. A Supplementary Affidavit was filed by the Operational Creditor upon serving the notice to Corporate Debtor to that effect.

6. It is found from the Supplementary Affidavit that upon the above said part payment, as on 09.01.2019, an amount of INR 9,30,759/- (Indian Rupees Nine Lakhs Thirty Thousand Seven Hundred Fifty Nine Only) is still due.
7. All the compliance for initiation of CIRP have been met with. The Applicant has produced and relied upon various documents to prove its case. The 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; A copy of Long Term agreement dated 09.05.2018 between the Operational Creditor and the Corporate Debtor annexed as **Annexure-D** to the application; Copies of 6 purchase orders raised by the Corporate Debtor on the Operational Creditor between 12.02.2018 and 08.06.2018 annexed as **Annexure-E** to the application; Copies of invoices raised against Corporate Debtor between 12.02.2018 and 14.06.2018 annexed as **Annexure-G (Colly.)** to the application; copy of payment notice sent by the Operational Creditor to the Corporate Debtor dated 11.10.2018 annexed as **Annexure-H** to the application; Copy of Bank Statement dated 15.10.2018 of the

Sd

Sd

Operational Creditor annexed as **Annexure-I** to the application; Copies of various emails dated 29.10.2018, 16.11.2018, 25.11.2018 and 03.12.2018 annexed as **Annexure-J, L, M and N**, respectively, to the application; Copy of balance sheet of the Corporate Debtor for the Financial Years 2016-2017 annexed as **Annexure-P** to the application; Copy of Bank Statement of the Operational Creditor dated 09.01.2019, showing receipt of the part-payment from the Corporate Debtor annexed as **Annexure-A1** to the Supplementary Affidavit; Copy of emails dated 10.01.2019, 11.01.2019 and 20.02.2019, along with the attached ledger statement and debit notes addressed by the Operational Creditor to the Corporate Debtor, between Corporate Debtor and the Operational Creditor annexed as **Annexure-A2, A3 and A4**, respectively, to the Supplementary Affidavit; Copy of statement of accounts of the Operational Creditor for the period commencing from 08.12.2018 to 31.05.2019 reflecting incomplete deposits.

8. Heard the Ld. Counsel appearing for the Applicant and perused the records. Having regard to the submission on the side of the operational creditor, and consideration of the documents above referred, we are satisfied that this application deserve an order of admission. The application is therefore liable to be admitted under section 9 of the I & B Code upon the following directions:-

Sd

Sd

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, Kolkata Electronics Private Limited is hereby **admitted**.
- 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;

Sd

Sd

- 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);
 - 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

Sd

Sd

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. Partha Pratim Ghosh**, residing at CB 108, Salt Lake, Sector – 1, Kolkata 700064, having Registration No. IBBI/IPA-001/IP-P00554/2017-2018/10984, e-mail cappghosh@gmail.com, Mobile No. 97478711022 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.
- xi) 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.
- xii) The Operational Creditor/Applicant is directed to deposit 5,00,000/- (Rupees Five Lakh Only) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench for the purpose of meeting

Sd

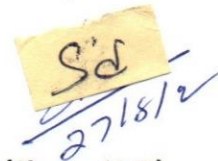
Sd

the preliminary expenses for initiating the CIRP by the Interim Resolution Professional within one week of the date of this order.

- xiii) 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 I.R.P. by Speed Post as well as through email.
- xiv) List the matter on **27.09.2019** for the filing of the progress report.
- xv) 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 (Technical)



(Jinan K.R)
Member (Judicial)

Signed on this 27th day of August, 2019.

/vc