

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No.436/KB/2019

In the matter of:

An application U/S. 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:

Jai Balaji Industries Limited, represented by Sougata Ghosh, having its Registered office at 5, Bentick Street, Kolkata- 700001;

... Operational Creditor

-Versus-

Bholanath Ingots Private Limited, having its registered office at 1, British Indian Street, Kolkata- 700069;

... Corporate Debtor

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Coram: Shri Madan B. Gosavi, Hon'ble Member [Judicial]

Shri Virendra Kumar Gupta, Hon'ble Member [Technical]

Counsel appeared:

1. Ms. Neha Somani]for the Operational Creditor
2. Ms. Sweta Mohanty] for the Corporate Debtor

Order pronounced on 07/08/2019

ORDER

Per Shri Madan B. Gosavi, Member (J)

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "I & B Code"] filed by the Operational Creditor viz., **Jai Balaji Industries Limited** for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against the Corporate Debtor viz., **Bholanath Ingots Pvt. Ltd.** claiming that an amount of **Rs. 6,85,00,000/- [Rupees Six Crore Eighty Five Lakhs only]** for unpaid operational debt due from the Corporate Debtor. That despite demand, the Corporate Debtor did not pay the outstanding amount and hence defaulted in payment of the

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operational debt and therefore, the Operational Creditor has filed this application.

2. The Operational Creditor states that the Operational Creditor had placed an order with the Corporate Debtor and pursuant to the order the Corporate Debtor issued a proforma invoice wherein one of the terms and conditions was to make 100% advance payment, a copy of the invoice is annexed with the application and marked as **Annexure "A-IV"**. The Operational Creditor made part payments towards the advance amounting to Rs. 6,85,00,000/-. The last part payment was made on 11.12.2012. Thereafter, the Corporate Debtor failed to supply the goods. The Operational Creditor further states that despite several correspondences between the Operational Creditor and Corporate Debtor, requesting the Corporate Debtor to supply the goods or refund of the advance made, the Corporate Debtor failed to supply the goods or refund the advance made. The Corporate Debtor in its reply dated 11.01.2016 to the demand notice sent by the Operational Creditor dated 21.12.2015 proposed to pay the debt in 11 monthly installments. However, the Corporate Debtor committed default and hence the Operational Creditor has filed this proceeding under Section 9 of the I & B Code, 2016.
3. Notice was sent to the Corporate Debtor. The Corporate Debtor entered appearance and filed his affidavit-in-reply on 06.06.2019.
4. The Corporate Debtor admits the default in the payment of the operational debt due. The Corporate Debtor further states that the default occurred due to stringent financial constraints.
5. Heard the Ld. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.

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6. The Operational Creditor produced on record all relevant evidence to establish the fact that there is an operational debt due and payable by the Corporate Debtor to the Operational Creditor and the Corporate Debtor committed default in paying such debts.
7. The Operational Creditor issued a demand notice U/S 8 of the I & B Code, dated 10.12.2018 upon the Corporate Debtor calling for payment of the debt which was delivered to the Corporate Debtor. The Corporate Debtor sent a reply dated 14.12.2018 to the Demand notice
8. The Operational Creditor has also filed an affidavit under Section 9 [3](b) of the I & B Code stating that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt.
9. The Operational Debtor has also filed Bank Statements till 31.12.2018, which reflect that no payments have been made by the Corporate Debtor, copies whereof have been annexed with the petition and marked as **Annexure "A-X"**.
10. The Corporate Debtor has also confirmed the balance in accounts as 31.03.2018 which can be seen from the copies of confirmation of accounts annexed with the petition and marked as **Annexure "A-VIII"**.
11. The Operational Creditor has proposed Mr. Rakesh Kumar Agarwal of 20, N.S. Road, Road No. 15, Block -A, Kolkata 700001, having Registration No. IBBI/IPA-001/IP-P00443/2017-18/10786 and email i.d. rakesh202@hotmail.com as Interim Resolution Professional [in short IRP]. There is nor record to show that any disciplinary proceeding is pending against him. The Operational Creditor in the case in hand, succeeds in proving all the ingredients of Section 9 (5)(i) of the I & B Code and therefore, the application is liable to be admitted.

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12. In view of the above-said discussion, the application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is admitted upon the following orders:-

ORDER

- a. 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, Bholanath Ingots Private Limited is hereby ***admitted***.
- b. We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- c. 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.
- d. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - i. 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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- ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
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- e. The services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
 - f. 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.
 - g. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
 - h. 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

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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.

- i. Necessary public announcement as per Section 15 of the I & B Code, 2016 may be made.
- j. Mr. Rakesh Kumar Agarwal, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having **Registration No.** IBBI/IPA-001/IP-P00443/2017-18/10786, **email i.d.:** rakesh202@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.
- k. The Operational Creditor/Applicant to pay Rs. 50,000/- [Rupees Fifty Thousand only] to the I.R.P. as payment of his fees as advance, as per Regulation 33 [3] of the IBBI [Insolvency Resolution Process for Corporate Persons] Regulations, 2016, the same shall be adjusted towards total fees.
- l. 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.
- m. Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the

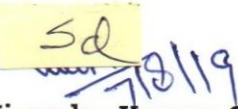
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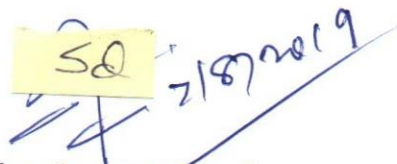
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Jai Balaji Industries Ltd. vs. Bholanath Ingots Pvt. Ltd.

Corporate Debtor and to the I.R.P. by Speed Post as well as through email.

13. List the matter on 23.09.2019 for the filing of the progress report.
14. 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 [T]


[Madan B. Gosavi]
Member [J]

Signed on this, the 7th day of August, 2019.