

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**KOLKATA**

**C.P. (IB) No. 10/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:**

**Syscraft Solutions Private Limited**, represented by an authorised representative Mr. Ayan Das, having its Registered office at Bengal Eco Intelligent Park, 13<sup>th</sup> Floor, Room 25A/B, Block-Em, Sector-V, Salt Lake City, Kolkata- 700091, West Bengal;

**... Operational Creditor**

**-Versus-**

**We Exel Technologies Private Limited**, having its registered office at 236, East Sinthi Road, Dum Dum, Kolkata- 700030;

**... 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. Mr. Avijit Ghoshal, Avocate ]for the Operational Creditor

**Order pronounced on 04/09/2019**

**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., **Syscraft Solutions Pvt. Ltd.** for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against the Corporate Debtor viz., **We Excel Technologies Pvt. Ltd.** claiming that an amount of **Rs. 14,69,187/- [Rupees Fourteen Lakhs Sixty Nine Thousand and One Hundred and Eighty Seven 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 operational debt and therefore, the Operational Creditor has filed this application.
2. The Operational Creditor states that the Corporate Debtor had placed orders for the supply of goods, the Operational Creditor delivered the said items and raised invoices for the same since 24.11.2017. Nine invoices were issued by the Operational creditor which were accepted by the Corporate Debtor. An amount of Rs. 5,50,000/- was given as an

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advance for the Financial Year 2017-2018 and thereafter the last payment was made on 24.04.2018. No payments have been made by the Corporate Debtor despite several reminders were sent to the Corporate Debtor.

3. The Corporate Debtor was served with the notice of this proceeding which was delivered. The Corporate Debtor entered appearance on 12.04.2019 through Counsel. Despite several opportunities the Corporate Debtor failed to file an affidavit in reply and hence an order for ex parte hearing against the Corporate Debtor was passed.
4. Heard the Ld. Counsel for the Operational Creditor and perused the records.
5. 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.
6. The Operational Creditor issued a demand notice U/S 8 of the I & B Code, dated 26.11.2018 upon the Corporate Debtor calling for payment of the debt which was delivered to the Corporate Debtor. No reply was given by the Corporate Debtor to the said notice.
7. 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.
8. The Operational Creditor has also filed Bank Statements till 05.05.2018 and ledger account details with respect to We Excel Technologies Pvt. Ltd..
9. The Operational Creditor has not proposed the name of an Interim Resolution Professional. 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.

10. 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, We Excel Technologies 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

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- execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- 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.
- 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

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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.

- i. Necessary public announcement as per Section 15 of the I & B Code, 2016 may be made.
- j. **Mr. Soumitra Bhowe**, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having **Registration No. IBBI/IPA-002/IP-N00793/2019-2020/12486**, **email i.d.: s\_bhowe@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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Corporate Debtor and to the I.R.P. by Speed Post as well as through email.

11. List the matter on 21.10.2019 for the filing of the progress report.
12. 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 4<sup>th</sup> day of September, 2019.*