IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- I
KOLKATA

CP(IB) No. 145 /KB/2021

In the matter of:

Under sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

Ritu Kejriwal, proprietrix carrying on business under the name and style Shree Krishna Trading Company, having office at Brindavan Garden, Building No. B6, 10th Floor, Unit No. 03, 98, Christopher Road, Kolkata- 700046 in the state of West Bengal.

.....Operational Creditor

-Versus-

Aanchal Cement Limited, a company incorporated under the Companies Act, 1956 and being a company within the meaning of Companies Act, 2013 and having Corporate Identification No- U26942WB1995PLC073703 and its registered office at Fatehpur Jagatdih Village Road, Sitarampur, Asansol, Burdwan -713359, in the State of West Bengal.

.... Corporate Debtor

Date of Hearing :27th April 2022

Date of pronouncing the order: 18th May 2022

<u>Coram:</u>

Shri Rajasekhar V.K., Member (Judicial)

Shri Balraj Joshi, Member (Technical)

<u>Appearances (via video conferencing):</u>

For Operational Creditor	:	1. Mr. Mainak Bose, Advocate
		2. Mr. Kanishk Kejriwal, Advocate
		3. Mr. Debashish Sharma, Advocate
For Corporate Debtor	:	1. Ms. Urmila Chakraborty, Advocate

2. Mr. Pranav Sharma, Advocate

ORDER

Balraj Joshi, Member (Technical):

1. This Court convened through video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by **Ritu Kejriwal**, carrying on business under the trade name and style of **Shree Krishna Trading Company** (**Operational Creditor**), seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Aanchal Cement Limited** ("**Corporate Debtor**").

Submissions on behalf of the Operational Creditor:

3. The case of the Operational Creditor is that pursuant to orders placed by the Corporate Debtor from time to time, duly sold, it supplied and delivered to corporate debtor various quantities of cement clinker to the Corporate Debtor.
4. It was decided that the Corporate Debtor will make payment within 15 days from the date of receipt of the said goods and in event of default to make timely payment, interest @ 18% would be levied. The Operational Creditor duly raised invoices with effect from 8th February 2020 to 24th February 2020 which was duly acknowledged by the Corporate Debtor. The amount outstanding on account of principal is ₹2,72,72,184.91 (Rupees Two Crore Seventy Two Lakh Seventy One Thousand One Hundred and Eighty Four and Paise Ninety One Only). However, the Corporate Debtor defaulted in the payment of the same. The date of default is stated to be 24th February 2020.
5. The Operational Creditor, by letter dated 14th August 2020, called upon the Corporate Debtor to pay the outstanding dues. In reply to the said letter, the Corporate Debtor issued a letter dated 24th August 2020, thereby acknowledging the debt and made a part payment of ₹2,50,000/- (Rupees Two Lakh Fifty Thousand only). After giving credit to the payment made by the Corporate Debtor a sum of ₹2,72,71,184.91 is still due and payable by the Corporate Debtor.

6. Thereafter, by reason of default on 24th February 2020, the Operational Creditor issued upon the Corporate Debtor a demand notice dated 15th April 2021 under section 8 of the Code. The Corporate Debtor replied to the said notice by a letter dated 26th April 2021 disputing the claims of the Operational Creditor.
7. The bank statements of Operational Creditor for a period of 1st February 2020 to 19th April 2021 reflect the transactions that have taken place between the parties. The total amount claimed to be in default is ₹3,26,81,204.91(Rupees Three Crore Twenty Six Lakh Eighty One Thousand Two Hundred and Four and Ninety One Paise Only) comprising of the outstanding principal sum of ₹2,72,71,184.91/- and interest amounting to ₹54,10,020/- (Rupees Fifty Four Lakh Ten Thousand and Twenty Only) calculated on the principal sum @18% per annum on and from 24th February 2020.

Submissions on behalf of the Corporate Debtor:

8. The submission on behalf of the Corporate Debtor is that the purported petition is not in proper form and it is not filed in terms of the provisions of the Code. The purported Demand Notice issued by the Operational Creditor dated April 15, 2021 is also not issued in accordance with the relevant provisions of the Code and the Rules and the Regulations and Forms framed thereunder.
9. The Goods supplied by the Operational Creditor were of inferior quality. It was discussed and agreed between the representatives of the Operational Creditor and the Corporate Debtor verbally that the Operational Creditor would give the Corporate Debtor discount for the inferior quality goods supplied. In view of supply of such sub-standard quality of goods, there exists genuine and bonafide disputes with regard to the alleged operational debt as claimed by the petitioner in the purported petition.
10. As the petitioner has supplied sub-standard quality of goods, the respondent has expressly rejected to undertake any further business with the petitioner in the meeting held on August 24, 2020. Despite being aware of such meeting held between the parties, the petitioner has grossly suppressed the same in the petition. There are pre-existing disputes between the parties herein.
11. Even though the goods supplied by the Operational Creditor were of inferior quality, the respondent in good faith requested the petitioner to provide some

more time for payment of its outstanding dues. The respondent has been going through serious financial stringency which has been aggravated due to COVID-19. Because of COVID-19, the respondent has suffered tremendous business loss and, as such, it failed to keep up with its payment commitment to the Operational Creditor.

12. By a letter dated August 24, 2020, the respondent had duly intimated the petitioner that due to the present industrial situation the respondent was facing financial difficulty. Even on that date, i.e. August 24, 2020, as a good gesture and in view of the long standing relationship, the respondent has made a part payment of ₹2,50,000/- vide bank transfer against the outstanding dues and has requested the petitioner to grant some more time to enable the respondent to clear the balance dues. The Operational Creditor promised that she would consider the financial stringency faced by the respondent especially in view of the business relationship, and that some more time will be granted to the respondent so that the respondent can clear the outstanding dues.
13. However, the Corporate Debtor was surprised and shocked to receive the purported Demand Notice under the said Code. The purported Demand Notice was issued in breach of the understanding between the parties, whereby, the petitioner assured the respondent that in view of the past business relationship and due to outbreak of COVID-19, the petitioner would grant more time.
14. The Corporate Debtor has claimed that the purported petition is filed not for insolvency resolution of the Corporate Debtor but as a recovery mechanism.

Analysis and Findings:

15. Heard the Ld. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.
16. The contention of the Corporate Debtor is that the petition is not maintainable due to the existence of pre-existing disputes. The Corporate Debtor, while replying to the demand notice issued by the operational Creditor mentioned that there was pre-existing dispute regarding the quality of goods supplied by the Operational Creditor and regarding the charging of interest by the Operational Creditor.

17. Since the Corporate Debtor has failed to bring on record any evidence to prove that the dispute regarding the inferiority of quality of the supplied goods was existing before the demand notice under section 8 was issued, the same cannot be taken into consideration.
18. On the other hand, the Operational Creditor, in the demand notice has called upon the Corporate Debtor to pay interest @18% per annum on the principal amount. However, the records before us fails to establish the basis for inclusion of the interest component in the demand notice. As such, the dispute raised by the Corporate Debtor regarding the same is valid apropos the interest component alone. There is no evidence to suggest any pre-existing dispute in regard to quality and quantity of the goods.
19. The principal amount due by the Corporate Debtor in itself is well above the minimum pecuniary threshold of ₹1 Crore, required to institute corporate insolvency proceedings under the Code. Further, the Corporate Debtor in its letter dated 24th August 2020 has expressed its inability to pay back the Operational Creditor due to the unhealthy market conditions and has requested for time to be granted to enable them to clear remaining dues. In doing so, the Corporate Debtor has admitted that there is a debt due from the Corporate Debtor to the Operational Creditor and simultaneously, its inability to pay the same.
20. In light of the above facts and circumstances, we are of the view that the instant petition successfully establishes that the Corporate Debtor is in default of a debt due and payable to the Operational Creditor. Further, the petition has been filed in the requisite form and affidavit in compliance under section 9(3)(b) has been made. As such, this petition is complete in all respects.
21. It is, accordingly, hereby ordered as follows:-
    a) The application bearing **CP (IB) No. 145/KB/2021** filed by **Ritu Kejriwal**, carrying on business under the name and style of **Shree Krishna Trading Company** (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating

CIRP against **Aanchal Cement Limited**, CIN: U26942WB1995PLC073703, the Corporate Debtor, is **admitted**.

b) There shall be a moratorium under section 14 of the IBC.

c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

e) **Ms. Mamta Binani**, registration number **IBBI/IPA-002/IP-N00086/2017-2018/10227**, email: **mamtabinani@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out her functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

h) The Operational Creditor shall deposit a sum of Rs. 3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

22. **CP (IB) No. 145/KB/2021** to come up on **25th July 2022** for filing the progress report.

23. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

BALRAJ JOSHI
Digitally signed by BALRAJ JOSHI
Date: 2022.05.18 17:13:13 +05'30'

Rajasekhar V K
Digitally signed by Rajasekhar V K
Date: 2022.05.18 18:48:42 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Signed on this, the 18th day of May, 2022

Suman M(LRA)