

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH, GUWAHATI

CP (IB) No.08/GB/2019

Under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:

M/s. Rosewood Projects (P) Ltd. ... Petitioner/Operational Creditor

-Versus-

M/s Amarnath International
Infrastructure (P) Ltd. ... Respondents/Corporate Debtor

Coram:

Hon'ble Mr Hari Venkata Subba Rao, Member (J)

Hon'ble Mr Ashutosh Chandra, Member (T)

For the Operational Creditor ... Mr H.K. Sarma, Advocate
.....

ORDER

Date of Order: 19th August, 2019

This is an application filed by the Operational Creditor (in short, OC) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, IBC) for initiating Corporate Insolvency Resolution Process (in short, CIRP) against the Corporate Debtor (in short, CD).

2. Brief facts of the application, as narrated by the OC, are as follows:

A. The OC is engaged in the business of underground constructional work in India and supplies mining, exploration and drilling machinery, cable

accessories, conductors and supreme quality of Drilltos's HDD Machine and Fibre Cable.

- B. An amount of Rs.8,03,573/- (Rupees Eight Lakhs Three Thousand Five Hundred and Seventy-Three only) is due and payable for/towards the value or price of the Spare Parts and Accessories of Drilltos's HDD Machine sold and delivered by the Operational Creditor to the Corporate Debtor not intending to do so gratuitously. It is submitted that all deliveries of goods were made to the Corporate Debtor and every delivery was duly accepted by them without any demur or protest.
- C. Consequently, the Operational Creditor raised various invoices of different dates towards the price of spare parts/goods sold and delivered to the Corporate Debtor. The details of sale invoices are as follows:
- i) invoice bearing no.RPPL/1718/09/030 dated 21st September, 2017 for Rs.58,88,000/-
 - ii) invoice bearing no.RPPL/1718/01/017 dated 15th January, 2018 for Rs.7,67,000 due and payable, as on dated aggregating Rs.66,55,000/-.

The said invoices were delivered to the Corporate Debtor and the same were accepted by the Corporate Debtor without any demur or protest whatsoever. Copies of the invoices raised by Rosewood Projects Pvt. Ltd. on the Corporate Debtor towards sale of spare parts in hereto annexed and marked as Annexure-II (Colly) (page 03 to 06).

The Corporate Debtor paid Rs.61,92,609/- out of the total amount of Rs.66,55,000/- but failed to further pay remaining amount of dues of Rs.8,03,573/- as on date.

D. The Operational Creditor has pursued the Corporate Debtor for payment of its outstanding dues on several occasions including letter dated 11th December, 2018 but to no avail. Copy of the aforementioned letter is annexed hereto and marked as Annexure-III (Colly) (Page 07to 07).

E. It is submitted that on 30th January, 2019, the Operational Creditor issued a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor demanding payment of unpaid operational debt of Rs.8,03,573/- (Rupees Eight Lakhs Three Thousand Five Hundred and Seventy-Three only) by the Corporate Debtor. A copy of the demand notice dated 30th January, 2019 issued by the Operational Creditor to the Corporate Debtor along with Postal Receipt are annexed hereto and marked as Annexure-IV (Colly) (Page 08 to 11).

3. The respondent/CD remained ex parte despite receipt of due notice. The advocate appearing for the applicant fairly submitted that subsequent to filing of the application, the OC received certain amount from the respondent/CD leaving an outstanding balance of Rs.3,41,182/- (Rupees three lakhs forty-one thousand one hundred eighty-two only) against the total amount of Rs.8,03,573/- (Rupees Eight Lakhs Three Thousand Five Hundred and Seventy-Three only). Since the amount claimed is more than Rs.1,00,000/- (Rupees one lakh only), this Tribunal has no option except to admit the above application.

4. Accordingly, the petition filed by M/s Rosewood Projects (P) Ltd. under Section 9 of IBC is admitted upon the following order:

ORDER

- (i) *The petition filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of M/s Amarnath International Infrastructure (P) Ltd.*

- (ii) *I hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.*
- (iii) *The 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 the 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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - 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 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 or 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 resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.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. Amit Pareek CS, with address at 4th Floor, Ram Prasad Complex, Chatribari, Guwahati-781001 with Registration No.IBBI/IPA-002/IP-N00413/2017-18/11205 (Mobile No.9864031935) with e-mail ID-amitpareek99@yahoo.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.*
- (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) *Registry is hereby directed under Section 7(7) (a) of the I.B. Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.*

(xiii) *The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016.*

5. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

sdr

Member (Technical)
Adjudicating Authority

sdr

Member (Judicial)
Adjudicating Authority

Dated, Guwahati the 23rd day of August, 2019
:Nkm/Deka//23-08-2019//