

**In the National Company Law Tribunal  
Kolkata Bench  
Kolkata**

**C.P. (IB) No. 153/KB/2019**

**In the matter of:**

An application for initiation of corporate insolvency resolution process by an 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. QUIPPA INFRASTRUCTURE LIMITED**, (formerly known as M/s. Quippo Construction Equipment Limited), a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at NAC Campus, Izzat Nagar, Kondapur Post, Cyberabad, Huderabad – 500084, Telengana.

**... Operational Creditor/Applicant**

**-Versus-**

**In the matter of:**

**M/s. DASCON SOURAV COMMERCIAL PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 289 Swamiji Sarani, Twin Tower, 2<sup>nd</sup> Floor, Block B, Kalindi 700048, Kolkata, West Bengal.

**... Corporate Debtor**

In the matter of :

M/S. QUIPPPO INFRASTRUCTURE LIMITED ] OPERATIONAL CREDITOR  
M/S. DASCON SOURAV COMMERCIAL PVT. LTD. ] CORPORATE DEBTOR

Date of pronouncement of order : 19/08/2019

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Counsel on Record :

1. MR. R.N. GHOSE, Advocate ]  
2. MS. ANKITA MNUKHERJEE, Advocate ] For the Operational Creditor

**ORDER**

Per Shri Jinan K.R., Member (Judicial).

1. The Operational Creditor M/s. Quippo Infrastructure Limited has filed this application under section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor M/s. Dascon Sourav Commercial Private Limited, alleging that the Corporate Debtor has committed default in payment of Rs.13,25,373/- (Rupees Thirteen Lacs Twenty Five Thousand Three Hundred Seventy Three Only) on account of service rendered by the Operational Creditor on the strength of an agreement dated 23.11.2015.

2. It is submitted that in compliance of the terms and conditions of the agreement, the Operational Creditor performed its obligation and raised invoices on the Corporate Debtor. However, the Corporate Debtor failed in payment of a sum of Rs. 13,25,373/- and thereby they are compelled to issue several legal notices demanding the amount. The Corporate Debtor not only failed to reply to the said notices but also failed to clear the outstanding dues to the Operational Creditor, thereby the Operational Creditor issued a demand notice dated 27.8.2018 as per Section 8 of the Insolvency & Bankruptcy Code to the Corporate Debtor claiming for the outstanding amount due.
3. The Corporate Debtor also failed to clear the outstanding dues to the Operational Creditor after receipt of the demand notice and therefore the applicant/Operational Creditor filed this application for initiating Corporate Insolvency Resolution Process as against the Corporate Debtor. The Operational Creditor has not proposed any Insolvency Resolution Professional (IRP).
4. In order to substantiate the above said contentions the Operational Creditor has produced copy of letter of authority proving the authority to move an application of this nature, the copy of agreement, demand notice as well as the letter and notice sent to the Corporate Debtor, statement of accounts of the Operational Creditor up to 27.05.2016 and affidavit in compliance of Section 9(3)(b).

5. Upon filing this application notices were issued to the Corporate Debtor however the Corporate Debtor did not turn up despite delivery of the notice. The Corporate Debtor called absent and declared ex-parte.
6. Heard the Ld. Counsel appearing for the Operational Creditor and perused the records.
7. This is an application filed under Section 9 of the I&B Code. What is to be proved by the Operational Creditor is that the debt claimed by the Operational Creditor is an Operational debt and that the Applicant is an Operational Creditor and that the Applicant has complied all the requirements to be meted out under Section 9 of the Code. The Applicant here in the case in hand demanded the outstanding amount evidently fallen due as per agreement entered into in between the Operational Creditor and the Corporate Debtor. In terms of the agreement the Operational Creditor has rendered service to the Corporate Debtor and the amount claimed by the Operational Creditor is found due to the Operational Creditor. The statement of accounts produced on the side of the Operational Creditor also add strength to the contention on the side of the Operational Creditor that the amount claimed by the Operational Creditor is the outstanding amount due from the Corporate Debtor and the statement of bank account (Axis Bank) also proves that the Corporate Debtor has not paid the amount as claimed by the Operational Creditor. So also an affidavit in support of Section 9(3)(b)

seen produced proving that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt.

8. Since the Operational Creditor has not proposed the name of a Resolution Professional the compliance of Section 9(5)(e) does not arise for consideration. Being satisfied with the documents placed on record by the Operational Creditor in support of its case I am convinced that the Operational Creditor has been able to successfully prove its case. The Corporate Debtor did not turn up for disputing the liability. Operational creditor otherwise proves that there is default in payment of the operational debt as claimed by the Operational Creditor. In the said circumstance this application is liable to be admitted. Accordingly, I admit the application upon the following orders:-

**ORDERS**

- 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, **M/s. Dascon Sourav Commercial Private Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

- iii) 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 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 the 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, suspended, or interrupted during 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) ~~PROPERTY IS OCCUPIED BY OR IN THE POSSESSION OF THE CORPORATE~~ 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 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) **Mr. Sanjit Kumar Nayak, an Insolvency Professional registered under Insolvency and Bankruptcy Board of India, having Registration No.**

**IBBI/IPA-003/IP-N00079/2017-18/10702,**                      **E-mail**                      **ID**  
**sknayak31@gmail.com**   **Mobile No. 9932002234** is hereby appointed  
as Interim Resolution Professional by this Tribunal for ascertaining the  
particulars of creditors and convening a meeting of Committee of  
Creditors for evolving a resolution plan.

- x) 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.
- xi) The Corporate Applicant is directed to deposit **Rs.2,00,000/-**(Rupees Two Lacs Only ) in the **ESCROW Account in SBI** to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP. This amount is to be released to the IRP/RP, subject to the approval of CoC.
- xii) 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 E-mail.

- xiii). List the matter on **20<sup>th</sup> September, 2019** for filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

*SD*  
*19/8/19*  
(Jian K.R.)  
Member (J)

Signed on this, the 19<sup>th</sup> day of August, 2019.

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