IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 1488/KB/2018

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:

Fast Cargo Movers, represented by its proprietor Subhash Chandra Ghosh, having its Registered office at Line No. 1, Kashidih, Near Sagar Hotel, Sakchi, Jamshedpur- 831001;

... **Operational Creditor**

-Versus-

Puneet Ispat Private Limited, having its registered office at 50, Chowringhee Road, 2nd Floor, Kolkata- 700071;

... **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. Nirmalya Dasgupta]
2. Pritha Basu]for the Operational Creditor

3. Md. Zohaib Rauf]for the Corporate Debtor

Order pronounced on 20/08/2019

ORDER

Per Shri Madan B. Gosavi, Member (J)

1. Fast Cargo Movers- the Operational Creditor has filed this application under Section 9 of the Insolvency and Bankruptcy Code, 2016 against Puneet Ispat Private Limited- the Corporate Debtor to initiate Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against **Puneet Ispat Private Limited-** the Corporate Debtor claiming that an amount of **Rs.8,61,100.50p [Rupees Eight Lakhs Sixty-One Thousand One Hundred and Fifty Paise only]** including interest of 15% p.a. is an 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.

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2. The Operational Creditor states that the Corporate Debtor had engaged the Operational Creditor for transportation of nut coke as a transport contractor and commission agent. The Operational Creditor raised bills after the completion of the work order, a copy of the bill is annexed with the application and marked as **Annexure "V"**. The Corporate Debtor has confirmed the outstanding operational debt in the Confirmation Accounts for the period from 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017. Since, the Corporate Debtor committed default in paying the operational debt, this proceeding is filed under Section 9 of the I & B Code,2016.
3. The Corporate Debtor was served with the notice of this proceeding. The Corporate Debtor in its reply denied any liability towards the Operational Creditor.
4. Heard the Ld. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor 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 02.04.2018 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.

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8. The Operational Creditor has also filed a certificate from the ICICI Bank as per Section 9[3](c) of the I & B Code that certifies that no payment has been received from the Corporate Debtor for the period 31.03.2016 to 10.05.2018.
9. The Corporate Debtor has not filed any evidence to support his contentions that there is no liability towards the Operational creditor.
10. The Operational Creditor has proposed the name of the Interim Resolution Professional as **Shri Rakesh 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. The written communication in Form 2, is annexed to the petition and marked as **Annexure "XI"**.
11. 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, Puneet Ispat 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

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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;
   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.

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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 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. **Shri Rakesh 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

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

12. List the matter on 14.10.2019 for the filing of the progress report.

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

Sd 20/8/19

[Virendra Kumar Gupta]

Member [T]

Sd 20/8/2019

[Madan B. Gosavi]

Member [J]

Signed on this, the 20th day of August, 2019.