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**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**Coram : (1) Shri Madan B. Gosavi, Hon'ble Member (J)
(2) Shri Virendra Kumar Gupta, Hon'ble Member(T)**

CP (IB) No. 546/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

M/s. Tata Hitachi Construction Machinery Company Private Limited, a company registered under the Companies Act, 1956, having its registered office at "Jubilee Building", 45, Museum Road, Bangalore 560025, Karnataka, India and its Regional Office at P.O. Nibra-South, Near Ankurhati Check Post, P.S. Domjur, NH-6, Dist-Howrah, West Bengal- 711 409; having its registered office at 5, Russel Street, First floor, Kolkata- 700 071

... Applicant/Operational Creditor

-Versus-

In the matter of:

M/s. Earth Mover Consultancy Private Ltd., a company Registered under the Companies Act, 1956, having its registered office at Plot Number-3 and 5, Phase-V, Adityapur, Kandra Road, Usha More, Gamharia, Jamshedpur-832 109, Jharkhand
CIN: U27100JH1998PTC008560;

... Respondent/Corporate Debtor

Counsel appeared:

1. Mr. Vijay Nath Jha, Advocate] For Operational Creditor

Date of Pronouncement of Order: 21.10.2019

ORDER

Per Shri M. B. Gosavi, Member(J):

M/s.Tata Hitachi Construction Machinery Company Private Limited - the Operational Creditor filed this application under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **M/s. Earth Mover Consultancy Private Limited** – Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying the operational debt of Rs.37,30,65,000/-

2. It is stated that corporate debtor was the dealer of the operational creditor. Operational Creditor supplied various models and equipment of construction machineries and raised invoices. Corporate Debtor used to make part payment. However, on 31.07.2015, the outstanding amount of Rs.28,05,21,316/- remained unpaid against the corporate debtor. Since the corporate debtor did not pay the amount, the operational creditor filed arbitration proceeding bearing no.PDA/1/2016 against the Sole Arbitrator, as the agreement between them provides for that. Sole Arbitrator by order dated 07.05.2018 directed the corporate debtor to pay total sum of Rs.37,49,58,750/- to the operational creditor alongwith the interest. In spite of that, the corporate debtor did not clear the outstanding. The Corporate Debtor committed the default in paying the operational debt. This proceeding is filed to start CIRP of the corporate debtor.

3. The Corporate Debtor could not be served with the notice by ordinary way either by speed post or by email. Hence, we directed the operational creditor to

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publish a notice in the leading newspaper having wide circulation in the area where the registered office of the corporate debtor is situated. Accordingly, operational creditor published a notice in Business Standard dated 09.08.2019. In spite of due publication of notice, corporate debtor did not appear in the matter. Hence, we directed the application to proceed ex parte against the corporate debtor.

4. We heard the Ld. Counsel for the Operational Creditor. Operational Creditor has filed Annexure "E", the award passed by the Sole Arbitrator. Perusal of it shows that the Arbitrator directed the corporate debtor to pay the operational creditor sum of Rs.37,49,58,750/-. It is undisputed on record that the award passed on the basis of the contention of the operational creditor that corporate debtor did not pay price of the goods. Hence, we hold that it is the operational debt which remained unpaid as the corporate debtor committed default in paying the same. The operational creditor sent the corporate debtor notice under section 8 of I&B Code. It was sent by speed post. Postal Track report shows that notice was delivered to the address of the corporate debtor. Operational Creditor also sent notice by email. In short, notice of demand is delivered but the corporate debtor did not reply the notice nor paid the amount.


5. From materials on record, we hold that the operational creditor proved that there is operational debt due and payable by the corporate debtor and the corporate debtor committed default in paying the operational debt, in spite of receipt of demand notice. Operational Creditor did not suggest the name of IRP and the matter is left at the discretion of this authority. This authority, as per the Panel of Insolvency Professionals recommending names for appointment as IRP and Liquidator for Corporate Debtor, we are proposing the name Mr. Pramod Kr.



Singh for appointment as the IRP. This application is defect-free. Hence, we admit the corporate debtor in CIRP by the following order:

ORDER

- (i) The application filed by the Operational Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of Corporate Debtor, **M/s. Earth Mover Consultancy Private Ltd.** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) 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 Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.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.

iv) 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.

v) 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.

vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.

vii) 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 Section 33, the moratorium shall cease



to have effect from the date of such approval or liquidation order, as the case may be.

viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.

(ix) As the Operational Creditor did not suggest any name for appointment as the IRP and they have left it open for the Tribunal to suggest, Shri Pramod Kumar Singh (Mob.9334611489) having registration no. IBBI/IPA-002/IP-N00678/2018-2019/12039 and email Id. pramodip09@gmail.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan. Proposed IRP has to submit written communication in Form-2, within two weeks from the date of his appointment as the IRP.

x) The Financial Creditor to pay to IRP a sum of Rs.1,00,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016


xii) Registry is hereby directed under section 7(7) of the I&B Code, 2016 to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

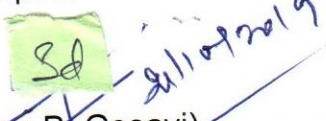
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Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **09.12.2019** for filing progress report.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 21st day of October, 2019.