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

C.P. (IB) No. 1542/KB/2018

IN THE MATTER OF:

An application 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:

Vipul V. Agarwal HUF carrying on business in trade name of M/s. Balaji Metals, shop No. 2, Ground Floor Agrasen Bhawan, 251 Thakurdwar Road, B.J. Marg, Mumbai - 400 002.

.....Operational Creditor / Applicant

And

IN THE MATTER OF:

Gontermann - Peipers (India) Ltd., Diamond Harbour Road, P.O. Pailan, South 24-Parganas, Kolkata - 700 104.

....Corporate Debtor / Respondent

CORAM:

**Shri M. B. Gosavi., Member (Judicial)
Shri V.K. Gupta, Member (Technical)**

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COUNSELS ON RECORD:

1. Mr. Dhiren Sharma, Adv.
2. Mr. A. P. Agarwal, Adv. }.... Operational Creditor
3. Ms. Meenakshi Mandi, Adv.

1. Mr. Shawak Mitra, Adv.
2. Ms. Neha Somani, Pr. CS } Corporate Debtor

Date of pronouncement of order: 11/12/2019

ORDER

Per M.B. Gosavi, Member (Judicial)

M/s. Balaji Metals - proprietary concern (Unit of HUF) filed this application under Section 9 IBC against Gontermann - Peipers (India) Ltd. to start CIRP of the Corporate Debtor in the ground that Corporate Debtor committed default in payment of operational debt of Rs. 22,85,363/-.

2. The following fact are not in dispute:

- a) By various purchase orders dated 20.06.2016, 28.12.2016 and 18.04.2017, the Operational Creditor sold and supplied the Corporate Debtor Forge Blank i.e. used iron steel rolls. The Corporate Debtor paid some amount leaving balance of Rs. 23,85,363/- to be unpaid. On 24.04.2018, the Operational Creditor

served on the Corporate Debtor demand notice under Section 8 IBC. The Corporate Debtor replied the same admitting the debt but raising point that goods sold were of inferior in quality.

b) According to the Operational Creditor, the Corporate Debtor committed default in paying operational debt, hence, this application filed to start CIRP of the Corporate Debtor. The Operational Creditor did not suggest the name of IRP and left the matter at the discretion of this authority. Operational Creditor has complied with the provision of Section 9 (3) (b) and 9 (3) (c) of the IBC.

c) The Corporate Debtor served with the notice of this application. It has approved its authorized signatory Mr. Ranatosh Roy Chowdhury. He filed affidavit in reply. We have gone through the same. It appears that he raised two defenses, (1) this application is not maintainable as it has been filed by the HUF which cannot file such application being not a judicial person, (2) the goods sold and supplied was of inferior quality.

3. We heard the Ld. Counsel for the Operational Creditor and Ld. Counsel for the Corporate Debtor. We consider the evidences on record. We have perused the application filed under Section 9 of IBC under rule 6 of IBBI (Application to Adjudicating Authority) Rule, 2016. It has been filed by one Mr. Vipul V Agarwal the Proprietor M/s. Balaji Metals and

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representative of the HUF. From title of this application it is crystal clear that this application is, in fact, filed by individual and not by HUF as contended by the Corporate Debtor. It is maintainable under Section 2 (g) of IBC. We find no merit in this defense of the Corporate Debtor.

4. The Corporate Debtor admitted in notice reply dated 10.05.2018 that since the companies running under Financial stringency. It is unable to pay the debt etc. We hold that debt and its default is admitted by the Corporate Debtor. It is not in dispute that the Operational Creditor served on the Corporate Debtor notice under Section 8 of IBC before filing this application. The debt is not time barred.

5. The Corporate Debtor in its reply dated 10.05.2018 contended that the goods supplied were of inferior quality. However, there is nothing on record to show that such dispute was raised by the Corporate Debtor before receipt of notice under Section 8 of IBC. It appears to us that dispute about quality of goods raised by the Corporate Debtor after thought and to void or deny the payment of the operational debt.

6. The Operational Creditor complied the provisions of Section 9 (3) (b) and 9 (3) (c) IBC. Even otherwise there is no dispute that the Corporate Debtor did not pay operational debt and it did not raise any dispute about the quality of goods at earlier point of time. The Operational Creditor did not suggest the name for appointment of IRP.

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Hence, we appoint Mr. Raj Singhania having registration No. IBBI/IPA/001/IP-P-188/2017-18/10367. We pass the following order:

ORDER

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, Gontermann - Peipers (India) Ltd, is hereby admitted.

ii. We 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

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execution of any judgment, 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 Operational 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 Operational sector regulator.

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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 Section 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.

ix. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x. Mr. Raj Singhanian, IP Registration No. IBBI/IPA/001/IP-P-188/2017-18/10367, E-mail ID: rajsinghanian-ca@yahoo.co.in Mob. No. 9830227678 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

xi. The Operational Creditor to pay sum of Rs. 50,000/- (Rupees Fifty Thousand only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case

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further funds are required during Corporate Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.


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

xiii. Registry is hereby directed under section 7(7) 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.

7. List the matter on 31/12/2019 for filing of the progress report.

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


(V.K. Gupta)
Member (Technical)


(M.B. Gauravi)
Member (Judicial)

Signed on this, the 11th day of December, 2019.

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