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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-323(ND)2019

In the matter of

MR. RATAN SINGH
R/o - B-219, Gali No. 8,
Ajay Colony, Surya Vihar - III,
Sehatpur, Faridabad - 121003

.....Operational Creditor

V/s

THEME EXPORT PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT:
B-25/1, Okhla Industrial Area Phase- II,
New Delhi -110020

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 29.08.2019

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Mr. Ravneet Singh for the Petitioner

Mr. Mudit Gupta for the Respondent

ORDER

Per Ms. Sumita Purkayastha (Member Technical)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.
2. The petitioner was employed with the Respondent company and has unpaid salary dues recoverable from the Corporate Debtor. He has therefore filed this petition as an Operational Creditor praying for



initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate here claim of Rs. 2,48,660/-.

3. As per averment the Operational Creditor was appointed on 09.07.2012 and provided continuous service till 20.12.2018. The Corporate Debtor did not pay the monthly salary to the Operational Creditor for the months of August,2018 to November, 2018 and partial salary for the twenty days of work in the month of December, 2018, totaling to Rs. 1,81,160/-. The Corporate Debtor has further failed to pay the statutory gratuity to Operational Creditor totaling to Rs. 67,500/-.

4. The Operational Creditor has claimed as detailed as under: -

Particulars	Amount (Rs.)
Gratuity	67,500/-
Salary Dues for the month of August, September, October and November 2018	1,56,000/-
Partial Salary for the twenty days of work in December, 2018	25,160/-
Total	2,48,660/-

5. The Operational Creditor issued the demand notice dated 03.01.2019 as required under Section 8 of the Code was issued, demanding a total sum of Rs. 2,48,660/-.



6. In view of the Corporate Debtor's failure to reduce or liquidate its liability, the present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) and 9(3)(c) of Code are on record to corroborate his case.
7. Pursuant to the Court notice issued to the Corporate Debtor, they appeared in court and admitted the outstanding liability but expressed their inability to pay on account of financial crisis. In view of the unqualified admission of the operational debt by the Corporate Debtor, the prayer of the Operational Creditor merits consideration. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

(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 debt or 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 Securitisation and Reconstruction of Financial Assers and Enforcement of Security Interest Act, 2002;

By



(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.

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

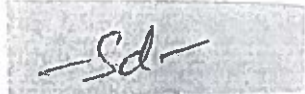
(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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."

8. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Vikram Bajaj, an Insolvency Professional, registration no. IBBI/IPA-002/IP-N00003/2016-2017/10003 email- bajaj.vikram@gmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.



9. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
10. Copy of the order be sent to both the parties as well as to the IRP.
11. To come up on for further consideration.



Sumita Purkayastha
Member (T)



Ina Malhotra
Member (J)

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04/09/19
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
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