

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram: 1. Shri Madan B. Gosavi, Hon'ble Member (Judicial)
2. Shri Virendra Kumar Gupta, Hon'ble Member (Technical)

C.P. (IB) No. 50/KB/2019

In the matter of:

An application to initiate Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016

-And-

In the matter of:

M/s. Action Construction Equipment Limited, having its registered office at Dudhola Link Road, Village Dudhola, Palwal, Faridabad, Haryana – 121102.

... Applicant/Operational Creditor

-Versus-

M/s. UTS Infratel Private Limited, having its registered office at 5th Floor, Krishna Mall, Ashok Nagar Road No.1, Ranchi, Jharkhand – 834002.

... Corporate Debtor

Counsel appeared:

1. Ms. Micky Chowdhury, Advocate) for Corporate Debtor
2. Mr. Rohit Jalan, Advocate)

Date of hearing : 23/09/2019

Order pronounced on 26/09/2019

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ORDERPer Virendra Kumar Gupta, Member [Technical]

1. This application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "IBC, 2016"] by **M/s. Action Construction Equipment Limited** / Operational Creditor, for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against the Corporate Debtor, **M/s. UTS Infratel Private Limited** alleging that the Corporate Debtor defaulted in payment of outstanding debt of Rs.5,49,061/- along with agreed interest, and date of default is 09.10.2017
2. The facts, in brief, are that Operational Creditor, based upon the Work Order issued by Corporate Debtor on 12.05.2017, gave machinery on hire. Operational Creditor raised invoices for Rs.9,29,061.28 against which payment of Rs.3,80,000.00 was made by Corporate Debtor. The last payment was made on 29.05.2017. Operational Creditor submitted Demand Notice U/S 8 of IBC, 2016 on 27.06.2018 for which no reply was submitted by Corporate Debtor.
3. The Ld. Counsel appearing on behalf of the Operational Creditor drew our attention to the relevant documents placed at respective pages of the petition. In particular, our attention was drawn to page 10, being computation sheet, for the amount of outstanding, page 17 showing the amount received on 29.05.2017 from Corporate Debtor. The Ld. Counsel also drew our attention to show that the notice under Section 8 had been delivered on the Corporate Debtor. It was also submitted that the petition filed was complete in all respects and the claim of the Operational Creditor was valid in law, hence, petition was liable to be admitted.
4. We have considered the submissions made by the Ld. Counsel on behalf of the Operational Creditor and have also perused the material on record.

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5. It is not in dispute that notice under Section 8 had been delivered to Corporate Debtor. There is no pre-existing dispute as regards the claim of the Operational Creditor. The amount outstanding is more than Rs. One Lakh. It is also not in dispute that Corporate Debtor has not paid the said amount. Thus, a default has also occurred. The petition is otherwise complete in all respects.

6. In view of the abovesaid facts, all the conditions mentioned in the IBC, 2016 for admission of a petition filed under Section 9 have been met and, therefore, we hold that CIRP against the Corporate Debtor could be initiated.

7. Since no name of Interim Resolution Professional ("IRP") has been proposed, therefore, we shall appoint an IRP from the approved list of Insolvency Professionals maintained by IBBI, as per the provisions of IBC, 2016.


4. Accordingly, we hold that this petition is fit for admission and order accordingly on the following terms and conditions:

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, UTS Infratel Private Limited, is hereby **admitted**.
- ii) We declare a moratorium and cause public announcement in accordance with Sections 13 and 15 of the I&B Code, 2016.
- iii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional 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.




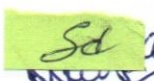
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration 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 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) 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) **Ms. Savita Agarwal, IRP Registration No. IBBI/IPA-001/IP-P00101/2017-18/10201**, E-mail: Savita_22@hotmail.com Mobile No. 9831634214, of R. Kothari & Company, 16A, Shakespeare Sarani, Kolkata, 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 the IRP as advance fees, as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, which shall be adjusted from final bill.
- 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) List the matter on 21/09/2019 for the filing of the progress report.
- 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 IRP by Speed Post as well as through e-mail.

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


 (Madan B. Gosavi)
 Member (Judicial)


 (Virendra Kumar Gupta)
 Member (Technical)

Signed on this, the 26th day of September, 2019.

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