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**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

**CORAM: Shri Madan B. Gosavi,
Member (Judicial)
&**

**Shri Virendra Kumar Gupta,
Member (Technical)**

CP(IB)No.1674/KB/2018

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 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

Santosh Devi Tibrewal @ Tibrewala, having its office at Vivek Vihar, Phase-V, Block-V, 493/C/A, G.T. Road, Howrah, West Bengal-700054.

.....Operational Creditor

In the Matter of:

Surprise Steels Private Limited, a company having its registered office at Sankrail Industrial Park, Jala Dhulagori, Sankrail, Dhulagori, Howrah-711302, West Bengal, India.

..... Corporate Debtor

Counsels appeared:

For Operational Creditor

1. Mr. Debrup Bhattacharjee, Advocate
2. Mr. P.K. Tulsyan, Advocate

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Date of pronouncement of order: 16th January, 2020.

ORDER

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

1. **Smt. Santosh Devi Tibrewal** the Operational Creditor filed this application under Section 9 of Insolvency and Bankruptcy Code, 2016 against **M/s Surprise Steels 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 operational debt of Rs. 26,76,968/- (Rupees Twenty Six Lakh Seventy Six Thousand Nine Hundred and Sixty Eight Only).
2. Upon issuing notice to the Corporate Debtor, one of its directors by name Mr. Biswanath Paul appeared and filed affidavit-in-reply.
3. We have gone through pleadings of the parties. It is seen that the parties are not in dispute as far as following facts are concerned.
 - 3.1. By Leave and License Agreement dated 16.10.2014, the Operational Creditor gave on rent her warehouse premise area measuring 7135 square feet out of Dag no. 1323, 1333 and 1334, Khatian No. 801 and 661 Mouza – Jaladhulagori situated at Sankrali Industrial Park, P.S. Sankrail, Howrah, West Bengal on monthly rent of Rs 85,620/- (including taxes).
 - 3.2. It is also not in dispute that the Corporate Debtor could not pay the debt since February 2017. In August 2018, the Corporate Debtor paid some amount. But it has still to pay total arrears of rent of Rs. 26,76,968/- (including interest at the rate of 36% per annum and the rate of interest is in dispute). It is not disputed by the Corporate

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Debtor that on 21.08.2018, the Operational Creditor served on it notice under Section 8 IBC.

- 3.3. Since the Corporate Debtor did not clear the debt, this application is filed to start its CIRP.
4. The Corporate Debtor raised the dispute contending that the warehouse given on rent was not in proper condition and in spite of his request, the land lady (the Operational Creditor) did not repair the same. According to the Corporate Debtor, it is at the most liable to pay sum of Rs. 16,07,780/- (Rupees Sixteen Lakh Seven Thousand Seven Hundred and Eighty) and not the amount that is claimed in the notice. Hence, notice is bad in law.
5. We heard Ld. Counsel for the Operational Creditor and Ld. Counsel for the Corporate Debtor. It is now well settled that recovery of rent is the operational debt within Section 5(20) IBC,2016 as it is amount due and payable by the Corporate Debtor towards service rendered by the Operational Creditor. In this regard, reference may be taken of the decision of this Bench in the case of The Press Trust of India Ltd. Vs. Axiom Estates Advisory Services Pvt. Ltd. {CP(IB)616/KB/2018}.
6. It is not in dispute that the Operational Creditor is at least entitled to receive sum of Rs. 16,07,780/- from the Corporate Debtor (para 10 of affidavit in reply). The Corporate Debtor did not dispute that he received demand notice under Section 8 IBC and he did not pay the amount. It is proved from the above evidence on record that the Corporate Debtor committed default in paying operational debt in spite of receipt of demand notice. The claim is within limitation.
7. We appoint one Mr. Sandip Kumar Kejriwal having registration no. IBBI/IPA-02/IP-N00236/2017-18/10687. Hence, we admit the Corporate Debtor in CIRP and 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, **M/s Surprise Steels Private Limited** 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 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);

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- 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.
- 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. Sandip Kumar Kejriwal having registration no. IBBI/IPA-02/IP-N00236/2017-18/10687, email id. sandipkej2@gmail.com, 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.

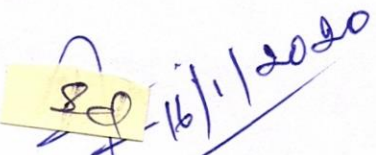
xii) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xiii) Registry is hereby directed under section 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 e-mail.

List the matter on **28.02.2020** for the filing of the progress report.

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


(Virendra Kumar Gupta)
Member(T)


(Madan.B. Gosavi)
Member(J)

Signed on this, the 16th day of January, 2020.

Deeksha(steno)