

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

**C.P. (IB) No. 177/KB/2018**

**In the matter of:**

**An application for initiation of corporate insolvency resolution process by an Operational Creditor 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:**

**M/S. SHALIMAR TRANSPORT CORPORATION, a registered partnership firm having its office at 2, Anukul Mukherjee Road, Kolkata 700006**

**... Petitioner**

**And**

**In the matter of :**

**M/S. STONE INDIA LIMITED, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 16, Taratala Road, Kolkata – 700088.**

**.....Corporate Debtor**

**Date of pronouncement of order : 19/12/2019**





Coram: Shri Jinan K.R, Hon'ble Member (Judicial) &

Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record :

1. MR. NILAY SENGUPTA, Advocate ]  
2. MS. SWATI AGARWAL, Advocate ] For Operational Creditor

1. MR. RISHAV BANERJEE, Advocate ]  
2. MR. PRITHWISH ROY CHOWDHURY, Adv. ] For Corporate Debtor

**ORDER**

Per Shri Harish Chander Suri, Hon'ble Member (T).

1. This petition under Section 9 of the Insolvency & Bankruptcy Code, 2016 has been filed by **M/s. Shalimar Transport Corporation**, a registered Partnership Firm through one of its Partners Sri Brij Gopal Bagri, who has been authorized by letter of authority dated 3<sup>rd</sup> October, 2017, hereinafter referred to as the "Operational Creditor", seeking Corporate Insolvency Resolution Process against **M/s. Stone India Limited**, a Corporate entity having its registered office at Kolkata, hereinafter referred to as the "Corporate Debtor".
2. The Operational Creditor has proposed the name of Mr. Manmohan Jhawar, an Insolvency Professional, who has also given his consent for being appointed in the event, this application is admitted.





3. It is submitted that the Operational Creditor/Applicant has been carrying on business of transportation, operating all over India and that in the course of its business since February, 2006, the Corporate Debtor approached the applicant to transport their goods to their clients in consideration for an agreed rates and price. It was agreed that the Corporate Debtor would pay the bills of the applicant immediately upon raising of the same.
4. The Operational Creditor discharged its obligations as a Transporter of the goods and raised various bills out of which majority of the bills were paid but in the year 2014-15 & 2015-16 the Corporate Debtor was facing financial stringency and was not in a position to pay the bills raised by the applicant which aggregated to a sum of Rs.50,80,253/- (Rupees Fifty Lakhs Eighty Thousand Two Hundred Fifty Three Only). All the bills were accepted by the Corporate Debtor and none of the bills was disputed in any manner whatsoever.
5. It is further submitted that during 29<sup>th</sup> June, 2015 to 5<sup>th</sup> April, 2016, the Corporate Debtor had paid only 11 Nos. of "on account cheques", of the aggregate value of Rs.8,83,000/- (Rupees Eight Lakhs Eighty Three Thousand Only) and after giving adjustment of the said amount, the outstanding sum of Rs.41,97,253/- (Rupees Forty One Lakhs Ninety Seven Thousand Two Hundred Fifty Three Only) remained to be paid. The Operational Creditor has claimed interest also @ 18% p.a. till the actual date of payment.

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6. The Operational Creditor issued a demand notice dated 7<sup>th</sup> October, 2017 under Section 8 of the I & B Code to the Corporate Debtor which was duly delivered on 9<sup>th</sup> October, 2017. The Operational Creditor has filed an affidavit dated 27<sup>th</sup> October, 2017 under Section 9 (3)(b). The Corporate Debtor, however, failed to reply to the said notice nor has the payment been received by the Operational Creditor pursuant to the said notice.
7. The Operational Creditor has filed a confirmation letter regarding payment transaction issued by ICICI Bank dated 25<sup>th</sup> October, 2017 that no payment was received from any party in the name of M/s. Stone India Limited from 9<sup>th</sup> October, 2017 till 24<sup>th</sup> October, 2017 which is supported by a summary of account as on 25<sup>th</sup> October, 2017. The Operational Creditor has also filed a copy of the letter dated 14<sup>th</sup> April, 2018 received from the Corporate Debtor which is self explanatory and most relevant to the issue in hand, which is reproduced below:-

"April 14, 2018  
Shalimar Transport Corporation  
2, Anukul Mukherjee Road,  
Kolkata – 700006

Dear Sirs,  
Sub: Outstanding dues – Rs. 41,97,253/-  
It has now been amicably settled by and between the parties to clear the aforesaid outstanding amount of Rs.41,97,253/- in 12 instalments beginning June, 2018, as stated below:

(a) Rs. 2,00,000/- each in June, July and August, 2018.

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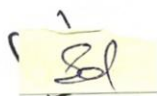
- (b) Balance Rs.35,97,253/- in 9 monthly equal instalments from September, 2018 onwards.  
(c) All interests are being waived.

On payment of the aforesaid dues, necessary steps will be taken by you to withdraw all legal proceedings.

You are requested to sign the duplicate copy of this letter in token of your acceptance.

Thanking you,  
Yours faithfully,  
STONE INDIA LIMITED  
Sd/-  
(Authorised Signatory)"

8. In the reply affidavit filed by the Corporate Debtor, one Mr. Debabrota Ghosh, Authorised Representative of the Corporate Debtor submitted that the application of the Operational Creditor is not maintainable and is liable to be dismissed in limine on the ground that the claim of the applicant is wholly untenable as the Corporate Debtor had never agreed to pay any interest amount and the amount claimed as interest is arbitrarily and unilaterally foisted on the Corporate Debtor and the definition of operational debt under Section 5(21) of the Code does not mention the word 'interest'. It is stated that the invoices of the Operational Creditor are barred by time and have been surreptitiously clubbed together with the other invoices.
9. The Operational Creditor has filed copies of all the invoices which contained a clause that interest will be charged @ 18% p.a. if the bill is not paid within the due date.





10. It is further submitted that the goods supplied by the Operational Creditor was delayed and due to such breach of obligations the Corporate Debtor has suffered huge losses, both financially and in terms of goodwill and therefore evidently there is pre-existence of dispute much before the issuance of demand notice.

11. We have heard the Ld. Counsel for the parties. We have also gone through their pleadings and the other documents placed on record. The Operational Creditor has been able to prove its case and the application is complete in all respect. Even though the Corporate Debtor has tried to raise its objections as regards service of notice and on various other grounds even in the arguments advanced on its behalf but, one document received by the Operational Creditor from the Corporate Debtor makes the whole case clear. This document is letter dated April 14, 2018 sent by the Corporate Debtor to the Operational Creditor which is reproduced above, specifically mentions that "it has now been amicably settled by and between the parties to clear the aforesaid outstanding amount of Rs.41,97,253/- in 12 installments". We find this letter having been issued to the Operational Creditor during the pendency of this application. The Corporate Debtor has not adhered to its demand and no amount has been paid to the Operational Creditor.

12. After having gone through all the documents and hearing the arguments advanced on both sides, we are of the considered view that



this application of the Operational Creditor deserved to be admitted. We, therefore, pass the following:-

**ORDERS**

- 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. Stone India Limited** is hereby **admitted**.
- ii) We hereby 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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

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- (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.

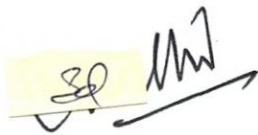
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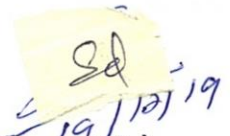
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Manmohan Jhavar**, registered with Insolvency and Bankruptcy Board of India, having registration number **IBBI/IPA-001/IP-N00334/2017-18/10604**, **Email ID: manmohanjhavar@yahoo.co.in** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Petitioner is directed to deposit 3,00,000/- (Rupees Three lack Only) in the ESCROW Account in SBI with in one week to be operated through the Registrar NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the

CIRP by the Interim Resolution Professional before constitution of CoC and the fees and cost can be withdrawn by the IRP/RP after the approval of CoC. Balance, if any, can be withdrawn by the Petitioner.

- xii) Registry is hereby directed 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.
- xiii). List the matter on **03.02.2020** for filing of the progress report.
- xiv) Certified copy of the order/Free copy may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)  
Member (T)



(Jina K.R.)  
Member (J)

Signed on this, the 19<sup>th</sup> day of December, 2019.

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