

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No.145/CTB/2019

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:

Sagar Business Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at Poddar Point, 113, Park Street, Kolkata-700016, West Bengal, India;

...Operational Creditor

-Versus-

Srabani Constructions Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at Plot No. 1185, Balitota Sahi, Nayapalli, Bhubaneswar, Khurda, Odisha-751012.

...Corporate Debtor

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Appearances (through video conferencing):

For Petitioner (s)	:	Mr. Yasobant Das, Adv.
For Respondent (s)	:	Mr. Sougat Dash, Adv.

Order reserved on: 06.04.2022

Order pronounced on: 21.04.2022

ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. This petition is filed by Sagar Business Pvt. Ltd, the Operational Creditor herein, to initiate the Corporate Insolvency Resolution Process (CIRP) under



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Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Srabani Constructions Pvt. Ltd. (UIN 27104WB1983PTC209190) having address N1/22, Nayapalli, Bhubaneswar, Odisha - 751012.

2. It is stated in the petition that pursuant to the oral orders placed by the Corporate Debtor herein, the petitioner has on and from 19.05.2015 till 02.09.2015 and from time to time supplied several steel products to the Corporate Debtor/Company, which the Corporate Debtor received without any demur and/or objection and the said goods were duly utilised by the Corporate Debtor. Operational Creditor submits that pursuant to delivery of goods, they raised invoices and duly declared such transactions in sales tax returns which were received by the Corporate Debtor without demur. The Operation Creditor during the course of business with the Corporate Debtor raised bill totalling to ₹ 14,81,318. Copy of such bills and invoices have been enclosed with the petition and marked as **A-3 series**.
3. The Operational Creditor further submits that in terms of the invoices raised by them, it was specifically mentioned therein that the interest shall be charged at the rate of 18% per annum, in the event, the payment is not made within the agreed time. Further, in terms of the invoices the payment was to be made within 30-days from the date of delivery. The Corporate Debtor having accepted such goods had also accepted the terms contained in such invoices without any demur. It is stated that despite several requests, they have not received any payment from the Corporate Debtor in respect of various invoices thereby entitling them to claim interest. Operation Creditor states that a principal sum of ₹ 14,81,318/- is due and payable by the Corporate Debtor to the Operational Creditor.

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4. Upon failure of the Corporate Debtor to pay the amount due, the Operational Creditor issued demand notice dated 05.09.2018 requesting the Corporate Debtor to make payment of the admitted dues. It is alleged that the Corporate Debtor has failed to make the payment or reply to the said notice. The notice along with postal confirmation of delivery to the Corporate Debtor has been annexed to the Petition as **Annexure – A**. The Operational Creditor thus claims that the Corporate Debtor is in default to pay the dues of ₹ 14,81,318/- along with interest amounting to ₹ 10,24,983/-. The Operational Creditor states that his claim is not barred by limitation as the entire transaction are within three years from the date of the last payment and that the account between the Operational Creditor and Corporate Debtor had been running and continuous.
5. On the limitation aspect it is noted that invoices were raised by the petitioner on different dates between May 11, 2015 to November 02, 2015 and, thereafter, demand notice was issued on 05.09.2018 and consequently this petition has been filed on 01.11.2019. In this regard the petitioner has produced details to the effect that on 30.04.2018 they had received two cheques each amounting to ₹ 5,00,000/- from the respondent in ICICI Bank (BBSR CC) 028451000002, but both the cheques had bounced. Receipt of payment by way of cheque from the respondent on 30.04.2018, though the cheques bounced, revives the limitation and the limitation period, as a matter of fact, is further extended by 3 years from 30.04.2018. Therefore, this tribunal agrees with the petitioner that his claim is not time barred.
6. Despite giving several opportunities, the respondents have neither filed their reply to the petition nor appeared before this Tribunal. Therefore, this Tribunal has set the respondent as *ex-prate* vide its order dated 01.02.2021.
7. In view of forging the documents/details provided by the Operational Creditor. This Tribunal is of the firm opinion that this is a fit case to initiate

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CIRP against the Corporate Debtor i.e., Srabani Constructions Pvt. Ltd. Accordingly, this petition is ADMITTED. Operational Creditor has not suggested the name of Interim Resolution Professional (IRP). Therefore, this Tribunal appoints **Mr. Chaitanya Kumar Ray Registration No. IBBI/IPA-003/IP-N00032/2017-18/10260**, residence of **Ray Nayak & Associates MIG-26, Manarama Estate, Bhubaneswar, Odisha ,751010** and **E-mail Id: cma.chaitanya@yahoo.com** for Interim Resolution Professional, Liquidator, Resolution Professionals and Bankruptcy Trustee for Cuttack Zone, issued by the Insolvency and Bankruptcy Board of India. There is nothing on record to say that any disciplinary proceedings against the proposed Interim Resolution Professional is pending.

ORDER

- (a) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **Srabani Constructions Pvt. Ltd.** Moratorium Order is passed for a public announcement as stated in Sec. 13 of the IBC, 2016. The 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 Sec.15. The public announcement referred to in clause (b) of sub-Section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (b) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution

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- of any judgment, decree or order in any Court of law, Tribunal, Arbitration Panel or other authority;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (d) 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.
- (e) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- (f) 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.

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- (g) Necessary public announcement as per Section 15 of the IBC, 2016 may be made by the Resolution Professional upon receipt of the copy of this order.
- (h) **Mr. Chaitanya Kumar Ray** having **Registration No. IBBI/IPA-003/IP-N00032/2017-18/10260** and **E-mail Id.: cma.chaitanya@yahoo.com** residence of **Ray Nayak & Associates MIG-26, Manarama Estate, Bhubaneswar, Odisha ,751010** is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency, as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this Order. He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
- (i) We direct the Operational Creditor to deposit a sum of ₹ 2,00 lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.
- (j) Directions are also issued to the suspended management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petition to the IRP, otherwise coercive steps to follow.

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- (k) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
- (l) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.
- (m) List the main CP for reporting progress on 30.05.2022.
- (n) Let the certified copy of the order be issued upon compliance with requisite formalities.

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Satya Ranjan Prasad
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this 21st day of April, 2022.

सत्य प्रति प्रमाणित होना
CERTIFIED TO BE TRUE COPY

Nilesh Steno

उप डुलसिचव
Deputy Registrar
राष्ट्रीय कम्पानी विधि अधिकरण
National Company Law Tribunal
कटक बेंच
Cuttack Bench

