

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,
KOLKATA

CP(IB) No. 07 /KB/2020

In the matter of:

Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Jai Trading Company, a partnership firm duly registered under the provisions of the Indian Partnership Act, 1932, having its business premises at 16, Bonfields Lane, Kolkata- 700001 and also at Hospital Road, P.O.- Silchar, Dist- Cachar, Assam.

.....Operational Creditor

-Versus-

Basantipur Tea Company Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, and having Corporate Identification No- U01132WB1964PTC026165 and its registered office at 3B, National Library Avenue, Ground Floor, Kolkata-700027 in the State of West Bengal.

.... Corporate Debtor

Date of Hearing : 26/ 11 / 2021

Date of pronouncing the order: 23 / 12/ 2021

Coram:

Shri Rajasekhar V.K., Member(Judicial)

Shri Balraj Joshi, Member(Technical)

Appearances (via video conferencing):

- For the Operational Creditors:
1. Ms. Sonal Shah, Advocate
 2. Mr. Kushagra Shah, Advocate
 3. Mr. Aniket Chowdhury, Advocate

ORDER

Per :Rajasekhar V.K., Member (Judicial):

1. This Court convened through video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by Jai Trading Company (Operational Creditor), represented by one of the Managing Partners of the Operational Creditor, Mr. Rakesh Sirohia, authorised by a Letter of Authority dated 09.11.2019, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Basantipur Tea Company Private Limited (“Corporate Debtor”).
3. The Corporate Debtor is a private company limited by shares and incorporated on 10.08.1964 under the Companies Act, 1956, with the Registrar of Companies (RoC), West Bengal, having Corporate Identification Number: U01132WB1964PTC026165. It has its registered office at 3B, National Library Avenue, Ground Floor, Kolkata-700027 in the State of West Bengal.
4. The present petition was filed on 30.12.2019, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.65,72,856/- (Rupees Sixty-Five Lakh Seventy-Two Thousand Eight Hundred and Fifty-Six only), due to the Operational Creditor for the supply of goods to the Corporate Debtor.
5. ***Submission of the learned Counsel for the Operational Creditor***
 - 1) The case of the Operational Creditor is that the Operational Creditor, a Registered Firm, had supplied Agrochemicals, pesticides etc. to the Corporate Debtor on various occasions, pursuant to the Purchase Orders issued by the Corporate Debtor. The goods were received by the Corporate Debtor without any protest or demur to the quality, quantity or branding of the goods.
 - 2) The goods were supplied to the Corporate Debtor till 02.02.2018 and accordingly, Tax Invoices were issued by the Operational Creditor which were also received by the Corporate Debtor. The last payment made by the Corporate Debtor was on 02.11.2018. At no point in time was any protest raised with regards to supply, quality or quantity of the goods supplied.

- 3) That part payments have been made by the Corporate Debtor against the bills so raised. Also, a balance confirmation was sought for by the Corporate Debtor on 30th August, 2018 which was provided by the Operational Creditor. After the confirmation, a sum of Rs. 2,84,570/- had been paid to the Operational Creditor, making the outstanding sum as Rs. 65,72,856/-. The last date of payment was 02.11.2018.
- 4) The Demand Notice under section 8 of the Insolvency and Bankruptcy Code, 2016 has been issued to the Corporate Debtor on 11.11.2019. The said notice was received by the Corporate Debtor.
- 5) The total amount claimed to be in default is Rs.65,72,856/- (Rupees Sixty-Five Lakh Seventy-Two Thousand Eight Hundred and Fifty-Six only) along with interest @24% from the last date of payment being 02.11.2018, which is stated to be the date of default.
6. The Corporate Debtor has failed to appear in the hearings inspite of delivery of notice. As such the Corporate has been declared ex parte by this Adjudicating Authority on 4.03.2020.

Findings and Analysis

7. Heard the learned Counsel for the Operational Creditor and perused the record.
8. A copy of the Demand Notice under section 8 of the Insolvency and Bankruptcy Code, 2016 as issued to the Corporate Debtor on 11.11.2019 has been furnished. The said notice was received by the Corporate Debtor but the Corporate Debtor has chosen not to file a reply.
9. Further, as per the affidavit furnished under section 9(3)(b) of the Insolvency & Bankruptcy Code, 2016, the Operational Creditor has not received any notice for dispute from the corporate debtor relating to the unpaid operational debt.
10. We have perused the petition and noticed that the invoices range between 27.02.2017 & 02.02.2018. It was a running and continuous account. The last payment of Rs. 2,84,570/- received on 02.11.2018, leaving a balance of Rs.65,72,856/-. The interest provided in the invoice is @24% per annum. There is no defence to the Section 9 petition from the documents which have been placed on record.
11. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the

Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, *i.e.*, Rupees one lakh, at the relevant time.

12. It is, accordingly, hereby ordered as follows:-

- a) The application bearing **CP (IB) No. 07/KB/2020** filed by Jai Trading Company, the Operational Creditor, under section 9 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Basantipur Tea Company Private Limited, CIN: U01132WB1964PTC026165, the Corporate Debtor, is **admitted**.
- b) There shall be a moratorium under section 14 of the IBC.
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Mr. Arun Poddar**, registration number **IBBI/IPA-001/IP-P02237/2020-2021/13387**, email: **ca.arunpoddar@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) The Operational Creditor shall deposit a sum of Rs. 3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
13. **CP (IB) No. 07/KB/2020** to come up on 10.02.2022 for filing the periodical report.
14. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

23.12.2021

SM[LRA]