

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

**C.P. (IB) No. 723/KB/2019**

**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. RISHAV COKE PRODUCT PRIVATE LIMITED, CIN: U51909WB2011PTC164224, Office at Mukherjee Medical Hall, Kada Road, Durgapur – 713203;**

**... Operational Creditor**

**Versus**

**In the matter of :**

**M/S. MODERN INDIA CON-CAST LIMITED, CIN: U27106WB1987PLC042166, having its registered office at 18 D, Everest, 46C, J.L. Nehru Road, Kolkata 700071, West Bengal, India**

**.....Corporate Debtor**

**Date of pronouncement of order : 22/10/2019**

**Sd/-** 1

**Sd/-**

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

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

Counsel on Record :

- |                                 |                               |
|---------------------------------|-------------------------------|
| 1. MR. PREM NARAYAN KHANDELWAL  | ] For Operational<br>Creditor |
| 2. MR. MAINAK BOSE, Advocate    | ]                             |
| 3. MR. SHOVAN GHOSH, Advocate   | ] For Corporate Debtor        |
| 4. MR. RISHAV KARNANI, Advocate | ]                             |

**ORDER**

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

1. This application under Section 9 has been filed by the **M/s. Rishav Coke Product Private Limited**, hereinafter referred to as the "Operational Creditor" through one of its Directors namely Ranjit Kumar, who has been duly authorized vide Board Resolution dated 26<sup>th</sup> March, 2019 to file the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 against **M/s. Modern India Concast Limited**, a corporate entity, having its Registered Office at Kolkata, hereinafter referred to as the "Corporate Debtor".
2. It is stated in the application that the Operational Creditor had supplied goods to the Corporate Debtor against purchase orders, by tax paid invoices and delivery notes issued by the Corporate Debtor from time to time, the copies of orders have been placed on record along with the application. It is submitted that finally the Corporate

ed 2

ed

Debtor failed to make the payment of Rs. 1,09,72,861.90/- (Rupees One Crore Nine Lacs Seventy Two Thousand Eight Hundred Sixty One and Paise Ninety Only) having fallen due, which is reflected in the two ledger accounts duly counter-signed by the Corporate Debtors and the two bank statements.

3. It is further submitted by the Operational Creditor that the Corporate debtor has paid only a sum of Rs. 10,00,000/- by way of RTGS and, thereafter, no payment was made and thus supply of goods was also discontinued by the Operational Creditor. The Operational Creditor issued a notice of demand dated 4<sup>th</sup> April, 2019 in Form 3 which was duly received by the Corporate Debtor and a reply thereto was also sent on 12<sup>th</sup> April, 2019. The Operational Creditor has also filed an affidavit under section 9(3) (b) of the Code deposing therein that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid Operational Debt as specified under Section 9. The Operational Creditor has also filed a confirmation of debt by the Corporate Debtor and a statement of bank account where deposits are made and credits received normally by the Operational Creditor in respect of Debt of the corporate Debtor. Since the outstanding debt is inclusive of the interest, it would be appropriate to mention here that all the invoices of the Operational Creditor had the interest clause thereby entitling to the Operational Creditor to the payment of interest as well on delayed payment. The Operational Creditor has, however, not proposed the name of any resolution professional.

 3



4. We therefore, have noticed that there is an outstanding debt owed to the Operational Creditor by the Corporate Debtor to the tune of Rs. 1,09,72,869.90/- which fell due on 1<sup>st</sup> April, 2017 and the same having not been paid by the Corporate debtor in spite of demand notice dated 4<sup>th</sup> April, 2019 and there being no mention of any pre-existing dispute in the reply dated 12<sup>th</sup> April, 2019 sent by the Corporate Debtor to the Operational Creditor, and the fact that the application is otherwise complete in all respects, and the claim of Debt is within the period of limitation, we have no other option but to hold that the Operational Creditor has been able to make out a valid case of initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
5. We therefore admit the petition with the following directions/Orders:-

**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. Modern India Con-Cast Limited is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

sd

sd

- 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;
  - (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);

Sel

Sel

- (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 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) **Ms. Jayshree Bhandari**, of Sunrise Tower, Flat 5L, 134B, Beliaghata Road, Kolkata 700015, registered with Insolvency and Bankruptcy Board of India, having registration number **IBBI/IPA-001/IP-P01174/2018-19/11838**.      **E-mail**      **ID:**

Sd / 6

Sd /

ip.bhandarijayshree@gmailcom, Mobile No. 9831270975, 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 subject to production of written consent within one week from the date of receipt of this order.

- 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 Corporate Applicant is directed to deposit Rs. 3,00,000/- (Rupees Three Lacs Only ) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- 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.

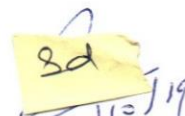
sd 7

sd

- xiii). List the matter on **25<sup>th</sup> November, 2019** 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)



(Jinan K.R.)  
Member (J)

Signed on this, the 22<sup>nd</sup> day of October, 2019.

VC