

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

Coram : (1) Shri Madan B. Gosavi,
Hon'ble Member (J)
&
(2) Shri Virendra Kumar Gupta,
Hon'ble Member(T)

CP (IB) No. 784/KB/2019

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

-And-

In the matter of:

Nandalal Khandelwal, having its registered office at 36,
"Udaychal", 9, Rowdon Street, Kolkata- 700 017;

... **Petitioner/Operational Creditor**

-Versus-

In the matter of:

Aparna Polyflex Private Ltd., having its registered office
at 155, Lenin Sarani, 4th floor, Room No. 402, Kolkata- 700 013
CIN: U25209WB2000PTC 160635;

... **Corporate Debtor**

Counsel appeared:

Mr. S. K. Tiwari, Advocate
Mr. A. Paul, Advocate

] Operational Creditor
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Date of Pronouncement of Order: 01.10.2019

ORDER

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

Nandalal Khandelwal - the Operational Creditor, filed this application under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Aparna Polyflex Private Ltd.** - Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor because the Corporate Debtor committed default in paying the operational charges of Rs.1,33,000/- towards consultation given by him in matters pertaining to payment of tax by the corporate debtor.

2. Operational Creditor submits that from 31.03.2017 to 31.12.2018, he raised various bills against the corporate debtor towards the professional service rendered by him in nature of tax consultancy. The corporate debtor failed and neglected to pay the professional charges. Hence, notice under section 8 of IBC was sent to the corporate debtor on 07.03.2019. Notice was received by the corporate debtor but he did not pay the amount. Hence, this proceeding is filed.

3. Notice of this application was served on the corporate debtor. It appeared through Advocate, Mr. Saurav Jain but in spite of direction, the corporate debtor did not file affidavit-in-reply and did not contest the petition.

4. Operational Creditor by supplementary affidavit has proposed the name, Shri Animesh Mukhopadhyay (Mob. No.9830107220 of Syndicon Enclave Flat 2B,25/1A/1 Naktala Road, Kolkata- 700 047, having registration no. IBBI-IPA-001/IP-P00125/2017-18/10266 and Email Id. Animesh_fca@yahoo.co.in as the Interim Resolution Professional. A written consent/ communication dated 22nd

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April, 2019 has been submitted by the proposed I.R.P., wherein he has declared that no disciplinary proceedings pending against him with the Board of Indian Institute of Insolvency Professionals of ICAI

4. We heard the Ld. Counsel for the Operational Creditor, Mr.S. K. Tiwari. Ld. Counsel for the corporate debtor submitted that the corporate debtor does not wish to contest the claim. This authority may pass order on merit. It is not in dispute that the operational creditor is the Tax Consultant. He rendered the services relating to payment of tax by the corporate debtor. He raised bill of Rs.1,33,000/- against the corporate debtor. Corporate Debtor did not pay the amount and its default. It is not in dispute that demand notice under section 8 of IBC has been received by the corporate debtor. Corporate Debtor did not raise any dispute about the claim. The Operational Creditor filed on record affidavit stating that he did not receive any dispute from the corporate debtor and he did not receive the amount claimed by him. Thereby, he has complied the provisions under section 9(3)(b) and 9(3)(c) of the IBC.

5. Operational Creditor has suggested the name of Interim Resolution Professional, against whom no proceeding is pending. The application is defect-free. Hence, we admit the same by following order:

ORDER

- (i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process in respect of Aparna Polyflex Pvt. Limited. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

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- (ii) 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.
- (iii) Moratorium under Sec.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);
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- iv) 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.

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- v) 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.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- vii) 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 Sec.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.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.
- ix) As per the proposal by the Operational Creditor for the appointment of Interim Resolution Professional (IRP), Shri Animesh Mukhopadhyay (Mob. No.9830107220 of Syndicon Enclave Flat 2B, 25/1A/1 Naktala Road, Kolkata-700 047, having registration no. IBBI-IPA-001/IP-P00125/2017-18/10266 and Email Id. Animesh_fca@yahoo.co.in is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- x) The Operational Creditor to pay to IRP a sum of Rs.50,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

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

xii) Registry is hereby directed to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email as per provisions of IBC.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **16.11.2019** for filing progress report.

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(Virendra Kumar Gupta)
Member (T)

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(Madan B. Gosavi)
Member (J)

11/10/2019

Signed on this, the 1st day of October, 2019.