

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

C.P. (IB) No. 223/KB/2018

In the matter of:

An application by 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. Rammaica India Limited), CIN: L36100MH1981PLC024162, having its Office No. 106-A, 106-B, 1st Floor, Kamanwala Chambers, New Udyog Mandir Premises Society, Plot No. 399/410, Mogul Lane, Mahim (West), Mumbai, Pin: 400016.

... Operational Creditor

Versus

M/s. B.M. Advertising Private Limited, having its office at Basundhara Apartment, Ground Floor, 10/A, Ghosh Para Lane, Kolkata, Pin – 700 036.

... Corporate Debtor

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**Coram: Shri Jinan K.R., Hon'ble Member [Judicial] &
Shri Harish Chander Suri, Hon'ble Member [Technical]**

Counsel on record:

Mr. Anuj Singh, Advocate]	
Ms. Madhuja Barman, Advocate]	For Operational Creditor
Mr. Aritra Basu, Advocate]	
Mr. Subhasis Chakraborty]	
Mr. Amit Chowdhury]	For Corporate Debtor
Ms. Sushmita Singh]	


Date of pronouncement of Order: 16/10/2019

ORDER

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

1. This application under Section 9 of the Insolvency and Bankruptcy Code, 2016 has been filed by **M/s. Rammaica India Limited**, hereinafter referred to as the "Operational Creditor", through One of its Partner Mr. Pankaj Jobalia, who has been authorised by the Board Resolution dated 9th December, 2017 for initiating Corporate Insolvency Resolution Process against M/s. B.M. Advertising Private Limited, a Corporate Entity, having its Registered Office at Kolkata, hereinafter referred to as the "Corporate Debtor".
2. It is submitted in the application that the Operational Creditor is engaged in the business of Frontlit Flex, PVC Flexible Sheeting, Inkjet





sales, Vinyl sales etc. During the course of its business, the Corporate Debtor approached the Operational Creditor with a proposal to supply various items and in lieu of the same assured to honour the invoices and make prompt payment by cash or cheque. The parties entered into a business relationship. The products and materials as per their orders were supplied as per the orders placed and the same were also acknowledged.

3. It is submitted that the bills were duly raised, certified and handed over to the Corporate Debtor and some payments were received from the Corporate Debtor. Finally a sum of Rs. 11,62,965/- (Rupees Eleven Lacs Sixty Two Thousand Nine Hundred Sixty Five Only) fell due along with interest amounting to Rs. 3,19,587/- which comes to **Rs.14,82,552/-** (Rupees Fourteen Lacs Eighty Two Thousand Five Hundred Fifty Two Only) as on 30th June, 2016.
4. It is submitted by the Operational Creditor that a demand notice was served on the Corporate Debtor with all the details of the Operational debt, amount claimed and the amount in default as on 31st March, 2016, calling upon the Corporate Debtor to repay the unpaid operational debt in default in full within 10 days from the receipt of the said letter but, no reply thereto was received by the Operational Creditor.
5. It is submitted that the tax invoices issued by the Operational Creditor had specifically mentioned in the foot note that interest @ 18%

p.a. would be charged if the amount is not paid within a month from the date of the invoice. It is submitted that all the invoices have been duly acknowledged by the Corporate Debtor.

6. The Operational Creditor in its supplementary affidavit submitted that Form-3 notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 had been duly served on the Corporate Debtor but the proof of service was filed later pursuant to the leave granted by this Tribunal vide order dated 27th September, 2019. The Operational Creditor has filed proof of service along with track report to indicate that the Corporate Debtor had actually received the notice under Section 8 of the Code but deliberately suppressed the fact at the time of hearing and that is why no objections on this point was raised by the Corporate Debtor in its reply affidavit in opposition.

7. The Operational Creditor has submitted that no dispute had been raised by the Corporate Debtor at any material point of time before or after the receipt of the notice and that this fact has been sufficiently mentioned and covered in its affidavit in consonance with Section 9(3)(b) of the Insolvency and Bankruptcy Code. It is submitted that the provisions of the Code do not require the same to be mentioned in a separate affidavit. The Operational Creditor has also filed copies of all the invoices and summary of its accounts in ICICI Bank to prove that no payment of the debt due to it from the Corporate Debtor has been received.

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8. On being served with the notice of this Tribunal, the Corporate Debtor appeared and submitted its reply affidavit submitting that the application is not maintainable in law or in facts because the dispute according to the Corporate Debtor cannot be decided in a summary manner or by way of an affidavit of evidence as the same involves disputed questions of fact. It is submitted that the evidence shown by the Operational Creditor is entirely bogus, fraudulent, misconceived and that material facts have been suppressed and/or distorted by the Operational Creditor.
9. It is further submitted that the Corporate Debtor had placed diverse verbal orders on the Operational Creditor from 16th October, 2008 onwards and the Operational Creditor has supplied diverse quantities of the said goods to the Corporate Debtor. It is submitted that after receipt of invoices made over by the Operational Creditor to the Corporate Debtor payments were forthwith made by the Corporate Debtor and such payments were made by the Corporate Debtor through one of the Group Companies of the Operational Creditor M/s. Maxflex and Imaging System Limited as per the instructions of the Operational Creditor because the Operational Creditor and M/s. Maxflex and Imaging Systems Limited are managed by the same controlling minds.
10. It is submitted that there is nothing due and payable on the part of the Corporate Debtor between October, 2008 to December, 2016, and the payments made by the Corporate Debtor to M/s. Maxflex and

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Imaging Systems Limited between the aforesaid period would be evident from letter **Annexure 'B'** annexed with the reply.

11. It is submitted that the Operational Creditor supplied further goods to the Corporate Debtor and invoices were issued and the payments were made to M/s. Maxflex and Imaging Systems Limited as per the instructions of the Operational Creditor and the same would be evident from Annexure 'C' & 'D'.
12. During the course of the argument, the Ld. Counsel for the Operational Creditor submitted that the payments have been made by the Corporate Debtor to M/s. Maxflex and Imaging Systems Limited, who is a Sister Concern of the Operational Creditor, on the instructions of the Operational Creditor but, on being questioned as to which instructions were issued and followed by the Corporate Debtor in making such payment to the Operational Creditor's Sister Concern, no document/note containing such instructions was produced or shown to convince the Bench. According to the Ld. Counsel, one of the Directors is a common director of both the Companies. The Corporate Debtor however, had shown certain payments having been made by it to M/s. Maxflex and Imaging Systems Limited but in the statement of accounts it is not to the Operational Creditor.
13. The Ld. Counsel for the Corporate Debtor submits that the petition should be dismissed because the notice under Section 8(1) had not been received by them.

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14. Ld. Counsel for the Operational Creditor, however, pointed out that even though on receipt of a copy of the application along with the copy of the notice purportedly received by the Corporate Debtor from the Operational Creditor, the Corporate Debtor has failed to make any contention in its reply affidavit in this regard.
15. The Operational Creditor has not proposed the name of any Resolution Professional for being appointed as the Interim Resolution Professional. As per the whole issue involved in the present case is based on the very basic thing in the Corporate Law that each Corporate Entity is a separate entity and even if one person is Director in both the Companies, it cannot be considered as One or having common interest, each One of them is distinct from the other and even from its shareholders. If the Corporate Debtor in the present case had some outstanding payments to be made to the Operational Creditor, the same would not have been given to the other Company viz., M/s. Maxflex and Imaging Systems Limited as is being submitted by the Corporate Debtor, even though there is a common Director. Each Company has its own separate business, separate accounts and separate assets and liabilities. A common Director cannot on its own instruct any debtor of One Company to make the said payment to the other Company to which the debt is not due or with whom the said Debtor has no business dealings. The Corporate Debtor in the present matter has failed to prove that the debt owed to the Operational Creditor in the case has been discharged by making some payment to

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the other Company on the alleged instructions of the common Director. The Corporate Debtor would be well advised if the amount illegally or mistakenly paid to the other Companies is reclaimed from the said Company instead of making irresponsible and illegal statements in the present case disowning its liability towards the Operational Creditor in the present case.

16. We have heard the Ld. Counsel for both the parties and gone through the documents placed on record by them. The Operational Creditor has been able to successfully make out its case and prove the outstanding debt against the Corporate Debtor and the Corporate Debtor has failed in its unsuccessful attempt to disown its liability on the ground that some payments had been made by it to the so called Sister Concern of the Operational Creditor viz., M/s. Maxflex and Imaging Systems Limited, on the instructions of the common Director of both the Companies.
17. In the result, we have no other option but to admit the petition with the following directions:-

ORDERS

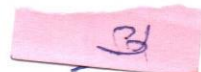
- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. B. M. Advertising Private Limited** is hereby **admitted**.

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- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. 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 judgment, 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 Securitisation and Reconstruction





of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

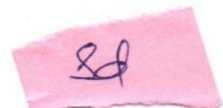
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions 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.

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- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) **Ms. Uma Kothari** of 20A, Charu Chandra Place (East), Kolkata 700033, a Resolution Professional registered under Insolvency and Bankruptcy Board of India, having Registration No. IBBI/IPA-001/IP-P01041/2017-18/11714, e-mail: caumakothari@gmail.com, Mobile No. 9830709956 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a 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.
- xi) 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.
- xii) The Operational Creditor/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 CIRP by the Interim Resolution Professional within one week of the date of this order.

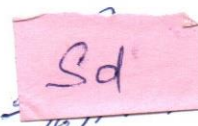




- xiii) Registry is hereby directed under Section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through email.
- xiv) List the matter on **18/11/2019** for the filing of the progress report.
- xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (Technical)



(Jinan K.R)
Member (Judicial)

Signed on this, the 16th day of October, 2019.

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