

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB) No. 375/KB/2019

In the matter of:

Section 9 read with section 8, 13, 14 & 33 and others applicable provisions  
of the Insolvency and Bankruptcy Code, 2016

And

In the matter of:

S.K. Engineering, having its principal office at 4, B.B.D. Bag (56-E Hemanta  
Basu Sarani) 4<sup>th</sup> floor, Room No. 56E, Kolkata- 700 001

...Petitioner/Operational Creditor

Versus

Pobi Technologies & Constructions Private Limited, CIN:  
U45203WB2006PTC111398 having its registered office at Karangapara  
Road, Durgapur, West Bengal-713201.

...Respondent/Corporate Debtor

Coram:

Shri Jinan K.R., Hon'ble Member [Judicial]

Shri H.C. Suri, Hon'ble Member [Technical]

For Applicant:

Ratul Das, Advocate

Vikas Baisya, Advocate

Date of pronouncement of Order: 11/12/2019

ORDER

Per Shri Jinan K.R., Member (Judicial)

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as the "I & B Code"] by S.K. Engineering [hereinafter referred to as the "Operational Creditor"] for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against Pobi Technologies & Constructions Private Limited [hereinafter referred to as the "Corporate Debtor"] as the Corporate Debtor committed default in payment of Rs. 73,43,923.75/- (Seventy Three Lakhs Forty Three Thousand Nine Hundred Twenty Three and Seventy Five Paise Only.) despite repeated demands.
2. It is submitted that the Corporate Debtor had placed order for purchase of Bitumen from the Operational Creditor at various occasions and vide various purchase orders. The Operational duly got it delivered at Corporate Debtor's sites situated at Durgapur, West Bengal and also at Jagbandhu Market, Gandachera Dhalai, Tripura-799356. The last payment received by the Operational Creditor from the Corporate Debtor was on 07.10.2016. The default occurred, *inter alia*, on the due

SD

SD

date of payment as per the invoices since the Corporate Debtor did not make full payment under the invoices. It is submitted that the date of default occurred from April, 2016 onwards.

3. That the Operational Creditor issued demand notice dated 25.01.2019 under section 8 of the I & B Code along with copies of all invoices which are pending in respect of the goods so supplied to the Corporate Debtor. The notice was duly received by the Corporate Debtor, however, the Corporate Debtor did not respond to it.
4. Notice of this Petition was served upon the Corporate Debtor. The Applicant filed an affidavit of service proving delivery of notice to the Corporate Debtor via post as well as by email. Therefore, delivery of notice to the Corporate Debtor was declared sufficient and since nobody on the side of the Corporate Debtor appeared, the Corporate Debtor was called absent and declared *ex-parte* vide order dated 03.06.2019. However, when the matter was called up for hearing on 20.09.2019, on perusal of the Track consignment, the bench was not sure about the delivery of notice to the Corporate Debtor. Though the Corporate Debtor was declared *ex-parte*, it was just and fair to repeat notice by a messenger (MTS) to the Corporate Debtor. On 02.12.2019, it was observed that the track consignment annexed to the affidavit of service reflected proper service, accordingly, the bench recorded the delivery of notice, called the Corporate Debtor absent and declared *ex-parte* in view of the several opportunities given to the Corporate Debtor on which it chose not to appear.



5. All the compliance for initiation of CIRP have been met with. The Applicant has produced and relied upon various documents to prove its case. the following are the documents relevant for the consideration of the case in hand:- An Affidavit under 9(3)(b) affirming on oath that no notice regarding the prior dispute has been received by the Operational Creditor from the Corporate Debtor; Copies of Ledger, Challans, tax invoices and carrier receipts annexed as Annexure P-2 to the Petition; Copy of statutory demand notice dated 25.01.2019 annexed as Annexure P-3; Copy of Bank Statement of the Operational Creditor filed separately.
6. The Operational Creditor has proposed Mr. Sashi Agarwal as the Interim resolution professional (IRP). The proposed IRP has given written consent in Form 2 which is also annexed to the Petition as Annexure P-4.
7. Heard the Ld. Counsel appearing for the Petitioner and perused the records. In the Light of the above said discussions, the application is hereby admitted under section 9 of the I & B Code upon the following directions:-

O R D E R

- a) 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, Pobi Technologies & Constructions Private Limited is hereby admitted.

- b) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- c) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The L.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.
- d) 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 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 Securitisation 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 the possession of the corporate debtor.
- e) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- f) 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.
- g) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- h) 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.
- i) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- j) Mr. Shashi Agarwal, residing opposite Udayan Club, 21N, Block-A, New Alipore, Kolkata- 700 053 having email: [shashiagg@rediffmail.com](mailto:shashiagg@rediffmail.com) and


registration number being IBBI/IPA-001/IP-P00470/2017-18/10813 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

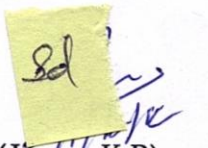
- k) The Interim Resolution Professional / Resolution Professional to conduct CIRP of the Corporate Debtor as per time line prescribed under Regulation 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
- l) The Interim Resolution Professional should convene a meeting 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.
- m) The Operational Creditor/Petitioner is directed to deposit 3,00,000/- (Rupees Three Lakhs Only) within one week from the date of this order, in the ESCROW Account in SBI maintained by the Registrar NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional before the constitution of the CoC and the fees and cost can be withdrawn by the IRP/RP after the approval of CoC. Balance, if any, can be withdrawn by the Operational Creditor.
- n) 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 IRP by Speed Post as well as through email.

sd

sd.

8. List the matter on 27.01.2020 for the filing of the progress report.
9. 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 11<sup>th</sup> day of December, 2019.*

/hb/.