

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (IB) No.1911/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 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;
And

In the Matter of:

Ajit Kumar, a sole proprietor, carrying on business in the name of proprietary concern by name Shree Shankar Enterprise, having its registered office at 10, Clive Row, 1st Floor, Kolkata - 700 001.

.....Applicant/Operational Creditor

And

In the Matter of:

HAIL Tea Limited, having its registered office at 160, Bangur Avenue, Block B, 2nd Floor, Northern Side, Kolkata - 700 055, West Bengal.

..... Corporate Debtor

Date of Hearing 17th January 2020

Order Delivered on 21st January 2020

Coram:

Jinan K.R., Member (Judicial)

Harish Chander Suri, Member (Technical)

For the Operational Creditor : Mr. Barnik Ghosh, Advocate

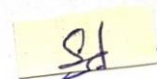
For the Corporate Debtor : 1. Ritoban Sarkar, Advocate
2. Avishek Das, Advocate

ORDER

Per Jinan K.R., Member (Judicial)

Shri Ajit Kumar, sole proprietor of of proprietorship concern viz. Shree Shankar Enterprise filed this application under Sec.9 of the Insolvency and





Bankruptcy Code, 2016 (in short IB Code) for initiation of corporate insolvency resolution process against the corporate debtor, viz., Hail Tea Limited for the alleged default in payment of operational debt to the tune of Rs.2,45,828.66 (Rupees Two lakh forty five thousand eight hundred twenty eight and paise sixty six only).

2. Brief facts of the case, for our consideration of the application are the following: -

In April 2017, the corporate debtor through its agent had approached the operational creditor to purchase nut bolts, asbestos tape, cupling and related machinery for the tea estate in Assam owned by the corporate debtor. Accordingly, several orders for purchase of the goods were placed by the corporate debtor verbally upon the operational creditor. The operational creditor in good faith supplied the goods as per the requirements of the corporate debtor to its full satisfaction. The operational creditor had used the services of Sugam Parivahan Private Limited for transporting the goods from Kolkata to Assam. The corporate debtor had received all such goods and had utilised the same without rising any demur of complaint in regard to quality of the goods.

3. Thereafter, the operational creditor had raised 11 invoices amounting to Rs.1,94,278.66. However, the corporate debtor did not make payment of the demands raised by the operational creditor. Repeated requests and follow-ups have been made by the operational creditor for releasing the due amount. However, the corporate debtor stated that it has been running severe losses over the years and not in a position to pay. Thus, the corporate debtor has failed and neglected to pay the outstanding amount of Rs.1,94,278.66 along with interest @18% per annum, totalling to Rs.2,45,828.66. The corporate debtor admitted its liability to pay the outstanding debt due to losses being suffered by the

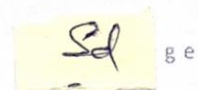
corporate debtor year after year and prays for admitting the petition.

4. The Corporate Debtor entered appearance and filed its reply wherein it has been stated the corporate debtor is undergoing severe financial crisis as the production cost has loomed larger than profit over the last five years. In such circumstances, the corporate debtor is under liquidity crisis to make payment of the extant amount being claimed by the operational creditor in this regard. The operational creditor has supplied nuts, bolts, asbestos, cuplings and such machinery for operational purposes of the corporate debtor. Due to deteriorating financial conditions of the corporate debtor, the payments became more and more difficult for the corporate debtor. The corporate debtor had to first make payment to its workers before suppliers, due to which no payment could be made to the operational creditor in the instant matter and prays for passing an order in this regard.

5. Heard both sides and perused the records.

6. This is an application filed under Sec.9 of IB Code for initiation of corporate insolvency resolution process against the company who is dealing with manufacturing of tea. Admittedly, there was supply of goods, like, nuts, bolts, asbestos, cuplings and such machinery, as per 11 invoices amounting to Rs.1,94,278.66.

7. According to the Ld. Counsel for the operational creditor since the corporate debtor failed to pay the above said amount, it is entitled to claim interest @ 18% per annum and thereby the total amount due is Rs.2,45,828.66. None of the invoices contains the terms stipulating the corporate debtor to pay interest for the delayed payment of the amount found due to the operational creditor. So that is the operational debt due and payable by the corporate debtor is Rs.1,94,278.66. The corporate debtor having not disputed its liability, the

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amount as claimed by the operational creditor towards the material cost is found due and payable by the corporate debtor.

8. According to the Ld. Counsel for the operational creditor, despite repeated demands, the corporate debtor failed to pay the operational debt and thereby issued a demand notice under Sec.8(1) of the IB Code, 2016, and the Corporate Debtor was in receipt of the demand notice and sent a reply dated 26/10/2019 by admitting the liability showing its inability to pay off the amount found due to the operational creditor. Accordingly, the claim of the operational creditor is found sustainable under the law.

9. In compliance of Sec.9(3) (b) of IB Code, 2016, the applicant has produced an affidavit and statement of bank account also seen produced on the side of the operational creditor. Therefore, all the requirements are made out in the case in hand. The operational creditor has also proposed the name of Resolution Professional, Shri Madhur Agarwal, Registration No.IBBI/IPA-001/IP-P00653/2017-2018/11127. Written communication under Form 2 reveals that there is no disciplinary proceedings pending against the proposed IRP. That being so, the operational creditor succeeds in proving that the application under sub-sec.(2) of Sec.9 of IB Code, 2016 is complete that there is no payment of the unpaid operational debt and that there is service of demand notice with invoices. Despite receipt of the demand notice, there is no payment on the side of the corporate debtor and also there is no disciplinary proceedings pending against the RP proposed under sub-sec.(4) of Sec.9 of IB Code, 2016 and accordingly this application is liable to be admitted.

10. In view of what is stated above, this application is liable to be admitted and the application is admitted upon the following:-

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, HAIL Tea Limited is hereby admitted.
- ii. We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- 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 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

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- 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 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 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. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
 - x. Shri Madhur Agarwal, Registration No.IBBI/IPA-001/IP-P00653/2017-2018/11127 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
 - xi. The Operational Creditor to deposit a sum of Rs.2,00,000/- (Two Lacs) in the ESCROW Account in SBI to be operated through the

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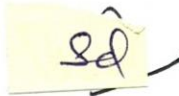
Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP within one week of the date of this order which can be adjusted after constitution of the CoC.

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

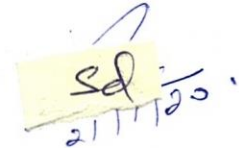
xiii. Registry is hereby directed under section 9(5) of the I.B.Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

11. List the matter on 27/2/2020 for filing of the progress report.

12. 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 (T)



(Jinan K.R.)
Member (J)

Signed on 21st January 2020