

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

**CP (IB) No.356/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:

Imperial Refractories, having its office at Newar Bhawan, Top Floor, 87, Chowringhee Road, Kolkata - 700 020.

.....Operational Creditor

And

In the Matter of:

Super Iron Foundry Pvt. Ltd., having its registered office at 7, Rabindra Sarani, Kolkata - 700 007 and also at 12, Pretoria Street, Kolkata - 700 071.

..... Corporate Debtor

Date of Hearing: 17<sup>th</sup> October 2019

Order Delivered on 21<sup>st</sup> October 2019

**Coram:**

**Madan B Gosavi, Member (J)**

**Virendra Kumar Gupta, Member (T)**

For the Operational Creditor : Mr. Anil Choudhury, Advocate

For the Corporate Debtor : 1. Mr. Pranay Agarwal, Advocate  
2. Ms. Ankita Baid, Advocate

**ORDER**

**Per Virendra Kumar Gupta, Member (Technical)**

This application has been filed under Sec.9 of the Insolvency & Bankruptcy Code, 2016 by the operational creditor, viz., Imperial Refractories for initiation of corporate insolvency resolution process against the corporate debtor, viz., Super Iron Foundry Pvt. Ltd. The amount of default has been

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claimed at Rs.18,48,170/- inclusive of interest.

2. The facts, in brief, are that the operational creditor supplied goods to the corporate debtor as per its requirement. Three invoices totalling to Rs.16,97,417/- remained unpaid. Supplies were made by the operational creditor in April, May and June 2018 based upon purchase orders issued by the corporate debtor. Corporate debtor, in spite of several requests, did not make the payment.

3. Ld. Counsel for the operational creditor narrated the facts and drew our attention to pages 21 to 23 containing copies of three invoices. Ld Counsel further submitted that several emails were exchanged and corporate debtor though raised some quality issue but neither returned the goods nor made any settlement for such issue and intentionally did not make the payment in spite of several reminders. Ld. Counsel further submitted that notice under Sec.8 of Insolvency & Bankruptcy Code, 2016 had been duly served and, therefore, the petition was liable to be admitted. Ld. Counsel further submitted that no reply had been given by the corporate debtor to the notice under Sec.8 of Insolvency & Bankruptcy Code, 2016.

7. Ld. Counsel for the corporate debtor on the other hand drew our attention to pages 27 and 28 of the Paper Book to show that there were issues relating to quantity of the materials supplied and such issues were raised on 18/3/2018 and 28/5/2018 whereas the petition was filed in December 2018, hence, it was a case of pre existing dispute. Consequently, the petition was not liable to be admitted.

8. Ld. Counsel for the operational creditor, in the rejoinder submitted that except one invoice i.e. IR/18-19/104 dated 5/4/2018 no dispute existed in other two invoices. He further contended that even against this invoice no

complaint was done when the material was supplied. Ld. Counsel further submitted that vide letter dated 17/9/2018 the conduct of the corporate debtor in holding back the payment due to the operational creditor was deplored.

9. We have considered the submissions made by both the sides and perused material on record. Admittedly, there has been correspondences between the operational creditor and corporate debtor regarding release of payment. It is also noteworthy that only in one invoice, observations have been made by the corporate debtor regarding quality. In one mail it has been stated that after deduction the payment could be released and in this list only one invoice dated 5/4/2018 find mention and in respect of other two invoices which are dated 11/5/2018 and 8/6/2018 there is no dispute nor any reason has been given as to why such invoice have not been paid. The amount of those invoices taken together is more than thresh-hold limit of Rs.1 lakh. Thus, on this basis only the petition can be admitted. Having stated so, in our view such conduct of the corporate debtor is against the spirit of Insolvency & Bankruptcy Code, 2016 as such situation adversely impact the promotion of credit culture. It is further to be noted that no reply to notice of demand issued under Sec.8 of Insolvency & Bankruptcy Code, 2016 has been given which also goes against the corporate debtor.

8. In view of the above facts, we are of the view that such dispute has been raised only to delay the release of payment to the operational creditor in respect of debt which is due and payable. This resulting into a situation of default. Consequently, this petition is liable to be admitted.

9. It reveals from the record that the applicant has not proposed any name of Interim Resolution Professional as per provisions of Sec.9(4) of the Insolvency & Bankruptcy Code, 2016. Hence, we approve the name of Ms. Savita Agarwal,

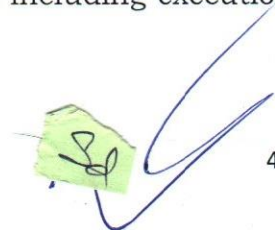
registration No.IBBI/IPA-00/IP-P00101/2017-18/10201 email id savita\_22@hotmail.com Mob No.9831634214 as she is qualified and no disciplinary proceedings are pending against him.

10. That application filed under section 9 of IBC is complete in all respects and complies with the requirements of IB Code read with relevant regulations and the debt is not barred by limitation. Accordingly, we admit the same and order as under:-

**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, Apeejay Tea Limited is hereby admitted.
- ii. We 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


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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 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. Ms. Savita Agarwal, registration No.IBBI/IPA-00/IP-P00101/2017-18/10201 email id savita\_22@hotmail.com Mob No.9831634214 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 pay a sum of Rs.2,00,000/- (Rupees Two lakh) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate Insolvency Resolution Process and if not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.
- 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 7(7) 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.
12. List the matter on 29/11/2019 for the filing of the progress report.
13. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(Virendra Kumar Gupta)  
Member (T)

Signed on 21<sup>st</sup> October 2019

  
(Madan B Gosavi)  
Member (J)