

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/1818(KB)2019

**Present: 1. Hon'ble Member(J), Shri Rohit Kapoor
2. Hon'ble Member(T), Shri Harish Chander Suri**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 09th December, 2021, 10:30 A.M

Name of the Company	VENKETESH UDYOG Vs. BIHARILAL GREENWOOD PVT. LTD.		
Under Section	IBC Under Sec 9		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

Counsel / Authorised Representative appeared through video conference:

1. Mr. Soumya Mukherjee, Advocate] For Operational Creditor
2. Mr. K. N. Jana, Advocate]

ORDER

1. The Court is convened by video conference today.
2. This petition under section 9 of the Insolvency and Bankruptcy Code, 2016 has been filed by **Sri Bankat Garodia** , the sole proprietor of **Venketesh Udyog**, (hereinafter referred as the Operational Creditor) having its office at Old Commissioner Compound Ranchi- 8340001, Jharkhand, seeking initiation of corporate insolvency resolution process in respect of **Biharilal Greenwood Private Limited** , **CIN: U36912WB2016PTC209314**, a corporate entity, having its office Plot No. 2372,2374,2375,2376, Tali Centre, Village-Durga, Post Office- Chekya,Police Station-Kotshila, District- Purulia, West Bengal. (hereinafter referred as the Corporate Debtor).
3. It is submitted by the Operational Creditor that by way of an agreement dated 4th January,2019 entered into between the Corporate Debtor and the Operational Creditor, the Operational Creditor was appointed as the Super Distributor by the Corporate Debtor in respect of their goods in the brand of 'MARBONE' in the territory of Ranchi, East Singhbhum, Palamau,West Singhbhum, Garhwa ,Seraikella and other places with various terms and conditions as mentioned in the said Distributorship Agreement.

4. It is further submitted that the Operational Creditor made certain advance payments to the Corporate Debtor to the tune of Rs. 32,51,221/- on 13th December, 2018 through NEFT for purchase of goods under the brand “Marbone’ and out of the said amount the goods for value of Rs.9,33,892/- were supplied by the Corporate Debtor instead of the total quantity agreed to be supplied to the tune of Rs.32,51,221/- for which the advance payment has been given by the Operational Creditor. It is further submitted by the Operational Creditor that in spite of repeated requests made by the Operational Creditor, the Corporate Debtor has failed and neglected to supply the remaining quantity of goods and ultimately agreed to return the said balance advance paid to them i.e. Rs. 23,17,239/- along with the interest.
5. It is submitted that the Operational Creditor has issued/exchanged a number of emails, and letters to the Corporate Debtor including the one sent on 31st July,2019, thereby terminating the said agreement between the parties and requesting them to refund the amount along with interest. According to the Operational Creditor a sum of Rs.23,17,239/- @ 12% per annum is to be realized from the Corporate Debtor and the date of default quoted in the petition is 13th December 2018. The Operational Creditor has annexed with the petition all the relevant papers and the petition having been filed on 1st October, 2019, there is no issue as regards limitation involved in this petition.
6. It is submitted that the Corporate Debtor issued a Cheuqe bearing No.527518 dt. 31.05.2019 drawn on State Bank of India, which was dishonoured when it was presented for payment.
7. In addition to the Emails, the Operational Creditor issued letter dated 31st July,2019 demanding the aforesaid amount of Rs. 23,17,239/- which was duly received by the Corporate Debtor but there was no response. It is submitted that the Operational Creditor further sent another notice dated 4th September, 2019 under section 8 of the Code by Speed Post which was also duly served on the Corporate Debtor. The Track Report indicated “Item delivery confirmed” is on record. But there was no response thereto as well.
8. When this petition was filed, inspite of notice having been received by the Corporate Debtor, nobody appeared on behalf of Corporate Debtor, nor any

reply to the petition was filed. The Corporate Debtor was thus proceeded ex parte on 3.12.2019. The Operational Creditor has filed an affidavit under section 9(3)(b). In Para 2 of the affidavit, it has been stated that no notice was served by the Corporate Debtor raising or existence of any dispute as regards the operational debt due to the Operational Creditor by the Corporate Debtor.

9. The Operational Creditor has enclosed the copy of the Bank Statement indicating that the advance money had been paid in part, of which was adjusted against the goods received from the Corporate Debtor and for the remaining amount, the Corporate Debtor has failed to refund.
10. This is a clear cut case, in which the Corporate Debtor should have either supplied goods or refunded the amount or at least replied to the notice under section 8 of the Act raising any pre-existing dispute if they had any but they have missed the golden opportunity by not replying to the notice under section 8 of the IBC.
11. We are fully convinced that the Operational Creditor has a good case. In this petition also the Corporate Debtor has not either appeared or opted to file any reply through its authorised representative. So on both these counts , the Corporate Debtor has failed to defend itself .
12. We, therefore, have no hesitation in accepting and admitting the petition and order initiation of CIRP against the Corporate Debtor in this matter.
13. The Operational Creditor though proposed name of Insolvency Resolution Professional. We, therefore, appoint **Ms. Meera Prasad, IRP** having Reg. No. **IBBI/IPA-003/IP-N00278/2020-2021/13212**, the **Ms. Meera Prasad** to act as Interim Resolution Professional (IRP). She shall file Form-2, and that no disciplinary proceedings are pending against her with the Board. .
14. We have heard the Ld. Counsel for the parties and gone through the petition and documents placed on record by the Operational Creditor.
15. The application of the Operational Creditor is otherwise complete in all respect. We have thus no hesitation to admit the this petition with the following orders:

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, is hereby **admitted**.
- 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 supply of essential goods or 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.
- ix) **Ms. Meera Prasad** registered with Insolvency and Bankruptcy Board of India, having Registration No **IBBI/IPA-003/IP-N00278/2020-2021/13212** and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby 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.
- x) 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.
- xi) The Operational Creditor/Applicant is directed to deposit **Rs. 1,00,000/- (Rupees One Lac only)** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

16. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

17. List the matter on **18.02.2022**. for filing of **Progress Report**.

18. 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)

Rohit Kapoor
Member (Judicial)

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