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

**CP (IB) No.982/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:

Veekay General Industries, registered under the provisions of Companies Act, 1956, having its registered office at B-46, Jhilmil Industrial Area, G.T. Road, Shahdra, Delhi - 110 095.

.....Operational Creditor/Applicant

And

In the Matter of:

Bright Power Projects (India) Private Limited, registered under the provisions of Companies Act, 1956, having its registered office at 24-Parganas (North), Belgharia, Kolkata - 700 056, West Bengal.

..... Corporate Debtor/Respondent

Date of Hearing: 28<sup>th</sup> November 2019

Order Delivered on 6<sup>th</sup> December 2019

**Coram:**

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

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

For the Operational Creditor : 1. Mr. Sudepta Kumar Pal, Advocate  
2. Mr. A. Dutta, Advocate


For the Corporate Debtor : 1. Mr. Zarowar Singh, Advocate  
2. Mr. Anirudhya Dutta, Advocate

**ORDER**

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

This petition has been filed under Sec.9 of the Insolvency & Bankruptcy Code, 2016 by the operational creditor, viz., Veekay General Industries for





initiation of corporate insolvency resolution process against the corporate debtor, viz., Bright Power Projects (India) Private Limited. The amount of default has been claimed at Rs.62,80,903/- and the date of default is 28/1/2019.

2. The facts, in brief, are that the operational creditor is engaged in manufacture and supply of electric bulbs, tube light and other electrical goods to railway and other private companies. Based upon negotiations between the operational creditor and corporate debtor, the operational creditor supplied goods to the tune of Rs.62,80,903/- by proforma invoice dated 5/1/2019. Payment was secured through issuance of irrevocable LC issued by the banker of the corporate debtor which was not discounted due to certain discrepancy which were not cleared by the corporate debtor. Corporate debtor assured to the operational creditor vide its mail dated 14/2/2019 that the payment would be cleared as soon as possible. However, such promise was not honoured, hence, this petition.

3. Ld. Counsel appearing on behalf of the operational creditor narrated these basic facts and drew our attention to the Paper Book to show the copy of proforma invoice dated 5/1/2019, copy of LC, tax invoice and evidences showing delivery of materials. Ld. Counsel also drew our attention to page 32 to show total supply was worth Rs.67,38,504/-, however, deduction of advance of Rs.4,57,601/- the net outstanding amount was Rs.62,80,903/- as per bill of exchange signed by the corporate debtor.

4. Ld. Counsel also drew our attention to show that several correspondences happened between the parties for release of payment. Ultimately, a demand notice under Sec.8 of Insolvency & Bankruptcy Code, 2016 was delivered and evidences in this regard had been submitted in the Paper Book. Ld. Counsel further contended that there was no dispute as regard

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to the supply of the goods, quantity or quality thereof. The amount was due and payable and default had occurred, hence, this petition was liable to be admitted.

5. Ld. Counsel appearing on behalf of the corporate debtor drew our attention to pages 50 and 51 of its reply to show that the corporate debtor, in fact, had gave advances to the operational creditor for Rs.10,89,225/- on 12/12/2017, Rs.21,80,750/- on 13/12/2017 and Rs.22,00,000/- on 11/5/2018, which had been adjusted. Hence, no debt was due and payable to the extent what had been claimed by the operational creditor. It was also claimed that on 8/8/2018 purchase order had been placed. Value of such purchase order was Rs.3,29,51,453/-. Another purchase order was placed on the same date value of which is Rs.2,85,44,889/- which the operational creditor failed to complete as per schedule. In this regard Ld. Counsel drew our attention to page 56 containing email dated 29/8/2018 wherein issue of delay in supply had been raised and it was also made clear that such delay would result in to losses which was not acceptable.

6. Ld. Counsel thereafter drew our attention to pages 84 and 85 of the reply affidavit to show that the net amount outstanding was Rs.7,35,691/- and the corporate debtor was ready pay the same.

7. Ld. Counsel for the operational creditor, in the rejoinder, contended that the present invoice was different and 10% advance had been given and Rs.4,57,601/- was only been given. He also drew our attention to the fact that the amount of advance claim at Rs.53,93,625/- was also not correct.

8. We have considered the submissions made by both the sides and materials on record. Admittedly, there is no dispute regarding material being supplied. No dispute exists as regards to the quality or quantity of the material as well. The only claim which has been made by the corporate debtor is that it

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had given advance against the earlier work orders and such work orders were not completed. However, no material has been brought on record other than the copy of work orders or one email to the fact that there was a delay by the operational creditor in support of this. In any case, this cannot be a valid reason not to admit this petition as per Scheme of Insolvency & Bankruptcy Code, 2016. and for that amount corporate debtor could have taken action action under Insolvency & Bankruptcy Code, 2016. We have also gone through the statement of account submitted before us, copy of the same have been placed at pages 50 and 51 of the Paper Book and from perusal of the same it is noted that the amount of advance claim at Rs.53,93,625/- is also not correct, because the amount of advance claim to have been paid on 13/12/2017 including of payments to various vendors/service providers and not only to the operational creditor. Even, other two advances have been shown against the work orders which are not of August 2018. Thus, this claim of the corporate debtor is not supported by evidence. Assuming for the moment that such claim made by the corporate debtor is correct, even then the amount outstanding is more than Rs.1 lakh which is sufficient to trigger action under Sec.8/9 of Insolvency & Bankruptcy Code, 2016. Notice under Sec.8 of Insolvency & Bankruptcy Code, 2016 has duly been delivered. The petition is otherwise complete in all respect and defect free and also complies with the requirements of provisions of Insolvency & Bankruptcy Code, 2016 read with regulations thereto.

9. Name of IRP has not been proposed as it is not mandatory for an application filed under Sec.8 of Insolvency & Bankruptcy Code, 2016. Hence, we approve the name of Shri Ananda Rao Korada, IP Registration No.IBBI/IPA-002/IP-N00286/2017-18/10844 email id [raoka55@gmail.com](mailto:raoka55@gmail.com) Mob. No.9874264647 as IRP as he is on the panel approved by Insolvency &

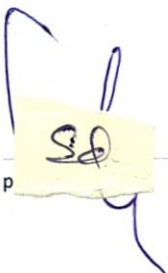
Bankruptcy Board of India and no disciplinary proceedings are pending against him.

10. In view of the above discussion, we admit the application and order as under:-

**ORDER**

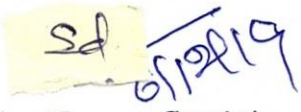
- i. The application filed by the Operational Creditor under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Bright Power Projects (India) Private Limited is hereby admitted.
- ii. We declare a moratorium and public 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 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.

  
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- x. Shri Ananda Rao Korada, IP Registration No.IBBI/IPA-002/IP-N00286/2017-18/10844 email id [raoka55@gmail.com](mailto:raoka55@gmail.com) Mob. No.9874264647 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 only) 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 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 24/1/2020 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.

  
(Virendra Kumar Gupta)  
Member (T)

  
(Madan B Gosavi)  
Member (J)

Signed on 6<sup>th</sup> December 2019