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Final Draft

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

**C.P. (IB) No. 832/KB/2019**

**IN THE MATTER OF:**

An application 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:**

M/s CARBON RESOURCES PRIVATE LIMITED, having its registered office at Saberwal House, 55B, Mirza Gazib Street, 3<sup>rd</sup> Floor, Kolkata - 700016, West Bengal.

.....Operational Creditor / Applicant

**And**

**IN THE MATTER OF:**

M/s. DIMENSION STEEL & ALLOYS PRIVATE LIMITED, having its Registered office at Camac Court, Flat No. 6/B, 25B, Camac Street; Kolkata - 700016, West Bengal.

....Corporate Debtor / Respondent





**CORAM:**

**Shri M. B. Gosavi., Member (Judicial)**  
**Shri V.K. Gupta, Member (Technical)**

**COUNSELS ON RECORD:**

1. Mr. Snehashis Sen, Advocate }... For the Petitioner

**Date of pronouncement of order: /10/2019**

**ORDER**

Per V.K. Gupta, Member (Technical)

This petition has been filed under Section 9 of Insolvency and Bankruptcy Code 2016, read with Rule 6 of the Insolvency and Bankruptcy (application to adjudicating authority) Rules, 2016 by the Operational Creditor namely M/s CARBON RESOURCES PRIVATE LIMITED to initiate Corporate Insolvency Resolution Process against the Corporate Debtor namely M/s. DIMENSION STEEL & ALLOYS PRIVATE LIMITED. The amount of default has been stated at Rs. 23,86,488.00 and interest therein at Rs. 3,16,733.81 both aggregating to Rs. 27,03,221.81 (Rupees Twenty-Seven Lakhs Three Thousand Two Hundred Twenty-one and Paise Eighty-one only) upto 31<sup>st</sup> March, 2019.

2. The facts, in brief, are that the Operational Creditor supplied the material based upon purchase order placed by the Corporate Debtor. The supply was made in May and June, 2018. The Corporate Debtor had also given to post dated cheques which were not encashed due to insufficient balance.

3. None appeared on behalf of the Corporate Debtor. The Ld. Counsel appearing on behalf of the Operational Creditor narrated these facts and drew our attention to page Nos. 74 to 76 and 297 to 299 of the paper book to substantiate its claims regarding supply as well as non encashment of cheques given by Corporate Debtor. After all efforts to realize the money had failed the notice under Section 8 of IBC, 2016 had been delivered on Corporate Debtor on 19.03.2019. In this regard, he drew our attention to pages 316 and 320 of the paper book.

4. After consideration of facts and material on record, we are of the view that there exists an admitted debt which is due and payable. The default has occurred in the payment thereof. Notice under Section 8 of the IBC, 2016 has been duly delivered on the Corporate Debtor. The amount of debt is not barred by limitation. The Petition filed under Section 9 is complete and in compliance with the requirements of IBC, 2016 read with relevant regulations. The Operational Creditor has proposed the name of IRP who has given his consent. It is claimed that no disciplinary proceedings are pending against him. Hence, we approve the same.

5. We admit the said 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, M/s. DIMENSION STEEL & ALLOYS 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 Operational 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.

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- 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 Operational 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. Meena Sureka, IP Registration No. IBBI/IPA-001/IP-P01422/2018-2019/12163, E-mail ID: [ipmeenasureka@gmail.com](mailto:ipmeenasureka@gmail.com) Mob. No. 9331011654 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 sum of Rs. 1,00,000.00 (Rupees One Lakh only) to IRP as advance fees 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.

5. List the matter on **03.12.2019** for the filing of the progress report.

6. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(V.K. Gupta)  
Member (Technical)

  
(M.B. Gosavi)  
Member (Judicial)

Signed on this, the 18<sup>th</sup> day of October, 2019.

M\_Jana\_Steno.