

IN THE NATIONAL COMPANY LAW TRIBUNAL,KOLKATA BENCH, KOLKATA**CP(IB) No. 1472/KB/2018**IN THE MATTER OF

An application Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the of the Insolvency and Bankruptcy (Application to Adjudicating Authority) for initiation of Corporate Insolvency Resolution Process.

And

IN THE MATTER OF

UEM India Private Limited, having its registered office at D-19, Kalkaji, New Delhi- 110019

.....Operational Creditor

Versus

Bengal Chemicals & Pharmaceuticals Limited , having its registered office at 6, Ganesh Chunder, Avenue, Kolkata-700013, West Bengal.

.....Corporate Debtor

Date of Hearing : 30.10.2019Order Delivered on : 01.11. 2019**Coram:****Madan B Gosavi, : Member (J)****Virendra Kumar Gupta, : Member (T)**

For the Operational Creditor : Mr. Pawan Sharma, Advocate

For the Corporate Debtor : 1.Mr. Supriya Ranjan Saha, Advocate
: 2.Mr.Subhrangsu Maiti, Advocate

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

This application Under Section 9 IBC,2016 has been filed by the Operational Creditor namely UEM India Private Limited to initiate Corporate Insolvency Resolution Process against Corporate Debtor namely Bengal Chemicals & Pharmaceuticals Limited. The amount of default has been claimed at Rs. 38,10,206/- (Rs. Thirty Eight Lakhs Ten Thousand Two Hundred and Six only) and interest thereon has been computed at Rs.35,63,608.99/- (Rs. Thirty Five Lakhs Sixty Three Thousand Six Hundred Eight and Ninety Nine Paise).

2. The facts, in brief, are that the Operational Creditor is engaged in business of designing and construction of water treatment plant etc. Pursuant to the tender floated by Corporate Debtor, Operational Creditor carried out the work at the designated site of the Corporate Debtor. The work completion certificate was given on 1st February, 2013. All the payments were released to the Operational Creditor except a sum of Rs. 38,10,206/- comprising of security and performance guarantee. The Operational Creditor pursued the matter from time to time. However, the same was not paid. In this situation, Operational Creditor served a notice under section 8 of IBC, 2016 on 20.11.2017, to which Corporate Debtor replied on 01.12.2017. The copies of the work order and invoices raised by the Operational Creditor and other documentary evidences including correspondences have been placed in the paper book.

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3. The learned counsel appearing for the Operational Creditor after narrating the relevant facts pointed out that there was no dispute regarding the work done by the Operational Creditor and due to the inability/ limitations of Corporate Debtor, the plant was not commissioned, hence, security and performance money retained was not refunded. To substantiate his claims, he drew our attention to page 78 of the paper book and drew our attention to Clause 7.3(d) to show that retention money was to be paid after completion of defect liability period/guarantee period, which was 12 months from the date of commissioning or 18 months from the date of delivery, whichever was later. He also submitted that retention money was to be released against submission of Bank guarantee of equal amount. Having narrated this contractual term, the learned counsel drew our attention to Clause 7.4 to show that guarantee/defect liability period was already expired as the plant had not been commissioned. Thereafter, he drew our attention to pages 114 to 117 and 130 to show that the Operational Creditor from time to time requested the Corporate Debtor to release the funds and it was ready to provide bank guarantee of the equivalent value. He also drew our attention to page no. 146 which contained the letter of the Managing Director of the Corporate Debtor dated 25th April, 2014 wherein it had been mentioned that due to shortage of funds, the Corporate Debtor was not able to complete and commission the project and efforts were being made to restart the work at the designated site. He also drew our attention to page 213 containing reply dated 01.12.2017 of the Corporate Debtor to notice of demand issued under

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section 8 of IBC, wherein it has been stated that the Corporate Debtor would release the retention money after successful commissioning of the Effluent treatment plant. The learned counsel pleaded that there was no default on the part of the Operational Creditor and Corporate Debtors indefinite failure could not be a reasonable basis for not releasing the amount.

4. The learned counsel for the Corporate Debtor pleaded that the required bank guarantee was not provided nor the trial runs had happened, hence, there was no debt and due and payable, consequently, there was no default. Thus, this petition was not liable to be admitted.

5. We have considered the submissions made by the both the sides and have also perused the matter on record. It is not in dispute that the Operational Creditor has carried out the work in the year 2013 at the designated site of the Corporate Debtor. The retention money has been withheld against commissioning of the said plant. It is worth while to note that even after lapse of considerable period, the Corporate Debtor could not commission the plant. It is also noted that the Operational Creditor has offered to provide bank guarantee equivalent to the value of retention money if the subject payment was released. In our view the services have been rendered and amount is due and payable because the Operational Creditor has discharged its contractual obligations. We also find that there is an admission on debt by the Corporate Debtor. The petition is within limitation period. The debt is payable and Corporate Debtor has failed to pay the same, hence, a default has

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occurred. No dispute exists in terms of provisions of Section 5(6) of IBC,2016.

6. The compliance affidavit under section 9(3)(b) is on record. Demand notice has been duly served. The application is defect free.

7. The name of IRP has not been proposed as it is not mandatory in case of application filed under section 9 of IBC,2016. As we are authorised to appoint an IRP from the list maintained by IBBI, the same will be done with the stipulation with consent of such person to obtain within one week from the date of uploading of this order. In case such appointed person does not intend to work as an IRP, an other qualified person may be appointed.

8. We admit this petition 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, Bengal Chemicals & Pharmaceuticals Limited is hereby **admitted**.
- ii) We declare a moratorium and cause public announcement in accordance with Sections 13 and 15 of the I&B Code, 2016.
- iii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional 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

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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.

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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. Sonu Jain** , IRP Registration No. **IBBI/ IPA-001/IP-P00575/2017-2018/11016**, E-mail: **skb.casonujain@gmail.com**, mobile no.9830285088, is appointed as Interim Resolution Professional.

v. The Operational Creditor to pay a sum of Rs. 100000/- (Rs. One 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) List the matter on **18.12.2019** for the filing of the **progress report**.

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 IRP by Speed Post as well as through e-mail.

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

WSG 11/11/2019
(Virendra Kumar Gupta)
(Member (T))

MSG 11/11/2019
(Madan B Gosavi)
(Member (J))

Signed on 1st November, 2019