

**In the National Company Law Tribunal  
Kolkata Bench  
Kolkata**

**C.P. (IB) No. 831/KB/2018**

**In the matter of:**

**An application for initiation of corporate insolvency resolution process by an Operational Creditor 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. S.T.P. Limited,** having Corporate Identity Number U23109WB1935PLC008423, a company registered under the Companies Act, 1956 and having its registered office at 6, Lyons Range, Kolkata 700001 within the jurisdiction aforesaid.

**... Applicant**

**Versus**

**In the matter of :**

**M/S. M.K. Infrastructure Private Limited,** having Corporate Identity Number U45309WB2004PTC100620, a company registered under the Companies Act, 1956 and having its registered office at 1, Agarsen Road, Post Office – Siliguri, District – Darjeeling, West Bengal, Pin 734405 in the State of West Bengal within the jurisdiction aforesaid.

**.....Corporate Debtor**

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**Date of pronouncement of order : 24/01/2020**

**Coram: Shri Jinan K.R, Hon'ble Member (Judicial) &**

**Shri Harish Chander Suri, Hon'ble Member (Technical)**

**Counsel on Record :**

- |                                     |   |                           |
|-------------------------------------|---|---------------------------|
| 1. MS. URMILA CHAKRABORTY, Advocate | ] | For Operational Creditor. |
| 2. MR. ARNAB BASU MULLICK, Advocate | ] |                           |
| 1. MR. K. MULLICK, Advocate         | ] |                           |
| 2. MR. A. PODDAR, Advocate          | ] | For Corporate Debtor.     |
| 3. MR. AYAN BASU, Advocate          | ] |                           |
| 4. MR. ARUNABHA SOM, Advocate       | ] |                           |

**ORDER**

**Per Shri Harish Chander Suri, Hon'ble Member (T).**

1. This application under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by M/s. S.T.P. Limited, through One Mr. Ricky Pandey, Authorised Representative duly authorized vide Board Resolution passed on 30<sup>th</sup> March, 2018, hereinafter referred to as the Operational Creditor, seeking initiation of Corporate Insolvency Resolution Process against M/s. M.K. Infrastructure Private Limited, a Corporate entity having its registered office at Darjeeling, West Bengal, hereinafter referred to as the Corporate Debtor.

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2. The Operational Creditor has submitted that the Operational Creditor had supplied Thermoplastic Road marking paint i.e. Shalimark B.S. (White) and Glass Bead, to the Corporate Debtor and raised various tax paid invoices. The Operational Creditor has filed along with the application a computation of total debt due which gives necessary details of the invoice Numbers and the amount due etc.
3. It is stated that a sum of Rs.10,24,074/-(Rupees Ten Lakh Twenty Four Thousand and Seventy Four Only) is due. The Operational Creditor has filed copies of all the invoices and delivery challans which indicate the delivery of the goods to the Corporate Debtor. It is submitted that the Corporate Debtor had issued two post dated cheques bearing No. 735247 dated 15<sup>th</sup> April, 2016 and cheque No. 735249 dated 30<sup>th</sup> April, 2016 for Rs.4,31,236/- (Rupees Four Lakh Thirty One Thousand Two Hundred Thirty Six Only) each which were dishonoured on presentation. Vide letter dated 27<sup>th</sup> July, 2016 the Operational Creditor through their Advocate sent a notice to the Corporate Debtor and its Directors intimating about the dishonouring of the **cheque No. 735249** and cheque No. 735247 calling upon them to make the payment of the dishonoured cheque.
4. It is submitted that in spite of various requests and demands the Corporate Debtor has not made the payment to the Operational Creditor. The Operational Creditor once again issued notice dated 2<sup>nd</sup> February, 2017 under Section 271 of the Companies Act, 2013

demanding the sum of Rs.7,51,138/- to which a reply dated 21<sup>st</sup> February, 2017 was received from the Corporate Debtor in which it was mentioned that since the Operational Creditor had already filed one criminal complaint under Section 141/148 of the Negotiable Instrument Act before the Chief Metropolitan Magistrate Court, Kolkata, this notice could not have been sent as the same would be hit by res judicata.

5. Finally the Operational Creditor had no other alternative but to send a demand notice dated 22<sup>nd</sup> March, 2018 (Form 3) demanding a total sum of Rs. 10,24,074/- which was due since 1<sup>st</sup> April, 2016 and was based on purchase orders and invoices mentioned in the application., which was duly delivered to the Corporate Debtor but there was no reply.
6. The Operational Creditor has also filed affidavit under Section 9(3)(b) to the effect that no notice or reply has been given by the Corporate Debtor relating to a dispute of the unpaid operational debt. The Operational Creditor has not proposed the name of any Interim Resolution Professional.
7. In the reply affidavit the Corporate Debtor has submitted that the application is not maintainable; that the demand notice dated 22<sup>nd</sup> March, 2018 is defective and void; the goods which were supplied by the Operational Creditor were thereafter made over to the customer of the Corporate Debtor.

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8. It is submitted that the cheque issued were to be kept as security but the Operational Creditor tried to encash Rs. 8,62,572/- instead of Rs. 7,51,138/- due to the Operational Creditor. It is submitted that there is a pre-existing dispute between the parties.
  
9. In the rejoinder also, the Operational Creditor has more or less reiterated and reaffirmed the averments mentioned in the application and denied the allegations of the Corporate Debtor mentioned in the reply affidavit.
  
10. We have heard the Ld. Counsel for both the parties. On the one hand, the Operational Creditor has placed on record all the relevant documents to prove its case and has successfully done so. On the other hand, the Corporate Debtor has unsuccessfully raised the vague disputes for the first time in the reply, particularly the dispute regarding non receipt of certain goods sent vide tax invoices dated 31<sup>st</sup> March, 2016 even though the goods have been duly received with the bills by the Corporate Debtor. It is completely an after-thought and cannot be permitted to be taken up at this stage. The Operational Creditor has placed on record all the documents and there is no infirmity noticed in the documents or in the application, which is complete in all respects. The Corporate Debtor has defaulted in making the payment of the operational debt due to the Operational Creditor in spite of repeated requests and the demand notice.

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11. In the aforesaid facts and arguments advanced on the side of the Ld. Counsel for both the parties, we are of the considered view that the application must be admitted. We, therefore, pass 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, **M/s. M.K. Infrastructure Private Limited** is hereby **admitted**.
- ii) We hereby 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:-

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- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.


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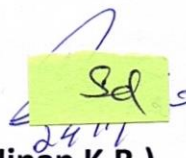
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- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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) **Mr. Jugraj Singh Bedi**, of 1250, GF, Mukherjee Nagar, Delhi – 110009, registered with Insolvency & Bankruptcy Board of India, having registration number **IBBI/IPA-001/IP-P00731/2017-2018/11208**, E.mail id: **jb@jsba.in**, Mobile No. **9810272652**, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of 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 is directed to deposit Rs. 1,00,000/- (Rupees One Lakh Only ) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed 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.
- xiii). List the matter on **25/02/2020** for filing of the progress report.
- xiv) Certified copy of the order/Free copy may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(Harish Chander Suri)  
Member (T)

  
(Jinan K.R.)  
Member (J)

Signed on this, the 24<sup>th</sup> day of January, 2020.

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