IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

Coram:

Madan B. Gosavi, Member (Judicial)

Virendra Kumar Gupta, Member (Technical)

CP(IB) No.1304/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 & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

- And -

In the matter of:

Kamar Infrastructure Private Limited, having its registered office at Kamar Estate, Devichapada, Taloja MIDC, Raigad Panvel, Navi Mumbai - 410 208.

... ... **Operational Creditor**

- And -

Sensetive Infra Private Limited, (CIN: U70102WB2014PTC202764), having its registered office at C/o Pradipto Sarkar, P.O. Bamongachi, P.S. Duttapukur, North 24 Parganas, Pin - 743 248.

... ... **Corporate Debtor**

Counsels on Record:

Mr. A.K. Awasthi, Advocate ... For Operational Creditor

Date of Hearing: 13th February, 2020

Date of Pronouncement of Order: 18th February, 2020

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ORDER

Per Virendra Kumar Gupta (T)

1. This application has been filed under Section 9 of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") by operational creditor, M/s. Kamar Infrastructure Private Limited for initiation of Corporate Insolvency Resolution Process ("CIRP") against Corporate Debtor, M/s. Sensetive Infra Private Limited as the Corporate Debtor has committed default in payment of outstanding debt. The amount claimed in default is Rs.9,31,378.78 [Rs.6,08,493.78 (principal sum) + Rs.3,22,885.00 (interest @ 18%).

2. The facts, in brief, are that the operational creditor provided machinery on higher to the corporate debtor. In this connection, 10 invoices were raised from December, 2014 to November, 2015 for a total value of Rs.31,16,767.02 against which corporate debtor made a payment of Rs.25,08,273.22 including TDS. The balance amount has remained outstanding.

3. The Ld. counsel, appearing on behalf of the operational creditor, narrated the facts and contended that in spite of several communications from time to time which were duly acknowledged by the corporate debtor, dues of the operational creditor remained unpaid. Due to failure of such efforts, notice under Section 8 of the IBC, 2016 was served on corporate debtor on 23rd July, 2019.

4. The Ld. Counsel for the operational creditor drew our attention to the relevant page no.41 of the paper book containing email dated 8.8.2016 written by corporate debtor to substantiate his claim that corporate debtor had acknowledged its liability, hence, the debt was not barred by limitation.

5. The Ld. Counsel for the corporate debtor, on the other hand, submitted that there were disputes between the parties and amicable settlement could not be arrived at between them, hence, the payment was not made. It was further contended that if a reasonable settlement could arrive, the corporate debtor was ready to settle the matter.

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6. On due consideration of the facts and circumstances of the case and pleas made by both the sides, we find that there is a debt due and payable which is not barred by limitation and a default has occurred, hence, this application is maintainable. The application is otherwise complete in all respects and defect-free as the notice under Section 8 of IBC, 2016 has been duly delivered as per the prescribed procedure and Affidavit under Section 9 is also enclosed. The name of IRP has not been proposed which is not required in case of an application under Section 9 of IBC, 2016, hence, we will appoint IRP from the panel of IRPs approved by IBBI. Thus, this application is admitted and we 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, Sensetive Infra Private Limited, is hereby admitted.

ii) We declare a moratorium and cause 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 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) Mr. Nitesh Kumar More, IRP Registration No.IBBI/IPA-001/IP-P01087/2017-18 /11785, E-mail: nmore2091@gmail.com, is 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.

xi) The Financial Creditor to pay sum of Rs.50,000/- (Rupees Fifty Thousand only) to IRP as advance fees as per Regulation 33(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

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 7th April, 2020 for the filing of the progress report.

xiv) Registry is hereby directed under section 7(7) of the I & B Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.

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

Sd 18/2/2020
(Virendra Kumar Gupta)
Member (Technical)

Sd 18/2/2020
(Madan B. Gosavi)
Member (Judicial)

Signed on this, the 18th day of February, 2020.

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