

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

C.P. (IB) No. 573/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. TIRUPATI TIMBER & PACKAGING LIMITED, 563, Marshal House, 33/1, Netaji Subhah Road, Kolkata 700001.

... Operational Creditor

Versus

In the matter of :

M/S. DUNCANS INDUSTRIES LIMITED, CIN: L28113WB1994PLC063452, having its registered office at Duncans House, 2nd Floor, 31, Netaji Subhash Road, Kolkata 700001.

.....Corporate Debtor

Date of pronouncement of order : 18/12/2019

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

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

Counsel on Record :

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| 1. SONAL SHAH, Advocate |] |
| 2. KUSHAGRA SHAH, Advocate |] For Operational Creditor. |
| 3. A.K. AWASTHI, Advocate |] For Corporate Debtor |

ORDER

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

1. This petition under Section 9 of the Insolvency & Bankruptcy Code, 2016 has been filed by M/s. Tirupati Timber & Packaging Limited, through One of its Directors Mr. Niraj Gupta, authorized vide Board Resolution dated 25.10.2017, hereinafter referred to as the Operational Creditor seeks initiation of Corporate Insolvency Resolution Process against M/s. Duncans Industries Limited having its registered office at Kolkata, hereinafter referred to as the Corporate Debtor.
2. It is submitted that the Corporate Debtor had approached the Operational Creditor for supply of "Outer Beige Colour Printed P.P. Bags "Un-laminated" by placing various purchase orders upon the Operational Creditor. The Operational Creditor supplied the goods to the Corporate Debtor through a Transporter to the address as

specified by the Corporate Debtor. Tax invoices were raised along with the challans thereof and sent to the Corporate Debtor which were duly received by the Corporate Debtor. The Operational Creditor has placed on record copies of all the purchase orders, tax invoices, consignment notes, challans and receipt of the bills thereof collectively as Annexure 'C'.

3. It is stated that on each of such occasions the goods were received by the Corporate Debtor without any protest or demur to the quality, quantity, or branding of the goods. It is stated that a sum of Rs.23,75,812/- (Rupees Twenty Three Lakhs Seventy Five Thousand Eight Hundred and Twelve Only) became due and payable resulting into series of transactions between the parties.
4. It is stated that the account of the Corporate Debtor has been in the nature of a running and continuous account whereas the last supply was made on 6th December, 2014 while the last payment was made by the Corporate Debtor on 17th January, 2016, to the tune of Rs.2,49,637.50 (Rupees Two Lakh Forty Nine Thousand Six Hundred Thirty Seven and Paise Fifty Only). It is stated that the Operational Creditor sought to confirm its outstanding from the Corporate Debtor which was received by the Corporate debtor on 13th January, 2016 and therefore the date of default is stated to be 13th January, 2016. It is stated that the liability of the Corporate Debtor arose inter alia under the Indian Contract Act 1872 and Sales of Goods Act, 1930 and the Insolvency & Bankruptcy Code, 2016.

5. It is further stated that a demand notice dated 31st October, 2017 was sent to the Corporate Debtor which was duly received on 3rd November, 2017, demanding the unpaid operational debt of Rs.23,75,812/- which was responded to by the Corporate Debtor vide its letter dated 7th November, 2017.

6. The Operational Creditor has further submitted that the defence raised by the Corporate Debtor in the reply to the notice is a moonshine. The Operational Creditor has filed a copy of the ledger account from 1st April, 2011 to October, 2017 which reflects various debits and credits entries and the last payment has been shown to have been received from the Corporate Debtor on 19th January, 2015 being Rs.2,49,637.50 followed by entry dated 31st March, 2015 in respect of the credit note issued by the Operational Creditor to be Rs.13,387.50. So, the date of default has been taken as 31st March, 2015 and the date of filing of the present petition is 23rd March, 2018, which is very much within the period of limitation.

7. The Operational Creditor has also filed a copy of the consolidated statement of invoices as on 31st October, 2017 which reflects the corresponding figure of Rs.10,474/- being the amount of bill dated 6th December, 2014 for the goods ordered on 8th December, 2014. The Operational Creditor has also filed a copy of the letter dated 13th January, 2016 written to the Director of the Corporate Debtor which reads as under:-

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"Sub: Outstanding and Overdue Bills

Dear Sir,

We write this letter to inform you that a long list of bills are yet to be cleared for payment. The total dues from your company till date is Rs. 28,03,778.31 (Twenty Eight Lakhs Three Thousand Seven Hundred Seventy Eight Rupees and Thirty One Paise Only).

We had supplied the materials to you irrespective of these long overdue bills and our services have gone unnoticed.

We have sent previous reminders to the company as well for these payments and all have failed to produce any good result. The previous intimations were made on 08.09.2015.

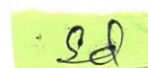
We request to kindly arrange payments for the same and also confirm the balance at the earliest.

In case of no response within 7 days, it would be considered that the balance sent by us is confirmed."

The above said letter has been duly received and stamped by the Corporate Debtor as on 13th January, 2016 itself.

8. The Operational Creditor has also filed a copy of the reply sent by the Advocate on behalf of the Corporate Debtor to the Operational Creditor. In its reply affidavit the Corporate Debtor submitted that the application filed on behalf of the Operational Creditor is not maintainable and liable to be dismissed because no demand notice as required under the Code and the Rules and Regulations framed there under has been sent and that it is further not maintainable because there was pre-existence of disputes between the parties. It is stated that the Corporate Debtor has raised dispute much prior to the purported demand notice and filing of this application. It is submitted that the purported claims made by the Operational Creditor are due from 19th January, 2015 and





that the Operational Creditor should have filed proceedings within the period of limitation i.e. on or before 18th January, 2018 and that the claim of the Operational Creditor is hopelessly and ex facie barred by limitation and the application is liable to be dismissed.

9. It is submitted that there is a specific prayer contained under Section 16G of the of the Tea Act, 1953 read with Section 16M of the Tea Act, 1953, and that the application is not maintainable because the Corporate Debtor is a Tea Company. It is stated that under Section 16M of the Tea Act, 1953, no suit or other legal proceedings could be instituted or continued against a tea undertaking or tea unit in respect of which an order has been made under Sections 16D or 16E except with the previous permission of the Central Government or of any officer authorized by the Government for this purpose.
10. It is denied by the Corporate Debtor that a sum of Rs.23,75,812/- or any part thereof is due from the Corporate Debtor to the Operational Creditor. The Operational Creditor filed rejoinder to the reply denying the allegations of the Corporate Debtor and stated that each and every allegation and contention and statements made in the reply are denied and disputed. It is stated that even in the reply to the demand notice there is no mention of any dispute as regards the claim of the Operational Creditor as alleged. It is denied that the claim of the Operational Creditor is barred by limitation. It is stated that though the last supply was made on 6th December, 2014 but the last payment was received on 19th January, 2015 and as such the claim is not at all

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barred by limitation by any stretch of imagination.

11. We have heard the Ld. Counsel for the parties at length and gone through each and every documents placed on records. The record is very much clear as regards supplies and payments received. The letter dated 13th January, 2016 as regards outstanding and overdue bills was duly received by the Corporate Debtor but no reply thereto was sent. No dispute as regards the payment due mentioned by the Operational Creditor in the aforesaid letter dated 13th January, 2016 was raised and the amount was not denied. In these circumstances, we can accept it as acknowledgement of its liability by the Corporate Debtor because it was duly received and signed by somebody on behalf of the Corporate Debtor and stamped with its official seal.
12. There is no substance in the reply of the Corporate Debtor sent to the Operational Creditor in response to its demand notice. It has attempted to raise the so called dispute by writing that “without prejudice to the aforesaid, please note that the goods and/or materials supplied by you to my client was of extremely poor and of inferior quality for which my client was constrained to return to you which was in your knowledge as the same was always communicated to you. Due to the inferior quality of the goods and/or materials supplied by you, my client has suffered huge loss and/or damage which were also communicated on several occasions. There is a dispute between my client and you within the ambit of the I&B Code, 2016”.

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13. There does not seem to be any plausible defence on the side of the Corporate Debtor in the light of all the documents placed on record and referred to by the Operational Creditor. The Operational Creditor has not proposed the name of any IRP.

14. We are convinced that the application filed by the Operational Creditor is complete in all respect and it deserves to be considered favorably on its merits. We, therefore admit the application upon the following :-

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. Duncans Industries 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

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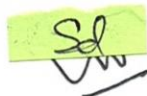
in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- 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 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.

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- 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 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. Surendra Kumar Agarwal**, registered with Insolvency and Bankruptcy Board of India, having registration number **IBBI/IPA-001/IP-P00825/2017-2018/11401**, E-mail ID: **surendraca@gmail.com**, Mobile No. **9830581575** 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.3,00,000/- (Rupees Three Lakhs 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 **20.01.2020** for filing of the progress report.

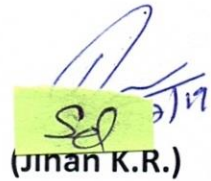
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- xiv) Certified copy of the order/Free copy may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jnan K.R.)
Member (J)

Signed on this, the 18th day of December, 2019.

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