

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

**CP (IB) No.82/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 and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;  
And

In the Matter of:

Rahul Carbon Commercials Private Limited, registered under the provisions of Companies Act, 1956, having its registered office at 502, Panchwati Plaza, 5<sup>th</sup> Floor, Kutchary Road, Ranchi - 834 001.

.....Operational Creditor

And

In the Matter of:

Kohinoor Steel Private Limited, registered under the provisions of Companies Act, 1956, having its registered office at 16A, Everest House, 46C, J.L. Nehru Road, Kolkata - 700 071, West Bengal.

..... Corporate Debtor

Date of Hearing: 7<sup>th</sup> November 2019

Order Delivered on 20<sup>th</sup> November 2019

**Coram:**

**Madan B Gosavi, Member (J)**

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

For the Operational Creditor : 1. Mr. A.K. Upadhyay, Advocate  
2. Mr. Aniruddha Sengupta, Advocate  
3. Mr. Debanjan Saha, Advocate

For the Corporate Debtor : 1. Mr. Pratit Sarkar, Advocate  
2. Ms. Shanta Ramchand, Advocate  
3. Mrs. Ledia Dasgupta, Advocate

**ORDER**

**Per Virendra Kumar Gupta, Member (Technical)**

This petition has been filed under Sec.9 of the Insolvency & Bankruptcy

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Code, 2016 by the operational creditor, viz., Rahul Carbon Commercials Private Limited for initiation of corporate insolvency resolution process against the corporate debtor, viz., Kohinoor Steel Private Limited. The amount of default has been claimed at Rs.1,21,83,964/- and the date of default has been claimed in August 2018.

2. The facts, in brief, are that the operational creditor supplied goods to the corporate debtor from June 2018 till 23<sup>rd</sup> July 2018. The amount was not paid at all leading to issue of notice of demand under Sec.8 of the Insolvency & Bankruptcy Code, 2016 which has been duly served on the corporate debtor.
3. Ld. Counsel appearing on behalf of the operational creditor while narrating the facts of the case drew our attention to the relevant documents filed along with the petition. He also submitted that notice under Sec.8 of the Insolvency & Bankruptcy Code, 2016 had duly been served and the applicant filed application under Sec.9 of the Insolvency & Bankruptcy Code, 2016, which is complete in all respect, hence, this petition was liable to be admitted.
4. Ld. Counsel appearing on behalf of the corporate debtor stated that the corporate debtor was not in a position to pay the debt.
5. On consideration of facts and submissions made by both the sides, we are of the view that a default has occurred in respect of the operational debt which is due and payable, hence, this petition deserves to be admitted. The petition is otherwise complete in all respect and complies with the requirements of provisions of Insolvency & Bankruptcy Code, 2016 read with regulations thereto.
6. It reveals from the record that the applicant has proposed the name of Shri Ashok Kumar Sarawagi, IP Registration No.IBBI/IPA-001/IP-P00171/2017-18/10340 email id [sarawagiashok@gmail.com](mailto:sarawagiashok@gmail.com) as Interim Resolution

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Professional. However, we feel that IRP should be an independent person and should not be a professional of the applicant's choice. Hence, we appoint Shri Ashok Kumar Sarawagi, IP Registration No.IBBI/IPA-001/IP-P00171/2017-18/10340 email id [sarawagiashok@gmail.com](mailto:sarawagiashok@gmail.com) as IRP.

7. In view of the above discussion, we admit the 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, Kohinoor Steel 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;


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- 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.

- x. Shri Ashok Kumar Sarawagi, IP Registration No.IBBI/IPA-001/IP-P00171/2017-18/10340 email id [sarawagiashok@gmail.com](mailto:sarawagiashok@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.
- xi. The Operational Creditor to pay a sum of Rs.1,00,000/- (Rupees One lakh only) 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. Registry is hereby directed under section 9(5) 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.
8. List the matter on 31/12/2019 for the filing of the progress report.
9. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

  
(Virendra Kumar Gupta)  
Member (T)

  
(Madan B Gosavi)  
Member (J)

Signed on 20<sup>th</sup> November 2019