

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

C.P. (IB) No. 785/KB/2019

In the matter of :

An application for initiation of corporate insolvency resolution process by an Operational Creditor under Section 9 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of :

MR. NANDALAL KHANDELWAL, 36, "Udaychal", 9, Rowdon Street, Kolkata 700017.

..... Petitioner/ Operational Creditor

Versus

In the matter of :

M/S. RUCHIKA TRADELINK PRIVATE LIMITED, a Company incorporated under the provisions of Companies Act, 1956, having its registered office at 155, Lenin Sarani, 4th Floor, Room No. 402, Kolkata 700013.

.... Respondent/Corporate Debtor

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In the matter of :

MR. NANDALAL KHANDELWAL] OPERATIONAL CREDITOR
M/S. RUCHIKA TRADELINK PRIVATE LIMITED] CORPORATE DEBTOR

Judgement / Order delivered on : 07/08/2019

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

Counsel on Record :

1. Mr. S.K. Tiwari, Advocate]
2. Mr. A. Paul, Advocate] For Operational Creditor
1. Mr. Saurav Jain, Advocate] For Corporate Debtor

ORDER

Per Shri Harish Chander Suri, Member (T)

1. This Application under Section 9 of the Insolvency & Bankruptcy Code, 2016 has been preferred by **Mr. Nandalal Khandelwal**, Tax Consultants, hereinafter called the Operational Creditor against M/s. **Ruchika Tradelink Private Limited**, a Corporate entity having its office at Kolkata, hereinafter called the Corporate Debtor.

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2. The Operational Creditor has submitted that this application has been filed to initiate Corporate Insolvency Resolution Process in the case of the Corporate Debtor because the Operational Creditor had rendered his professional services to the Corporate Debtor and the Operational Creditor had sent repeated requests and reminders to the Corporate Debtor for payment of his pending dues and the Corporate Debtor had assured the Operational Creditor time and again that the said payment of the Operational debt would be released. However, the Corporate Debtor has not made the payment of the same till date.
3. It is submitted that in support of the said application, the Operational Creditor has filed all the relevant documents. The Operational Creditor had issued demand notice dated 10th March, 2019 through his Counsel which is stated to have been sent by hand delivery and received by the Corporate Debtor on 11th March, 2019.
4. It is further submitted that repeated letters have been sent to the Corporate Debtor for payment of the outstanding sum vide letter dated 14th August, 2017, 8th February, 2018 & 20th February, 2019 demanding the total amount of Rs. 1,97,000/- (Rupees One Lakh Ninety Seven Thousand Only) as mentioned in the final reminder dated 20th February, 2019, towards professional fees of the Operational Creditor but no amount till date has been received by the

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Operational Creditor. In support of his claim the Operational Creditor has also enclosed copies of invoices dated 31.03.2017, 05.10.2017, 31.12.2017, 31.01.2018, 01.11.2018, 10.11.2018, 31.12.2018, 31.12.2018 & 31.01.2019, Bank statements of the Operational Creditor from 1st April, 2017 to 31st March, 2019.

5. When the matter was listed for admission before this Tribunal, this Tribunal issued notice to the Corporate Debtor on 11th June, 2019 which was duly received by the Corporate Debtor and the Corporate Debtor appeared through its Counsel and filed reply affidavit through their authorized representative Mr. Sajjan Kumar Tailor who was duly authorized by the Board of Directors in its Meeting dated 1st February, 2019 to file affidavit in reply to the application on behalf of the Corporate Debtor.
6. In the reply, it is stated that the Corporate Debtor is engaged in the business of trading Coal and Coke but the business of the Corporate Debtor is suffering very heavy cash crunch due to weak response from the market in the business and the promoters or Officers of the Corporate Debtor are trying to revive the Company with every possible way, and hat the Corporate Debtor does not have any funds as of now to run the Company or to pay off its Creditors.

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7. It is further submitted that the Corporate Debtor has already shown its inability to pay the debt due to weak financial condition of the Corporate Debtor. It is admitted in the reply that the Corporate Debtor had appointed the Operational Creditor to render their professional services to the corporate debtor with regard to penalty proceedings before the Income Tax Authorities for different assessment years.
8. It is further submitted on behalf of the Corporate Debtor that the debt amounting to Rs. 1,97,000/- on account of professional services is due but due to the weak financial position, the Corporate Debtor is unable to repay the debt and needs time to bring back its business on the track because due to lack of money the Corporate Debtor is unable to clear the dues of the Operational Creditor.
9. In the rejoinder filed by the Operational Creditor to the reply affidavit filed by the Corporate Debtor, the Operational Creditor has reiterated that the Operational Creditor had rendered professional services to the Corporate Debtor for which he was engaged, for which a demand notice was sent demanding a sum of Rs. 1,97,000/- but the Corporate Debtor while clearly admitting the debt amount, submitted that the outstanding debt could not be repaid due to bad market scenario.

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10. It is prayed in the application that since the Corporate Debtor has committed default in making payment, the Corporate Insolvency Resolution Process might be initiated against the Corporate Debtor due to the default made by the Corporate Debtor in making payment of its acknowledged and admitted operational debt.
11. We have gone through the application, reply affidavit filed by the Corporate Debtor and the rejoinder thereto filed by the Operational Creditor and have also perused the invoices/bills issued from time to time and the demand notice dated 10th March 2019 which was delivered by hand along with annexures.
12. In view of all these documents on record, particularly the reply affidavit filed by the Corporate Debtor we are convinced that the admitted amount of Rs. 1,97,000/- payable and outstanding to the Operational Creditor has not been paid and the Corporate Debtor has stated that they are unable to pay due to weak market scenario and cash crunch.
13. The Operational Creditor has filed a Supplementary Affidavit dated 23rd July, 2019 proposing the name of **Mr. Animesh Mukhopadhyay** as an Interim Resolution Professional along with Form No. 2 and written communication. Reference to the written communication and

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Form No. 2 we are satisfied that no disciplinary enquiry proceeding is pending against the proposed Resolution Professional. Therefore, we are inclined to appoint him as the Interim Resolution Professional.

14. In view of the aforesaid facts, we do not have any other option but to admit the application and pass the following orders:-

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, M/s. Ruchika Tradelink Private Limited is hereby **admitted.**
- ii) I 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.

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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

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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) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) **Sri Animesh Mukhopadhyay**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having **Registration No. IBBI/IPA-001/IP-P00124/2017-18/10266**, **E.mail ID: animesh_fca@yahoo.co.in**, **Mobile No. 9830107220**, is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening meetings of Committee of Creditors for evolving a resolution plan.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the

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Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date.

- xii) The Operational Creditor is directed to deposit **Rs. 50,000/- (Rupees Fifty Thousand 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.
- 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.
- xiv) List the matter on **16th September, 2019** for filing of the progress report.
- xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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(Harish Chander Suri)

Member (T)

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Member (J)

Signed on this, the 7th day of August, 2019.

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