

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Before Shri Jinan K.R., Hon'ble Member (J)

CP (IB) No. 93/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 8 and 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

M/s. Bengal Polypet, having its registered office at Jirat Road, New Baigachi, Ashoknagar- 743 222 address for correspondence Mr. Abhishek Sikdar, Sikdar & Associates, Advocates, 10, Kiran Sankar Roy Road, 2nd floor, Room No.33, Kolkata- 700 001;
... Applicant / Operational Creditor

-Versus-

In the matter of:

M/s. Pincon Spirits Limited, having its registered office at Wellesley House, 3rd floor, 7 Red Cross Place, Kolkata- 700 001 and Corporate Office at No.103, 3rd floor, Samskruthi Chambers, K.H. Road, Shanthi Nagar, Bangalore- 560 027 And also at Gopalpur, Chandigarh, P.O. Ganganagar, Kolkata- 700 132;

.... Respondent/Corporate Debtor

Counsel appeared:

1. Abhishek Sikdar, Advocate] Operational Creditor

Date of Pronouncement of Order: 19.07.2018

ORDER

This is an application filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) by the Operational Creditor namely, M/s. Bengal Polypet for initiating Corporate Insolvency Resolution Process in respect of M/s.Pincon Spirits Limited/Corporate Debtor

2. The applicant contends that as per various purchase orders placed by the Corporate Debtor pet bottles, were supplied to the Corporate Debtor in terms of specifications provided by the Corporate Debtor. Accordingly, the Tax Invoices and challans were raised by the Operational Creditor, which are collectively annexed hereto and marked as **Exhibit "C"**. Based on the said goods supplied as per the purchase orders and the said Tax Invoices and Challans, payment was always made on *ad hoc* basis but after 18.10.2017, no payment whatsoever was received by the Operational Creditor. An amount of Rs.31,76,168/- has been due since 18.10.2017 and remains payable by the Corporate Debtor. In this context, a computation sheet has been annexed and marked as **Exhibit "B"** to the application. Further, the applicant has annexed the ledger sheets pertaining to the periods from 01.04.2017 to 24.11.2017 and marked as **Exhibit "D"**, which reflects the amount due from the Corporate Debtor.

3. The applicant further contends that the Corporate Debtor has not made the payment of the said Tax Invoices and Challans and has also used the VAT benefit of the due invoices for the goods supplied by the Operational Creditor. The said amount is due from the Corporate Debtor with interest at 18%. Since

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the Operational Creditor and the Corporate Debtor were in regular transactions, the Corporate Debtor was assuring the payment, thus there has been an inordinate delay in believing such false assurances. Despite demand the respondent failed to repay the amount, hence the applicant on 24.11.2017, sent a demand notice under Form 3 of the Code to the Corporate Debtor asking for the long outstanding payment but it was not replied. The copy of the demand notice along with five postal receipts and five Article Tracking Reports is annexed and marked as **Exhibit "E"** to the application.

4. The Operational Creditor also filed the copies of Bank Statements dated 04.01.2018 for the period from 01.04.2017 to 04.01.2018 from Bank of India, Badarhat evidencing the transactions between the operational creditor and the Corporate Debtor, which are annexed and marked as **Exhibit "F"** to the application.

5. As per the Supplementary Affidavit dated 12th January, 2018 therein enclosing the Affidavit of Service, the applicant submitted that the documents including the Demand Notice dated 24.11.2018 have been posted on 08.01.2018 and the same has been received by the Corporate Debtor, which is evident from the acknowledgement downloaded through internet of official website of Indian Post. The Corporate Debtor received the demand notice but not chosen to file any reply. In order to strengthen its contentions, the applicant produced the copy of invoice as Exhibit "C", copy of demand notice Annexure "E", affidavit in compliance with section 9(3)(b) and certificate in compliance with section 9(3)(c) of the Code. However, the applicant did not propose any name of Insolvency Resolution Professional. Upon said contentions, the applicant prays for admitting the application.

6. The Respondent/Corporate Debtor did not appear at any point of time and was called absent and declared exparte.

7. Heard the Ld. Counsel appearing for the Applicant and perused the records.

8. This is an application filed by the Operational Creditor under section 9 of I&B Code for initiating the Corporate Insolvency Resolution Process as against the Corporate Debtor. The Operational Creditor admittedly supplied pet bottles in terms of various purchase orders placed by the Corporate Debtor and the corporate debtor admittedly received goods from the applicant and not denied the receipt of goods. The Corporate Debtor neither turn up nor raised any disputes in respect of materials supplied on the basis of purchase orders annexed to the application (**Exhibit "C"**). From the records, it transpires that the Corporate Debtor was in receipt of the demand notice. The Respondent did not choose to send a reply within the stipulated period of 10 days and not brought the existence of any disputes in respect of the amount found due to the applicant.

9. It is submitted on the side of the Operational Creditor that the entire claim as claimed in the application is due from the Corporate Debtor and the respondent not raise dispute upon receipt of the demand notice. The respondent did not pay any part of that amount and therefore, this is a fit case in which CIRP is to be initiated against the corporate debtor.

10. The applicant herein, in the instant case, has succeeded in proving that all the requirement to be meted out under Section 9(5)(2) are complied. An affidavit under section 9(3)(b) and bank certificate under section 9(3)(c) was

produced. Applicant did not propose any name of the IRP. Therefore, this application is liable to be admitted.

11. In the result, the application is admitted upon the following orders:

ORDER

- (i) The application filed by the Operational Creditor under Section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process in respect of **M/s. Pincon Spirits Limited**. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) The 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 Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.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 possession of the corporate debtor.
- iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v) 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.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- vii) 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.

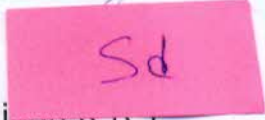
(ix) Mr. Partha Kamar Sen having email no. partha_kamal@yahoo.com is appointed as Insolvency Resolution Professional having Registration No. IBBI/IPA-002/IP-N00022/2016-17/10049 as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors. He shall produce Form 2 and written communication upon acceptance of the order.

xi) Registry is hereby directed to communicate the order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **20.08. 2018** for the filing of the progress report.


(Jinani R.R.)
Member (J)

Signed on this, the 19th day of July, 2018.