

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

**Coram: Shri Jinan K.R.
Hon'ble Member (J)
&
Shri M.B.Gosavi
Hon'ble Member (J)**

CP(IB) No. 547/KB/2017

In the matter of:

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016

-And-

In the matter of:

M/s. Daya Engineering Works Private Limited, registered office at Gaya Dhobi Road, Rampur, Gaya 823 001;

... .. **Applicant/Operational Creditor**

-And-

In the matter of:

M/s. UIC Udyog Limited, Anandlok, Block - A, 1st Floor, 227, A.J.C. Bose Road, Kolkata 700 020.

... .. **Corporate Debtor/Respondent**

Counsels appeared:

For the Operational Creditor: 1. Mr. Soumik Chakraborty
2. Mr. Sourojit Dasgupta
3. Ms. Deebleena Ganguly

For the Corporate Debtor: 1. CS Deepak Kumar Khaitan

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Order pronounced on 16/05/2018

ORDER

Per Shri Jinan K.R., Member (Judicial)

This is an application filed u/s. 9 of the Insolvency and Bankruptcy Code, 2016 by M/s. Daya Engineering Works Pvt. Ltd. allegedly an operational creditor for initiating Corporate Insolvency Resolution Process in respect of M/s. UIC Udyog Ltd.

1. Brief averments in the application for the consideration of the points for determination are the following:-

(a) The applicant is engaged in the business of manufacturing and supplying of all pre-stressed concrete Sleepers. The applicant issued various purchase orders on the corporate debtor for supply of HTs wire to its sleeper manufacturing unit at Mirza, State of Assam from time to time. But the corporate debtor made short supplies in respect of purchase orders placed by the operational creditor in the financial year 2014-15 though after receipt of advance payment against supplies.

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(b) Operational creditor was paid an amount of Rs. 4,14,42,916/- as on 04/03/2015 and corporate debtor have supplied the material value of Rs. 4,02,33,473/- only and the balance amount of Rs. 12,09,443/- is liable to be returned for non-supply of the material equivalent to the said debit value be made. The corporate debtor deliberately failed to supply the purchase order quantity after taking advance. The corporate debtor neither supplied the material nor refunded the money in spite of repeated requests.

(c) In spite of repeated requests and reminders made by the operational creditor, the corporate debtor have neither supplied the materials nor refunded the said advance amount of Rs. 12,09,443/- though admitting said advance is due as per the books of account. Finally, the operational creditor had issued legal notice dated 22nd May, 2017 to the corporate debtor through its legal counsel Sri Krupachand Gogineni and called upon the corporate debtor to pay the legitimate dues, which are illegally holding by them. However, in spite of receipt of the said notice the corporate debtor failed and neglected to pay the said dues till date. Hence, the operational creditor is entitled to initiate proceedings under the Insolvency and Bankruptcy Code, 2016 to recover the legitimate dues from the corporate debtor.

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(d) Despite notice the corporate debtor did not pay the amount due to the tune of Rs. 12,09,443/- . plus interest of 24% per annum from 04/03/2015 to 30/06/2017, totaling to an amount of Rs. 21,00,683/- .

(e) The applicant produced the copies of the Purchase Orders and marked as Annexure "C". Tax-cum-Excise Invoice issued by the corporate debtor also produced as Annexure "D" **(it is mentioned in the application that those invoices were issued by the applicant. It is admittedly a mistake)**. A computation of amount due is annexed and marked as Annexure "F". Despite notice the corporate debtor did not discharge the debt and therefore filed the application for initiating Corporate Insolvency Resolution Process against the corporate debtor.

2. The corporate debtor entered appearance and filed reply affidavit contending in brief is the following:-

(a) The application filed is not in the prescribed format. There is deliberate misleading of facts. There is no proper authorisation so as to authorize the signatory Mr. Surodip Mukherjee has been given or produced. The application is incomplete for want of affidavit u/s. 9(3)(b) and 9(3)(c) of the I & B Code. Section 9(3)(c) certificate is

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prepared by the applicant itself and it is a self made certificate. The address of the operational creditor also not given in the Form. The authorisation produced along with the application does not provide any authorisation in favour of Ms. Sanchari Chakraborty, Advocate.

(b) The corporate debtor further contended that there was no power of attorney executed despite passing of the resolution so as to prove the authorisation. Copy of the Article of Association and the Certificate of Incorporation produced for proving the registration of the corporate debtor is of a company not belonging to the existing corporate debtor and it belongs to UIC Wires Limited.

(c) The contention of the applicant is that there was no reply to the demand notice issued by the applicant is incorrect. On the other hand the corporate debtor sent a reply in response to the demand notice denying the claim and raising existence of disputes. A copy of the reply is produced along with the reply affidavit marked as Annexure **"A"**. So also the corporate debtor had replied to the notice dated 22/09/2017 vide reply letter dated 17/10/2017 and copy of the reply is produced and marked as Annexure **"B"** to the reply affidavit. There is

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no affidavit in support of the verification of the petition also produced by the applicant along with the application.

(d) The corporate debtor had to bear the financial burden for taxes amounting to Rs.17,83,908/- and interest and penalty on the said amount to Commercial Tax Department on account of non-issuance of Form C against the relevant invoices amounting to Rs. 63,39,694/- and late submissions of Form C amounting to Rs. 5, 37,13,179/-. Therefore, the corporate debtor is entitled to recover the same from the operational creditor along with the necessary damages.

(e) The corporate debtor further contended that the petitioner company owes Rs. 2,12,992/-, i.e., Rs. 73,632/- and Rs. 1,39,360/- to the respondent company in respect of the supplies made to Gaya Unit and Mirza Unit respectively. A detailed ledger for financial years 2015-16 and 2016-17 annexed with the reply affidavit and collectively marked as Annexure "E". In fact it is surprising that the petitioner owes money to the respondent for goods supplied to them whereas no goods were ever supplied by the petitioner to the respondent. It is further submitted that Daya

