

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

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

C.P. (IB) No. 455/KB/2018

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:

Subrata Sarkar, a sole proprietorship concern, through its sole proprietor Mr. Subrata Sarkar, having Office at 52A/1A, Nazir Lane, Kidderpore, Kolkata 700023;

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

-Versus-

In the matter of:

KND Engineering Technologies Limited, a company within the meaning of the Companies Act, 1956 having its registered office at 7A, Hospital Street, Kolkata 700072;

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

Counsels appeared :

- | | | |
|----|-----------------------------|---------------|
| 1. | Mr. Shaunak Mitra, Advocate |] For the |
| 2. | Mr. Sayantak Das, Advocate |] Operational |
| | |] Creditor |

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1. Mr. Tarun Aich, Advocate] For the
2. Ms. Urmila Chakraborty, Advocate] Corporate
] Debtor

Order pronounced on 30/08/2018

ORDER

1. This is an application filed by Mr. Subrata Sarkar, a sole proprietor of a proprietary concern u/s. 9 of the Insolvency and Bankruptcy Code, 2016 (In short, I & B Code, 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (In short CIRP) as against the corporate debtor, KND Engineering Technologies Limited, claiming that an amount of Rs. 5,71,789/- is the outstanding amount dues from the corporate debtor without interest and a sum of Rs. 7,84,787/- is the total amount dues with interest from the corporate debtor and that the corporate debtor failed in repaying the amount despite demand, hence filed this application.

2. Brief facts for the consideration of the application is the following:-

(a) The operational creditor was engaged by the corporate debtor for design, installation and commissioning and sanitary and plumbing system at the Oberoi Flight Catering service at Bankra, Birati, Kolkata. In terms of the work orders issued by the corporate debtor, the operational creditor had carried out all works and made all supplies contemplated under the contract.

(b) The operational creditor had raised running account bills on the corporate debtor from time to time which were duly certified by and/or on behalf of the corporate debtor without raising any disputes or objections. The total value of the bills was Rs. 41,25,024/-. Out of which the corporate debtor made adhoc payments from time to time aggregating to Rs. 33,53,235/-. After adjusting the adhoc payments made by the corporate debtor an amount of Rs. 5,71,789/- was outstanding towards the principal sum. In fact the corporate debtor had also deducted TDS on the outstanding dues.

(c) The operational creditor is entitled to agreed interest @ 18% per annum on the aforesaid outstanding amount till full payment, which is reasonable having regard to the fact that the transactions between the parties are of a commercial nature and the operational creditor has been deprived of its legitimate

outstanding dues from the corporate debtor. The outstanding dues have not been paid despite reminders and requests.

(d) The project and works have been commissioned in compliance of the terms and conditions agreed between the parties and, therefore, the entire value of the works carried out and materials supplied ought to be paid and the corporate debtor duly certified the bills raised by the operational creditor for payment. No dispute has been raised at any point of time by the corporate debtor either with regard to the quality of the works carried out or quantity of materials supplied. All works have been carried out and all materials have been supplied to the full satisfaction of the corporate debtor and this has been accepted without any objection. No part of the outstanding operational debt is barred by limitation and the operational debtor has no defence to the claims made in the application.

(e) The corporate debtor has admitted and acknowledged its liability to the operational creditor in writing or otherwise. In fact the operational creditor had also issued a demand notice in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the corporate debtor demanding payment of the outstanding operational debt. However, no reply was received to the said notice and nor the

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corporate debtor paid any part of the outstanding operational debt thereafter.

3. The applicant/operational creditor also produced the following documents for strengthening the contentions:-

- (a) Demand Notice; and
- (b) Statement of Bank Accounts.

4. The applicant/operational creditor proposed the name of one Mr. Ram Ratan Modi, Insolvency professional for appointment as Interim Resolution Professional and written communication in Form 2 that there is no disciplinary proceeding is pending against the proposed Resolution Professional. Upon the said contention the applicant prays for admitting the application.

5. The respondent corporate debtor entered appearance. However not contested by submitting that the corporate debtor is financially un-sound to discharge the debt and hence not chosen to file reply affidavit.

6. Heard the Ld. Counsel appearing on the side of the operational creditor as well as the Ld. Counsel appearing on the side of the corporate debtor and perused the records.

7. This is an application filed u/s. 9 of the I & B Code, 2016 by the operational creditor. Operational creditor carried out the work of design, installation and commissioning and sanitary and plumbing system at the Oberoi Flight Catering service at Bankra, Birati, Kolkata as specified in the works order. The operational creditor carried out all works and supplied materials under the contract as per work order (**Annexure C**). On completion of the work the operational creditor had also raised Running Account Bills on the corporate debtor from time to time, which were duly certified on behalf of the operational creditor. The corporate debtor did not challenge the issuance of Running Account Bills against the work carried out by the operational creditor. According to the operational creditor as per the bills raised upon completion of the work, which has been marked as **Annexure D**. The total value of the bills was a sum of Rs.41,25,024/-. Out of this the corporate debtor has made the running account adhoc payment from time to time for an aggregate sum of Rs. 35,53,235/-. According to the Ld. Counsel for the operational creditor after adjusting the said amount the remaining outstanding dues from the corporate debtor to the operational creditor is Rs. 5,71,789/- . According to him the corporate debtor has also deducted TDS admitting the outstanding amount due to the operational creditor and produced the copy of the TDS certificates as **Annexure E**.

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So also it is contended that the corporate debtor in its ledger account showed the amount in demand as the outstanding dues and to strengthen the said contention produced **Annexure F**. According to the Ld. Counsel for the operational creditor, operational creditor is entitled to claim interest @18% per annum on the total outstanding dues and the total outstanding amount due is Rs. 7,84,787/- and that a demand notice has been issued on 22/11/2017 in compliance of Section 8 of the I & B Code, 2016 and that the corporate debtor did not choose to file any reply to the demand notice. The copy of track report produced on the side of the corporate debtor proved that the demand notice has been served on 24/11/2017. Therefore, the operational creditor proved issuance of demand notice as well as delivery of demand notice to the corporate debtor in compliance of provisions of the I & B Code, 2016. Despite the demand the corporate debtor did not repay the amount within 10 days of the delivery of the demand notice on the corporate debtor. Therefore, the operational creditor proves default in repayment of the amount evidently found due to the operational creditor on account of the work done by the operational creditor as per the requirements of the corporate debtor.

8. Being satisfied that the corporate debtor committed the default then next question is whether there is any dispute raised on the side of the corporate debtor ?

9. Corporate debtor here in the instant case does not contest the application, and not chosen to file reply affidavit. The Ld. Counsel appearing on the side of the corporate debtor submits that the corporate debtor have had no means, thus the application is not contested. The corporate debtor neither replied to the demand notice nor filed reply affidavit to the application, which would indicate that the corporate debtor has no challenge as to the demand made by the operational creditor.

10. Being found that no dispute is pending between the operational creditor and the corporate debtor, let me see whether the operational creditor succeeds in meeting the requirements as provided under Section 9 of the I & B Code, 2016?

11. All the requirements as provided u/s. 9(3) of the I & B Code seen satisfied by the operational creditor. Section 9(3)(b) affidavit to the effect that there is no notice given by the corporate debtor relating a dispute of unpaid operational debt seen filed by the applicant. Though a certificate as such under Section 9(3)(c) seen not produced, a statement of Bank Accounts evidencing no

payment as demanded by the operational creditor has been credited in the account of the operational creditor is produced and marked as **Annexure H**. The applicant proposed the name of Mr. Ram Ratan Modi, an Insolvency Professional having Registration No. IBBI/IPA-001/IP-P00051/2017-18/10125 to be appointed as an Interim Resolution Professional and the written communication produced along with the **Form 2 (Annexure A-1 and Annexure A-2)** proving that there is no disciplinary proceeding is pending against the Interim Resolution Professional. Therefore, the applicant/operational creditor herein also succeeds in proving compliance of all the requirements as per of Section 9(5) of the I & B Code, 2016 and therefore, this application is liable to be admitted.

12. In the result the application filed u/s. 9 of the I & B Code, 2016 is admitted upon the following amongst -

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, **KND Engineering Technologies Limited** is hereby admitted.

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ii) I declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency and Bankruptcy Code, 2016. The Interim Resolution Professional 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;
- 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

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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 I & B Code, 2016 may be made.

x) **Mr. Ram Ratan Modi**, Narayani Building, 5th floor, Room No. 503, 2, Brabourne Road, Kolkata 700001 e-mail: **rrmodi@gmail.com**, Mobile No. **98300 80506** an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having **Registration No. IBBI/IPA-001/IP-P00051/2017-18/10125** 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 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.

xii) Registry is hereby directed under section 9(5) of the Insolvency and Bankruptcy Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.

List the matter on **03/10/2018** for filing of the progress report.

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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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(Jinan K.R.)
Member (J)

Signed on this, the 30th day of August, 2018.

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