

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**KOLKATA**

**C.P. (IB) No. 122/KB/2019**

**In the matter of:**

**An application U/S. 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:**

**M/S Cobra Sentinal Private Limited, represented by its director, Pankaj Kumar Sinha, having its Registered office at 302, Shanti Van-1, P.S. Kankarbagh, Patna, Bihar- 800020;**

**... Operational Creditor**

**-Versus-**

**M/S Prashant Impex Private Limited**, a company having its registered office at Wellesley House 7, Red Cross Place, 3<sup>rd</sup> Floor, Kolkata- 700001, West Bengal, within the aforesaid jurisdiction;

... Corporate Debtor

**Coram: Shri Madan B. Gosavi, Hon'ble Member [Judicial]**

**Counsel appeared:**

1. Shri Saurav Jain ] for the Operational Creditor
2. Shri S.K. Tiwari ] for the Corporate Debtor

**Order pronounced on 27/06/2019**

**ORDER**

1. This is an application filed by **M/S Cobra Sentinal Private Limited** [hereinafter referred to as the "Operational Creditor"] represented by its Director, Pankaj Kumar Sinha, under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as the I & B Code]

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read with Rule 6 of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 for initiating Corporate Insolvency Resolution Process [hereinafter referred to as CIRP] against the Corporate Debtor, **M/S Prashant Impex Private Limited** [hereinafter referred to as the "Corporate Debtor"] claiming an amount of **Rs. 5,46,999.95/- [Rupees Five Lakhs Forty-Six Thousand Nine Hundred Ninety-Nine and Ninety-Five Paise only]** as the unpaid operational debt due from the Corporate Debtor [principal amount being Rs. 4,61,800/- (Rupees Four Lakh Sixty-One Thousand and Eight Hundred only) including interest at the rate of 18% as per the terms mentioned in the invoice till 30.11.2018] and that despite demand, the Corporate Debtor did not pay the outstanding amount and hence defaulted in payment of the unpaid operational debt and therefore the Operational Debtor has filed this application.

2. The facts, in brief, as stated by the Operational Creditor, are as follows:-
  - a. The Operational Creditor has provided security services to the Corporate Debtor at their factory premises situated at Durgapur Expressway, Dankuni, Hooghly since 2011. The Corporate Debtor vide their letter dated 23.06.2011 hired the Operational Creditor for their work, a copy of the letter is annexed with the petition

- and marked as **Annexure "D"**. The Operational Creditor raised monthly bills and payments were made for the same till the year 2017. The Corporate Debtor started defaulting in payment of invoices from the year 2017 till date, copies of the invoices are annexed with the petition and marked as **Annexure "E"**.
- b. The Corporate Debtor accepted the invoices without raising any objection or disputes regarding the services rendered to them. The Operational Creditor vide their reminder letters dated 14.08.2017, 20.10.2017, 30.11.2017, 10.03.2018 and 10.06.2018 constantly requested the Corporate Debtor to make the payments of the outstanding dues but the Corporate debtor failed to do so. Copies of the letters are annexed with the petition and are marked as **Annexure "F"**.
- c. The Operational Creditor, then issued a statutory demand notice dated 19.12.2018 in Form 3 under Section 8 of the I & B Code, 2016 demanding payment from the Corporate Debtor, the Corporate Debtor accepted the default of payments in its reply dated 28.12.2018, however, the Corporate Debtor failed to make the payments. Despite repeated requests/demands made by the Operational Creditor, no amount has been paid by the Corporate

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Debtor and therefore, the Operational Creditor has filed this application. The Demand Notice and the reply dated 28.12.2018 are annexed to the petition and marked as **Annexure "J"** and **Annexure "K"** respectively.

3. The Corporate Debtor has defaulted and neglected to make the payment of Rs. 5,46,999.95/- [Rupees Five Lakhs Forty-Six Thousand Nine Hundred Ninety-Nine and Ninety-Five Paise only] including the interest @18% p.a. as per the terms of the invoice in spite of repeated demands. In support of the claim of unpaid operational debt, the Operational Creditor has submitted the following documents: -
- a. Copy of transaction on account of which the debt fell due is annexed with the petition and marked as **Annexure "C"**;
  - b. Copy of letter dated 23.06.2011 of the Corporate Debtor with all the terms and conditions is annexed to the petition and marked as **Annexure "D"**;
  - c. Copies of the invoices are annexed to the petition and marked as **Annexure "E"**;
  - d. Copies of the Reminder letters are annexed to the petition and are marked as **Annexure "F"**;

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- e. Copy of the Ledger Account maintained by the Operational Creditor pertaining to the Corporate Debtor for the period commencing from 01.04.2017 to 31.03.2019 is annexed to the petition and marked as **Annexure "G"**;
  - f. Copy of Bank Statements of the Operational Creditor for the period of 01.04.2017 to 31.03.2018 is annexed to the petition and marked as **Annexure "I"**;
  - g. Copy of Demand Notice dated 19.12.2018 in Form 3 issued under Section 8 of the I & B Code, 2016 is annexed to the petition and marked as **Annexure "J"**;
  - h. Copy of the reply to the demand notice is annexed with the petition and marked as **Annexure "K"**.
4. The Operational Creditor has proposed the name of the Interim Resolution Professional as **Shri Mahesh Chand Gupta**, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having **Registration No. IBBI/IPA-001/IP-P01489/2018-2019/12304**, **email i.d.: [mcgupta90@gmail.com](mailto:mcgupta90@gmail.com)** along with the written communication in Form 2, a copy of the communication is annexed to the petition and marked as **Annexure "M"**.

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5. The Operational Creditor further contends that several reminders were sent to the Corporate Debtor, but the Corporate Debtor failed to clear the outstanding dues. Subsequently the Operational Creditor issued statutory demand notice dated 19.12.2018 under Section 8 of the I & B Code, 2016, the Corporate Debtor accepted the default in payment in its reply dated 28.12.2018, however, the Corporate Debtor failed to make payment. Therefore, the Operational Creditor has filed the instant application under Section 9 of the I & B Code, 2016 for initiating the Corporate Insolvency Resolution Process as against the Corporate Debtor.
6. The Corporate Debtor entered appearance and filed reply affidavit on 07.03.2019. The Corporate Debtor has stated the following in the reply:
  - a. The Corporate Debtor has accepted the default in payment of the security services rendered by the Operational Debtor to the tune of Rs. 4,61,800/- [Rupees Four Lakh Sixty-One Thousand and Eight Hundred only];
  - b. The Corporate Debtor has further stated that the business of the Corporate Debtor is suffering from a serious cash crunch and needs time to bring back its business back in normal course.

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Due to lack of money the Corporate Debtor is unable to clear the dues of the Operational Creditor.

7. The Operational Creditor in its rejoinder filed on 17.06.2019 states that due to financial crisis or money crunch problem the Corporate Debtor cannot deny refunding the money taken from any creditor and that the Corporate Debtor has received considerable time to retrieve its business.
8. Heard the Id. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor and have perused the record and the concerned documents annexed to the petition.
9. This is an application filed under Section 9 of the I & B Code, 2016 for initiating CIRP as against the Corporate Debtor alleging that the Corporate Debtor, who was in receipt of the security services provided by the Operational Creditor, had failed to make payments for the said services received, despite demand and had committed default in payment of the operational debt to the extent of Rs. 5,46,999.95/- including interest payable by the Corporate Debtor to the Operational Creditor, claiming that the amount is due on the basis of invoices, copies of which were produced along with the application. The Operational Creditor also issued demand notice under the I & B Code,

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2016 demanding payments from the Corporate Debtor. However, the Corporate Debtor, in his reply dated 28.12.2018 to the demand notice has accepted the operational debt due to the Operational Creditor and has expressed his inability to make payments of the operational debt. Copies of the two notices have been produced along with reply of the Corporate Debtor and annexed with the application.

10. According to the Ld. Counsel for the Operational Creditor, the requirement to be meted out to file an application of this nature by the applicant has been complied with. He has submitted that since the Corporate Debtor did not pay the operational debt due to the Operational Creditor, he has filed this application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and upon the said contentions, the Operational Creditor pressed for admitting the application.
11. According to the Ld. Counsel for the Corporate Debtor, the Corporate Debtor accepts the default in payment of dues to the Operational Creditor and also submits that the Corporate Debtor is suffering from a serious cash crunch and due to lack of money the Corporate Debtor is unable to clear the dues of the Operational Creditor at this time.

12. This application is filed under Section 9 of the I & B Code, 2016. To fulfill all requirements under Section 9(3), the Operational Creditor has furnished along with the application, copies of the invoices demanding payment, the demand notice delivered by the operational creditor to the corporate debtor as required under Section 9(3)(a) the reply of the Corporate Debtor to the demand notice, a copy of the bank account statements showing non-payment of operational dues by the Corporate Debtor. A Demand Notice as per Section 8(1) of the I & B Code was issued by the Operational Creditor which has been duly served upon the Corporate Debtor. The Operational Creditor has further submitted copy of Ledger Account maintained by it pertaining to the Account of the Corporate Debtor which adds strength to the contention on the side of the Operational Creditor that unpaid operational debt is due from the Corporate Debtor.

13. Therefore, the Operational Creditor succeeds in proving that the application is complete, that there is no payment of the unpaid operational debt, also that the demand notice has been delivered by the Operational Creditor and the debt has been accepted by the Operational Creditor. The Operational Creditor has proposed the name of an Interim Resolution Professional [hereinafter referred to as the

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I.R.P.]. Written Communication by the I.R.P. in Form 2 produced along with the application certifies that no disciplinary proceeding is pending against the Insolvency Resolution Professional. The Operational Creditor in the case in hand, succeeds in proving all the ingredients of Section 9 (5)(i) of the Code and therefore, the application is liable to be admitted.

14. In view of the above-said discussion, the application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is admitted upon the following orders: -

**ORDER**

- a. 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 Prashant Impex Private Limited is hereby admitted.
- b. I hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- c. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. 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.

d. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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);

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- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
  
- e. The services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
  
- f. 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.
  
- g. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
  
- h. 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.

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- i. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
  - j. **Shri Mahesh Chand Gupta**, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having **Registration No. IBBI/IPA-001/IP-P01489/2018-2019/12304**, **email i.d.: mcgupta90@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.
  - k. 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.
  - l. 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 email.
15. List the matter on 13.08.2019 for the filing of the progress report.

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16. 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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27/6/2019

**Madan B. Gosavi**

**Member (J)**

*Signed on this, the 27<sup>th</sup> day of June, 2019.*