

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

Before Shri Madan B. Gosavi, Hon'ble Member (J)

CP (IB) No. 798/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(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Hiranmaye Energy Limited, a company incorporated under the Companies Act, 1956 having its registered office at Plot X 1,2 & 3, Block-EP, Sector-V, Salt Lake, Kolkata-700 091;

... Applicant / Operational Creditor

-Versus-

In the matter of:

**West Bengal Mineral Development & Trading Corporation Ltd.,** a Company, registered under the Companies Act, 1956 with CIN: U14219WB1973SGC028707 and having its registered office at 13, Nelle Sengupta Sarani (Lindsay Street), 2<sup>nd</sup> floor, Kolkata- 700 087;

.... Respondent/Corporate Debtor

Counsel appeared:

- |                                  |                        |
|----------------------------------|------------------------|
| 1. Mr. Rishav Banerjee, Advocate | ] Operational Creditor |
| 2. Mr. Zeeshan Haque Advocate    | ]                      |
| 3. Mr. A.K. Awasthi, Advocate    | ]                      |

Date of Pronouncement of Order: 10.09.2018

ORDER

This petition under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) is filed by the Operational Creditor namely, **Hiranmaye Energy Limited** to start Corporate Insolvency Resolution Process (in short, "CIRP") against **West Bengal Mineral Development & Trading Corporation Limited**, a Government of West Bengal Undertaking, the Corporate Debtor as they are unable to pay the outstanding debt of a sum of Rs.75 lakhs to the Operational Creditor, which was accepted by the Corporate Debtor with the assurance to supply the coal extracted from Jagannathpur "B" Coal Block.

2. The following facts are not in dispute -

2.1 The Corporate Debtor has entered into coal supply agreement dated 1<sup>st</sup> March, 2011 with the Operational Creditor and agreed to supply the coal extracted from "B" block Jagannathpur mining site. The Corporate Debtor accepted a sum of Rs.75 lakhs as a security deposit from the Operational Creditor. It was paid by the cheque drawn on Axis bank. By virtue of order dated 24.08.2014, the Hon'ble Supreme Court in case of Mantushil Shaw -vs- Union of India cancelled coal extract licence and thereto the Corporate Debtor was unable to supply the coal as agreed.

2.2 Operational Creditor requested the Corporate Debtor to refund the security deposit. Letter dated 07.10.2017 was sent to the Corporate Debtor. The Corporate Debtor by reply dated 03.05.2017 admitted the liability and informed the Operational Creditor that the matter is taken up to the Principal Secretary of

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Industry & Commerce Department, Government of West Bengal. The Operational Creditor waited for some days and again sent letter dated 03.07.2017 requesting therein to refund the security deposit. This letter was also replied by the Corporate Debtor, again admitting the debt and informing that the matter was still under consideration of the authority. Lastly, on 08.02.2018, Operational Creditor sent demand notice under section 8 of I&B Code to the Corporate Debtor. Instead of repeated notice, the amount was not paid. Hence, this application.

3. The Corporate Debtor is served with the notice of this application. They filed reply dated 24.04.2018. The Corporate Debtor after admitting the liability a sum of Rs.75 lakhs further stated in para 15 that, "Accordingly, the Corporate Debtor approached the Government of West Bengal, Department of Industries, Commerce and Enterprise to terminate the relevant clause pertaining to coal supply in the Development Agreement dated 04.10.2007 for enabling the Corporate Debtor to refund the security deposit in favour of the Operational Creditor.." It is further contended that as per clause 11.

3.1 It is further contended that as per the Clause 11 of the Coal Supply Agreement dated 11.03.2011 any dispute arising out of that agreement has to be referred to for arbitration. It is further contended that the matter of cancellation of the coal supply clause is now referred to relevant Department of State Government. Unless it is done, the Corporate Debtor is not in a position to refund the security deposit.

4. I heard the Ld. Counsel, Mr. Rishav Banerjee appearing for the Operational Creditor. None appeared for the Corporate Debtor. I have gone through the records and proceedings. It is not in dispute that the Operational

Creditor gave security deposition of Rs.75 lakhs to the Corporate Debtor. It is not in dispute that the Corporate Debtor did not supply coal as agreed because allocation of coal block was cancelled due to order of the Apex Court. It is not in dispute that security deposit is not refunded in spite of repeated demand. The Corporate Debtor received the demand notice but did not reply. No dispute about the debt is raised.

5. The Corporate Debtor has come out with the defence that the matter is referred to the Government of West Bengal and the Government is yet to take decision. It is also contended that for the breach of terms of agreement dated 11.03.2011, the remedy is to opt for arbitration. I considered the submission of the Ld. Counsel for the Corporate Debtor. Issue of refund of security deposit is pending with the Government cannot be a defence available under the provisions of I&B Code. The Corporate Debtor can raise defence only as per section 9 (ii) of the I&B code, 2016. As far as referring the matter for arbitration is concerned, section 238 of I&B Code states that the provisions of this Code will supersede any other law time being in force. Hence, that defence is not tenable. Besides above, no other argument is raised and argued.

6. Corporate Debtor is a Government of West Bengal Undertaking. However, it appears from record itself that it is a registered company under the Companies Act, 1956. Hence, by virtue of provisions of section 2 of the I&B Code, the provisions of I&B Code are applicable though it is Government of West Bengal undertaking. In view of facts on record, I hold that the Corporate Debtor admitted debt and its default. Other statutory compliances appear to have been made by the Operational Creditor. Hence, this application for CIRP against the Corporate Debtor deserves to be admitted. Therefore, I pass the following orders:

## ORDER

- (i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process in respect of **West Bengal Mineral Development & Trading Corporation Ltd.** 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

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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 Section 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) As the Operational Creditor has not proposed any name for appointment as Interim Resolution Professional, Mr. Chandra Kumar Jain (Mob.no. 9748488836) having email no. ckcacs@yahoo.co.in is appointed as

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Insolvency Resolution Professional having Registration No. IBBI/IPA-001/IP-P00214/2017-18/10414 as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan. As per the amended provision of the I&B Code, he has to finalise the Resolution Plan on or before 105 days from the date of admission of CIRP.

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) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

xii) Registry is hereby directed to communicate the order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post.

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

List the matter on **10.10.2018** for the filing of the progress report.

  
(Madan B. Gosavi)  
Member (J)

*Signed on this, the 10<sup>th</sup> day of August, 2018.*