

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

Company Petition (IB) No.557/KB/2017

In the matter of:

An application 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.

In the matter of:

Goutam Kumar Roy

....Applicant/Operational Creditor

Versus

Dooteriah & Kalej Valley Tea Estate Pvt. Ltd.

.... Respondent/Corporate Debtor

Order Delivered on 12th December 2017

Coram:

V. P. Singh, Member (J)

Jinan K.R., Member (J)

For the Applicant

: Mr. Madhu Sudan Sarkar, Advocate

ORDER

Per Jinan K.R., Member (J)

The petition is filed under Section 9 of the Insolvency and Bankruptcy Code 2016 and for initiation of corporate insolvency against the Corporate Debtor (Dooteriah & Kalej Valley Tea Estates Private Limited) by the Operational Creditor/Applicant (Goutam Kumar Roy) 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.

Brief facts of the case:

2. The petitioner is the sole proprietor of the proprietorship firms namely "Fuel Links" and "Goutam Kumar Roy". Petitioner contents that Fuel Links is dealing with sale of Coal and Goutam Kumar Roy is dealing with transporting goods and that out of supply of coal and carrying coal to the tea estate of the respondent/ corporate debtor (Dooteriah & Kalej Valley Tea Estates Private Limited) owe Rs.36,50,847.00 (Rupees Thirty-Six Lakhs Fifty Thousand Eight Hundred Forty-Seven) as the outstanding amount due and payable to the Petitioner. The occurrence of the date of default is from 12.11.2016.

3. Petitioner further contents that as per the balance confirmation exchanged between the parties the outstanding amount due is Rs. 29,74,611/- (Rupees Twenty-Nine Lacs Seventy-Four Thousand Six Hundred Eleven Only) for 'Fuel Links' and Rs. 6, 76, 236/- (Rupees Six Lacs Seventy-Six Thousand Two Hundred Thirty-Six Only) for Goutam Kumar Roy, and produced **Annexure-C**, a computerised ledger copies and **Annexure-D** to prove the balance outstanding amounts due to the petitioner.

4. It was stated in the petition by the Petitioner that the Corporate Debtor has, time and again, accepted and admitted its liability to make the payment of the outstanding dues to the petitioner, but remained unpaid.

5. Petitioner stated that the Corporate Debtor has issued letters of confirmation marked and annexed as '**Annexure C & D**' confirming the amounts to be paid as against the Purchase Orders along with invoices and challans. Thereafter, a series of communication took place between the Petitioner and the Respondent. Copies of the emails attached as '**Annexure-E, F**' wherein the parties tried to negotiate to arrive at a settlement of the amount for the coal to be supplied. However, later in the letter '**Annexure-F**' the petitioner (Goutam Roy) claimed to settle the outstanding amount remains to be due of Rs. **36,50,862.00/-** to be paid as the last and final amount due till date.

6. The petitioner further contends that Three cheques of Rs.56700.00 dated 17-08-2016 ch no. 860531 drawn on Axis Bank, Rs. 51975.00 dated 06.08.2016 ch no- 860530 drawn on Axis Bank and Rs. 56700.00 dated 18-07-2016 drawn on PDC (Post-dated Cheques) subsequently got bounced seeking for clarification for the amount left due. The copy of the letter marked and annexed as '**Annexure-F**'. In the above said circumstances petitioner issued demand notice in Form 3 (Annexure-I dated 06.07.2017) demanding payment in respect of unpaid operational debt due from the respondent but the respondent despite receiving the demand notice on 15.07.2017 (**Annexure-Y** in supplementary affidavit dated 18.10.2017) not send a reply nor cleared the debt and hence the petitioner filed the instant application for initiation corporate insolvency resolution process as against the respondent.

7. Despite service of demand notice as well as notice issued by this Tribunal the respondent did not turned up for defending this case. Heard the Id. Counsel for the petitioner, perused the records.

8. This is a petition filed under section 9 of the I&B Code. On a scrutiny of this petition it is found that petition is complete, and petitioner satisfied all the requirement under section 9(5) (a) to (e) of I&B Code. **Annexure-IV** is the affidavit filed under section 9(3)(b) deposing that there is no notice of dispute has been received by the petitioner from the respondent. **Annexure-Y** produced along with the supplementary affidavit dated 18.10.2017 proves service of demand notice with invoice for payment to the respondent has been delivered by the petitioner as required under section 9(5) (c). **Annexure III** is the certificate from the bank certifying that there is no repayment of the unpaid debt. So also, the petitioner produced written communication by the resolution professional Mr. Chhedi Rajbhar, (crajbharco.ca@gmail.com) in Form 2 certifying that no disciplinary proceedings pending against him. The petitioner therefore succeeded in proving that respondent despite demand of unpaid operational debt not cared to repay the debt legally due to the petitioner.

9. In the circumstances mentioned above, the petition is liable to be admitted for initiation of Corporate Resolution Process under section 9 of I&B Code. Accordingly, we hereby admit this Petition u/s.9 of the Code declaring a moratorium for the purposes referred to in section 14 of the Code with following directions:

(i) That this Bench, subject to provisions of subsections (2) & (3) of section 14 of the Code, hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 and the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

(ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

(iii) That 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.

(iv) That the order of moratorium shall have effect from 12/12/2017 till the completion of the corporate insolvency resolution process as prescribed under section 12 of the Code.

(v) That this Bench hereby appoint Mr. Chhedi Rajbhar, 25/2, Ramcharan Naskar Lane, Ghusuri, Howrah-711102 having registration

No. IBBI/ IPA-001/ IP-000129/ 2017-18/ 10271 [e-mail crajbharco.ca@gmail.com] as Interim Resolution Professional with a direction to cause public announcement of the corporate insolvency resolution process immediately as specified under section 15 of the Code.

(vi) That, moratorium is declared for the purposes referred to under 14 of the IBC Code.

10. The registry is directed to communicate the copy of the order to the petitioner, respondent and to the resolution professional forth with.

11. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.

List the case on 1/1/2018.


Vijai Pratap Singh,
Member (J)


Jinan K.R.
Member (J)

Signed on 12th December 2017