

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P.(IB) No.610/KB/2017

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

IN THE MATTER OF :

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

IN THE MATTER OF :

KAYANCE CEREALS PRIVATE LIMITED, a Company incorporated under the provisions of the Companies Act, 1956, and having its Registered Office at Nehru Road, Siliguri, District. Darjeeling, West Bengal.

.....Operational Corporate Creditor/ Applicant

And

ALIPURDUAR ENTERPRISES LIMITED having its Office at 201/B, M.G. Road, Room No.37, 3rd Floor, Sada Sukh Katra, Kolkata 700 007, West Bengal

..... Respondent / Corporate Debtor

Order Delivered on 07th February, 2018.

For the Applicant: 1. Mr. Madhusudan Sarkar, Advocate
2. Mr. Mousomjit Sarkar, Advocate

Sd

ORDER**Per Jinan K.R (Member Judicial)**

1. Petitioner has filed this application under Sec.9 of the Insolvency and Bankruptcy Code, 2016 (from now on referred to I & B Code, 2016) for initiating corporate insolvency process read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the corporate debtor, Alipurduar Enterprises Ltd. Petitioner has stated that corporate debtor has committed default in making payment of Rs.4,81,540/- (Rupees Four lakh eighty one thousand five hundred forty) as principal as on 17/9/2013 and Rs.3,50,801.89 (Rupees Three lakh fifty thousand eight hundred and paise eighty nine) as interest as on 12/9/2017 totaling a sum of Rs.8,32,341.89 (Rupees eight lakh thirty two thousand three hundred forty one and paise eighty nine) only.

2. The brief facts of the case, as stated in the application, are that Kayencee Cereals Pvt. Ltd. having its registered office at Nehru Road, P.O. Siliguri – 5, District Darjeeling. Mr Shibendu Bikash Guha, Assistant Manager and Constituted Attorney has filed this application on behalf of the applicant/operational creditor on the basis of Board Resolution issued by the Board of Directors dated 2/8/2017 annexed with the application and marked as Annexure VII(a).

3. The Corporate Debtor, Alipurduar Enterprises Ltd., Identification No. is 037220 of 1984. The name and registration number of the proposed interim resolution professional is Mr. Chhedi Rajbhar; Registration No. is IBBI/IPA-001/IP-00093/2016-2017-/1130 of 25/2, Ramcharan Naskar Lane, Ghosuri, Howrah – 711 102, email address crajbharco.ca@gnaul.com.



4. Applicant has annexed a copy of the statement of account on and from 1/4/2011 to 31/3/2014 annexed with the application and marked as Annexure A.
5. Applicant/operational creditor had sent the Demand Notice by email dated 3/10/2017 annexed with the application at page 46 to 54.
6. It reveals from the record that that the operational creditor had filed the application for winding up of the corporate debtor before the Hon'ble High Court, Calcutta. As per Government Notification all winding up petition on account of inability to pay shall be treated as a petition under Sec.7, 8 and 9 of the I & B Code. As per the above referred notification the Hon'ble High Court of Calcutta, transferred the winding up application to this Tribunal vide order dated 28/6/2017.
7. It further reveals that notice of admission issued from this Tribunal was served upon the corporate debtor by way of e-mail, but none appeared on behalf of the corporate debtor and no objection filed.
8. Heard argument of Ld. Advocate for the applicant/operational creditor.
9. In spite of demand notice, the corporate debtor has failed to make payment and thereby committed default. Petitioner has filed this application in the proper format as prescribed in I & B Code and Adjudicating Authority Rules which is complete. There is no repayment of the unpaid operational debt. Subsequent to the transfer of this case the applicant has issued the demand notice along with the invoices and produced copies of invoices to prove that notice has been issued in compliance of section 8 (1) of I&B, Code. So also, an affidavit to the effect that no notice of dispute has been

Sd

received by the applicant was produced by the applicant. Since the application was originally filed before the Hon'ble High court of Calcutta before the period of limitation the claim of the applicant is found not barred by Law of Limitation.

10. The Applicant/operational creditor has proposed the name of Mr. Chhedi Rajbhar, who is competent to work as IRP. No disciplinary proceeding is pending against him. Therefore, an application filed by the applicant/operational creditor under Sec 9 of I & B Code deserves to be admitted.

11. The petition filed by the applicant/operational creditor under Sec 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process and declare a moratorium and public announcement as stated in Sec.13 of the IBC, 2016.

12. The moratorium is declared for the purposes referred to in Sec.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.

13. 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 judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

Sd

- 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 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.

14. 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.

15. 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.

16. The order of moratorium shall affect the date of such order till the completion of the corporate insolvency resolution process.

17. 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 Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

Sd

18. Necessary public announcement as per Sec.15 of the IBC, 2016 may be made.

19. Mr. Chhedi Rajbhar; Registration No. is IBBI/IPA-001/IP-00093/2016-2017-/1130 of 25/2, Ramcharan Naskar Lane, Ghusuri, Howrah – 711 102, email address crajbharco.ca@gnaul.com is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

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

21. Let the certified copy of the order be issued upon compliance with requisite formalities and a copy of the order may also be sent to the Applicant/Financial Creditor as well as Corporate Debtor and IRP through email.

List the matter on 27.02. 2018 for filing of the progress report.



**Jinan K.R.
Member (J)**

Signed on 7th day of February 2018.