

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

CORAM

Shri Vijai Pratap Singh  
Hon'ble Member (J)

Shri S. Vijayaraghavan  
Hon'ble Member (T)

Company Petition No.173/2017

In the Matter of:

The Insolvency and Bankruptcy Code, 2016;

-And-

In the Matter of :

Section 8 and 9 and other applicable Provisions of the Insolvency and Bankruptcy Code, 2016;

-And-

In the Matter of:

M/s. Berger Paints India Limited, a company, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 129, Park Street, Kolkata – 700 017, represented by its Officer Administrator Shri Prasanta Sengupta;

... Petitioner

-And-

In the Matter of :

Precision Engineers & Fabricators Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 166B, Shyama Prasad Mukherjee Road, Flat No.-3D, Merlin Link, Kolkata – 700 026;

.... Respondent

Counsels on Record:

- |                                   |                      |
|-----------------------------------|----------------------|
| 1. Mr. Rohit Jalan, Advocate      | ] For the petitioner |
| 2. Mr. Micky Chowdhury, Advocate. | ]                    |

Date of Pronouncing the order : 4-4-2017

## ORDER

### Per Sri Vijai Pratap Singh, Member(J)

The applicant being a Operational Creditor has filed this application in Form 5 as provided under section 8 and 9 of the Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

Brief facts of the case are such that the Operational Creditor (hereinafter referred to as "Petitioner"), is a public limited listed Company incorporated under the Companies Act, 1956 having Identification No. L5143WB1923PLC004793 and having its registered office at 129, Park Street, Kolkata – 700 017. Precision Engineers & Fabricators Private Limited (hereinafter referred to as the "Corporate Debtor") having Corporate Identity Number U28111WB2005PTC105536, a private limited company incorporated under the Companies Act, 1956 and having its registered office at 166B, Shyama Prasad Mukherjee Road, Flat No.-3D, Merlin Link, Kolkata – 700 026.

The Petitioner, in its course of business, had sold goods worth Rs.15,28,719/- and delivered to the operational debtor between May to September, 2013 under various invoice numbers. Credit against earlier supply of Rs.5,017.24 and part payment of Rs.33,546.17, Rs.13,740.00 and Rs.50,000.00 were made from time to time, resulting operational debts payable by the Corporate Debtor to the extent of Rs.14,26,416/- to the Operational Creditor, being the value of goods sold and delivered alongwith interest @18% per annum being the prevalent market rate of lending from the due date till actual payment. The Petitioner further submitted that as on 11.01.2017, a total sum of Rs.23,10,906/- being Rs.14,26,416/- being the principal dues and Rs.8,84,490/- being the interest till 11.01.2017 @18% per annum together with further interest from 12.01.2017 till actual payment. In this context, a copy of the worksheet showing workings for computation of default with respective dates in tabular form has been enclosed with the petition. The petitioner also

RJ





submitted that the said sums were payable on the dates mentioned in the respective invoices and as such the date of invoice is the date of default.

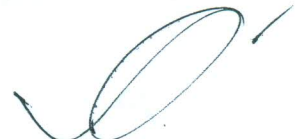
The Petitioner stated that as per the oral contract with the Corporate Debtor, the petitioner had sold the goods which is governed by the provisions of the Sale of Goods Act, 1930 and Indian Contract Act, 1872. The petitioner annexed the copies of the following documents along with the petition.

(1) Invoices, (2) Memorandum of settlement dated 3<sup>rd</sup> November, 2015, (3) Notice of demand dated 21.11.2016, (4) Reply letter dated 12/12/2016, (5) Notice dated 13/01/2017 issued under Form 3 of the said Code along with evidence of delivery of the said notice at the registered office of the Corporate Debtor, (6) Reply letter dated 09/02.2017 against notice dated 13/01/2017 issued under Form 3 of the said Code and (7) Board's Resolution dated 09.01.2017.

It is observed that the Petitioner's Counsel has issued Notice of demand dated 21<sup>st</sup> November, 2016 under section 434 of the Companies Act, 1956 to the Respondent for not paying the dues as per the Memorandum of Settlement dated 3<sup>rd</sup> November, 2015. In reply, the Respondent's Counsel has submitted vide his letter dated 12<sup>th</sup> December, 2016 stating that his client was inclined to pay the dues as per further negotiation as his client was in stress for some winding up order and also requested to advise his client to withdraw the pending criminal case being filed before the Metropolitan Magistrate, 18<sup>th</sup> Court, Calcutta.

The petitioner further issued Demand Notice/Invoice dated 13<sup>th</sup> January, 2017 demanding unpaid operational debt along with the interest amounting to Rs.14,26,416/-. In reply to the above Notice dated 13<sup>th</sup> January, 2017, the Respondent's Counsel has submitted vide his letter dated 9<sup>th</sup> February, 2017 to the Petitioner to consider the earlier Memorandum of Settlement prospectively and withdraw the pending criminal case.

2



It appears that Corporate Debtor has committed default in making payment of unpaid operational debt of Rs.14,26,416/-. The Petitioner, therefore, has filed this Petition under section 7 of the IBC, 2016 but has not proposed any name as Interim Resolution Professional

In the circumstances mentioned above, we admit the petition for initiating the Corporate Resolution Process and declare a moratorium and public announcement as stated in section 13 of IBC 2016. The relevant sections 13 and 14 are reproduced below for the purpose of convenience.

**13. Declaration of moratorium and public announcement**

*(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order-*

*(a) declare a moratorium for the purposes referred to in section 14;*

*(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and*

*(c) appoint an interim resolution professional in the manner as laid down in section 16.*

*(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.*

**14. Moratorium**

*(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*

*(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 action under the Securitisation 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.*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(3) 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.*

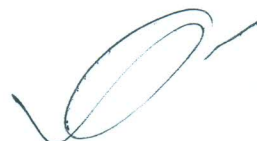
*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.*

*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."*

Necessary public announcement as per section 15 of the IBC, 2016 may be made by the Company.


In the circumstances mentioned above, we admit the petition for initiating the Corporate Insolvency Resolution Process and declare a moratorium and public announcement as stated in section 13 of the IBC, 2016. Necessary public announcement as per section 15 of the IBC 2016 may be made by the applicant company. On the basis of records available with the applicant, it appears that the Corporate Debtor has committed default in making payment of unpaid operational debt of Rs.14,26,416/-. The above order may be communicated to the Operational Creditor and the Corporate Debtor.

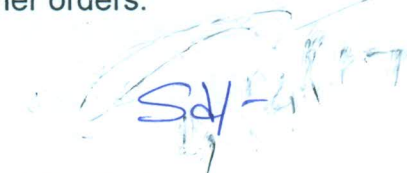
81



The petitioner has not given the name of any Interim Resolution Professional. So, the Petitioner is directed to submit the name of Interim Resolution Professional alongwith his full address and consent within seven days from the date of this Order.

List the matter on 11/4/17 for further orders.

  
(S. Vijayaraghavan)  
Member(T)

  
(Vijai Pratap Singh)  
Member (J)

Signed on this 4<sup>th</sup> day of April, 2017