

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.186/2017**

**In the Matter of:**

The Insolvency and Bankruptcy Code, 2016;

-And-

**In the Matter of :**

Section 9(1) 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. Naresh Kumar & Company Pvt. Ltd., a company incorporated under the Companies Act, 1956, having its Registered Office at 5<sup>th</sup> floor, 9-B, Woods Street, Kolkata- 700 016. ;

... **Operational Creditor**

-And-

**In the Matter of :**

"Kalyanpur" Cements Limited, a Company incorporated under the Companies Act, 1956, having its Registered Office at 2 & 3, Dr. Rajendra Prasad Sarani (earlier known as 2 & 3 Clive Row), Kolkata – 700 001.

.. **Operational Debtor**

**Counsels on Record:**

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|--------------------------------------|-----------------------|
| 1. Mr. K.N.Jana, Advocate            | ] For the petitioner  |
| 1. Mr. Shaunak Mitra, Advocate       | ] For the Respondents |
| 2. Mr. Nilanjan Chatterjee, Advocate | ]                     |

Date of Pronouncing the order : 19/4/17

## ORDER

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

This application has been filed by the Operational Creditor under section 9(1) of the Insolvency and Bankruptcy Code read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process against the Operational Debtor.

In the application, the operational creditor has stated that the Operational Debtor, Kalyanpur Cements Ltd. has registered office in Kolkata at 2&3, Dr. Rajendra Prasad Sarani, Kolkata- 700 001. The operational creditor has claimed that on account of transportation of about 9000 MT per month of fly ash from various power stations being Hindalco, Resusagar, DVC, Bokaro Thermal Power Station and delivery of the same at the required destination of the operational debtor by the operational creditor, pursuant to order no.383 dated 01.02.2011, an amount of Rs.1,53,66,760.18 has become due but after service of notice on the Corporate debtor, the petitioner raised invoices on account of such transportation charges on different dates, details of which are mentioned in Part-IV of the petition consisting of particulars of Operational Debtor. The Operational Creditor has further stated that in spite of several requests and reminders, the Operational Debtor made only a part payment in piecemeal from time to time and the last payment was made of Rs.2 lakhs on June 19, 2015, leaving aside a total sum of Rs.1,53,68,760.18 as due and payable to the operational creditor, being the claim of the operational creditor on account of transportation charges along with interest " 24% per annum from the date of each invoices raised by the operational creditor



upon the operational debtor. On November 02, 2016, the Operational Debtor through its Advocate Mr. Nilanjan Chatterjee sent a reply to the legal notice dated 17<sup>th</sup> October, 2016 given by the Operational Creditor wherein the operational debtor has unequivocally admitted the claim of the operational creditor. The operational creditor on 12<sup>th</sup> February, 2017 claimed a total sum of 1,53,66,760.18 as principal plus interest @24% per annum from the date of each invoices till the date of payment. The operational creditor has claimed that the said sums were payable on the date as mentioned in the respective invoices. The operational creditor has given the details of invoices in a tabular form along with the petition which is Annexure "C" at page 43 of the petition which shows that Rs.1,53,66,760.92 was due on the Corporate debtor on account of different invoices and last payment which was made by the Corporate debtor was Rs.2 lakhs made on 09.06.2015.

The operational creditor has filed the copy of work order as Annexure "A" with the petition, alongwith copy of all the invoices which are annexed as Annexure "B" of the petition. The operational creditor has also filed the copy of the legal notice served on the corporate debtor which is annexure "D" which shows that on 17.10.2016, the Corporate Creditor has sent the legal notice on the Corporate debtor for making the balance outstanding amount of Rs.1,53,66,760.18 and also filed a copy of reply given by the Corporate Debtor which is Annexure "E" to this petition which shows that Corporate Debtor has accepted the balance amount of Rs.1,53,66,760,18 but in that reply he has mentioned that from November, 2016 onwards, he will pay off all the dues in instalment of Rs.5 lakhs per month upto

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December, 2016 and thereafter from January, 2017 onwards, his client will pay off the dues in instalment of Rs.7.50 lakhs per month.

The Operational Creditor has also filed the demand notice given to the Corporate Debtor under section 8(1) of the Insolvency & Bankruptcy Code which is Annexure "F" to the petition which was sent on 12.02.2017 whereby the claim of entire amount due i.e. principal amount of Rs.1,53,66,760/- + 25% interest per annum was claimed by the operational creditor. This notice was sent through the Courier and the operational creditor has filed track report of service of notice which shows that notice was duly served on the Corporate debtor on 14.02.2017. Even after the receipt of the notice under the Insolvency & Bankruptcy Code, 2016, the Corporate Debtor has failed to make payment. Therefore, the Operational Creditor filed an application under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Resolution Process. The Operational Creditor has filed the copy of the Board Resolution. The Operational Creditor has filed the authorisation letter which shows that Shri Madanjeet Singh Bindra has been authorised on behalf of the Company through Power of Attorney that Company has authorised Shri Madanjeet Singh Bindra as lawful attorney of the company to act on behalf of the Company M/s. Naresh Kumar & Company Pvt. Ltd. and Shri Madanjeet Singh Bindra has verified the petition.

On the above basis, it is clear that the Operational Debtor has committed default for not making payment of outstanding dues of Rs.1,53,66,760/- as principal dues along with interest @ 24% per annum from the date of each bill/invoice raised till the date of payment and even after the receipt of notice, the Corporate debtor has failed to pay off the dues to the Operational Creditor.



In this context, it is observed that the Operational Creditor has not proposed the name of Interim Resolution Professional. The Operational Creditor is directed to propose the name of the Interim Resolution Professional before the petition is admitted for initiating Corporate Resolution Process alongwith the Consent letter of the I.R.P. in form 2 as prescribed under Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 within 07 days from this order. The Operational Creditor is also directed to file certificate of the I.R.P. mentioning that he possesses the required qualification of I.R.P.

List on 24<sup>th</sup> April, 2017.



(S. Vijayaraghavan)  
Member(T)



(Vijai Pratap Singh)  
Member (J)

Signed on this 19<sup>th</sup> day of April, 2017