

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri Vijai Pratap Singh
Hon'ble Member (J)

Ms. Manorama Kumari
Hon'ble Member (J)

Company Petition No.150/2017

In the Matter of:

The Insolvency and Bankruptcy Code, 2016;

-And-

In the Matter of :

An application for initiation of corporate insolvency resolution process by the Operational Creditor under Section 8 and 9 of the Insolvency and Bankruptcy Code, 2016;

-And-

In the Matter of:

Parker Hannifin India Pvt. Ltd., a private limited company incorporated under the provisions of the Companies Act, 1956, having its address at Plot-EL-26, MIDC, TTC Industrial Area, Mahape, Navi Mumbai- 400 709;

... **APPLICANT / OPERATIONAL CREDITOR**

-And-

In the Matter of :

Prowess International (P) Ltd., a private limited company incorporated under the provisions of the Companies Act, 1956, having its address at A-18, 6th Phase Industrial Area, Adityapur, Jamshedpur- 832 108, Jharkhand;

.. **CORPORATE DEBTOR**

Counsels on Record:

- | | |
|------------------------------------|----------------------|
| 1. Mr. Swatarup Banerjee, Advocate |] |
| 2. Mr. Avishek Guha, Advocate |] For the petitioner |
| 3. Mr. Avishek Sikdar, Advocate |] |

Date of Pronouncing the order :

ORDER

This application has been filed under section 8 and 9 of the Insolvency and Bankruptcy Code, 2016 by the Operational Creditor for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, Prowess International (P) Ltd. on account of default for not making payments of Rs.45,73,250/-/- . Details of debt amount of the Corporate Debtor has been given in a chart which is exhibit "G" at page no. 18 of the petition.

The Operational Creditor has submitted that in response to the Purchase Order dated 28th July, 2014 issued by the Corporate Debtor for manufacture and supply of certain materials, such as Hydraulic Power Pack for EAF, Hydraulic Power Pack for LRF, Hydraulic Power Pak for VD, Spare for Hydraulic Power Pack, etc., the Operational Creditor duly manufactured and supplied the said items to the Corporate Debtor and raised four invoices asking for payment regarding supply of the aforesaid items. Two invoices were raised on 7th March, 2015 for Rs.22,03,500/- and Rs.19,49,250/- and other two invoices were raised on 11th March and 14th March, 2015 for a sum of Rs.10,17,000/- and Rs.22,03,500/- respectively. The said invoices have been annexed as Exhibits "C" to "F" with the petition. Thus, the Corporate Debtor was liable to pay a total sum of Rs.73,73,250/- The Operational Creditor has further submitted that out of the total invoice value, the Corporate Debtor has only paid a sum of Rs.28,00,000/- to the Operational Creditor and the balance sum of Rs.45,73,250/- is still due.

The Operational Creditor has again submitted that the said purchase order alongwith the invoices constituted a legal, valid and binding contract between the Operational Creditor and the Corporate Debtor for which the Operational Debtor is liable to pay the Operational Creditor for the manufacture and supply of the purchase order items.

The petitioner has also filed copy of the Board Resolution which is Exhibit "A" which shows that petitioner no.1 vide Resolution dated 23.01.2017 unanimously passed resolution to initiate Corporate Insolvency Resolution under

Corporate Insolvency and Bankruptcy Code, 2016. The petitioner has also filed bank statements where deposits are made or credits are received by the Applicant/Operational Creditor. The petition has been signed by Ms. Priti Baria, as Company Secretary of Parker Hannifin India Pvt. Ltd., who has been authorised by the Board Resolution to present the petition under the Insolvency and Bankruptcy Code, 2016 for initiating corporate insolvency process. On the basis of documents filed by the petitioner, it appears that the Corporate Debtor has committed default in making payment of Rs.45,73,250/-.

It appears from the record that all the documents filed with the petition have been signed by Mrs. Priti Baria, who was authorised to present the petition. The petitioner has also filed copies of the notice under section 433 and 434 of the Companies Act, 1956 dated 29th March, 2015 and 18th May, 2015 and Demand Notice dated 23rd December, 2016 and also proof of delivery which are "Exhibit-L, Exhibit-M and Exhibit-N" respectively at page nos.41 to 59 of the petition.

The petitioner has also proposed the name of Shri Arun Kumar Gupta as Interim Resolution Professional whose registration number and Email ID as mentioned is given as under:

**Shri Arun Kumar Gupta,
P-15, Bentinck Street,
Kolkata- 700 001
Registration No.: IBBI/PA-001/IP-P00013/2016-2017/10037**

The petitioner has also certified that Shri Arun Kumar Gupta is fully qualified and permitted to act as Interim Resolution Professional. The proposed IRP, Shri Arun Kumar Gupta has also given his consent letter in form no.2 of Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 and he has also certified that no disciplinary proceeding is pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI, Insolvency Professional Agency.

On the above basis, it is clear that the Corporate Debtor has committed default for not making payment of debt of Rs.45,73,250/-. Therefore, the petition is



admitted and Shri Arun Kumar Gupta is appointed as Interim Resolution Professional. Moratorium is also declared as per provision of section 14 of the Insolvency & Bankruptcy Code, 2016. Direction is also being issued for issuing public announcement in terms of section 15 of Insolvency & Bankruptcy Code, 2016. The petitioner is also directed to serve the copy of the order on the Corporate Debtor. This Order be communicated to the Financial Creditor as well as Corporate Debtor in terms of section 7 of the Insolvency and Bankruptcy Code, 2016.

List on 28th April, 2017 for submission of progress report by the Interim Resolution Professional.

Sd/-
(Manorama Kumari)
Member(J)

Sd/-
(Vijai Pratap Singh)
Member (J)

Signed on this 20th day of April, 2017