

275

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.73/2017

In the matter of :

Application under section 9 of the Insolvency and
Bankruptcy Code, 2016

And

In the matter of:

Application by Operational Creditor to initiate Corporate
Insolvency Resolution Process under Rule 6 of the Insolvency
and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

And

In the matter of:

Surendra Kumar Joshi, 74, Burtolla Street, 2nd Chowk,
1st floor, Kolkata – 700 007

....**Operational Creditor/Applicant**

And

In the matter of:

Rei Agro Limited, 'Everest House', 46C, Chowringhee Road,
15th floor, Room no.15B, Kolkata – 700 071

... **Corporate Debtor**

Counsels on Record:

- | | | |
|-----------------------------------|---|--------------------|
| 1. Mr. Jishnu Chowdhury, Advocate |] | |
| 2. Ms. Swapna Choubey, Advocate |] | For the Applicant |
| 3. Mr. Sidhartha Sharma, Advocate |] | |
| 4. Ms. Namrata Basu, Advocate |] | |
| | | |
| 1. Ms. Meenakshi Manot, Advocate |] | For the Respondent |

Date of Pronouncing the order : 27-2-17

ORDER

This Company Petition has been filed by Operational Creditor, Mr.Surendra Kumar Joshi, supported by an affidavit to initiate Corporate Insolvency Resolution Process in respect of REI Agro Limited under the Insolvency and Bankruptcy Code, 2016. The application has been submitted in form 5 as provided under the Insolvency and Bankruptcy Code 2016. The applicant has stated in the application that he has preferred this application on the basis of amount claimed to be in default and the workings for computation of default are (1) Salary for August 2016 – Rs.60,650/-, (2) Bonus from 1.10.15 to 31.08.2016 – Rs.47,690/-, (3) Leave from 1.10.15 to 31.08.16 – Rs.47,690/- (4) Gratuity from 01.04.1993 to 31.08.2016 – Rs.8,64,408/-, total amount due being Rs.10,20,437/- from the Operational Debtor and date of default being 31.08.2016. It has been stated in the application that the corporate debtor is in default of about Rs.10,20,437/- with respect to operational creditor which is at Annexure-5 (page 35) of the application. The particulars of the operational Debtor are mentioned in Part-IV of the application.

In this context, the applicant has given demand notice on 25.01.2017 in form no.3 under clause (a) of sub-rule (1) of rule 5 to the operational debtor demanding payment of an unpaid operational debt amounting to Rs.10,20,437/, which is at Annexure-4 with the application. The applicant has also issued Form of notice dated 25th January, 2017 with which invoice demanding payment is to be attached in Form no.4 (page no.32 of the application) to the operational debtor. The operational debtor, i.e. REI Agro Limited vide their letter dated 11.09.2016 has also acknowledged the debt of Rs.10,20,437/- to be paid to the applicant which is at Annexure 1 (page 9) of the application.

In response to the demand notice dated 25th January, 2017 given by the applicant, the operational creditor vide their letter dated February 6, 2017 has written to the applicant that the company is badly suffering from financial crisis and due to various reasons, it has resulted in erosion of the company's net worth and has been referred to BIFR and the reference pending before the BIFR has ~~been~~ abated and revival of the corporate debtor under the relevant

provision of SICA Act has been jeopardised and everything is at standstill. However, in consultation with the company's legal advisors, the company is seeking their guidance to revive the company under the guidance of the Adjudicating Authority under the IBC, 2016. Finally, they sought some breathing time and assured the operational creditor that the payment of all dues will be made.

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 Operational Creditor.

The applicant has also proposed to appoint Mr. Anil Agarwal, FCA to be appointed as Interim Resolution Professional and submitting a resolution plan to NCLT as required under the IBC Act. In accordance with rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, ²⁰¹⁶~~2006~~, Mr. Anil Agarwal has submitted his consent as stipulated in Form-2 of the NCLT Rules. The details and registration number of I.R.P. given in the Petition, are as under:

21




Mr. Anil Agarwal
Chartered Accountants,
9, Binoba Bhawe Road, Flat no.2G,
Behala, Kolkata – 700 038
anil@dvaonline.in
Regn. No.IBBI/IPA-001/IP-00621/2016-2017/1372


The applicant/petitioner has also certified the fact that Mr. Anil Agarwal is fully qualified and permitted to act as an Interim Resolution Professional in accordance with Code and the Associated Rules and Regulations.

The application for initiation of Corporate Insolvency Resolution Process is accepted and Mr. Anil Agarwal is hereby appointed as Interim Resolution Professional. He will initiate the process as per the Rules.

Urgent copy of the order may be issued upon compliance of all necessary formalities.

List the matter on 03/03/2017 for further orders.


(S. Vijayaraghavan)
Member(T)


(Vijai Pratap Singh)
Member (J)

Signed on this 27th day of February, 2017