

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/1410/2019

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **M/s. V R V Engineers Private Limited***

M/s. Streamline Refrigeration Private Limited

No.7/1, Jagad Guru Ashram Road,
4th Cross, Lalbagh Road,
Bangalore – 560 027.

... Operational Creditor

-Vs-

M/s. V R V Engineers Private Limited

Door No.4/889, (New No.4/423), 3rd Main Road,
Swaminathan Nagar, Kotivakkam,
Chennai, Kancheepuram – 600 041.

... Corporate Debtor

Order Pronounced on 29th January 2021

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Operational Creditor : B. Sarath Babu, Advocate

For Corporate Debtor : None appeared

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. This is an application filed by M/s. Streamline Refrigeration Private Limited (hereinafter referred as "**Operational Creditor**") under section 9 of the Insolvency and Bankruptcy Code 2016

seeking to initiate Corporate Insolvency Resolution Process against the Company, namely, M/s. V R V Engineers Private Limited (hereinafter referred as "**Corporate Debtor**").

2. From Part-I of the Application, it is seen that the Operational Creditor is a Private Limited Company. From Part - II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 08.09.2006 and as per the Application, the registered office address of the Corporate Debtor is stated to be situated at Door No.4/889, New No.4/423, 3rd Main Road, Swaminathan Nagar, Kotivakkam, Chennai, Kancheepuram - 600041. From Part - III of the Application, it is seen that the Operational Creditor has not proposed the name of any Insolvency Resolution Professional and left it to the discretion of this Tribunal to appoint the same.

3. Part - IV of the Application, discloses the details of the Operational Debt, from which, it is seen that the Operational Creditor has claimed a sum of Rs.8,62,644/- as due and payable by the Corporate Debtor.



4. Part – V of the Application sets out the details of the documents which are being filed in order to prove the existence of an Operational Debt, which are as follows:

- (i) Copy of Invoices
- (ii) Copy of the Demand Notice along with Tracking receipt
- (iii) Copy of the E-mail dated 14.08.2019
- (iv) Copy of the Ledger Account of the Corporate Debtor in the books of the Operational Creditor.
- (v) Copy of the E-mails exchanged between the Operational Creditor and the Corporate Debtor.
- (vi) Copy of the payment realisation agreement sent by the Corporate Debtor.
- (vii) Affidavit under Section 9(3)(b) of IBC, 2016

5. The Learned Counsel for the Operational Creditor submitted that they are engaged in the business of offering a wide range of Rubber refrigeration parts, refrigeration spares, tube plugs for compressors, crisper trays, freezer frames, etc and had supplied VAV Boxes, Communication Controllers, VAV Compact Actuator, Digital Rooms Thermostat, etc to the Corporate Debtor. It was submitted by the Learned Counsel for the Operational Creditor that the goods were received and accepted by the Corporate Debtor and there were no dispute at that time relating to the quantity and quality of goods, however the Corporate Debtor has failed to make



payments for the outstanding dues of the invoices, which were raised by the Operational Creditor on 31.08.2015 and 10.09.2015 aggregating to Rs.5,08,974/-. The copies of the Invoices issued by the Operational Creditor are placed at pages 13 to 18 of the typed set filed along with the Application. It was also submitted that the Corporate Debtor is liable to pay interest on the outstanding dues to the tune of Rs.3,53,670/- as per the Invoice from the due date till the date of the Demand Notice.

6. The Learned Counsel for the Operational Creditor submitted that after several reminders to clear the said outstanding dues, the Operational Creditor issued a statutory Demand Notice as mandated under Section 8 of IBC, 2016 to the Corporate Debtor on 14.08.2019 which was delivered to the Corporate Debtor and the Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 stating that inspite of sending Demand Notice the Corporate Debtor has not paid the amount and has also not replied to the Demand Notice. The copy of the said Affidavit is placed at page Nos. 75 to 78 of the typed set filed along with the Application.



7. The Learned Counsel for the Operational Creditor also submitted that the Corporate Debtor has sent a Payment realise Agreement to the Operational Creditor on 10.02.2017, regarding releasing the outstanding payment for the invoices dated 31.08.2015 and 10.09.2015. The copy of the said payment realise agreement is placed at page Nos. 61 and 62 of the typed set filed along with the Application.

8. In the said circumstances, it is submitted by the Learned Counsel for the Operational Creditor that the 'debt' and 'default' on the part of the Corporate Debtor being proved and hence prayed for initiation of CIRP in relation to the Corporate Debtor.

9. In relation to the Corporate Debtor, it is seen from the record that this Tribunal vide Order dated 21.10.2020 directed the Registry of this Tribunal to issue notice to the Registered Office address of the Corporate Debtor and also private notice was ordered. Further, when the matter came up for hearing on 10.02.2020, the Counsel for the Operational Creditor has filed an Affidavit of Service by stating that the consignment was not delivered for the reason "Addressee left without instructions". Thereafter, this Tribunal vide order dated 19.02.2020 directed the

Operational Creditor to cause notice upon the Directors of the Corporate Debtor individually as reflected in the Master data. On 14.10.2020, when the matter was taken up for hearing, it was seen that the Operational Creditor has filed an Affidavit of Service in relation to the orders passed by this Tribunal on 19.02.2020. Subsequently when the matter was posted for hearing on 01.12.2020 and on 20.01.2021, none appeared on behalf of the Corporate Debtor and hence this Tribunal was constrained to proceed in the matter in the absence of the Corporate Debtor.

10. Heard the submissions made by the Learned Counsel for the Operational Creditor and perused the record including the pleadings placed on file.

11. Upon perusing the invoices raised by the Operational Creditor, it is seen that the Invoices as raised by the Operational Creditor are dated 31.08.2015 and 10.09.2015. It is to be noted here that the present Application has been filed by the Operational Creditor before this Tribunal on 01.11.2019. *Prima facie* it appears that the debt as claimed by the Operational Creditor is barred by limitation. However, the Operational Creditor has placed on record a purported Payment realise Agreement which has been issued by



the Corporate Debtor on 10.02.2017. At this juncture, it is necessary to extract Section 18 of the Limitation Act, 1963;

18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.—For the purposes of this section,—

- (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;
- (b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and
- (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

12. Section 18 of the Limitation Act, 1963 states that where before the expiration of the prescribed period of limitation for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right



has been made in writing then fresh periods of limitation shall be computed from the time when acknowledgement was so signed. It is to be noted here that before expiration of the period of limitation, acknowledgement of liability in writing, renews the debt but does not create a new right or action and that by acknowledgement in writing, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. Further an acknowledgement is to be an 'acknowledgement of debt' and must involve an admission of subsisting relationship of debtor and creditor; and an intention to continue it and till it is lawfully determined must also be evident from such acknowledgment.

13. A perusal of the Affidavit dated 10.02.2017 signed by one of the Directors of the Corporate Debtor shows that the Corporate Debtor has agreed that there is a delay in payment of money to the Operational Creditor and also agreed to pay a sum of Rs.9,08,974/- to the Operational Creditor on 09.03.2017 in respect of the Invoices dated 31.08.2015 and 10.09.2015. The Corporate Debtor has also stated in the said Affidavit that he agrees to pay 36% penalty amount for difference in tax, interest and other charges. The copy of the said Affidavit is attached herewith;





पञ्जाब तमिलनाडु TAMILNADU
4229 V.R.V. Engineers Pvt Ltd
7 FEB 2017
BF 103928
N JYOTHI SELVAM
L No 10/01/2008
PARAMESWARAN NAGAR
TIRUVANMALUR, CHENNAI - 600 119

Date: 10.02.2017

To

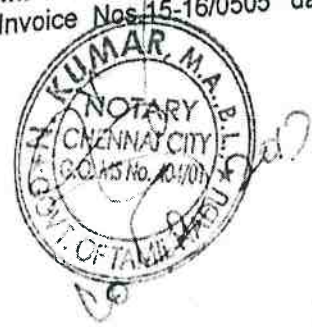
STREAMLINE REFRIGERATION PVT.LTD.,
BANGALORE.

Dear Sir,

I, V.A.RAVISHANKAR, Director of VRV ENGINEERS PVT (LTD) having its office at No.4/889, Swaminathan Nagar, 3rd Main Road, Kottivakkam, Chennai 600 041, agree for the delay in the payment to Streamline Refrigeration Pvt.Ltd., I agree to pay the money of Rs.9,08,974/- (Rupees Nine Lakhs Eight Thousand Nine Hundred and Seventy Four Only) on 9th March, 2017 along with 'C' Form for the material consumed for the site (against Invoice Nos.15-16/0505 dated 31.08.2015 for Rs.6,56,371/-

For VRV Engineers Pvt Ltd

Director





तमिलनाडु TAMILNADU
4230 V.R.V. Engineers Pvt Ltd.
7 FEB 2017
BF 103929
N JYOTHI SELVAM
L No 80851/2006
PARANTHAKAN NAGAR
KOLKATTAUR CHENNAI - 600 119

and 15-16/0539 dated 10.09.2015 for Rs.2,52,603/-) caterpillar for Rs.9,08,974/- (Rupees Nine Lakhs Eight Thousand Nine Hundred and Seventy Four Only)

If fail to pay on the 9th of March, 2017.
If 'C' Form is not given before 15.02.2017.

I hereby agree to pay 36% penalty amount for difference in tax, interest and other charges as per government notice.

I request for the inconvenience caused.



V.A. Ravishankar
(V.A. RAVISHANKAR)
Director
VRV ENGINEERS PVT (LTD)

N. KUMAR, M.A., B.A.,
ADVOCATE & NOTARY PUBLIC
No. 9/9, 10th LANE,
Achi Nagothamman Koil Opp. Street,
INDIRA NAGAR, ADYAR, CHENNAI-23.
CELL : 91764 85090, 80561 98743

14. Thus, from the documents placed by the Operational Creditor, it is seen that the Corporate Debtor has acknowledged its debt by way of writing on 10.02.2017 and by necessary consequence there will be saving of limitation as envisaged by section 18 of the Act and hence the Application as filed by the Operational Creditor is well within the period of limitation.

15. Coming to the aspect of debt and default, which is to be proved by the Operational Creditor in the present case it is seen from the records that the Corporate Debtor has not preferred to reply to the Demand Notice issued by the Operational Creditor in spite of receiving the same. Further, by acknowledging the debt, the Corporate Debtor has issued an Affidavit on 10.02.2017 and also the Corporate Debtor has not preferred to appear before this Tribunal in order to rebut the claim as claimed by the Operational Creditor.

16. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the default has arisen well before the Notification effected in increasing



the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.

17. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal, based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January – June 2021, appoints **Mr. Chandrasekhar Sagutoor**, Reg. No. *IBBI/IPA-001/IP-P00960/2017-2018/11581* (email id:- sagutoor@gmail.com) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under



the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

18. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

- (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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(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.

19. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(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.

20. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

21. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records.

Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond