

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 15-04-2021 AT 10.30 A.M THROUGH
VIDEO CONFERENCING:**

**PRESENT: SMT. R. SUCHARITHA, MEMBER (JUDICIAL)
SHRI B. ANIL KUMAR, MEMBER (TECHNICAL)**

**APPLICATION NUMBER :
PETITION NUMBER : IBA/1324/2019
NAME OF THE PETITIONER : Esskkaay Construction
NAME OF THE RESPONDENTS : Fortune Mix India Pvtv Ltd
UNDER SECTION : Sec 9 Rule 6 of IBC, 2016**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IBA/1324//2019 filed under section
9 of the Insolvency Bankruptcy
Code, 2016 with Rule 6 of the
Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016.

In the matter of M/s. Fortune Mix India Private Limited

M/s. Esskkaay Construction

Rep. by its Proprietor Mr. S. Karthik
Flat No. 24, BBC Villa 2nd Floor,
65/33, Prakasamsali, Broadway,
Chennai-600108.

---Operational Creditor

Vs.

M/s. Fortune Mix India Private Limited

[CIN: U26950TN2015PTC102253]

No. 1, Thirunagar 1st J N Salai
100 feet Road, Vadapalani,
Chennai-600026

---Corporate Debtor

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R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)


For Operational Creditor : *M/s. Ganesh & Ganesh, Advocates*

For Corporate Debtor : *Shri. C. Ramasubramaniam, PCS*
Shri. S. Sathyanarayanan, Advocate

Per : R. SUCHARITHA, MEMBER (JUDICIAL)

Under consideration is an application filed under Section 9 of the I & B Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 **(Rules)** by M/s. Esskkaay Construction **(Applicant/Operational Creditor)** against M/s. Fortune Mix India Private Limited **(Respondent/Corporate Debtor)**, on the ground that Corporate Debtor defaulted an amount of Rs.9,55,510/-. This Application was filed on 30.09.2019.

2. Learned Counsel for the Operational Creditor averred that about 799.92 tonnes of M. Sand and quarry dust were ordered for purchase by the Corporate Debtor from the Operational Creditor, on credit on various dates and the Corporate Debtor undertook to make payments for the purchase of the materials within 30 days from the date of invoice. The invoices were duly raised after delivery of the materials but the Corporate Debtor failed to make the payments. As a proof of having supplied the materials between the period from 15.03.2019 to 17.05.2019, the Operational Creditor has placed delivery challan-cum-weighment slip and GST



certificate. The total outstanding operational debt of Rs.9,55,510/- together with interest at the rate of 24% per annum fell due on 16.03.2019.

3. It is submitted that the Operational Creditor had sent demand notice on 03.08.2019 in Form-3 for which the Corporate Debtor has not sent its reply. It is further submitted that the Operational Creditor has filed copy of Bank Statement from 16.03.2019 to 05.09.2019.

4. Heard both the parties and perused documents placed before this Adjudicating Authority. The Operational Creditor has proved existence of 'debt' and 'default'. Moreover, this application was filed on 30.09.2019. The pecuniary jurisdiction of this Adjudicating Authority, at the time of filing this application was debt due Rs.one lakh and above. Hence, this Adjudicating Authority has jurisdiction to adjudicate this petition. The registered office of the Corporate Debtor is also within the State of Tamilnadu, hence this Adjudicating Authority has jurisdiction. The alleged debt due is

between the period from 01.04.2018 to 17.07.2019. Hence, it is well within the period of limitation.

5. It is seen that when this matter came up for hearing on 20.11.2020, the learned counsel for Respondent submitted that they have made part payment towards the outstanding payable to the Applicant. On 08.04.2019, the Respondent had sought time to take instructions and the matter was posted for hearing on 15.04.2021 for final disposal. The Corporate Debtor has made part payment towards outstanding. The last payment of a sum of Rs.2,00,000/- was pending. The Corporate Debtor issued cheques and failed to honour the same.

6. By taking into consideration the facts mentioned supra, this Adjudicating Authority is inclined to **admit** the Application as has been filed by the Operational Creditor and consequently Corporate Insolvency Resolution Process is initiated. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints *Mr. S.*

Kamaraj, Regn.No.IBBI/IPA-001/IP-P00116/2017-2018/10251 as *"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.

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

(i) 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.

(ii) 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.

8. 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:

(iv) 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.

9. The Operational Creditor is directed to pay a sum of Rs.50,000/- (*Rupees Fifty Thousand 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 him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

10. 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.

11. Accordingly, this application IBA/1324/2019 stands **allowed**.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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