

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

IBA/137/2020

*(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. GSH Facilities Management Services Pvt. Ltd.

M/s. I.C.I. Projects (India) Private Limited

No.5/1, Veterinary Hospital Road,
Erode,
Tamil Nadu – 638 001

... Operational Creditor

-Vs-

M/s. GSH Facilities Management Services Private Limited

New No.14, Old No.20,
Thiru – Vi – Ka, III Street,
Royapettah High Road,
Mylapore,
Chennai – 600 004

... Corporate Debtor

Order Pronounced on 22nd February 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)


ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : S. Manjula Devi, Advocate

For Corporate Debtor : Guruswaminathan, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

-  1. This is an application filed by M/s. I.C.I. Projects (India) 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. GSH Facilities Management Services 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 19.03.2015 and as per the Application, the registered office address of the Corporate Debtor is stated to be situated at New No.14, Old No.20, Thiru - Vi - Ka, III Street, Royapettah High Road, Mylapore, Chennai - 600 004. 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.7,77,539/- as due and payable by the Corporate Debtor, which includes a principal sum of Rs.5,44,320/- and interest for a sum of Rs.2,33,219/-. The date of



default is stated to be 01.10.2017. The present Application is filed before this Tribunal on 18.12.2019.

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 the Demand Notice dated 17.09.2019.
- (ii) Reply to the Demand Notice sent by the Corporate Debtor dated 26.09.2019
- (iii) Copy of the Order Form with Order No. IN6847.
- (iv) Copy of the Invoice No.004 dated 11.08.2017
- (v) Copy of the 1st page of Form 26AS for Financial Year 17 - 18, TDS paid for the said Invoice.
- (vi) Copy of the email communications from Corporate Debtor acknowledging the receipt of the Invoice No.004 dated 11.08.2017
- (vii) Copy of the notice under Section 230 to 232 of the Companies Act, 2013 sent by the Corporate Debtor to the Operational Creditor.
- (viii) Copy of the Bank statement showing the details of the amount due.
- (ix) Affidavit in accordance with Section 9(3)(b) of IBC, 2016.

 5. The Learned Counsel for the Operational Creditor submitted that based upon the Purchase Order placed by the Corporate

Debtor on 28.04.2017, the Operational Creditor has rendered services to the Corporate Debtor and has raised Invoices against the Corporate Debtor. It is submitted by the Learned Counsel for the Corporate Debtor that as per the terms of the Purchase Order, the payment has to be released in three stages, the first stage of payment is 20% which would be paid after completion of Stage 1 scope of work, the second stage is 40% which is to be paid on completion and submission of pre – tendering report, the third stage is 40%, which is to be paid on completion and submission of post – tendering report.

6. It was submitted by the Learned Counsel for the Operational Creditor that after completion of stage 1, the Operational Creditor has raised Invoice, to which the Corporate Debtor has made the payment. It was submitted that, for the second stage of work, after it was completed, the Operational Creditor has raised Invoice on 11.08.2017 for a sum of Rs.5,94,720/-, however the Corporate Debtor has failed to make payment for the said amount. It was further submitted that the Corporate Debtor vide their email dated 17.07.2019 has acknowledged the receipt of the Invoice. The Learned Counsel for the Operational Creditor submitted that they have sent various emails to the Corporate Debtor on 21.06.2019,



29.06.2019, 05.07.2019, 19.07.2019, 30.07.2019, 27.08.2019, 30.08.2019, 11.09.2019, however the Corporate Debtor has kept silent and has failed to make the payment of the said sum of Rs.5,94,720/- to the Operational Creditor.

7. The Learned Counsel for the Operational Creditor further submitted that the Corporate Debtor in relation to a Scheme of Amalgamation contemplated by it, had sent a notice to the Operational Creditor on 17.10.2018 under Section 230 to 232 of the Companies Act, 2013 by calling for the Operational Creditor to attend the meeting of the Unsecured Creditors of the Respondent Company as proposed to be held 20.11.2018. Further, it was also submitted that for the Invoice raised by the Operational Creditor for a sum of Rs.5,94,720/-, the Corporate Debtor has deducted TDS for a sum of Rs.50,400/- which is reflected from the Form 26AS filed by the Operational Creditor along with the typed filed with the Application.

8. The Learned Counsel for the Operational Creditor submitted that they have sent the statutory Demand Notice as mandated under Section 8 of IBC, 2016 to the Corporate Debtor on 17.09.2019 which was delivered to the Corporate Debtor and the



Corporate Debtor has sent a reply to the said Demand Notice on 26.09.2019. 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 the Corporate Debtor has raised the existence of dispute for the first time and has not shown any records to indicate that there is a pre-existing dispute. 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 that the reply has been filed and the Learned Counsel for the Corporate Debtor submitted that the contract got terminated at the first stage itself and the applicant raised invoices for the first stage of contract on 29.05.2017 and 30.05.2017 for a total value of Rs.3,03,300/- inclusive of taxes which were paid by the Corporate Debtor on 20.07.2017 and 22.08.2017. Further, it was submitted that since the contract was terminated at the first stage itself, the Operational Creditor has not provided any services and no amount was due and payable by the Corporate Debtor to the Operational Creditor.



10. The Learned Counsel for the Corporate Debtor submitted that as soon as the second Invoice was received the same was forwarded to the accounts department of the Corporate Debtor, and as per usual procedure the Tax Deduction at Source was remitted and accordingly the TDS was deducted and paid by the Corporate Debtor. Further, it was submitted that as soon the same was pointed out by the Operational Creditor, the said TDS amount was reversed in the next quarter and the same was also informed to the Operational Creditor by letter dated 26.09.2019. Under the circumstances, it was submitted by the Learned Counsel for the Corporate Debtor that the remittance of TDS by the Corporate Debtor will not entitle the Operational Creditor to claim the amount under the invoice with no work or service being rendered by the Operational Creditor. Under the circumstances, it was submitted by the Learned Counsel for the Corporate Debtor that the Corporate Debtor is not liable to pay any amount to the Operational Creditor and hence the claim of the Operational Creditor is false and imaginary and sought for the dismissal of the present Application.

11. Heard the submissions made by the Learned Counsel for the parties. From the submissions made by the Learned Counsel for both the parties, the issue which has to be decided by this



Adjudicating Authority is that whether there is any pre-existing dispute between the parties, before the issuance of the Demand Notice by the Operational Creditor on 17.09.2019.

12. It is seen from the record that the Second invoice was raised by the Operational Creditor on 11.08.2017, for a sum of Rs.5,94,720/-. It is also seen that after raising the said Invoice, the Accounts Department of the Corporate Debtor has processed the said Invoice and has also remitted the TDS to the account of the Operational Creditor, which is reflected from Form 26AS filed by the Operational Creditor. Further, it is also seen that for the various emails being sent by the Operational Creditor on 29.06.2019, 05.07.2019, 19.07.2019, 30.07.2019, 27.08.2019, 30.08.2019, 11.09.2019, the Corporate Debtor has not replied, nor even denied their liability and not raised any dispute in relation to the same. It is also to be noted here that the Corporate Debtor has sent a notice to the Operational Creditor on 17.10.2018 under Section 230 to 232 of the Companies Act, 2013 by calling for the Operational Creditor to attend the meeting of the Unsecured Creditors of the Corporate Debtor Company which was proposed to be held 20.11.2018 in relation to the Scheme of Amalgamation. Thus, the plea of the Corporate Debtor that there is no debt which is due and



payable to the Operational Creditor militates against their notice dated 17.10.2018 issued under Section 230 to 232 of the Companies Act, 2013 to the Operational Creditor.

13. It is also significant to note here that the reversal of the TDS amount has been done by the Corporate Debtor only after the Operational Creditor has caused a Demand Notice to the Corporate Debtor and as such, it cannot be held as a pre-existing dispute. Further, the contention of the Learned Counsel for the Corporate Debtor that the contract got terminated at the first stage itself seems to be only an assertion being made, which is not supported by any relevant document and the same is also being refuted by the Operational Creditor. All these facts bring to the fore that the defence as raised by the Corporate Debtor is a spurious defence, which is required to be brushed aside. In the said circumstances, this Tribunal comes to an irresistible conclusion that there exists no dispute between the parties before the issuance of the Demand Notice.

14. From the documents filed along with the typed set and also from the submissions made by the Learned Counsel for the Operational Creditor, it is seen that the Corporate Debtor has



committed default in payment of the "operational debt" which is due and payable by the Corporate Debtor to the Operational Creditor. The default, it is also seen from the pleadings and documents filed on the part of the Financial Creditor are much prior to the advent of the Covid-19 pandemic. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor. From the list of invoices filed, it is evident that the claim as raised by the Operational Creditor is within the prescribed period of limitation of 3 years. The registered office of the Corporate Debtor is situated within the State of Tamilnadu, amenable to its territorial jurisdiction and this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor

15. 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 has filed the petition, being the date of initiation prior to the said date, and as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.


16. 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. Pudukkarai Srinivasan Sitaram** with Reg. No. *IBBI/IPA-001/IP-P01328/2018-2019/12011* and email id:- *pssitaram@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.

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

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- (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.

18. 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.

19. 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.

20. 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