

(44)

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

**IBA/582/2020**

*(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. GPR Resources Private Limited**

**M/s. Premier Global Logistics Limited.,**

104, Real Towers, 1<sup>st</sup> Floor,  
51-52, Royapettah High Road,  
Mylapore, Chennai - 600004

*...Petitioner/Operational Creditor*

-Vs-

**GPR Resources Private Limited,**

No.47, Whites Road,  
22A & 22b, Ground Floor,  
Desabhandhu Plaza,  
Royapettai, Chennai -600014

*... Respondent/Corporate Debtor*

*Order pronounced on 1<sup>st</sup> November 2021*

CORAM:

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

*For Operational Creditor : Suresh Kumar, Advocate  
For Corporate Debtor : None present*

**ORDER**

**Per: R.SUCHARITHA, MEMBER (JUDICIAL)**

This is an Application filed by M/s. Premier Global Logistics Limited(hereinafter referred to as "**Operational Creditor**") under Section 9 of the Insolvency and Bankruptcy Code, 2016 against

M/s. GPR Resources Private Limited, (*hereinafter referred as the "Corporate Debtor"*) seeking thereof to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. From Part I of this Application, it is seen that the Operational Creditor is a Public Limited Company incorporated under the provisions of the Companies Act, 1956. From Part II, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 20.09.2013 bearing CIN: U60100TN2013PTC093064 and the Registered Office address of the Corporate Debtor as per the Application is stated to be situated at No.47, Whites Road, 22 &22B, Ground Floor, Desabhandhu Plaza, Royapettah, Chennai - 600014. From Part III of the Application, it is seen that the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part IV of the Application it is seen that the Operational Creditor has stated that a sum of Rs.61,62,583/- is due and payable by the Corporate Debtor. Part V of the Application discloses the list of the documents which had been filed by the Operational Creditor in order to prove its Operational Debt and the list of documents which have been filed along with the Application are as follows;



- a) Agreements dated 27.06.2019 & 06.08.2019
- b) Statement of Bills endorsed by Operational Debtor –bill (CHN/FCM/085/19-20 dated 07.08.2019 & CHN/FCM/092/19-20 dated 17.08.2019
- c) Copy of HDFC Bank Letter dated 15.02.2020 giving details of credits
- d) Copy of the Notice dated 09.01.2020 in Form 3

4. The Learned Counsel for the Petitioner/ Operational Creditor Submitted that the Operational Creditor is a Public Limited Company which is providing logistics services at affordable prices and the Corporate Debtor is a Private Limited Company who is engaged in export business of granites molds to South Eastern Counties.

5. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor approached the Operational Creditor to provide Logistics Services for export of granites and other exports through barge movements. The Operational Creditor completed all the shipments and raised bills for the service rendered and that the balance payment is required to be released after adjusting advance amount paid by the Corporate Debtor.

6. The Learned Counsel for the Operational Creditor further submitted that as per the agreed terms of credit, the payment has

to be released within 30 days of submission of bills which has not been adhered till date by the Corporate Debtor. With respect to the balance payments for shipment completed, it was submitted that the Operational Creditor had written mails on various dates for releasing pending payments for which the Corporate Debtor had acknowledged pending dues through email dated 14.11.2019.

7. The Learned Counsel for the Operational Creditor further submitted that following is the breakup of payments to be received from the Operational Debtor after adjusting advance received.

S. No	INVOICE NO	DATE	AMOUNT (₹)	ADVANCE RECEIVED (₹)	BALANCE (₹)
1	CHN/FCM/085 /1920	07.08.2019	55,08,674.33	27,01,874	28,06,800.33
2	CHN/FCM/092 /1920	17.08.2019	55,20,135.81	27,07,495	28,12,640.81
<b>TOTAL</b>			<b>1,10,28,810.14</b>	<b>54,09,369</b>	<b>56,19,441.14</b>

8. The Learned Counsel for the Operational Creditor submitted that as per the agreed terms, the Corporate Debtor had given two Post Dated Cheques to fulfil the payment commitment bearing No.00033 dated 05.09.2019 for part payment of balance amount of Rs.27,01,873/- and 000034 dated 12.09.2019 for the remaining balance amount of Rs.27,07,494/-. The Operational Creditor after obtaining oral confirmation from Corporate Debtor had deposited cheque bearing no 000033 dated 05.09.2019. On 06.09.2019, it was submitted that the Operational Creditor was shocked and

surprised to know that the said cheque was dishonoured for the reason "Funds Insufficient" and the same was intimated to the Operational Creditor by its bankers' through return memo dated 09.09.2019 which was received by the Operational Creditor company on 10.09.2019 which is annexed as **Annexure II(9)** at page Nos. 46 -47 of the typed set.

9. The Learned Counsel for the Operational Creditor further submitted that, the Operational Creditor again obtaining oral confirmation, had deposited another cheque bearing No: 00034 dated 12.09.2019 for balance amount of Rs.27,07,494/- on 07.10.2019. However, the Operational Creditor was shocked and surprised to know that the said cheque was also dishonoured for the reason "Funds Insufficient" and the same was intimated to the Operational Creditor by its bankers through return memo dated 09.10.2019 which was received by the Operational Creditor company on 11.10.2019 which is annexed as **Annexure II(10)** .

10. The Learned Counsel for the Petitioner/Operational Creditor submitted that on dishonour of the cheques the Operational Creditor had sent a legal notice dated 27.09.2019 & 15.10.2019 to all the directors and registered office of the Operational Debtor which was duly received by the Corporate Debtor. On receipt of the legal notice, it was submitted that the Corporate Debtor revisited

its payment schedule and agreed to close the long pending amounts and requested not to pursue the case further which would hamper business relationships. Hence, it was submitted that in order to cement the relationship, the Corporate Debtor had again issued two cheques bearing 704513 and 704512 dated 27.11.2019 for Rs.27,01,873/- and Rs.27,07,495/- respectively.

11. The Learned Counsel for the Petitioner/Operational Creditor submitted that after waiting for more than a month and after obtaining confirmation of funds position with Corporate Debtor, the Operational Creditor deposited the above mentioned cheques on 09.01.2020, however the Operational Creditor stated that the said cheques were also dishonoured for the reason "Funds Insufficient" and the same was intimated to the Operational Creditor by its bankers through return memo dated 09.01.2020 which was received by the Operational Creditor on 10.01.2020 which is annexed as **Annexure II(12)**. The Operational Creditor further stated that on dishonour of cheques again sent a legal notice dated 15.01.2020 to all the director and registered office of Operational Debtor which was duly and acknowledge by the Corporate Debtor.

12. Under such circumstances, it was submitted that the Operational Creditor has issued a notice of Demand as stipulated under Section 8 of the IBC, 2016 to the Corporate Debtor on

09.01.2020 and it was sent to the Corporate Debtor on 16.01.2020 and communicated through email to the Corporate Debtor on 09.01.2020. From the Affidavit filed under Section 9(3)(b) of IBC, 2016 it is evident that the Corporate Debtor has not raised any dispute in respect of the outstanding amount which is due and payable to the Operational Creditor nor paid the operational debt within 10 days from the date of receipt of the Demand notice. Under such circumstances, the Operational Creditor has filed the present Application before this Tribunal on 03.03.2020 seeking thereof to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

13. The Learned Counsel for the Operational Creditor further submitted that the Corporate Debtor has no intention to repay the outstanding amount of Rs.56,19,441/- towards the Principal amount and Rs.5,43,142 towards interest @24% p.a. on the principal amount till January 2020 aggregating to a sum of Rs.61,62,583.

14. In relation to the Corporate Debtor, it is seen from the records that in spite of notice having been served, none appeared on behalf of the Corporate Debtor. However, on 07.01.2021 an Advocate represented on behalf of the Corporate Debtor and sought time to file counter. Thereafter, when the matter came up

for hearing there was no appearance on behalf of the Corporate Debtor. In the said circumstances, we are constrained to proceed with the matter in the absence of the Corporate Debtor.

15. Thus, from the facts narrated above it is seen that the Corporate Debtor in discharge of his liability had issued two cheques in favour of the Operational Creditor, which shows that there is a 'debt' on the part of the Corporate Debtor and the dishonour of those cheques would amount to 'default' being committed on the part of the Corporate Debtor and thus the Operational Creditor from the documents filed and also from the submissions made has proved that there is an 'operational debt' and the 'default' which is being committed on the part of the Corporate Debtor. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

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 present Application has been filed on 03.03.2020, which is well prior to the Notification resulting in increase in the threshold limit



from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. 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.

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 July 2021 to December 2021 appoints **Ms. Seetha Thelagar**, with Reg. No. **IBBI/IPA-002/IP-N00755/2019-2020/12805 (email id:- tseetha2002@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. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more

specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

18. 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.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in

any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

19. 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

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

20. 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.

21. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-** (*Rupees One Lakh 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.

22. 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. SUCHARITHA)**  
**MEMBER (JUDICIAL)**

*Raymond*