

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

IBA/911/2019 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. Shriram SPEL Composites Pvt. Ltd.**

M/s. Vasavi Bala Resins Private Limited

151, Eldams Road, Teynampet,
Chennai – 600 018

... Operational Creditor

-Vs-

M/s. Shriram SEPL Composites Private Limited

31-A/12, SIDCO Industrial Estates,
North Phase, Ambattur,
Chennai – 600 098

...Corporate Debtor

Order Pronounced on 23rd December 2020

CORAM :

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

For Operational Creditor : Alpa Jain, PCS

For Corporate Debtor : N. P. Vijay Kumar, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is an Application that has been filed on 25.07.2019 by **M/s. Vasavi Bala Resins Private Limited** (hereinafter referred to as '*Operational Creditor*') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short,



'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Shriram SEPL Composites Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.


2. Part-I of the Application sets out about the details of the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U25200TN2007PTC065726 was incorporated on 13.12.2007 and that its Nominal Share capital and paid up capital is Rs.68,00,00,000/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.31-A/12, SIDCO Industrial Estate, North Phase, Ambattur, Chennai – 600 098. Part-III of the Application shows that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the same.



3. From Part-IV of the Application, it is seen that a sum of Rs.55,24,929/- is being claimed by the Operational Creditor as Operational Debt, which includes the Principal sum of Rs.43,02,902/- and interest amount of Rs.12,22,027/-. The date of default is stated to be on 14.06.2017.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor supplied Resin to the Corporate Debtor based upon the Purchase Order placed by the Corporate Debtor on various dates from 26.05.2017 to 28.06.2018 and accordingly the Operational Creditor has raised 11 Invoices on various dates in the following manner;

- i. Inv. No. 954 dated 14.06.2017
- ii. Inv. No. 960 dated 15.06.2017
- iii. Inv No. FAC/0150/17-18 dated 15.07.2017
- iv. Inv No. FAC/0151/17-18 dated 15.07.2017
- v. Inv No. FAC/0340/17-18 dated 31.07.2017
- vi. Inv No. FAC/0659/17-18 dated 29.08.2017
- vii. Inv No. FAC/2681/17-18 dated 22.02.2018
- viii. Inv No. FAC/2811/17-18 dated 06.03.2018
- ix. Inv No. FAC/2969/17-18 dated 17.03.2018
- x. Inv No. FAC/1081/17-18 dated 07.07.2018
- xi. Inv No. FAC/1276/17-18 dated 23.07.2018



5. The Learned Authorized Representative for the Operational Creditor submitted that the Corporate Debtor had issued three post dated cheques as follows;

- i. Cheque No. 922038 for ₹3,65,976/- dated 08.04.2018
- ii. Cheque No. 922039 for ₹1,98,653/- dated 11.04.2018
- iii. Cheque No. 922040 for ₹5,20,538/- dated 08.05.2018

6. However, it was represented by the Authorized Representative for the Operational Creditor that the Corporate Debtor has informed the Operational Creditor not to present the above cheques for realization. The Learned Authorized Representative referred to the working sheet for computation of default, which is filed along with the typed set and submitted that the Operational Creditor raised Invoice for a total sum of Rs.1,65,00,735/- and as against the said sum, the Corporate Debtor has paid only a sum of Rs.1,21,97,833/- and as such a principal sum of Rs.43,02,902/- still remains to be paid by the Corporate Debtor. Further, it was also submitted that the Operational Creditor has calculated interest at the rate of 18% p.a. from the date of each amount, which aggregates to Rs.12,22,027/- and in all the Operational



Creditor has claimed a sum of Rs.55,24,929/- as due and payable by the Corporate Debtor to the Operational Creditor.

7. The Respondent has filed counter. Upon perusal of the same, it is seen that the Corporate Debtor is disputing the Opening Balance of Rs.59,30,281/- which is shown in the ledger account and as such it is stated that no supporting documents has been provided in respect of the opening balance. It is admitted in the counter that the Corporate Debtor has paid a sum of Rs.1,21,97,833/- to the Operational Creditor and as such it was submitted that as per the settlement which was entered on 07.09.2019, the entire payment was paid in full by the Corporate Debtor. It is also averred that the Operational Creditor has not given due credit to such payment and to the settlements entered between the parties.

8. Taking into consideration, the averments made in the Counter, this Tribunal on 12.02.2020 passed the following order;

"Learned A.R. for the Petitioner as well as Learned Counsel for the Corporate Debtor are present. During the course of submissions of the Corporate Debtor, it is pointed out that the opening balance from Statement of Account as filed by the Petitioner is disputed and further that the invoices



which have been raised by the Petitioner are fully settled and that the payments have been made invoice wise. However, correlation statement in relation to the payments made against each of the invoices have not been furnished by the Corporate Debtor.

In the circumstances, we direct the Corporate Debtor to furnish tabulation in relation to the invoices raised by the Petitioner and the payments in respect of the invoices which have been made by the Corporate Debtor with details of payments. Further, Counsel for the Corporate Debtor also relies upon the letter dated 07.09.2019 wherein it is represented by Learned Counsel for the Corporate Debtor that even according to the Petitioner no payment is due as the same has been fully settled by the Sister Concern of the Corporate Debtor. The said letter relied on mentions about a settlement agreement dated 20.03.2019. In the absence of the settlement agreement on record, we are not able to take into consideration the said letter dated 07.09.2019 as filed by the Corporate Debtor and in the circumstances we direct the Corporate Debtor to furnish the settlement agreement based on which the letter dated 07.09.2019 is relied upon by the Corporate Debtor as the amounts claimed to have been fully settled. Let the Corporate Debtor file a memo of tabulation as well as the Settlement Agreement dated 20.03.2019 within a period of two weeks from today. A copy of the same as well as tabulation in relation to the invoices raised by the Petitioner and the payment made in this regard be furnished to the other side. Post this matter for continuation of the arguments on **03.03.2020**.

9. However when the matter came up for hearing on 03.03.2020 it was adjourned to 16.03.2020 and subsequently



the matter was not listed for hearing due to Covid-19 pandemic and attendant lockdowns imposed by the Central and State Governments.

10. It is seen from the records that on 14.10.2020 an Affidavit vide Diary No. 2894 is being filed by the Respondent represented by one Ms. Uma Kumar, the Authorized Signatory of the Corporate Debtor, wherein it has been stated that the Corporate Debtor has not been carrying on any business activities since 2017 and the persons from the accounts department have left the services of the Respondent and at the time of preparing the counter statement, the Respondent could not ascertain the corrections of the statement of account furnished by the Applicant. It is further stated in the said affidavit that the letter of 07.09.2019 is alone available on record with the Corporate Debtor and that the agreement dated 20.03.2019 is not available with them. Further, it is stated that there are no employees currently working with the Corporate Debtor and as such the Corporate Debtor is taking steps to prepare the accounts with the help of the outside consultants. It is admitted in the said Affidavit that the Corporate Debtor is liable to pay a sum of Rs.43,00,298/- to the Operational Creditor and since there is liquidity crisis in the Corporate Debtor, they are not in a position to pay the



said amount. It is also stated that the Corporate Debtor has not been in operations for the past 3 years and they are unable to arrange for immediate funds to the trade creditors.

11. Thus, from the Affidavit filed by the Corporate Debtor, it is seen that the Corporate Debtor has admitted its liability and as such the debt and default on the part of the Corporate Debtor is proved.

12. However, in relation to the procedural compliances as mandated under IBC, 2016, it is seen that the Operational Creditor has sent a Demand Notice to the Corporate Debtor on 24.06.2019, which was delivered on the Corporate Debtor on 25.06.2019. The Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 stating thereon that despite the receipt of the said Form - 3 notice, and before the expiry of the period of 10 days the Corporate Debtor has neither responded nor remitted the claimed amount to the Operational Creditor and no notice of any dispute or any communication whatsoever has been received by the Operational Creditor.

13. 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 Date of Default is stated to be 14.06.2017. Since 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.

14. In relation to the 'Question of Limitation' is concerned, it is evident from the perusal of the Invoices as filed by the Petitioner / Operational Creditor in relation to the Corporate Debtor which discloses that the invoices have been raised commencing from 14.06.2017 to 23.07.2018 and the present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 25.07.2019 and as such it falls well within the period of limitation.

15. 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 26th November 2020 till 31st December 2020 appoints **Mr. Perumal Ulaganathan**, with Registration Number **IBBI/IPA-001/IP-P00970/2017-2018/11600**, (e-mail id: **apunathan@yahoo.co.in**) 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.

16. 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.

17. 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.

18. 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 with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. 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