

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH, KERALA

CP(IB)/05/KOB/2021

(Under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016)

Order delivered on: 3.11. 2021

Coram:

Hon'ble Mr. Ashok Kumar Borah Member (Judicial)

Hon'ble Mr. Anil Kumar B. Member (Technical)

Vijayakumaran J.,
V. J. Constructions,
Thattankonam, Edaicode,
Kanniyakumari District,
Pincode 629 152.

... Operational Creditor

Versus

Samson and Sons Builders & Developers (P) Ltd,
Having its Registered Office at: TC 3/678,
Kannimattom, Muttada P.O.,
Trivandrum 695 025.

... Corporate Debtor

Appearance (through video conferencing)

For Operational Creditor

... Shri. Akhil Suresh, Advocate.

For Corporate Debtor

... Shri. Thomas P. Kuruvila, Advocate.

This CP(IB)/05/KOB/2021 has been filed by Mr. Vijayakumaran J. , V.J. Constructions, Thattankonam, Edaicode, Kanniyakumari District 629 152 (hereinafter called as '**Operational Creditor**') on 12.03.2021 by invoking the provisions of Section 9(6) of the Insolvency and Bankruptcy Code (hereinafter called as '**Code**') against Samson and Sons Builders & Developers (P) Ltd, having its Registered Office at T C 3/678, Kannimattom, Muttada P.O., Trivandrum 695 025 (hereinafter called as '**Corporate Debtor**'). The Operational Creditor stated that the total amount of debt of the Corporate Debtor is Rs. 1,34,36,943/- (Rupees One Crore Thirty-Four Lakhs Thirty-Six Thousand Nine Hundred Forty-Three only), which includes the principal

amount of Rs. 1,19,97,271/- (Rupees One Crore Nineteen Lakhs Ninety-Seven Thousand Two Hundred only) and interest at the rate of 12% amounting to Rs. 14,39,672/- (Fourteen Lakhs Thirty-Nine Thousand Six Hundred and Seventy-Two only).

2. The Corporate Debtor is a private limited company incorporated on 27.07.2009. The Authorised Share Capital of the Corporate Debtor Company is Rs. 4,00,00,000/- (Rupees Four Crores only) and the Paid-up Share Capital is Rs. 4,00,00,000/- (Rupees Four Crores Only).

The brief facts of the case are as under: -

3. The Operational Creditor was appointed by the Corporate Debtor as the Contractor for the construction of various villas projects and other civil construction works vide an agreement dated 12.02.2014 and further entered into 8 agreements for the Construction of various villas, flats and other civil works from 12.02.2014 to 24.07.2014. The Operational Creditor received the payments for the construction works from the Corporate Debtor in parts. Subsequently Corporate Debtor had abruptly stopped paying Operational Creditor's remaining payments from May 2016.

4. It is stated that the total amount for the work done by the Operational Creditor is Rs. 3,18,96,061/- (Three Crores Eighteen Lakhs Ninety-Six Thousand Sixty-One Only) out of which Rs. 1,98,98,790/- (One Crore Ninety-Eight Lakhs Ninety Eight Thousand Seven Hundred and Ninety Only) has been received by the operational creditor over a period of time. It is also stated that the Operational Creditor had issued several oral reminders seeking payment of balance dues, but to no avail. Subsequently on 25.11.2018 the Corporate Debtor had worked out the final outstanding payable to the Operational Creditor. Therefore, the date of default is considered as 25.11.2018. On 22.12.2019 a Demand Notice in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding payment of Rs. 1,34,36,943/- (Rupees One Crore Thirty-Four Lakhs Thirty-Six Thousand Nine Hundred Forty-Three Only) was sent to the Corporate Debtor at its registered office.

5. Hence, the present application has been filed by the Operational Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 9(6) of Insolvency and Bankruptcy Code, 2016.

Submission by the Corporate Debtor

6. In the counter filed by the Corporate Debtor it is stated that the Operational Creditor was one of the Contractors employed by the Corporate Debtor to execute its projects. The Operational Creditor was initially diligent in executing the works entrusted. However, over the years the quality of the work was suffered, as a result the Corporate Debtor started getting several complaints from its purchasers. The Operational Creditor also failed in executing the works as per the time schedules agreed.

7. It is also stated that, there arose certain court cases. As a result, some of the projects being executed by the Corporate Debtor came to a standstill and the cash flow was stopped. It is admitted by the Corporate Debtor that some of the pending bills to the Operational Creditor could not be paid by them and that for which there were several discussions between the Operational Creditor and the Corporate Debtor and it was agreed that the Operational Creditor would give proper discounts to the Corporate Debtor to compensate the delay in executing the work.

FINDINGS

8. We have heard learned counsel for both the parties and perused the whole case records including documents and photocopies appended with the case records.
9. We have gone through the evidences on record. The Operational Creditor has established that he was appointed as the Contractor for construction of various villas projects and other civil construction works by the Corporate Debtor and that he was entitled to receive a balance amount of Rs. Rs. 1,19,972,71/- (Rupees One Crore Nineteen Lakhs Ninety-Seven Thousand Two Hundred only) and interest at the rate of 12% amounting to Rs. 14,39,672/- (Fourteen Lakhs Thirty-Nine Thousand Six Hundred and Seventy-Two only) totalling Rs. 1,34,36,943/- (Rupees One Crore Thirty-Four Lakhs Thirty-Six Thousand Nine Hundred Forty-Three only) and that

a default of non-payment had occurred. The contention of the Corporate Debtor that the Operational Creditor was initially diligent in executing the works entrusted, over the years the quality of the work suffered, as a result the Corporate Debtor started getting several complaints from its purchasers was not supported by any documentary evidence. The Corporate Debtor was not able to produce any evidence to show that there is a “pre-existing dispute” in the instant case.

10. Considering these facts and circumstances, in our opinion the nature of the Debt is an ‘Operational Debt’ as defined under Section 5 (21) of the Definitions under the Code. There is a “Default” as defined under Section 3 (12) of the Code on the part of the Corporate Debtor and that it is a fit case to admit and order initiation of CIRP against the Corporate Debtor.
11. The application made by the Operational Creditor is complete in all respects as required by law, and it clearly shows that the operational debt has not been paid by the Corporate Debtor. Moreover in the counter the Corporate Debtor admitted that some of the pending bills could not be paid by them to the Operational Creditor.
12. The Operational Creditor has not proposed the name of any Resolution Professional to be appointed as the Interim Resolution Professional.
13. The Application under Sub-Section (6) of Section 9 of I&B Code, 2016 is complete in all respects. Accordingly, the application filed under Section 9 of the Insolvency and Bankruptcy Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor is to be admitted and the following order has been passed: -

ORDER

14. **Application No. CP(IB)/05/KOB/2021** is **admitted** in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following,

- a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor 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 off by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation 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 corporate debtor.
- e) It is further directed that the services to the corporate-debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The moratorium shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution

Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.

g) That the public pronouncement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of IBC.

h) This Bench hereby appoints **Mr. Muhammed Davood Cmk** having Registration No. **IBBI/IPA-001/IP-P02357/2020-2021/13499**, email id: cadavoodip@gmail.com residing at **No 6/1238J, Second Floor, KRS Tower, Moottolikandy Road, Kozhikode, Kerala 673 032** whose name appears in the panel of IPs for appointment as Interim Resolution Professional for the period 01.07.2021 to 31.12.2021 for Kochi Bench as Interim Resolution Professional to carry out the functions as mentioned under IBC. The fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/ Directions issued in this regard. The proposed IRP is directed to submit his consent along with copy of AFA issued to him in the prescribed format within 2 days from the date of receipt of this order.

i) We direct the Operational Creditor to deposit a sum of Rs. 2 lakhs (Rupees Two Lakhs Only) within three days from the date of receipt of this order with the Interim Resolution Professional to meet out the initial expenses to perform the functions assigned

to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This amount, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

j) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional.

Dated this the 3rd day of November, 2021.

Sd/-
(Anil Kumar B.)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)