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

IBA/319/2020

*(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. Force – 1 Guarding Services Pvt. Ltd.**

Syed Kaleem

Sole Proprietor of M/s. Everbright Industries
New No.84, old No.72B,
II Floor, Sydenhams Road, Periamet,
Chennai – 600 003

... Operational Creditor

-Vs-

M/s. Force – 1 Guarding Services Private Limited

Reg. Off:-

No.3/1, Lake View Road,
Kottur,
Chennai – 600 085

...Corporate Debtor

Order Pronounced on 25th February 2021

CORAM :

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

For Operational Creditor : A. Rengarajan, Advocate

For Corporate Debtor : S. Ravi, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is an Application that has been filed by one **Mr. Syed Kaleem**, Sole proprietor of M/s. Everbright Industries (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. Force – 1 Guarding Services 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 Operational Creditor from which, it is evident that the Operational Creditor is an Individual and sole proprietor of M/s. Everbright Industries, a proprietorship concern. 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:U74920TN2002PTC048679 which was incorporated on 28.03.2002 and that its Authorized Share capital is Rs.5,00,000/- and its paid up capital is Rs.1,00,000/-. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.3/1, Lake View Road, Kottur, Chennai – 600 085. Part-III of the Application shows that the Operational Creditor has proposed the name of one Mr. K. K. Balasubramanian, Reg. No.



IBBI/IP/001/P-01544/2018-19/12401 to act as "Interim Resolution Professional" (IRP) in relation to the Corporate Debtor, in case the present Application is admitted. The said Interim Resolution Professional has also filed his written consent in Form 2 which is filed as Annexure V to the typed set filed along with the Application.

3. From Part-IV of the Application, it is seen that a sum of Rs.9,86,156/- is being claimed by the Operational Creditor as Operational Debt, including interest. The date of default as per Part - IV of the Application, is stated to be 01.08.2019. Part - V of the Application sets out about the list of documents which is filed by the Operational Creditor in order to prove the operational debt and the Operational Creditor has filed the Invoices raised by them from April 2019 and the remainder letter for payments.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor and the Corporate Debtor is having a long term business relationship and the Operational Creditor has been supplying uniforms and shoes from time to time to the Corporate Debtor on a mutual understanding. It was further submitted that the Operational Creditor used to raise Invoice for the goods supplied by the



Operational Creditor and as a general practice the payment has to be made by the Corporate Debtor within a period of 30 days from the date of Invoice.

5. The Learned Counsel for the Operational Creditor submitted that since April 2019 the Operational Creditor has raised Invoice for a total amount of Rs.20,47,745/- and out of which the Corporate Debtor has paid only a sum of Rs.11,09,964/- and as such a balance sum of Rs.9,37,781/- is pending due and payable by the Corporate Debtor to the Operational Creditor. It was submitted that since July 2019 the Operational Creditor has not received any payments from the Corporate Debtor and the Operational Creditor has sent several reminder letters to the Corporate Debtor to settle the outstanding amounts and even after regular follow up by the Operational Creditor to settle the aforesaid outstanding amount, the Corporate Debtor did not settle the outstanding amount nor gave any assurance to settle the same, as a result of which the Operational Creditor has suffered loss.

6. The Learned Counsel for the Operational Creditor submitted that under the said circumstances, the Operational Creditor caused a Demand Notice to be sent under Section 8 of IBC, 2016 in Form 3 and Form 4 to the Corporate Debtor on



18.01.2020 to the Registered Office Address of the Corporate Debtor and the same was served to the Corporate Debtor physically on 18.01.2020 itself. The Operational Creditor has filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016 wherein it has been stated that the Corporate Debtor has not replied to the Demand Notice issued by the Operational Creditor nor has brought to the notice of the Operational Creditor the pendency of a suit or arbitration proceedings filed before the service of the Demand Notice upon the Corporate Debtor. Under such circumstances, the Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has committed default in the payment of the dues to the Operational Creditor and hence prayed for the initiation of the CIRP in relation to the Corporate Debtor.

7. In relation to the Corporate Debtor, it is seen that vakalath has been filed and the counter has been served to the Operational Creditor, however no counter has been filed by the Corporate Debtor before this Tribunal. When the matter came up for hearing before this Tribunal on 03.02.2021, the Learned Counsel for the Corporate Debtor submitted that the Corporate Debtor is not financially doing well and that the bankers of the Corporate Debtor have also attached the assets of the Corporate Debtor and in the circumstances, the



Corporate Debtor is unable to settle the claim amount of the Operational Creditor. Thus, it is seen from the representation made on behalf of the Corporate Debtor that the Corporate Debtor is unable to service its dues to the Operational Creditor and has admitted its debt and default.

8. From the Invoices filed by the Operational Creditor, it is seen that the same has been raised from 01.04.2019 to 29.07.2019 and the present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 21.02.2020 and as such it falls well within the period of limitation. Also the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016.

9. 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 the petition has been filed 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. Under the said circumstances, this Tribunal is left with no other option that to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

10. 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. The Operational Creditor has proposed the name of **Mr. K. K. BALASUBRAMANIAN** with Reg. No. (IBBI/IPA-001/IP-P01544/2018-2019/12401) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

11. 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;

12. 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.

13. 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.

14. 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