

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 3545 (IB)/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Bigbloc Construction Limited

...Operational Creditor/ Applicant

v/s

Golden Sparrow Corporation Private

Limited

...Corporate Debtor

Order Dated 24.09.2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh

Hon'ble Member (Technical) Mr Rajesh Sharma

For the Applicant: PCS. Dhiren R. Dave

For the Respondent: Adv. Akshay Petkar, Adv. Aniket Malu

Per V.P Singh, Member (Judicial)

ORDER

1. This is an application being CP 3545/2018 filed by, **Bigbloc Construction Limited**, Operational Creditor or Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Golden Sparrow Corporation Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. This application is filed by Mr Mohit Narayan Saboo, the Director of the Operational Creditor. The Application is filed claiming default of ₹8,48,149.32/- (Rupees Eight Lakh Forty-Eight Thousand One Hundred and Forty-Nine and Paise Thirty Two Only).
3. The Applicant has supplied AAC Blocks to the Corporate Debtor from 27.12.2014 to 27.01.2015. The Applicant raised invoices for the goods supplied, and copies of the Invoices along with the Delivery Challans are annexed to the Application.

4. The Applicant has annexed its copy of the Ledger Account for the period 01.04.2013 to 10.12.2017 maintained in respect of the Corporate Debtor, showing the outstanding amount ₹4,68,450/- (Rupees Four Lakh Sixty-Eight Thousand Four Hundred and Fifty Only). The due date of each invoice is 60 days from the date of delivery. The interest has been charged for the amounts due from the date of default till 31.07.2018. Copy of table of computation of outstanding amount along with interest is annexed to the Application.
5. The Applicant has annexed Bank Certificate dated 06.08.2018 showing that the Applicant has not received payment from the Corporate Debtor during the period, i.e. 22.09.2016 to 05.08.2018.
6. The Applicant issued Demand Notice dated 10.12.2017 under section 8 of the I & B Code, 2016 in Form 3, which was served on 08.01.2018 on the Corporate Debtor. Copy of the Demand Notice along with the proof of service, is annexed to the Application.
7. The Applicant has filed Affidavit of service dated 21.12.2018 along with the proof of delivery of the Notice intimating the next date of hearing establishing that the Corporate Debtor has been duly served with and intimated the proceedings initiated against the Corporate Debtor. But the corporate debtor chose not to file any objections in its defence, even after providing ample opportunities to do so.
8. The Applicant has filed an affidavit dated 13.08.2018 in compliance of section 9(3)(b) of the I&B Code stating that after service of notice, no notice of a dispute from the corporate debtor was received.
9. The Corporate Debtor has failed to point out any dispute about the goods supplied. The Corporate Debtor has made payments of ₹1,10,000/- on 19.08.2015, ₹2,00,000/- on 16.11.2015 and ₹3,50,000/- on 16.11.2016 respectively. After that, the Corporate Debtor had not made payments. The Corporate Debtor failed to repay the balance of the invoice amounts of ₹4,68,450/- (Rupees Four Lakh Sixty-Eight Thousand Four Hundred and Fifty only). The Applicant has charged interest at the rate of 24% per annum making the total amount payable ₹8,48,149.32/- including interest.

10. The written submissions of the Applicant put it on record that the Corporate Debtor has made payments of ₹4,33,450/- (Rupees Four Lakh Thirty-Three Thousand Four Hundred and Fifty Only) in the course of the proceedings.
11. We have heard the parties and perused the records.
12. On perusal of the invoices and the Delivery Challans, it is seen that the Applicant has supplied goods to the Corporate Debtor. The Bank Certificate dated 06.08.2018 shows that a sum of ₹4,68,450/- (Rupees Four Lakh Sixty-Eight Thousand Four Hundred and Fifty only) has not been paid to the Applicant. The Corporate Debtor has defaulted in paying the invoice amounts in respect of the supply of goods. The amounts due are operational debt as per section 5(21) of the I & B Code, 2016. The Corporate Debtor has not pointed out any pre-existing dispute about the goods received. On the contrary, the Corporate Debtor has made payments in piecemeal towards the total outstanding amount.
13. It is seen that the conduct of the Corporate Debtor establishes the debt and default. The outstanding debt of more than Rs One Lakh is due and payable against the corporate debtor and the corporate debtor has committed default in making the payment.
14. The application filed by the operational creditor is on proper Form 5, as prescribed under the Adjudicating Authority Rules and application is complete.
15. The Applicant has not proposed the name of a registered Insolvency to act as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
16. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy

Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

The application filed under Section 9 of I&B Code, 2016, by **Bigbloc Construction Limited** against the corporate debtor, **Golden Sparrow Corporation Private Limited**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 of 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 activity 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench at this moment appoints **Ms Pooja Piyush Kabra**, a registered Insolvency Resolution Professional having Registration Number **[IBBI/IPA-001/IP-P00826/2017-18/11411]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

17. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

24th September 2019