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

IBA/222/2019 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. Prism Johnson Limited***

M/s. PRISM JOHNS LIMITED
(Previously Known as Prism Cement Limited)
Reg Off at:
No.305, Laxmi Niwas Apartment
Ameerpet,
Hyderabad – 500 016 ... Operational Creditor

-Vs-

M/s. DUGAR HOUSING LIMITED
Reg Off at:
Dugar Towers, 7th Floor, 34 (123)
Marshalls Road, Egmore,
Chennai – 600 018 ... Corporate Debtor

Order delivered on *13th November, 2019*

CORAM:

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

For Operational Creditor : Mr. Gouri Shanker Mishra, PCS
For Corporate Debtor : Mr. K.V. Bashyam Chari, Counsel

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. This Application has been filed invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code-2016") in the format as prescribed under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "AAA Rules") by the Applicant in the capacity of the Operational Creditor viz., M/s. Prism Johnson Limited against the Respondent viz., M/s. Dugar Housing Limited.

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 a Public Limited Company with CINL26942TG1992PLCO14033. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Public Limited Company with CINU74999TN1994PLC028755 which was incorporated on

28.09.1994 and that its authorised capital and paid up capital is ₹20,00,00,000 and ₹10,40,10,000 respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at Dugar Towers, 7th Floor, 34(123) Marshalls Road, Egmore, Chennai, Tamilnadu – 600 018. Part-III of the Application shows that the Operational Creditor has not proposed any Interim Resolution Professional. From Part-IV of the Application, it is seen that a sum of Rs.45,07,678/- as on 08.09.2018 is being claimed by the Operational Creditor as Operational Debt, the breakup of which has been given as follows:-

Total Outstanding as on 30.06.2017	Rs.36,07,580.00
Interest @ 18% till 08.09.2018	Rs.9,00,098.00
Total amount claimed to be in default	Rs.45,07,678.00

3. The transactions given as to the amount claimed by the Operational Creditor as against the Corporate Debtor is stated to have arisen consequent upon the Operational Creditor having supplied Ceramic/Vitrified tiles and similar other products to the Corporate Debtor who is engaged in the business of construction of housing apartments at various project sites. Part-V of the Application sets out the details of the Invoices in various Annexures of the Application. On the

basis of Purchase order/request from the Corporate Debtor, the Operational Creditor has effected supply of the materials on various dates as per various invoices as mentioned above. The Corporate Debtor is required to effect the payment within 30 days. As per the application, certain invoices remain unpaid and the supply of material and outstanding dues thereon has been duly acknowledged by the Corporate Debtor through its confirmation letter. It is stated that the Corporate Debtor has never objected/disputed the amount of outstanding prior to the issuance of notice under the Insolvency and Bankruptcy Code, 2016.

4. It is seen that the Operational Creditor has issued Demand Notice under Section 8 of the I&B Code, 2016 on 10^{th} October, 2018 to the Corporate Debtor to the address as given in the said notice, which is acknowledged to have been received on 13.10.2018.

5. The Operational Creditor has filed Affidavit by complying with Section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016 along with the typed set of document at Pages 9 and 10, wherein it has also been deposed that the Petitioner/Operational Creditor issued a demand notice in

terms of Section 8 of the Insolvency and Bankruptcy Code, 2016 and Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 10th October 2018. The demand notice was received by the Respondent/Corporate Debtor above named. It is submitted further that Dugar Housing Limited, the Respondent/Corporate Debtor above-named, certain invoices of the Operational Creditor stood unpaid within the due dates. The supply of the material and outstanding dues has been duly acknowledged by the Corporate Debtor through its confirmation letter. Corporate Debtor has never objected/disputed the outstanding before the issue of notice under IBC 2016. It is stated that the Corporate Debtor however sent a letter dated 1st November 2018 and in its reply it has raised the issue of replacement of damaged/short shipped materials. Such issues were never raised before the issue of notice by the Operational Creditor. It has been further stated that the Respondent/ Corporate Debtor in such reply however did not annex any documents relating to existence of dispute or record of the pendency of the suit or arbitration proceedings initiated before the receipt of the demand notice issued by the Applicant/Operational Creditor, above named as required under Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016. It is also stated that the Respondent/Corporate Debtor raised issue of replacement of damaged/short shipped materials beyond the time period prescribed in terms of Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016.

6. The Corporate Debtor has sent its reply dated 01.11.2018 stating that some tiles supplied were damaged. It is alleged by the Operational Creditor that this is the first occasion when the Corporate Debtor has raised the issue of damaged tiles/short shipment of tiles. It has been further pointed out by the Operational Creditor that the Corporate Debtor has twice issued the acknowledgement of outstanding.

7. In the counter affidavit filed by the Respondent/ Corporate Debtor, it has been stated that:

a) The petitioner has deliberately not adjusted Rs.9,15,770/-[Rupees Nine Lakhs Fifteen Thousand Seven Hundred and Seventy Only) towards short shipped/damaged goods as claimed by the Respondent. The respondent further states that in the instant case the petitioner has an option to go before the Civil Court to resolve the dispute but not under the Provisions of IBC 2016.

b) The respondent has received the demand notice dated 10.10.2018 of the petitioner in the late evening on 13.10.2018. The respondent could not reply to the said demand notice within 10 days as the concerned official of the respondent company i.e. Vice President was not in station to provide all necessary documents to prepare reply notice. Hence, the delay of 12 days had occurred in replying to the demand notice under reference.

c) the respondent wished to place the factual position of the case, as borne out of records, which has otherwise been suppressed by the petitioner. According to the Respondent there exist serious commercial disputes between the respondent and the petitioner, which fact has been conveniently and maliciously suppressed by petitioner while filing the above application before this Hon'ble Tribunal.

d) The respondent had been purchasing tiles from the petitioner for a very long time till the dispute was raised by the respondent with petitioner and elucidated the procedure of procurement as under.

e) The respondent has been purchasing the above said materials from the petitioner for its Company's Projects at Chennai. In this regard, the petitioner had supplied materials on various occasions under different Invoices. The goods were received by respondent's purchase department in packaged condition. After necessary documentations, the respondent's purchase department used to handover the packages to its Project Sites. The project department at the project site will open the packages and do thorough inspection / checking of materials contained in the packages. They stated that during inspection and checking of each consignment delivered to respondent Company's Projects Department, the respondent had on various occasions noticed defects / short shipments in the materials and accordingly, they had notified the petitioner to provide replacement for damaged / short shipped goods. The Respondent claimed to have made requests for replacement through emails to respondent which fact is stated to have been ~~had~~ suppressed by the Petitioner in their above application under reference. The details of such requests made to petitioner, to provide invoice-wise replacements are as follows:

Invoice #	**Invoice Date**	**No. of boxes Damage**	**Price per box**	**Amount**	**Email Date**
9861735854	17.03.2017	272	523	142256	20.03.2017
9861736076	30.03.2017	252	666	167832	10.04.2017
9861736085	30.03.2017	189	1405	265545	10.04.2017
9861880053	30.04.2017	150	667	100050	12.05.2017
9861830689	31.05.2017	186	419	77934	07.06.2017
9861830684	31.05.2017	387	419	162153	07.06.2017

The damaged/short slipped goods amounts to a sum of Rs.9,15,770/- (Rupees Nine Lakhs Fifteen Thousand Seven Hundred and Seventy Only) as evidenced from the above tabulations.

8. It is reiterated that no further evidence like photograph or video of the process of inspection is on record to support the claim.

9. The respondent has stated that it is a customary practice for them to ask for accounts reconciliation during the year end. The last consignment were sent on 31.05.2017 vide Invoice Nos.9861830684 and 9861830689. Thereafter, the respondent has not released any Purchase Order since the petitioner did not provide replacement for the damaged / short shipped goods as mentioned ante. Hence, business came to stand still between respondent and petitioner which is an admissible fact.

10. The Respondent has further stated that their Accounts Department had, as a matter of routine practice, without having a word with its Projects & Other Departments, conveyed the reconciliation of invoices without taking note of respondent company's claim of replacement of goods from Petitioner Company. In the said process, the respondent company's accounts department had conveyed as though they owe Rs.36,07,580/- to petitioner, which is factually / patently incorrect which can be evidenced from various emails

mentioned supra wherein their company had raised serious quality and other disputes and sought for replacement of goods which comes to the tune of Rs.9,15,770/-.

11. The Corporate Debtor has placed copies of e-mail communication purported to have been sent to the Operational Creditor to claim that there was damage/broken tile in the individual consignment indicating the respective invoice numbers vis-a-vis the quantity/rate. They failed to corroborate their claim for damage/breakage to tiles. They should have employed considerable ingenuity to demonstrate their bona fide by attaching photograph of the opened packet containing damaged tiles which *ipsofacto* challenges the veracity of the e-mail communication and authenticity of claim for damages before this Tribunal. They did not even care to call for the Operational Creditor to do a site visit and take stock of the damaged or broken tile at least once especially when the purported claim for damage is Rs.9,15,770/-.

12. It is further stated that there was system failure in respondent company's administrative style of working which has created the situation of inadvertent admission of liability of the extent of Rs.36,07,580/- by the respondent.

13. The respondent has stated that they were always ready and willing to settle the petitioner's genuine dues subject to providing replacements as sought for supra, which was reiterated by the respondent in their reply dated 01.11.2018. However, no attempt is seen to have been made by the Respondent in making payment towards the admitted viability by proffering the payment first and claiming for replacement of the titles alleged to have been broken in handling at site.

14. It is seen from the records that the respondent has confirmed the balance principal amount of Rs.36,07,580/- on 21/02/2018 and 18/04/2018 in the copy of the Accounts Statement prepared and forwarded by the Respondent. However, the respondent maintained that due to inadvertence, the short shipped and damaged products amounting to Rs.9,15,770/- (Rupees Nine Lakhs Fifteen Thousand Seven Hundred and Seventy only) has not been adjusted in the balance confirmation under reference.

15. This Tribunal has examined the details available as per records and heard the submissions and arguments made by the Counsel for the Petitioner and the Respondent. During the course of the proceeding and conclude that the submissions

and arguments made by the Respondent on behalf of the Respondent with respect to the existence of dispute on the basis of the alleged damage are not acceptable to this Tribunal, since e-mail communication on damage was not corroborated by any other evidence such as photograph/videograph of the broken tiles in the project site of the respondent. The amount of operational debt as evidenced in the ledger statement produced by the Corporate Debtor for confirmation of balance by the Operational Creditor, duly acknowledged by the latter is sufficient proof for satisfying the existence of operational debt due by the respondent. Their submission that the Accounts department "***inadvertently***" prepared and sent the accounts statement is not acceptable to this Tribunal since the balance confirmation was done twice namely on 21.02.2018 and 18.04.2018 which is sufficiently after closure of accounts for the financial year ending 31st March 2018, a true and fair view of which must have reflected in the books of both the parties which are subject to statutory audit in the manner prescribed. It is therefore reiterated that "***inadvertence***" in admission of liability cannot be taken as a plea for accepting expenses on dispute. Therefore this plea of the Respondent is hereby rejected.

16. By taking into consideration the facts mentioned supra, we are inclined to admit the Application as has been filed by the Operational Creditor and consequently Corporate Insolvency Resolution Process is initiated. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints **Mr. Velli Paramasivam** with Registration Number *IBBI/IPA-002/IP-N00311/2017-18/10940* (Email id:- *velliparamasivam@rediffmail.com*, Mobile No: +91 9381007845) 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.

17. However, during the pendency of the moratorium period in terms of Section 14(2) 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.

(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.

18. 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.

19. The Operational Creditor is directed to pay a sum of ₹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 to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. 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.

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

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