IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH-II, CHENNAI

IBA/796/2020

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

In the matter of ***M/s. You Seung Sang Sa India Construction Pvt. Ltd.***

Monika Gupta
Sole Proprietor of
M/s. Monika Traders,
a Proprietorship concern
having its Office at
84/9, JulanaJind
Haryana – 126101

..... *Operational Creditor*

-Vs-

M/s. You Seung Sang Sa India Construction Pvt. Ltd.
having its Registered Office at
C/o. No.342/1, New No.523,
Anna Salai, Nandanam,
Chennai – 600035
Tamilnadu

..... *Corporate Debtor*

Order Pronounced on 9th August 2021

CORAM

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

For Operational Creditor	:	*Mr. Pulkit Goyal, Advocate*
For Corporate Debtor	:	*None appeared.*

ORDER

Per: **R. SUCHARITHA, MEMBER (JUDICIAL)**

The present application is filed by One **Smt. Monika Gupta** in the capacity of the "**Operational Creditor**" against M/s. You

Seung Sang Sa India Construction Private Limited (herein after referred to as "**Corporate Debtor**") under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

2. From the records it is seen that the Operational Creditor is a Sole Proprietor of M/s. Monika Traders, which is engaged in the business of trading and providing construction services all over India. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor is also engaged in construction business and the Corporate Debtor has approached the Operational Creditor to provide construction services, for which the Corporate Debtor has issued various work orders.

3. It was submitted by the Learned Counsel for the Operational Creditor that after supplying the materials as per the work orders issued by the Corporate Debtor, the Operational Creditor has issued Invoices with a variable credit period of maximum of 45 days within which the payment is required to be made. The Learned Counsel for the Operational Creditor submitted that there was running account which was maintained between the Operational Creditor and the Corporate Debtor and that various

services were provided by the Operational Creditor. Further, it was submitted that the Corporate Debtor has failed to make payments for the Invoices dated 05.06.2019 and 01.09.2019 and as such defaulted in payment of a sum of Rs.2,19,96,203.17 (Rupees Two Crores Nineteen Lakhs Ninety Six Thousand Two Hundred and Three and Paise Seventeen only).

4. It was submitted by the Learned Counsel for the Operational Creditor that they have made various requests to the Corporate Debtor for the payment of the balance amount due, however the Corporate Debtor did not accede to the same. Further, it is seen from the records that the Operational Creditor has issued a Demand Notice as mandated under Section 8 of IBC, 2016 in Form – 3 on 08.09.2020, which was also served to the Corporate Debtor on 12.09.2020. It was also submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor did not raise any dispute within the stipulated time period of 10 days nor paid the outstanding amount as claimed in the Demand Notice. In this context, it is also seen that the Operational Creditor has filed an affidavit as mandated under Section 9 (3) (b) of IBC, 2016.

5. In view of the same it was submitted by the Learned Counsel for the Operational Creditor that there is a debt and default on the

part of the Corporate Debtor and accordingly prayed for initiation of CIRP against the Corporate Debtor.

6. In relation to the Corporate Debtor, it is seen from the record of the proceedings that this Tribunal vide its order dated 21.01.2021 has ordered notice to be served upon the Respondent. Subsequently, it is seen that in spite of notice being issued, there was no representation on behalf of the Respondent. On 08.03.2021, this Tribunal directed the Operational Creditor to cause a paper publication and posted the matter for hearing on 15.04.2021. In relation to the same, it is seen that the Operational Creditor has filed an affidavit of service and a perusal of the same manifests the fact that the notice by way of paper publication was effected in 'Indian Express' and 'Makkal Kural' by the Operational Creditor as per the order of this Tribunal dated 08.03.2021. In spite of the same, there was no representation on behalf of the Corporate Debtor. Hence, this Tribunal was constrained to proceed with the matter in the absence of the Corporate Debtor and accordingly by the order of this Tribunal dated 15.04.2021, the Corporate Debtor was set *ex-parte*.

7. Heard the submissions made by the Learned Counsel of the Operational Creditor. It is seen from the records and also from the Invoices attached along with the application that the Corporate

Debtor is required to pay the Operational Creditor a sum of Rs.2,19,96,203.17/- which the Corporate Debtor has defaulted.

8. Thus, the default, on the part of the Corporate Debtor is proved from the documents filed and the submissions made by the Learned Counsel by the Operational Creditor. Further, it is also pertinent to note that 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. Under the said circumstances, this Tribunal is left with no other option other than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

9. 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 that the invoices have been raised during the period commencing from 05.06.2019 and ending in 01.09.2019 and the account being maintained on a running account basis, the present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 17.10.2019 and as such it falls well within the period of limitation.

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 **Mr. Harsh Garg, Reg. No. IBBI/IPA-001/IP-P00243/2017-2018/10472 Email: harsh.garg81@gmail.com, Mobile No. 9815343200** 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 suspended 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 mange 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. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond