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

IBA/642/2019

(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. Free World Exports Pvt. Ltd.***

M/s. Crosby Engineering Private Limited
Reg. off:-
Old No.88, New No.175,
Broadway Road (Prakasam Salai)
Chennai – 600 001

... Operational Creditor

-Vs-

M/s. Free World Exports Private Limited
Reg. Off:-
No.45, 2nd Floor, 1st Main Road,
Gandhi Nagar, Adyar,
Chennai – 600 020

...Corporate Debtor

Order Pronounced on 3rd February 2021

CORAM :

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

For Operational Creditor : Prashanth Kiran, Advocate
For Corporate Debtor : A G Sathyanarayana, Advocate

ORDER

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

1. Under Adjudication is an Application that has been filed by **M/s. Crosby Engineering Private Limited** (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. Free World Exports 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 a Private Limited Company. 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:U51420TN2004PTC052776 which was incorporated on 19.03.2004 and that its Authorized Share capital is Rs.10,00,00,000/- and its paid up capital is Rs.8,65,00,000/-. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.45, 2nd Floor, 1st Main Road, Gandhi Nagar, Adyar, Chennai – 600020. Part-III of the Application shows that the Operational Creditor has not proposed any "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part-IV of the Application, it is seen that a sum of Rs.12,46,773/- is being claimed by the Operational Creditor as Operational Debt, including interest.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is involved in the business of Trading and Authorized Dealership for Material Handling, Lifting Tools and Tackles, Mining and Mining and Rock Technology and they supplied various goods to the Corporate Debtor and raised Invoices to that effect which are as follows;

Sl. No.	**Date**	**Invoice No.**	**Amount (₹)**
1	14.11.2016	336	5,55,066
2	24.11.2016	352	32,031
3	24.11.2016	366	870
4	31.12.2016	420	2,98,899
5	28.11.2016	362	1,49,388
6	04.04.2017	8	17,817

5. It was further submitted by the Learned Counsel for the Operational Creditor that on supply of goods to the Corporate Debtor, the Corporate Debtor has evaded making payments as per the invoices stated above and the Corporate Debtor has issued the following cheques towards the due amount:

(i) Cheque No.127243 dated 31.03.2018 for Rs.3,00,000/-

(ii) Cheque No. 127242 dated 31.03.2018 for Rs.3,00,000/-

(iii) Cheque No.127244 dated 31.03.2018 for Rs.3,04,683/-

6. The Learned Counsel for the Operational Creditor submitted that all the above cheques issued in respect of the sum owed by the Corporate Debtor were returned with the endorsement *"funds insufficient".* The Operational Creditor has served Demand Notice as mandated under Section 8 of the IBC, 2016 to the Corporate Debtor on 21.12.2018, to which the Corporate Debtor has replied vide e-mail to the Operational Creditor that they admit their liability to the tune of Rs.10,75,497/- as on that date and since the Corporate Debtor has paid an amount of Rs.2,98,899/- the balance outstanding as against the Operational Creditor stood at Rs. 7,76,598/-. It was also stated in the said e-mail that the Corporate Debtor undertook to make the balance payments in three instalments from January 2019 to March 2019. 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. The Corporate Debtor has filed counter before this Tribunal on 22.01.2021 and it has been stated that there was a dispute between the parties and also there is a difference in the default of claim as made by the Operational Creditor in the present Application. However, in the counter the Corporate Debtor has admitted that they are facing severe financial constraints in their business post demonetization. It has also been stated in the counter that the Application is incomplete and several invoices are not signed by the Corporate Debtor and there is a prior existing dispute among the parties.

8. Heard the submissions made by the Learned Counsel for the parties and perused the file including the pleadings placed on record. It is seen from averments made in the counter that the Corporate Debtor itself has admitted its liability, however the Learned Counsel for the Corporate Debtor seems to advance a feeble argument as if a dispute exist between the parties. From the documents filed, it is seen that the Corporate Debtor themselves have admitted their liability and also promised to repay the sum to the Operational Creditor within a timeframe. The e-mail dated 15.04.2019, which is sent by the Corporate Debtor to the Operational Creditor is reproduced hereunder;

From : mines@freeworldgranites.com
To : swaroop@mvschambers.com
Cc : rishabh@isshardware.com,mines@freeworldgranites.com
Date : Mon. 15 Apr 2019 14:49:49 +0530
Subject : M/s.Freeworld Exports P Ltd., - Outstanding Dues - rseg.
============ Forwarded Message ============

To
Mr.V.Prashanth Kiran,
MVS Chambers - Advocates
Sir,
We are in receipt of your letter dated 01/04/2019 intimating us that the case has been filed on account of your Client M/s.Crosby Engineering Pvt Ltd., to initiate the insolvency proceedings before NCLT, Chennai mentioning the outstanding dues as Rs.904683/- from our end.
In this connection, we would like to submit that we have made a payment of Rs.298899/- by way of RTGS as early on 18/12/2018 itself. But, the said payment of Rs.298899/- was not at all taken into consideration by your client M/s.Crosby Engineering. The same has been clearly informed by us vide our email dated 21/12/2018 to M/s.CrosbyEngg. , As such, the outstanding dues payable by us is Rs. 605,784/-
But, due to recession in the granite industry globally and the drastic fall down of business, there was a severe financial crisis. We have no intention neither not to pay the above dues nor to drag the matter further, but we are ready to settle the entire amount and to maintain cordial relationship with your client. In this regard, we require some time to recover from the crisis. We hereby give below the time schedule towards the remaining amount of Rs.605,784/- payable by us, and also to waive the interest part, considering the above facts:-
By end May'2019 - Rs.2,00,000/-
By end June '2019 - Rs.2,00,000/-
By end July ' 2019 - Rs.2,05,784/-
As we have explained our present situation, kindly advise your client not to initiate any further action and to withdraw the above case filed pending before NCLT, Chennai.
Thanks with Regards,
Balasubramanian K

FREEWORLD EXPORTS PVT. LTD.,
45, II Floor, 1st Main Road, Gandhi Nagar,
Adyar, Chennai - 600 020. India.
Mobile: 94444 00487, Ph: +91 - 44 4592 7927
E-mail: mines@freeworldgranites.com

9. A perusal of the aforesaid email, manifests the fact that the Corporate Debtor is suffering from severe financial crisis and had also sought to gain some time from the Corporate Debtor to make the remaining payments which are due to the Operational Creditor. Thus, the default, on the part of the

Corporate Debtor is proved from the documents filed and the submissions made by the Learned Counsels before this Tribunal. 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 that to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

10. 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 claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.

11. 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 in relation to the Corporate Debtor which discloses that the invoices have been raised commencing from 14.11.2016 to 04.04.2017 and the present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 09.04.2019 and as such it falls well within the period of limitation.

12. 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. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January – June 2021 appoints **Ms. Vijayakumari Natarajan** Reg. No. IBBI/IPA-001/IP-P00972/2017-2018/11602 *(email id:-natarajviji@gmail.com)* 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.

13. 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 serices 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

14. 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.

15. The Operational Creditor is directed to pay a sum of **Rs.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.

16. 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