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

**CP/IB/131/CHE/2021**

*(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. Ozone Projects Private Limited***

**Sterling and Wilson Private Limited**

Represented by its commercial Head-  
MEP Tamil Nadu and Kerala  
Mr. S.K. Anantharaman  
Universal Majestic, 9<sup>th</sup> Floor,  
P.L. Lokhande Marg Chembur  
Mumbai- 400 043

*... Operational Creditor*

-Vs-

**Ozone Projects Private Limited**

Represented by its Managing Director  
Mr. Vasudevan Sathyamoorthy  
New No.63, GN Chetty Road  
T. Nagar, Chennai- 600 017.

*...Corporate Debtor*

*Order Pronounced on 8<sup>th</sup> March 2022*

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor : Thriyambak J. Kannan, Advocate*

*For Corporate Debtor : Ex-parte*

**ORDER**

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

Under Adjudication is CP/IB/131/CHE/2021 filed by **Sterling  
and Wilson 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 **Ozone Projects Private Limited** (hereinafter referred to as '**Corporate Debtor**'). The Application is filed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Company Limited by shares which was incorporated under the Companies Act, 1956 on 13/06/1974 with CIN No: U31200MH1974PTC017538. The Registered office of the Operational Creditor is situated at 9th Floor, Universal Magestic, P.L. Lokhande Marg, Chembur Mumbai-400043, Maharashtra, India. 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: U70101TN2005PTC056894 and was incorporated on 13/07/2005 under the Companies Act, 1956. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at New No.63, G.N.Chetty Road, T. Nagar, Chennai-600017. From Part III of the application, it is seen that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of this Tribunal.



3. The Affidavit verifying the application is placed at page no's 45-46 of the Application typeset and Mr. S.K. Anantharaman, the commercial Head MEP of Tamil Nadu and Kerala, of the Operational Creditor/Applicant has sworn the Affidavit as the authorized representative of the Operational Creditor vide Board Resolution dated 07.01.2021.

4. From Part-IV of the Application, it is seen that a total sum of Rs.2,17,50,049.75 /- (Rupees Two crores Seventeen Lakhs Fifty thousand and Forty Nine and Paise Seventy Five Only) is being claimed by the Operational Creditor as the Operational debt. The Principal amount claimed is Rs.1,45,66,066/- at a interest of 18% per annum amounting to Rs.71,83,983.75/-. In Part IV of the Application, the Operational Creditor has mentioned the date of default to be 11.09.2019.

5. Part – V of the Application discloses about the details of the documents filed by the Operational Creditor in order to prove the 'Operational debt', which are as follows;

- i. Notice award dated 13.04.2011
- ii. Letter dated 27.04.2011 issued by the Corporate Debtor.
- iii. Email dated 23.04.2017
- iv. Email dated 28.04.2014
- v. Letter dated 18.02.2019 sent by the Operational Creditor requesting payment dues.

- vi. Email dated 01.02.2019
- vii. Demand Notice dated 15.01.2021

6. It is submitted by the Ld. Counsel for the Applicant that the Corporate Debtor is a real estate development company with projects in Bengaluru, Chennai and Goa approached the Operational Creditor for inter alia Fire fighting at a residential zone "Metrozone" located at Anna Nagar, Chennai and on further negotiations, prices were agreed upon. Further, the Ld. Counsel stated that work commenced and the Operational Creditor had duly fulfilled all their contractual obligations.

7. Incidentally, the Ld. Counsel for Operational Creditor submitted that, the Corporate Debtor had made part payments in acknowledgements of its liabilities. Further, as the Corporate Debtor had failed to make their payments from 11.09.2018 for dues amounting to Rs. 1,45,66,066/- at the rate of 18% interest per annum, hence they were left with no other option than to approach this Tribunal.

8. The Ld. Counsel for the Operational Creditor submitted that the Statutory Demand Notice Under Form-III dated 15.01.2021 was sent by the Operational Creditor to the Corporate Debtor for the claim amounting to Rs. 1,45,66,066/- at the rate of 18% interest per annum for which no reply came from the Corporate Debtor. The Ld. Counsel for the Operational Creditor submitted that even prior

to the issuance of the statutory demand notice Form III, dated 15.01.2021, the Operational Creditor had sent a letter dated 18.02.2019 to the Corporate Debtor requesting to settle the outstanding dues (Principal) amounting to Rs. 1,45,66,066. Subsequently, the Ld Counsel for the Operational Creditor submitted that in the E-mail communication dated 01.02.2019, the Corporate Debtor had acknowledged the total outstanding amount (Principal) payable to be Rs. 1,45,66,066 and the same is extracted hereunder:-

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Sat'yadev R

From: Sat'yadev R  
 Sent: 01 February 2019 13:12  
 To: H. Suman  
 Cc: S ANANTHABAMAN  
 Subject: FW: Ozone - Balance Confirmation

Dear Mr Suman,

Please find finding mail from Ozone Group regarding Balance confirmation, requesting kindly do the needful for the closure of the job in SAP.  
 Sterling & Wilson Pvt Ltd  
 Bangalore  
 Mob: 984584068

Regards,  
 Sat'yadev R  
 OGM Commercial MEP South

From: Chandro R. Seshar (mailto:chandroseshar@ozonegroup.com)  
 Sent: 01 February 2019 13:08  
 To: Vijayaragh S. (mailto:vijayaraghs@sterlingwilson.com); S ANANTHABAMAN (mailto:anamb@sterlingwilson.com);  
 Cc: S ANANTHABAMAN (mailto:anamb@sterlingwilson.com); R ABHIRAJ (mailto:r.abhiraj@sterlingwilson.com); Mahan A. Choudhary &  
 Procurement (mailto:machand@ozonegroup.com); Ganapathi Sanki (mailto:gsanki@ozonegroup.com)  
 Subject: RE: Metrocon - Sterling Wilson - Final bill - Credit notes/Invo CCC - 111

Dear All,

We confirm that TOTAL OUTSTANDING of Rs. 1,45,66,066 is payable to M/s Sterling & Wilson

Details of the same as follows:

Summary of Total outstanding as on 31.1.19 -M/s Sterling & Wilson	
Details	Amount
Retention -WCC01	4,438,123
Retention -W0162	7,800
Hold -W0162	14,000
Hold/Retn -W0003	24,235
Against Bill (All WCCs)	9,262,411
Hold certified / Payment yet to be received	1,80,000
Hold certified / Payment yet to be released	55,327
<b>Total Payable to Sterling &amp; Wilson</b>	<b>14,566,066</b>

Thanks & Regards,

9. The Ld. Counsel for the Operational Creditor also submitted that IBA/863/2020 and CP/IB/201/CHE/2021 are also pending on the file of this Tribunal against the same Corporate Debtor Viz.,

Ozone Projects Private Limited. However, the Corporate Debtor are being represented by different Counsels in the aforesaid Company Petitions.

10. The Corporate Debtor had not filed any counter/ reply statement in this matter. However, made oral submissions on merits of the case.

11. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record. This Tribunal after comprehensively hearing the said matter is of the view that, the debt and default had been proven based on the email communication dated 01.02.2019 in which the Corporate Debtor has acknowledged the outstanding dues (Principal) payable amounting to Rs. 1,45,66,066/-. The same was not denied during oral arguments by Respondent Counsel and it was candidly admitted that the outstanding is due and payable.

12. The above said email communication dated 01.02.2019 sent by the Corporate Debtor to the Operational Creditor are more than sufficient to prove the existence of the 'operational debt' and further accepted during oral submission and arguments.

13. It can be seen from the records of the proceedings placed before us that, settlement talks were prevalent between the



Operational Creditor and the Corporate Debtor but the same did not fructify.

14. Further, this said debt amount claimed by the Operational Creditor amounting to Rs. 1,45,66,066/- along with interest amounting to 18% per annum, for a total amount of Rs.2,17,50,049.75 /- (Rupees Two crores Seventeen Lakhs Fifty thousand and Forty Nine and Paise Seventy Five Only) falls well within the purview of the pecuniary limit fixed by the central government vide notification **S.O 1205(E) dated 24.3.2020** issued by the Ministry of Corporate Affairs, Government of India. 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 also cannot seek shelter under Section 10A of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

15. 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:

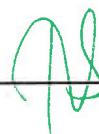


- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any 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;

16. 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.

17. 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.

18. 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 Jan 2022 – June 2022 appoints **Mr. N Veerapandian** having registration number *IBBI/IPA-001/IP-P-02148/2020-2021/13301* 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.

19. The IRP is directed to take charge of the Corporate Debtor’s management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. 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 IBC, 2016 and file his report within



30 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

21. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

22. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakh 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.

24. 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.

25. The IRP is directed to file the 1<sup>st</sup> Progress Report before this Tribunal on or before the 45<sup>th</sup> day of initiation of CIRP by this Adjudicating Authority.

26. Post this CP/IB/131/CHE/2021 for hearing on **25.04.2022**

-Sd-  
**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-  
**R. SUCHARITHA**  
MEMBER (JUDICIAL)

*Vinita. K*