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

In the matter of **Safire Machinery Company Private Limited**

**TCP/141/IB/2017**

**Along with**

**MA/259/2018 in TCP/141/IB/2017**

**Along with**

**MA(IBC)/7(CHE)/2022 in TCP/141/IB/2017**

*(filed under Rule 11 of the NCLT Rules, 2016)*

**JOINUP CORPORATION**

Having its office at  
2-31 Shimoenjaku 4 – Chrome,  
Mitaka City,  
Tokoyo 181 – 0013, Japan

*... Petitioner/Operational Creditor*

**-Vs-**

**SAFIRE MACHINERY COMPANY PRIVATE LIMITED**

New No. 16 (Old No.31) Balaji Nagar, 1<sup>st</sup> Street,  
Royapettah,  
Chennai – 600 014

*.... Respondent/Corporate Debtor*

**CORAM :**

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

*For Applicant : Vivek Kohli, Senior Advocate  
Sandeep Bhuraria, Advocate  
For Respondent : John Aquinas, Advocate*

*Order pronounced on 28<sup>th</sup> April 2022*

**ORDER**

**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

3. The Petitioner/Operational Creditor has originally filed  
the Winding up Petition under Section 433(e) and Section 433(f) r/w  
Section 434 of the Companies Act, 1956 seeking winding up of the

Respondent/Corporate Debtor in the year 2015 before the Hon'ble High Court of Madras. After the advent of the Insolvency & Bankruptcy Code, 2016 the said Company Petition came to be transferred before this Tribunal and renumbered as TCP/141/2017. During the pendency of the aforesaid Company Petition, it is averred in the Application that the Corporate Debtor has approached the Operational Creditor seeking settlement of disputes between the parties and after several attempts the parties have arrived at a consensus and accordingly a Settlement Agreement dated 25.07.2017 was entered into between the Operational Creditor and the Corporate Debtor.

2. MA/259/2018 has also been filed by the Petitioner/Operational Creditor under Section 245 of the Companies Act, 2013 r/w Rule 11 of NCLT Rules, 2016 seeking the following reliefs: -

- a. *Hold the Corporate Debtor in contempt for wilful breach of the Order dated 10.08.2017 passed by this Hon'ble Tribunal in the present Company No. TCP/141/(IB)/2017 and take appropriate action against Respondents/Contemnors as per law:*
- b. *Pass such further or other order that this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case:*

3. MA(IBC)/7(CHE)/2022 has been filed by the Corporate Debtor seeking relief as follows;

- a. *To raise order of Attachment dated 19.08.2019 over the schedule property on deposit or direct paying*

*JPY 30 million to the Operational Creditor as directed by the Hon'ble Tribunal and to communicate the order to the Sub Registrar of Virugambakkam to record necessary endorsement in its Registers.*

*b. Pass such further orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the present case*

4. It was submitted by the Learned Counsel for the Operational Creditor that as per the Settlement Agreement, the Corporate Debtor is bound to pay an amount of 65 Million Japanese Yen to the Operational Creditor and furthermore the Corporate Debtor was required to pay an amount of 50 Lakh Japanese Yen at any time before 01.04.2018 and subsequent payment of 1 Crore Japanese Yen from April 2018 to September 2018.

5. Learned Counsel for the Operational Creditor further submitted that this Tribunal vide Order dated 10.08.2017 has recorded the said Settlement Agreement entered into between the parties and *disposed off* the TCP/141/2017 in terms of the Settlement Agreement and it was further submitted while disposing off the said petition, it was recorded that the Settlement Agreement forms part of the order. Further, it was submitted that the liberty was granted to the Operational Creditor to revive the TCP/141/2017 in case Corporate Debtor has committed default.

6. Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has committed default in repayment of the dues as agreed between the parties in terms of the Settlement Agreement and inspite of sending several e-mails, the Corporate Debtor has not paid any amount to the Operational Creditor. Further, it is the contention of the Learned Counsel for the Operational Creditor that apart from committing breach of the Settlement Agreement, the Corporate Debtor has also violated the Order dated 10.08.2017 passed by this Tribunal and hence being the Operational Creditor has moved MA/259/2018 before this Tribunal seeking thereof to hold the Corporate Debtor in contempt for wilful breach of the Order dated 10.08.2017 passed by this Tribunal. The revival petition came to be allowed by this Tribunal vide order dated 03.01.2022 and TCP/141/2017 was taken on file by this Tribunal.

7. Heard the submissions made by the Learned Counsel for the Operational Creditor. It is seen from the records that already a Settlement Agreement was entered into between the parties on 25.07.2017 in and by which the Corporate Debtor is liable to pay a sum of 65,000,000 JPY on or before September 2018. There is no dispute in relation to the same. However, it is seen from the record of proceedings that the Corporate Debtor has violated the terms of the said settlement Agreement and seeking time to settle the matter. Hence, the 'debt' and 'default' on the part of the Corporate

Debtor is proved beyond reasonable doubt and under the said circumstances we are left with no other option than to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

8. It is also seen that this Tribunal vide order dated 02.05.2019 that based upon the details of the list of assets produced by the Director of the Corporate Debtor, has restrained the Corporate Debtor from selling the vacant land situated at Arcot Road, comprised in T.S. No. 5/11 without the permission of this Authority. The said restraining order remains in force till date. Under the said circumstances, the Corporate Debtor has filed MA(IBC)/7(CHE)/2021 to raise the attachment order. Since we are inclined to admit the present Petition, the restraining order passed against the property situated Arcot Road, comprised in T.S. No. 5/11, stands *intact*. Accordingly, MA(IBC)/7(CHE)/2022 stands **dismissed**. Let the Resolution Professional take appropriate steps during CIRP stage.

9. In so far as MA/259/2018 is concerned, it is seen that the breach of the Settlement Agreement has resulted in admission of the present Petition and CIRP is required to be initiated as against the Corporate Debtor. Hence, MA/259/2018 stands **closed**.



10. The Operational Creditor has not proposed the name of IRP. **Mr. R Sugumaran** with Reg. No. *IBBI/IPA-001/IP-P00677/2017-2018/11147* (email id:- *rsmaran@yahoo.co.in*) is appointed as the Interim Resolution Professional (IRP) from the panel of IRP recommended by IBBI for the period 01.01.2022 to 30.06.2022, upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 24.09.2022. The proposed IRP who is appointed shall 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 15,19,18 of the Code 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.

11. As a consequence of the Application being admitted in terms of Section 9 of the Code, moratorium as envisaged under 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 Operational 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 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.

(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 Operational sector regulator or any other authority;
  - (b) a surety in a contract of guarantee to a corporate debtor.



13. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (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. 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.

15. 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, 19, 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.

16. The IRP shall comply with the provisions of Sections 13 (2), 15, 19 & 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.

17. 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.

18. Based on the above terms, the Petition stands **admitted** in terms of Section 9 of the Code and the Moratorium shall come into 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 shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned. Operational Creditor is directed to pay to IRP a sum of Rs. 2,00,000/- (Rupees Two Lakh) in order to meet the initial expenses.

19. 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.

20. Post this TCP/141/2017 for hearing on **17.06.2022**.

-Sd-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-

**R. SUCHARITHA**  
MEMBER (JUDICIAL)

*Raymond*