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NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI

(10)

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 04.10.2019

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER – JUDICIAL
SHRI ANIL KUMAR B, MEMBER - TECHNICAL

APPLICATION NUMBER :

PETITION NUMBER : IBA/316/2019

NAME OF THE PETITIONER(S) : KANAKA DURGAA CRANE

NAME OF THE RESPONDENT(S) : UNIQUE ROOF PVT LTD

UNDER SECTION : SEC 9 RULE 6 OF IBC

S.No. NAME (IN CAPITAL)

DESIGNATION

SIGNATURE

REPRESENTATION BY WHOM

1. R. RAGHAVENDRAN

at for CD



Madhumitha.J [MADHUMITHA.J]

For Mr. S.V. Pravin Rathinam

Counsel for Operational
Creditor

Madhumitha.J.

[S.V. PRAVIN RATHINAM]



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

IBA/316 /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. Unique Roof Private Limited*

M/s. KANAKA DURGAA CRANE

... *Operational Creditor*

-Vs-

M/s. UNIQUE ROOF PRIVATE LIMITED

... *Corporate Debtor*

Order delivered on 4th October, 2019

CORAM:

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Operational Creditor : Ms. Madhumitha J, Counsel
For Corporate Debtor : Mr. R. Ragavendran, Counsel

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL):

1. Under Adjudication is IBA/316/2019 that has been filed by *M/s. Kanaka Durgaa Crane* (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. Unique Roof 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. Heard the Counsels for the Operational Creditor, Corporate Debtor and perused the pleadings including the documents placed on file.

3. The Operational Creditor has claimed an amount of Rs.61,10,651/- (Rupees Sixty One Lakhs Ten Thousand Six Hundred and Fifty One Only) including interest @ 18% per annum, which the Corporate Debtor has failed to pay.

4. The brief facts of the case are that pursuant to the offer dated 13.10.2016 the Corporate Debtor has issued a Contract Order to the Operational Creditor on 15.10.2016 for hiring a 30/40 Ton Telescopic Crane for construction of building for Medical College at Kerala. As



seen from the letter of offer dated 13.10.2016, which is placed at pages 17 and 18 of the typed set filed with the Application, it is clearly recorded that the Operational Creditor is not responsible for the Crane remaining idle at site due to reasons not attributable to the Operational Creditor and if for some reasons the Crane idles due to unforeseen breakdowns etc., of the Crane, only rent for said period need not be paid and any other deductions are not acceptable. In other words, if the Crane remains idle at the site due to any reason not attributable to the Operational Creditor then the Corporate Debtor is under a legal obligation to pay the rent. Clause 12 of the terms and conditions of the Contract Order dated 15.10.2010 provides that all other terms and conditions are agreed as per the offer no.KDC/URPL/CBE/2016 - 17/114, dated 13.10.2016.

5. Pursuant to the Contract Order, the Crane was placed at the disposal of the Corporate Debtor and the Invoices for the period for which the Crane was deployed, were raised by the Operational Creditor. The Invoices are



placed at pages 21 to 47 of the typed set filed with the Application.

6. The offer letter dated 13.10.2016 provides the condition for the payment that monthly bills will be submitted by the Operational Creditor and the payments to be made within 7 days. However, condition No. 8 of the terms and conditions of the Contract Order dated 15.10.2016 provides that the payment will be made 15 days from submissions of the bills.

7. Be that as it may, the Operational Creditor has placed on record the computation sheet of the total amount due as on 07.02.2019, which is placed at pages 9 and 10 of the typed set filed with the Application wherein, it is reflected that the principal amount of Rs.51,50,849/- along with interest amounting to Rs.9,57,768/- at the rate of 18% p.a. is due and payable. Therefore, the total amount claimed by the Operational Creditor, is Rs.61,10,651/-.



8. It is submitted by the Counsel for the Operational Creditor that after filing of the present Application on 28.02.2019, two more Invoices were raised each involving Rs.3,04,204/-.

9. The Counsel for the Corporate Debtor has filed the Counter. The gist of the Counter is that there was a dispute between the Corporate Debtor and the principal employer of the Corporate Debtor and the Crane remained idle for a period with effect from 01.04.2017 to 31.03.2018 and it was agreed upon by the Operational Creditor that the Corporate Debtor shall pay nominal hire charges of Rs.1,40,000/- per month for the said period and no further Invoice shall be raised by the Operational Creditor beyond 31.03.2018. It is further submitted that the contract between the Operational Creditor and the Corporate Debtor was cancelled.

10. Pursuant to the said agreement, the Corporate Debtor issued 9 post-dated Cheques which were dishonoured on presentation before the bank. Thereafter, the Operational Creditor has issued notice under Section



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138 of the Negotiable Instruments Act, 1881, on 31.05.2018. Pursuant to the same, the Corporate Debtor is stated to have paid the amount as agreed, by way of Demand Draft which was received and acknowledged by the Operational Creditor. Accordingly, the Corporate Debtor has settled all the outstanding dues to the Operational Creditor and there exists no outstanding towards the Corporate Debtor. Thus, there is no default on the part of the Corporate Debtor.

11. The Counsel for the Corporate Debtor has referred to a letter dated 09.07.2018 which is stated to have been written by the Corporate Debtor to the Operational Creditor giving a few details of the Invoices and the post-dated cheques. Under Para 4 of the said letter, it is stated that as per the Commissioner's Office (Police) instructions and as per mutually agreed basis, the bill payment payable by the Corporate Debtor, is Rs.16,80,000/- for which post dated Cheques have already been issued. The letter appears to be a unilateral decision of the Corporate Debtor, which is self serving and is not substantiated with any documentary evidence



to establish that the Operational Creditor and the Corporate Debtor have entered into any agreement as claimed by the Counsel for the Corporate Debtor.

12. It is reiterated by the Counsel for the Corporate Debtor that they have cancelled the agreement on 31.03.2018. However, it reflects from the Complaint dated 19.05.2018 that the Crane was in the custody and possession of the Corporate Debtor and the Principal employer of the Corporate Debtor, which was released by the Operational Creditor on 06.04.2019. Therefore, it reflects that the Crane remained in possession of the Corporate Debtor, till 06.04.2019. In short, the defence that has been advanced by the Counsel for the Corporate Debtor appears to be hollow, mere bluster and stands rejected.

13. The Operational Creditor has sent notice under Section 8 of the I&B Code, 2016 on 11.09.2018 which is placed at pages 11 to 15 of the typed set filed with the Application, wherein it has been mentioned that an amount of Rs.55,19,671/- was due and payable along with interest at the rate of 18% p.a. It is worthwhile to



record that no reply was given by the Corporate Debtor to the said notice.

14. The Operational Creditor has also complied with Section 9(3)(b) and (c) of the I&B Code, 2016, by placing on record the Affidavit at pages 157 to 159 of the typed set filed with the Application wherein it is deposed that the Corporate Debtor has failed to bring to the notice of the Operational Creditor the existence of dispute in relation to the unpaid Operational Debt. The Operational Creditor has also filed the statement of account obtained from the Bank.

15. In view of the discussions made above, this Bench is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, the Application is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

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16. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016.

It is ordered to prohibit all of the following, namely: -

- (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor 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 corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002):



(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

17. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

18. The Operational Creditor has not proposed the name of IRP, therefore, Mr. Muthuiah Thevar Rajapandian, is appointed as IRP, whose name has been mentioned in the Panel of Insolvency Professionals recommended by the IBBI, there is no disciplinary proceedings pending against the IRP. The IRP is directed to take charge of the Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of



this order is received, and call for submissions of claim in the manner as prescribed.

19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B 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, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

20. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016. The address details of the IRP are as follows: -

Mr. Muthuiah Thevar Rajapandian
(IBBI/IPA-003/IP-N00090/2017 – 2018/10854)
Email: rajapandianm1955@gmail.com
Mobile No. 9487074173.

21. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.



22. Order is dictated and pronounced in open court in the presence of the Counsels for the Operational Creditor and the Corporate Debtor.

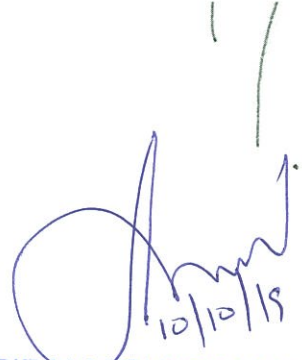
-SD-
ANIL KUMAR B
MEMBER (TECHNICAL)

-SD-
CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)

P.ATHISTAMANI



Certified to be True Copy


10/10/19
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ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH
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Received order on 10/10/2019


10/10/2019
MUTHUIAH THEVAR RAJAPANDIAN
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