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

IBA/751/2020

*(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)*

Along with

MA/101/CHE/2021 in IBA/751/2020

(Filed under Rule 11 of NCLT Rules, 2016)

*In the matter of **M/s. Uniply Industries Limited***

M/s. Kishan Chand Suresh Kumar

Represented by its Partner Mr. Mohit Bansal
No.133, Tagore Park,
Delhi -110 009

... Operational Creditor

-Vs-

M/s. Uniply Industries Limited

No.572, Anna Salai, Teynampet,
Chennai – 600 018

... Corporate Debtor

Order pronounced on 4th October 2021

CORAM:

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

*For Operational Creditor: Mayank Agarwal, Advocate
For Corporate Debtor : Ex-parte*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

IBA/751/2020 is an Application filed by M/s. Kishan Chand
Suresh Kumar (*hereinafter referred to as "Operational*

Creditor") under Section 9 of the Insolvency and Bankruptcy Code, 2016 against M/s. M/s. Uniply Industries Limited, (hereinafter referred as the "**Corporate Debtor**") seeking thereof to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. MA/101/CHE/2021 is an Application filed by the Operational Creditor under Rule 11 of NCLT Rules, 2016 seeking thereof to take on record the name of the IRP in Part – III of the Main Application. The Operational Creditor has proposed the name of one Mr. Lingumgunta Venkata Shyam Sundar with Reg. No. IBBI/IPA-002/IP-N00262/2017-18/10775. Taking into consideration, the averments made in the Application, MA/101/CHE/2021 stands **allowed** and consequently, the name of the IRP as proposed by the Operational Creditor is taken on record.

3. From Part I of this Application, it is seen that the Operational Creditor is a Partnership Firm represented by its Partner Mr. Mohit Bansal registered under the provisions of the Partnership Act, 1932. From Part II, it is seen that the Corporate Debtor is a Public Limited Company incorporated on 04.09.1996 bearing CIN: L20293TN1996PLC036484 and the Registered Office address of the Corporate Debtor as per the Application is stated to be situated at No.572, Anna Salai, Teynampet, Chennai- 600018. It is seen that



the Operational Creditor has proposed the name of one Mr. Lingumgunta Venkata Shyam Sundar to be appointed as the *Interim Resolution Professional*.

4. Part IV of the Application states that a sum of Rs.3,99,55,123.29/- is due and payable by the Corporate Debtor. Part V of the Application discloses the list of the documents which had been filed by the Operational Creditor in order to prove its Operational Debt and the list of documents which are filed along with the Application are as follows;

- a) Copy of Demand Notice dated 20.02.2020 U/s 8 of the Insolvency and Bankruptcy Code,2016, with all of its Annexures along with proof of delivery through post and email is collectively annexed as Annexure I.
- b) Copy of the Master Data of Corporate Debtor as available on Ministry of Corporate Affairs Website is annexed as Annexure II(1)
- c) A copy of the outstanding invoices raised by the Operational Creditor against the Corporate Debtor along with bill wise details are annexed as Annexure II(2)
- d) Copy of Memorandum of Compromise dated 30.04.2019 is annexed as Annexure II(3)
- e) Copies of the 6 Cheques issued by Corporate Debtor along with their respective cheque return memos are collectively marked as Annexure II(4)
- f) The details of part payments received by Operational Creditor against the admitted outstanding debt are mentioned in Annexure II(5)



- g) A copy of the cheque dated 01.02.2020 along with the cheque return memo is annexed as Annexure II(6)
- h) Workings for computation of default and interest accrued on the outstanding amount, is annexed as Annexure II(7)
- i) The tabular computation sheet showing calculation of total amount payable, part payments received, balance payment including interest payable against the Corporate Debtor is annexed as Annexure II(8)
- j) Ledger account of Corporate Debtor maintained by Operational Creditor along with letter of explanation is annexed as Annexure II(9)

5. The Learned Counsel for the Petitioner/ Operational Creditor submitted that the Operational Creditor is a Partnership Firm which had supplied Plywood and block boards to the Corporate Debtor based on the purchase orders placed by the Corporate Debtor and thereafter the Operational Creditor raised invoices against the Corporate Debtor, however the Corporate Debtor had failed to make payments to the Operational Creditor towards the said invoices.

6. The Learned Counsel for the Petitioner/ Operational Creditor submitted that as a result of non-payment by the Corporate Debtor, an amount of Rs.4,87,64,071/- is pending as due and payable to the Operational Creditor by the Corporate Debtor. That apart, it was submitted an amount of Rs.3,23,65,499/- was due in

favour of the Operational Creditor from M/s. Uniply Decor Limited (*M/s .UV Board Ltd. since amalgamated in Uniply Décor Ltd.*) a sister concern / group company of the Corporate Debtor.

7. It was further submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor despite having admitted its liability in respect of the outstanding sum, had failed to make payments. Subsequently, it was submitted that the Operational Creditor had issued a Demand Notice dated 03.04.2019 to the Corporate Debtor under section 8 of the IBC, 2016 for payment of outstanding amount. Upon receipt of the aforementioned Demand Notice, it was submitted that the Corporate Debtor approached the Operational Creditor for settlement of dues including that of its sister concern/group companies. Thereafter, on 30.04.2019 a Memorandum of Compromise (MOC) was entered into between the Operational Creditor, the Corporate Debtor and its sister concern/group companies, who were the joint debtors to the Operational Creditor.

8. It was further submitted by the Learned Counsel for the Operational Creditor as per Clause 4 of the MOC, the parties agreed that the amount payable to the Operational Creditor was Rs.5,25,00,000/- and clause 5 of the said MOC which stated that the Debtors therein undertook to pay the said due of



Rs.5,25,00,000/- to the Operational Creditor in accordance with the schedule payment specified in the said clause.

9. It was further submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor issued 6 post-dated cheques from its account in favour of the Operational Creditor for a total amount of Rs.5,25,00,000/- which was the agreed payable amount as per the said MOC but no payment was made and all the above said cheques were dishonoured upon its presentation. It was further stated that out of the total admitted amount payable by the Corporate Debtor to the Operational Creditor, the Corporate Debtor has till date only made payment of Rs.2,00,00,000 on various dated through Bank RTGS/NEFT, in complete violation to and disregard to the agreed schedule in the MOC, into the account of the Operational Creditor. Thus it is evident through the aforementioned sequence of events, an amount of Rs.3,25,00,000/- is the unpaid operational debt payable by the Corporate Debtor to the Operational Creditor.

10. It was further submitted by the Learned Counsel for the Operational Creditor that after much persuasion, the Managing Director of Corporate Debtor Mr. KN Kantamneni, in discharge of the unpaid debt of the Corporate Debtor issued a cheque dated 01.02.2020 for a sum of Rs.1,75,00,000/- in favour of Operational

Creditor from his other company Viz. KKN Holding Private Ltd, under his signature. However the said cheque also got dishonoured upon presentation.

11. It was further submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor was required to make payment of Rs.1,50,00,000/- on or before 07.05.2019 as per the agreed schedule of payment given in para 5 of the said MOC but the Corporate Debtor defaulted in making the said payment. Thus the first date of default in making payment by the Corporate Debtor is 08.05.2019. Thus, the Operational Debt fell due on various dates between May 2019 and October 2019.

- i. 08.05.2019:1st default – failed to pay Rs.1.50 crores
- ii. 08.06.2019: 2nd default – Failed to pay Rs.75 Lakhs
- iii. 08.07.2019: 3rd default – Failed to pay Rs.75 Lakhs
- iv. 08.08.2019: 4th default – Failed to pay Rs.75 lakhs
- v. 08.09.2019: 5th default- Failed to pay Rs.75 Lakhs
- vi. 09.10.2019 : 6th default – Failed to pay Rs.75 Lakhs

12. It was submitted that the principal amount due and payable by the Corporate Debtor is Rs.3,25,00,000/- and that the Corporate Debtor despite having its liability with respect to the outstanding sum, failed to make payments notwithstanding several requests and reminders and it is evident that there is no dispute with regard to the existence of the said operational debt. It was



further submitted by the Operational Creditor further submitted that as on 20.02.2020, a principal sum of Rs.3,25,00,000/- along with interest of Rs.46,34,301/- (*calculated @ 24% p.a. up to 20.02.2020 on the principal amount*), totalling to Rs.3,71,34,301 was due and payable by the Corporate debtor up to 20.02.2020.

13. Under such circumstances, it was submitted that the Operational Creditor issued a notice of Demand as stipulated under Section 8 of the IBC, 2016 to the Corporate Debtor on 20.02.2020, which was received by the Corporate Debtor on 24.02.2020 and also received through mail on 27.02.2020. From the Affidavit filed under Section 9(3) (b) of IBC, 2016, it is evident that the Corporate Debtor has not raised any dispute in respect of the outstanding amount which is due and payable to the Operational Creditor nor paid the operational debt within 10 days from the date of receipt of the Demand notice. Hence, the present Application has been filed by the Operational Creditor before this Tribunal on 17.08.2020 for initiation of CIRP as against the Corporate Debtor.

14. In relation to the Corporate Debtor, it is seen from the record of proceedings that when the matter came up for hearing on numerous occasions, the Corporate Debtor was represented by an Authorized Representative and time was sought on the pretext that the settlement was about to arrive between the parties.

Thereafter, it is seen that there was no representation on behalf of the Corporate Debtor subsequently this Tribunal by its order dated 06.08.2021 has set the Corporate Debtor as *ex-parte*. Pursuant to that, it is seen that the matter came up for hearing on 03.09.2021 before this Tribunal and this Hon'ble Tribunal held as follows;

"It is seen from the records that the Respondent was set *ex-parte* on 06.08.2021, however, when the matter is taken up for hearing on 03.09.2021, Mr.Akhil Bhansali appearing on behalf of the Respondent. It is noted that till date no Application has been filed by the Respondent to set aside the *ex-parte* order passed by this Hon'ble Tribunal dated 06.08.2021.

The learned Counsel for the Respondent stated that even though the Respondent has been set *ex-parte*, he may be permitted to make the submissions based on the merits of the case. It was further submitted by the learned counsel for the Respondent that the alleged debt which is due and payable in respect of different company viz., M/s.Uniplay Décor Ltd, 50% of the amount has been paid and also a settlement talks are underway in respect of a M/s. Uniplay Industries Ltd, the Corporate Debtor herein.

Heard the submissions of both the parties. Order stands reserved.

15. Thus, it is seen that the Corporate Debtor under the garb of settlement is trying to delay the proceedings before this Tribunal. The Corporate Debtor has not denied that the amount is due and payable to the Operational Creditor; hence the default on the part of the Corporate Debtor is proved beyond any reasonable doubt. Thus, the Operational Creditor has proved that there is an 'operational debt' and 'default' which has been committed on the

part of the Corporate Debtor. 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 than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

16. 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. Lingumgunta Venkata Shyam Sundar with** Reg. No. *IBBI/IPA-002/IP-N00262/2017-2018/10775, (Email: shyam.ascend@gmail.com)* 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.

17. 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;

18. 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.

19. 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.

20. 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