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

**IBA/1406/2019**

*(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 **SRG Apparels Limited**

**Gradiant WTT O&M Services Pvt. Ltd.,**  
8<sup>th</sup> Floor, East Wing, High Gates Building,  
82, Santhome High Road,  
MRC Nagar, Chennai – 600 028

... *Operational Creditor*

-Vs-

**SRG Apparels Limited**  
10B, Padmavathipuram,  
Tiruppur,  
Tamil Nadu – 641 603.

... *Corporate Debtor*

*Along with*

**IBA/112/2020**

*(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)*

In the matter of **Gradiant WTT O&M Services Pvt. Ltd.**

**SRG Apparels Limited**  
10B, Padmavathipuram,  
Tiruppur,  
Tamil Nadu – 641 603.

... *Operational Creditor*

-Vs-

**Gradiant WTT O&M Services Pvt. Ltd.,**  
8<sup>th</sup> Floor, East Wing, High Gates Building,  
82, Santhome High Road,  
MRC Nagar, Chennai – 600 028

... *Corporate Debtor*



Order Pronounced on 1<sup>st</sup> March 2022

CORAM:

**Justice (Retd) S. RAMATHILAGAM, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor: T.K. Bhaskar, Advocate*  
*K.P. Sanjeev Kumar, Advocate*  
*In IBA/1406/2019*

*For Corporate Debtor: Kaushik N. Sharma, Advocate*  
*Prakash Venkataramani, Advocate*  
*In IBA/1406/2019*

**COMMON ORDER**

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

IBA/1406/2019 is filed by one **M/s. Gradient WTT O&M Services Private Limited** (hereinafter referred to as 'Operational Creditor') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **SRG Apparels 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 discloses the details of the Applicant from which it is evident that the Operational Creditor is a Private Limited Company. From Part – II of the application is it seen that



the Corporate Debtor is a Limited Company incorporated on 05.04.1999 with CIN: U18101TZ1999PLC008821 and having its registered office situated at Nos. 10B, Padmavathipuram, Tirupur, Tamil Nadu – 641 603.

3. From Part – III of the Application it is seen that the Applicant has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the same. From Part – IV of the Application, it is seen that the Operational Creditor has claimed a total amount of Rs.19,22,64,227/- along with interest at the rate of 18% p.a. The date of default mentioned in the Application is 17.09.2019.

4. The Learned Counsel for the Operational Creditor submitted that they Operational Creditor is in the business of Waste Water Treatments and the Operational Creditor is having the necessary patented technology to carry out effective and effluent treatment for industries under Zero Liquid Discharge (ZLD) methods in both organic and inorganic modes. It was submitted that during the coruse of business, the Operational Creditor entered into an Agreement for Waste Water Treatment dated 28.03.2019 wherein the Operational Creditor installed the following equipments:

S. NO.	NAME OF EQUIPMENT
1	Biological System
2	Belt Press System
3	Quartz Filter System
4	Micron Filter System

5	Decarbonating Tower System
6	RO System
7	Physio - Chemical Treatment System
8	NF System
9	Brine Tank Air Line
10	CIP Skid

5. The Learned Counsel for the Operational Creditor submitted that the above-mentioned equipments worth about Rs.8,50,00,000/- was designed and installed at the Corporate Debtor's factory premises to treat the wastewater accrued from the Corporate Debtor's industry. It was submitted that the Corporate Debtor is liable to pay a sum of Rs.2,62,64,227/- towards the operation and maintenance of ZLD of equipments as listed above for treating their waste water. Thus, it was submitted that the Corporate Debtor is liable to pay the 'operational debt' of Rs.19,22,64,227/- with an interest of 18% p.a. towards the outstanding dues, compensation for loss of profits, unused inventory, cost of equipments and services at the stage of design and installation. However, it was submitted that the Corporate Debtor has failed to repay the said amount to the Operational Creditor.

6. The Learned Counsel for the Operational Creditor submitted that on 15.09.2019, the Corporate Debtor issued a cheque bearing No. 005011 drawn on Kotak Mahindra Bank for a sum of Rs.34,88,830/- towards the part liability for the outstanding

payment due, however under instructions from the Corporate Debtor vide e-mail dated 14.09.2019, the Operational Creditor has not deposited the said cheque.

7. The Learned Counsel for the Operational Creditor submitted that on 17.09.2019, the Corporate Debtor terminated the Agreement for Waste Water Treatment on 17.09.2019 by alleging false and untrue statements regarding the functioning of the treatment by exhibiting incorrect figures in their termination letter stating that the treatment capacity was an average of 706.77 m<sup>3</sup> which is untrue and false. It was submitted that under Clause 4 of the Agreement, it is clearly stipulated that the Corporate Debtor unconditionally guarantees to pay the Operational Creditor a minimum price for 800 m<sup>3</sup> per day though the actual fee is less than 800 m<sup>3</sup>. However, the Corporate Debtor has failed to make payments and has terminated the Agreement on 17.09.2019 raising frivolous reasons without substantiating the same with correct facts and circumstances.

8. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor has issued two letters to the Corporate Debtor. The first letter dated 21.09.2019 is a reply to the Termination Letter dated 17.09.2019, wherein the Operational Creditor has clearly shown the reasons for such termination by the



Corporate Debtor is baseless and has also shown the correct figures of the treatment capacity. The second letter issued by the Operational Creditor dated 21.09.2019 called upon the Corporate Debtor to pay the outstanding amount of Rs.19,22,64,227/- which is as follows;

<b>S. No.</b>	<b>DESCRIPTION</b>	<b>VALUE IN INR</b>
1	Equipment and Services provided thereunder	8,50,00,000
2	Outstanding payment towards invoices	2,62,64,227
3	Unused Inventory	10,00,000
4	Loss of Profit for the 5 years Lock - in - period	8,00,00,000
<b>TOTAL</b>		<b>19,22,64,227</b>

9. The Learned Counsel for the Operational Creditor submitted that vide letter dated 26.09.2019, the Corporate Debtor furnished a reply stating that the Agreement was void and unenforceable. However, it was submitted that the Corporate Debtor is using this as a mechanism to avoid paying the operational debt amount due to the Operational Creditor and has till date not been paid the same. Under the said circumstances, it was submitted that the Operational Creditor has issued a Demand Notice as mandated under Section 8 of IBC, 2016 to the Corporate Debtor on 30.09.2019, to which, the Corporate Debtor has replied on 10.10.2019.

10. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor continuously utilized the Operational

Creditors equipments, products and services for effluent treatment under Zero Liquid Discharge (ZLD) methods and is liable to pay a sum of Rs.19,22,64,227/-. Furthermore, it was submitted that the intention of the Corporate Debtor on admitting the validity of the Agreement dated 28.03.2019 is evident through its termination letter dated 17.09.2019 as the Corporate Debtor would have had no requirement to terminate a void contract as alleged by them. Hence, it was submitted that the Corporate Debtor has committed default in repay of the 'operational debt' to the Operational Creditor and sought for initiation of Corporate Insolvency Resolution Process as against the Corporate Debtor.

#### **REPLY OF CORPORATE DEBTOR**

11. The Learned Counsel for the Corporate Debtor *prima facie* contended that the Operational Creditor has not filed Affidavit as mandated under Section 9(3)(b) of IBC, 2016 which itself shows that there exists dispute between the parties and hence sought dismissal of the present Application on the said ground. It was submitted that the alleged Agreement shown as the basis of the Operational Creditor's claim is void, as the said Agreement was signed on 28.03.2019 on which date the Operational Creditor company was not even in existence and that the Company was incorporated only on 26.04.2019. Thus, it was submitted that the Operational Creditor



has made a deliberate falsehood and induced the Corporate Debtor to sign the impugned contract.

12. It was submitted by the Learned Counsel for the Corporate Debtor that the persons claiming to be from the office of the Operational Creditor company represented to the Corporate Debtor that they were experts in Effluent Treatment Plant (ETP) and that they had the skill to increase the existing capacity of the Corporate Debtor from 800 m<sup>3</sup>/day to 1200 m<sup>3</sup>/day. It was submitted that even assuming but not conceding that the said Agreement was signed on 28.03.2019 was valid, the Operational Creditor, knowing pretty well that they did not have the claimed expertise and had only given false promise to the Corporate Debtor to increase the capacity of the Effluent Treatment Plan to 1200 m<sup>3</sup>/day. It was further submitted that the Operational Creditor ought to have installed and operated the new equipment from 01.06.2019, but it was not complied.

13. The Learned Counsel for the Corporate Debtor submitted that the Operational Creditor did not perform any of the promises stated in the aforesaid Agreement dated 28.03.2019 and that after taking into record the gross failures on the part of the Operational Creditor and the subsequent meetings held on 27.06.2019 and 03.07.2019, the Corporate Debtor was constrained to send a letter dated



17.09.2019 terminating the 'Agreement' dated 28.03.2019 detailing the failures on the part of the Operational Creditor.

14. The Learned Counsel for the Corporate Debtor submitted that subsequent to the letter of termination dated 17.09.2019, the Operational Creditor had sent a letter dated 21.09.2019 claiming a total termination fee of Rs.19,12,64,227/- under the guise of presumed loss of profits for the five-year lock in period. It was submitted that the Operational Creditor did not perform any positive performance as promised / assured by them and further they neither had any bonafide documents nor produced any such records to this effect before this Tribunal.


15. It was submitted by the Learned Counsel for the Corporate Debtor that in response to the letter dated 21.09.2019, the Corporate Debtor has sent another response dated 26.09.2019 stating that due to the inactions of the Operational Creditor, the Corporate Debtor has suffered loss of production – profit and thus the total compensation due and payable by the Operational Creditor was a sum of Rs.28,68,00,000/-. Thus, it was submitted that the aforestated exchange of letters between the Corporate Debtor and the Operational Creditor would go on to show that there exists a dispute between the parties.



16. The Learned Counsel for the Corporate Debtor submitted that the Operational Creditor has complete knowledge of the fact that the Operational Creditor did not perform their obligations under the Agreement dated 28.03.2019 and further also aware that the Operational Creditor is required to pay a sum of Rs.28,68,00,000/-. Further, it was submitted that the Operational Creditor, despite having received a notice of dispute in relation to the sums claimed, has approached this Tribunal with the sole intention of harassing and threatening the Corporate Debtor. Under the said circumstances, the Learned Counsel for the Corporate Debtor prayed for dismissal of the present Application.

**REJOINDER OF THE OPERATIONAL CREDITOR**

17. The Operational Creditor has filed rejoinder to the reply filed by the Corporate Debtor and the Learned Counsel for the Operational Creditor submitted that the issue of dispute raised by the Corporate Debtor in the present Application is an afterthought. The Learned Counsel for the Operational Creditor submitted that the picture of dispute purportedly raised by the Corporate Debtor in relation to the quantum of amounts set out in the application cannot qualify itself to be a dispute as per the provisions of IBC, 2016.

 18. The Learned Counsel for the Operational Creditor submitted that it is false on the part of the Corporate Debtor to state that the

present Application has been filed to threaten and twist the arms of the Corporate Debtor and in the contrary it is the Corporate Debtor who has registered FIR against the Directors of the Operational Creditor subsequent to the present Application, in order to harass and force the Directors of the Operational Creditor to enter into a settlement.

19. The Learned Counsel for the Operational Creditor submitted that in any event, the liability of the Corporate Debtor is over a sum of Rs.1,00,000/- and it was submitted that where the operational debt exceed Rs.1 Lakh and the debt is due and payable and has not been paid, in such a case, in the absence of existence of a dispute between the parties, the present Application is required to be admitted.

20. The Learned Counsel for the Operational Creditor submitted that at the time of Agreement, the Operational Creditor was under the process of incorporation and the CIN mentioned in the agreement belongs to the parent company of the Operational Creditor. It was submitted that the CIN of the Operational Creditor Company is subsequently mentioned in the invoices raised by the said company and the same has been accepted by the Corporate Debtor without any demur. Under the said circumstances, sought for admission of the present Application.



## **FINDINGS OF THIS TRIBUNAL**

21. Heard both sides and perused the records including the documents placed on record. From the submissions made by the Learned Counsel for both the parties, the point which fell for consideration and adjudication before this Authority is;

- (i) *Whether at the time of entering into an Agreement with the Operational Creditor, the Corporate Debtor company was incorporated and if not, what is the validity of the said agreement.*
- (ii) *Whether the Corporate Debtor has raised any dispute as against the payment of the sum as claimed by the Operational Creditor in the present petition before issuance of the Demand Notice?*

22. It is an undisputed fact that the Waste Water Treatment of 1200 m<sup>3</sup>/day was entered into between the parties on 28.03.2019. Also, it emerges from the master data of the Operational Creditor that the Operational Creditor company was incorporated only on 26.04.2019. However, in the Agreement dated 28.03.2019, it is seen that the name of the M/s. Gradient WTT O&M Services Pvt. Ltd. is reflected. It is quite strange to note that as on the date of Agreement, no such Company with the name M/s. Gradient WTT O&M Services Pvt. Ltd. was in existence. Further, the CIN number mentioned as against the said Company pertains to M/s. Gradient India Private Limited and not that of the Operational Creditor herein.



Thus, at no stretch of imagination it can be said that the Operational Creditor herein has entered into an Agreement with the Corporate Debtor. Eventhough a defence was raised by the Learned Counsel for the Operational Creditor in their rejoinder that the CIN of the Operational Creditor Company is subsequently mentioned in the invoices raised by the said company and the same has been accepted by the Corporate Debtor without any demur, at no point of time, the Operational Creditor can rely upon the agreement dated 28.03.2019 since as on date of entering into the said agreement, the Operational Creditor company was not even in existence. Hence, the issue No. (i) is answered accordingly.

23. In so far as issue No. (ii) is concerned, upon perusal of the typed set of documents filed by the Corporate Debtor, it would reveal the that before the issuance of the Demand Notice, the Corporate Debtor has raised numerous disputes in relation to the supply made by the Operational Creditor and went on to the extent of terminating the agreement with the Operational Creditor by their letter dated 17.09.2019. In reply to the same, the Operational Creditor has also issued a letter to the Corporate Debtor 21.09.2019, to which the Corporate Debtor has again replied on 26.09.2019.

24. After series of exchange of letter of dispute between the parties, the Operational Creditor has decided to issue a Demand

Notice under Section 8 of IBC, 2016 to the Corporate Debtor on 30.09.2019. Thus, it is apparent on the face of record that there exists a serious dispute between the parties and the said dispute is not a hypothetical or illusory.

25. Further, the Hon'ble Supreme Court of India in the matter of M/s. '**Mobilox Innovations Pvt. Ltd.**' Vs. '**Kirusa Software Pvt. Ltd.**' (2018) 1 SCC 353 has clearly laid down that 'the test for determination for the Adjudicating Authority is to see at the stage of Admitting/rejecting the Application is whether there is a plausible contention which requires further investigation and that the 'Dispute' is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster'.

26. Thus, from the discussions made *supra* whether the Corporate Debtor was right in terminating the contract with the Operational Creditor and whether the Operational Creditor has rendered goods to the satisfaction of the Corporate Debtor is the question to be decided by a Civil Court after letting in sufficient evidence and also filing necessary documents, which is not possible in a summary proceedings before this Tribunal. Further, as per the decision of the Supreme Court in **Mobilox** (*supra*), this Tribunal need not be satisfied as to whether the said defence is likely to succeed or not

and also need not examine the merits of the dispute. The fact that dispute truly exists between the parties in fact is sufficient for this Tribunal to reject the Application, so long as the said defence is not spurious, hypothetical or illusory.

**IBA/112/2020**

27. This is an Application filed by the Corporate Debtor as against the Operational Creditor under Section 7 of IBC, 2016. This Application is a counterblast to IBA/1406/2019 filed by the Operational Creditor. In the present Application, the Corporate Debtor has claimed a sum of Rs.28,54,61,699/- as against the Operational Creditor due to the failure on the part of the Operational Creditor to meet the obligations agreed under the said Agreement and that the liability thereof aggregates to Rs.28,54,61,699/-.

28. Since in the preceding paragraphs, we have already held that there exists a dispute between the parties in respect of the impugned transactions and that whether the Operational Creditor is required to be paid or the Corporate Debtor is required to be paid, is the question to be decided by a Civil Court after letting in sufficient evidence and also filing necessary documents, which is not possible in a summary proceeding before this Tribunal.



29. In view of the above discussions, this Adjudicating Authority is of the view that the both the Applications filed under section 9 of the IBC, 2016 is required to be rejected and accordingly, the Applications viz. IBA/1406/2019 and IBA/112/2020 are hereby **dismissed**. No costs.

-Sd-  
**B. ANIL KUMAR**  
MEMBER (TECHNICAL)

-Sd-  
**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

*Raymond*