

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CP (IB)No.103/CTB/2019

**CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)**

In the Matter of:

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

M/s Vikas Scaffolding Systems, through its Sole Proprietor, Mrs. Seema Saini having its Registered Office at: Sector -74, Behrampur Road Opposite Kumar Automobiles Near Sandhar Components Gurgaon 122001, Haryana.

.... Operational Creditor/ Applicant

-Versus-

In the Matter of:

M/s Metro Builders Private Limited, having its Registered Office at: Metro River View Complex, Sunshine Field Rig Road, Cuttack, Orissa – 753 001 and bearing CIN U70101OR1993PTC003393.

.....Respondent/Corporate Debtor

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Counsels appeared for the Petitioner: -

1. Gursat Singh, Adv.

Counsels appeared for the Respondent: -

1. Aditya Narayan Dash

Date of pronouncement of Order: 02nd day of December, 2019.

ORDER

Per: Ms. Sucharitha R. Member (J)

1. This Petition is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (for brevity IBC) read with Rule, 6 of the IBC (Application to Adjudicating Authority) Rules, 2016. The petitioner **M/s Vikas Scaffolding Systems** is the Operational Creditor/ Applicant is a Registered Company under the provisions of Companies Act, 2013. The Application is filed against the Corporate Debtor **M/s Metro Builders Private Limited** to initiate Corporate Insolvency Resolution Process of **M/s Metro Builders Private Limited**.

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2. The Petitioner submits that the petitioner and the respondent entered into a Lease Agreement Dated 16.07.2014 for providing Shuttering/Scaffolding Material at the project as per the lease agreement. The Operational Creditor commenced to supply the materials and the goods to the Corporate Debtor. The Operational Creditors and the Corporate Debtor were maintaining a running account in respect of the goods supplied to the Corporate Debtor raised invoices on a monthly basis. Their invoices raised were during the period of 31.03.2016 to 31.03.2019. The total outstanding as per the invoices is a sum of Rs. 84,92,550/- (Eighty-Four Lakh Ninety-Two Thousand Five Hundred Fifty) the last part payment received from Corporate Debtor was dated 19.01.2019. Thereafter, the Corporate Debtor failed to repay the amount as per the invoices. The Operational Creditor issued demand notice under Section 8 of the IBC Code, dated 18.04.2019. However, the Corporate Debtor did not response to this Notice. The Operational Creditor has also filed Bank Statement in support of its stand.

3. The Corporate Debtor has filed reply stating that due to some difficult in the construction business, they are unable to settle the dues on time. Further, due to unnatural calamities like Fani Cyclone also affected the business of the Corporate Debtor. Corporate Debtor states that the lease deed was for the period of 18 months. Hence, the lease deed is not

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registered before the Sub Registered Office, lease agreement beyond the period of 11 months ought to be registered with the Sub Registered office, hence, the Operational Creditor cannot rely upon the terms and condition of the lease deed.

4. The invoices are between 31.03.2016 to 31.03.2019 the last payment was made on 19.01.2019. Hence, this application is well within the period of limitation. The Registered Office address of the respondent is within the State of Odisha and hence this Adjudicating Authority has jurisdiction.

5. It is admitted fact that Corporate Debtor has received materials under various invoices. It is also admitted fact that there is no pre-existing dispute between them. Further, the Corporate Debtor admits that a sum of Rs. 84,92,500/- (Eighty-Four Lakh Ninety-Two Thousand Five Hundred Fifty) is due and payable to Operational Creditor. The Corporate Debtor has also expressed its inability to settle the dues.

6. The applicant/Operational Creditor has not proposed the name of any IRP. In view of the same, this Adjudicating Authority appoints Mr. Sunil Kumar Keswani residence of House No. 31, Canal Linking Road, Ravi Nagar, Raipur, Chhattisgarh - 492 001 having Registration No.

IBBI/IPA-001/IP-P00819/2017-2018/11396 and E-mail Id:-

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sunil.keswani.co@gmail.com There is nothing on record to show that any disciplinary proceedings is pending against the IRP.

7. In view of the same, this application is **ADMITTED** by following Order.

ORDER

- (i) The application filed by the Operational Creditor under Section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **M/s. Metro Builders Private Limited** Moratorium Order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) Moratorium Order is passed for a public announcement as stated in Sec. 13 of the IBC, 2016. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public

announcement referred to in Clause (b) of sub-Section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vi) The order of moratorium shall commence from the date of admission 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33,

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the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- (vii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the Resolution Professional upon receipt of the copy of this order.
- (viii) **Mr. Sunil Kumar Keswani** is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency having Registered Address House No. 31, Canal Linking Road, Ravi Nagar, Raipur, Chhattisgarh ,492001 and **its Registration No. IBBI/IPA-001/IP-P00819/2017-2018/11396 and email Id:- sunil.keswani.co@gmail.com** as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- (ix) We direct the Operational Creditor to deposit a sum of Rs. One Lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations,

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2016. The needful shall be done within three days from the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

- (x) Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in their knowledge within a period of one week from the date of admission of the petition to the IRP, otherwise coercive steps to follow.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
- xii) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail. The copy of the order to be forwarded to ROC, Odisha.

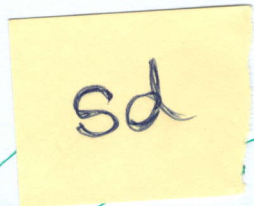
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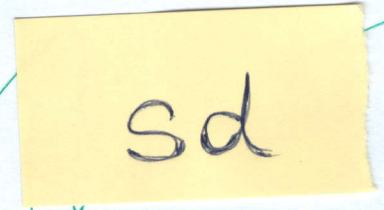
Interim Resolution Professional to file 1st Progress Report on
06.01.2020.

List the matter on **06.01.2020.**

Let the certified copy of the order be issued upon compliance
with requisite formalities.



Shri Satya Ranjan Prasad
Member (T)



Ms. Sucharitha R.
Member(J)

Signed on this, the 02nd day of December, 2019.

Kaushal Steno