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IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH - I, CHENNAI

CP/IB/17(CHE)/2023

(filed under Section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of M/s. Call Express Constructions Private Limited

M/s. The India Cements Limited

Coromandel Towers
No.93 Santhome High Road,
Karpagam Avenue,
Chennai 60028

... Petitioner/Operational Creditor

-vs-

M/s. Call Express Constructions Pvt. Ltd,

No.20, Poes Road,
First street, Teynampet,
Chennai - 600018

... Respondent / Corporate Debtor

Order Pronounced on 05th July, 2023

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SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Petitioner : Gautam S. Raman, Advocate
For Respondent : Pranav Charan, Advocate




ORDER
(Hearing conducted through VC)

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This application has been filed by the Operational Creditor viz. *The India Cements Ltd* against the Corporate Debtor viz. *Call Express Constructions Private Limited* under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC', 2016) seeking to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

2. Part – I of the Application provides that the Operational Creditor is a Limited Company. Part – II of the Application sets out the details of the Corporate Debtor stating that the Corporate Debtor was incorporated on 09.01.2006 and the Registered office address of the Corporate Debtor is situated at No.20, Poes Road, First street, Teynampet, Chennai – 600018.

3. Part – III of the Application, states that the Operational Creditor has suggested the name of one Ms. Subramaniam Aneetha as the 'Insolvency Resolution Professional'.

4. In Part – IV of the Application it is stated that the Corporate Debtor is engaged in the business of development and sale of the residential projects. The Operational Creditor herein had supplied ready mix concrete to the Corporate Debtor, for which, the invoices were raised for the period from 02.04.2017 to 02.08.2018. It is stated that the Corporate Debtor had maintained a running account with the Operational Creditor in respect of the same.

5. It is stated that the Corporate Debtor is liable to pay a sum of Rs.1,32,98,800/- as on 31.10.2019 which was also duly acknowledged and accepted by the Corporate Debtor vide its letter dated 19.11.2019. It is also stated that the Operational Creditor had sent a Demand Notice to the Corporate Debtor on 03.05.2022 as stipulated under Section 8 of IBC 2016 and in response to the same, the Corporate Debtor sent a reply to the Operational Creditor on 14.05.2022. The reply is extracted as below:





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Call Express Construction (India) Pvt. Ltd.

CIN : U45201TN2006PTC058525

14.05.2022

To,

The India Cements Limited,
Coromandel Towers,
93, Santhome High Road,
Karpagam Avenue,
RA Puram, Chennai – 600 028.

Kind Attn: Y. Adinarayana Rao,

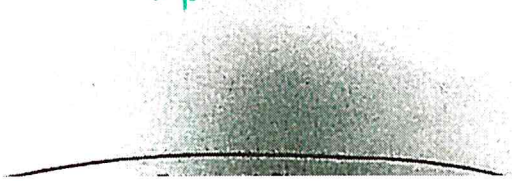
Dear Sir,

Sub: Interim Response to your letter dated 03.05.2022

We are in receipt of your letter dated 03.05.2022. We have noted the contents contained therein. We will send our detailed response to your said letter within 6 weeks. Kindly bare with us in the meantime.

Thanking you,
Yours sincerely,

For Call Express Construction (India) Private Limited



6. It is stated that the aforesaid reply to the Demand notice would manifest that the Corporate Debtor neither disputed nor denied the liability which is due and payable by it. The Operational Creditor has filed an affidavit as mandated under Section 9(3)(b) of IBC, 2016.

7. During the hearing held on 28.04.2023, it was observed by this Adjudicating Authority as under;

“Applicant is represented by the Ld. Counsel Mr. Gautham S Raman. Respondent is represented by the Ld. Counsel Mr. Pranav Charan through video conferencing mode.

Applicant has attached a balance confirmation certificate which is dated 19.11.2019. On perusal, it is seen that the balance confirmation is with respect to two different companies.

Total balance as indicated in balance confirmation certificate is Rs.1,32,98,800.00. One of the company is Trishul Concrete Products P. Ltd which has an outstanding of Rs.40,98,357.41. The other company, which is the Petitioner company has a balance of Rs. 92,00,442.59.

The Petitioner states that the limitation gets extended due to the balance confirmation certificate.

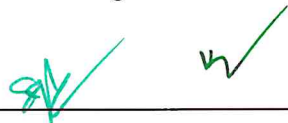
On being asked, Ld. Counsel for the Applicant states that two companies as stated in balance confirmation have since merged.

No order for merger of these two companies has been placed on record.

Ld. Counsel for the Applicant seeks and is granted seven days time to file an additional affidavit in this regard.

Ld. Counsel for the Applicant is permitted to file additional affidavit attaching the copy of the merger order of the two companies.

List the matter on **01.06.2023** for hearing.”



8. In compliance to the aforesaid order, the Operational Creditor filed an Additional Affidavit on 13.05.2023 stating that the Operational Creditor has entered into a Scheme of Amalgamation to acquire two entities viz. Trinetra Cements Limited and Trishul Concrete Products Limited. The Scheme of Amalgamation was sanctioned by this Tribunal vide order dated 13.04.2017. As per Clause 4.1. of the Scheme of Amalgamation, the entire business, all moveable and immovable properties, sundry debtors, loans and advances, cash and bank balances and deposits, etc., stand transferred to and vested with the Transferee Company. It is thus stated that the Operational Creditor herein is entitled to maintain the present Application as against the Corporate Debtor.

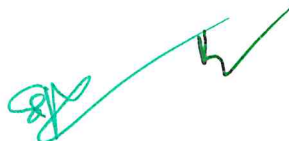
9. The Corporate Debtor has filed its reply on 10.04.2023 where in para 10 it is stated as under:

“10. It is submitted that the Operational Creditor had supplied ready mix concrete for the Corporate Debtor since commencement of the Project. Though the Corporate Debtor was regular in clearing the dues initially, for the reasons stated hereinabove it became difficult for the Corporate Debtor make any payments post September 2018. The Corporate Debtor have kept the Operational Creditor informed about the issue faced by them and have been requesting time for settling the due on the bona fide hope that the Corporate Debtor would be able to reason

out with the Investors and his set of home buyers and resolve the issue. The Corporate Debtor has been in business with the Operational Creditor for over 16 years and prior to this the Corporate Debtor has not defaulted payment even once. The Operational Creditor has been very accommodative and empathetic toward the issues faced by the Corporate Debtor and the genuine effort put forth by them to resolve the issue and pay the dues. Despite the best efforts of the Corporate Debtor, the Corporate Debtors has not been able to amicably settle the matter. However, the Corporate Creditor is taking all sincere efforts to settle the issue with the Operational Creditor.”

10. We have heard the Learned Counsel of both the parties and perused the documents placed on record. A perusal of the reply of the Corporate Debtor reveals that the Corporate Debtor has not denied its liability, however, has expressed its inability to settle the dues towards the Operational Creditor. Thus, the Operational Creditor has proved that there is an ‘operational debt’ and ‘default’ on the part of the Corporate Debtor.

11. Further, the sum which is in default is also more than Rs. 1 crore and the default in present case has occurred much prior to the advent of Covid-19 pandemic and as such the Corporate Debtor cannot take shelter under Section 10A of IBC 2016.



12. 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. We Order accordingly. The Operational Creditor has named the Insolvency Resolution Professional in Part – III of the Application and accordingly this Tribunal appoints **MS. SUBRAMANIAM ANEETHA** with *Registration No: IBBI/IPA-001/IP-P00376/2017-2018/10633 (email id: aneethaca@gmail.com)* who is having Authorization for Assignment till 03.05.2024 as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 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.



13. 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;

14. 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;

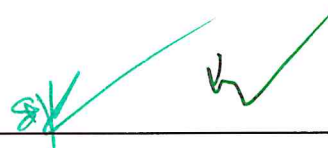
(b) a surety in a contract of guarantee to a corporate debtor.

15. 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.

16. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/- (Rupees Two Lakhs only)** to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



17. 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 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 be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named 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.



SAMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Raymond

Order pronounced under Rule 151 of NCLT Rules 2016, by Hon'ble Technical Member Sameer Kakar on behalf of the Bench Comprising of Sanjiv Jain, Member (Judicial) and Sameer Kakar, Member (Technical)



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