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

**CP/1107/IB/2018**

*(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 Sri Kumaran Builders Pvt Ltd*

**Muthuiah Thevar Rajapandian**

RP of Unique Roof Private Limited  
No.3/158, Bharathiyar Street,  
Indian Bank Colony  
Narayanapuram  
Madurai, Tamil Nadu – 625 014

... Operational Creditor

**-Vs-**

**Srikumaran Builders Private Limited,**

(Formerly Teemage Builders Private Limited)  
Represented by its Directors  
S.F.No.6/12, College Road,  
First Cross Street,  
Tirupur -641 602

... Corporate Debtor

**Order Pronounced on 17<sup>th</sup> December 2021**

CORAM:

**SUCHARITHA R, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor : Muthiah Thevar Rajapandian, RP*

*For Corporate Debtor : B. SarathBabu, Advocate*

**ORDER**

**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

Under adjudication is an Application filed by **Muthuiah Thevar**

**Rajapandian RP of Unique Roof Private Limited** (hereinafter referred to

as “**Operational Creditor**”) under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short, ‘I&B Code, 2016) r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Sri Kumaran Builders Private Limited** (hereinafter referred to as “**Corporate Debtor**”) to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

2. It is relevant to point out that this Tribunal in IBA/316/2019 vide Order dated 04.10.2019 ordered initiation of CIRP against the Unique Roof India Private Limited, the Applicant/Operational Creditor in the Present Application and Mr. Muthuiah Thevar Rajapandian was appointed as the IRP in IBA/316/2019. As far as the present Application is concerned, on 10.12.2019, Mr. Muthiah Thevar Rajapandian filed an amendment application for amending the cause title and this Tribunal ordered the amendment application vide order dated 20.01.2020.

3. From Part-I of the Application, it is seen that the Operational Creditor is a Private Limited Company. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 21.11.2007 bearing CIN :U45202TZ2007PTC014038, under the Companies Act, 1956 and the Registered Office Address of the Corporate Debtor as per the Application is stated to be situated at No.6/12, College Road, 1<sup>st</sup> Cross Street, Tirupur – 641 602 Tamil Nadu. From Part-III of the Application, it is seen that the Operational

Creditor has not proposed that the name of the IRP and left it to discretion of this Tribunal to appoint the same.

4. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of. Rs.52,49,850/ together with interest at 18% principal amount from the due date to till 29.05.2018 (Demand Notice date) which is due and payable by the Corporate Debtor .Part-V of the Application discloses the details of the documents filed by the Operational Creditor, in order to prove its 'operational debt' and the list of documents which filed along with the Application are as follows;

- a. Copy of Demand Notice dated 29.05.2018 issued by the Operational Creditor to the Corporate Debtor.
- b. Proof of service of Demand Notice of the Corporate Debtor
- c. Eight Purchase Orders
- d. Five Invoices
- e. Affidavit in support of the Application in accordance with the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules 2016
- f. Proof that specified application fee has been paid

5. Learned Counsel for the Operational Creditor submitted that the Operational Creditor had supplied Hallow core Bed, Structures and Design activities to the Corporate Debtor based on Eight Purchase Orders dated Teem/Gur/PO/009 dated 04.05.16, Teem/Gur/PO/010 dated 05/05/16, Teem/Gur/PO/019 dated 21.05.16,

1696 dated 03.11.16, 35 dated 15.04.17, 93 dated 10.05.17, 141 dated 24.05.17 and 878 dated 12.07.17 respectively vide 5 invoices as mentioned below:

- a) Invoice No.686 dated 25.08.16
- b) Invoice No. 730 dated 03.09.16
- c) Invoice No.126 dated 28.04.17
- d) Invoice No. 434 dated 26.06.17
- e) Invoice No.539 dated 11.07.17

The above mentioned invoices become immediately payable once the invoice is raised.

6. Learned Counsel for the Operational Creditor further submitted that the Corporate Debtor had only made part payments and even after repeated reminders the Corporate Debtor was not forthcoming with the payment of the amounts due to the Operational Creditor.

7. Learned Counsel for the Operational Creditor further submitted that the default of the Corporate Debtor has affected the financial credentials of the Operational Creditor and also resulted in business downslide causing serious monetary losses.

8. Under such circumstances, it was submitted that the Operational Creditor has issued a notice of Demand as stipulated under Section 8 of the IBC, 2016 to the Corporate Debtor on 29.05.2018 which was

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received by the Corporate Debtor on 30.05.2018. From the Affidavit filed under Section 9(3)(b) 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 07.08.2018 for initiation of CIRP as against the Corporate Debtor.

9. It was averred in the Application that the amount fell due on various dates between 25.08.2016 to 11.07.2017 based on the invoices were raised by the Operational Creditor.

10. The Learned Counsel for the Corporate Debtor filed a Counter Affidavit and denied the allegations made by the Operational Creditor in the application. Further it was submitted that as per the Purchase Order the Applicant has to supply materials within a stipulated time and if they failed to supply materials and erect shed as per purchase order the Respondent is entitled to deduct 5% of the entire amount. Upon the finalization of the terms of for each project, Purchase Order is raised by the Respondent to the Applicant specifying the requirements and timelines for supply of the materials for locations outside the state of Tamil Nadu the Applicant raise bills along with each batch of completed materials for taxation Purposes

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and final settlement is done after successful delivery of materials and successful erection as per specifications and timelines mentioned by corporate Debtor in the Purchase Order.

11. The Learned Counsel for the Corporate Debtor alleged that the applicant did not complete the project within stipulated time and materials were not supplied in time as per PO and as per letter sent by the Applicant dated 07.06.2017 and without completion of; project the applicant is no entitled for any amount as claimed in the Application and the documents filed by the Applicant would show that completion Certificate was not issued by the Respondent and it was necessary for final settlement. Thus the Corporate Debtor herein prayed to dismiss the present Application filed by the Operational Creditor.

12. The Learned Counsel for the Operational Creditor filed a Rejoinder and denied all the allegations made by the Corporate Debtor in the Counter wherein the invoices and Ledger accounts of the Corporate Debtor which indicates clearly the amount of debt on part of the Corporate Debtor.

13. The Operational Creditor further submitted that the Corporate Debtor had issued the Work Completion Certificate with respect to Gurgaon and Haryana Project and for the other projects work completion certificate is not applicable. The letter which was sent by

the Corporate Debtor does not contain any letter head, company seal, and date of the letter and even there is no Signature and it should not be taken as evidence.

14. It is pertinent to point out that this Tribunal vide order dated 18.09.2020 and the extract of the order is reproduced hereunder:

*Learned IRP for the Petitioner Mr. Muthuiah Thevar Rajapandian as well as Learned Counsel for the Corporate Debtor Mr.E.K.Kumaresan, Advocate are present through video Conferencing mode.*

*It is represented by IRP that the accounts as between the Petitioner Company and the Corporate Debtor stands reconciled on 21.02.2020 and subsequent to the reconciliation, the Corporate Debtor was required to revert to the IRP. However, even though more than six months have lapsed, the Corporate Debtor has not turned up.*

*Learned Counsel for the Corporate Debtor has represented finally an opportunity be given so that the parties who can endeavour to settle the matter and report or to proceed with the matter before this Tribunal on the next date of hearing.*

*In view of the said representaion, let the parties either report settlement or to proceed with the matter on the next date of heraing as it is seen form the records, pleadings are complete in this matter. Post this matter on 07.10.2020.*

After the said order, no authenticated final report was ever filed before this Tribunal, by the persons who have carried out such reconciliation by any of the parties.



15. Heard submissions made by the Learned Counsel for the Operational Creditor and perused the documents placed on record. The Applicant submitted that Corporate Debtor is liable to pay a sum of Rs. 52,49,850/-. From the list of the invoices attached along with the Application which clearly shows that there is an existence of debt of the amount of Rs. 42,53,485 on the part of the Corporate Debtor. Also from the Ledger statement filed, it is seen that certain transactions were made during the year 2016 to 2018 which clearly indicates the existence of debt.

16. Further it is seen from the records, as reflecting in the books of the Corporate Debtor a sum of Rs. 42, 53,485.80 is due and payable by the Corporate Debtor to the Operational Creditor. Further, the Learned Counsel for the Corporate Debtor is also failed to bring to the notice of this Adjudicating Authority of any dispute in relation to the services being rendered by the Operational Creditor and the same being raised prior to the issuance of Demand Notice.

17. Further, the said default is also in excess of a sum of Rs.1 Lakh, which was prevalent at the time of filing of the Application i.e. on 07.08.2018. 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 also cannot seek shelter 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.

18. Thus the Operational Creditor has proved the existence of an 'Operational Debt' and its default on the part of the Corporate Debtor and in the absence of any objection being raised by the Corporate Debtor, we are of the Considered view that the Corporate Debtor has committed 'default' in the repayment of the 'operational debt' to the Operational Creditor and in the said circumstances we are constrained to initiate the CIRP in relation to Corporate Debtor.

19. 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. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between July 2021 – December 2021 appoints **Mr.R.THAMODHARAN**, with Reg. No. IBB/IPA-001/IP-P-02292/2021-2022/13592 (email id:- thamodharansubi@gmail.com) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending

against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. 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 superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

20. 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;

21. 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.

22. 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.

23. 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.

24. 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.

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**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-

**R. SUCHARITHA**  
MEMBER (JUDICIAL)

*Sriram Ananth V*