

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

IBA/1281/2019

*(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 **M/s. GEES EPC Services Pvt. Ltd.**

M/s. Hariprasad Associates

A Partnership firm, having its Office at
G.K.S. Annex No.20, Pycrofts Garden Road,
Chennai – 600 006

... Operational Creditor

-Vs-

M/s. GEES EPC Services Private Limited

Reg. Off:-
Office Space No.95, 10th Cross Street,
Senthil Nagar, Kolathur,
Chennai – 600 099

...Corporate Debtor

Order Pronounced on 25th February 2021

CORAM :

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

For Operational Creditor : P M Vatsala, Advocate

For Corporate Debtor : None Appeared

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

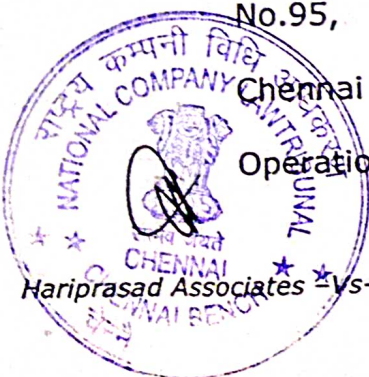
1. Under Adjudication is an Application that has been filed
by **M/s. Hariprasad Associates** (hereinafter referred to as



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'Operational Creditor') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/c. GEES EPC Services Private 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 sets out about the details of the Operational Creditor from which, it is evident that the Operational Creditor is a Partnership firm. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U45400TN2014PTC096842 which was incorporated on 07.08.2014 and that its Authorized Share capital is Rs.1,00,000/- and its paid up capital is Rs.1,00,000/-. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at Office Space No.95, 10th Cross Street, Serithil Nagar, Kolathur, Chennai – 600 099. Part-III of the Application shows that the Operational Creditor has not proposed any "Interim Resolution



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Professional* (IRP) and left it to the discretion of this Tribunal to appoint the IRP,

3. From Part-IV of the Application, it is seen that a sum of Rs.6,93,205/- is being claimed by the Operational Creditor as Operational Debt, including interest. The date of Default is mentioned as 31.12.2016 and the present Application is filed on 01.10.2019,

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor and the Corporate Debtor had executed Agreements for Hire Service of Scaffoldings from the Operational Creditor on 08.12.2016 and 23.12.2016 and based upon the said Agreement, the Operational Creditor has supplied scaffoldings to the Operational Creditor and raised a total of 12 Nos. of Invoices for the period between 31.12.2016 to 27.06.2017. It was further submitted by the Learned Counsel for the Operational Creditor that a running account was maintained by them in relation to the transactions carried out with the Corporate Debtor and the last payment was made by the Corporate Debtor on 13.04.2017.



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5. It was submitted by the Learned Counsel for the Operational Creditor that the total sum claimed against the 12 Invoices raised by the Operational Creditor, amounts to Rs.16,14,870/- against which the Corporate Debtor has paid a sum of Rs.11,46,488/- and as such a sum of Rs.4,68,382/- is still due and payable by the Corporate Debtor towards the scaffolding components supplied by the Operational Creditor. Further, the interest component for the period from 01.05.2017 to 30.04.2019 comes to the tune of Rs.2,24,823/- and in all a total sum of Rs.6,93,205/- has become due and payable by the Corporate Debtor to the Operational Creditor and as such the Corporate Debtor has committed default in payment of such sum to the Operational Creditor.

6. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor has caused a Demand Notice as mandated under Section 8 of IBC, 2016 to the Corporate Debtor on 22.05.2019 and the same was delivered on the Corporate Debtor on 25.05.2019 and the Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 to this effect and has stated that the Corporate Debtor has not raised any dispute nor paid the debt amount to the Corporate Debtor within ten days from the date of receipt of the Demand Notice. Under such circumstances, the Learned

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Counsel for the Operational Creditor submitted that the debt and default on the part of the Corporate Debtor is proved and hence sought for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

7. In relation to the Corporate Debtor, it is seen from the record of proceedings that this Tribunal vide order dated 03.02.2020 wherein one counsel had represented on behalf of the Corporate Debtor and sought for some time to file reply and this Tribunal granted two weeks time to file reply. Thereafter, when the matter came up for hearing on 07.01.2021, there was no representation on behalf of the Corporate Debtor and it was found that the Corporate Debtor has not filed its reply and hence the right to file reply by the Corporate Debtor was closed by this Tribunal and the matter was posted for final arguments on 03.02.2021. Even on the said date of hearing, there was no representation on behalf of the Corporate Debtor and this Tribunal, upon hearing the submissions made by the Learned Counsel for the Operational Creditor has reserved the matter for order. Thus, it is seen that the Corporate Debtor is not willing to cause appearance before this Tribunal and to proceed with the matter, for reasons only best known to it.



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8. Heard the submissions made by the Learned Counsel for the Operational Creditor and perused the file including the pleadings placed on record. From the Invoices, filed by the Operational Creditor, it is seen that the same has been raised for the period from 31.12.2016 to 27.06.2017 and also it is seen that the Corporate Debtor has made its last payment on 13.04.2017 and that the present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 01.10.2019 and as such it falls well within the period of limitation. It is to be seen 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. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the instant petition being filed prior to the said date, as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. Under the said circumstances, in the absence of any opposition to the present Application by the



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Corporate Debtor and also in view of the fact that the debt and default on the part of the Corporate Debtor is proved by the Operational Creditor, 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.

9. 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 January - June 2021 appoints **Mr. Solomon Rajesh Jeyasingh** with Registration No. *IBBI/IPA-002/IP-N00802/2019-2020/12509* (email id:- *ip.solomonrajeshj@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. 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



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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;

10. 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.



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(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.

11. 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.

12. 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



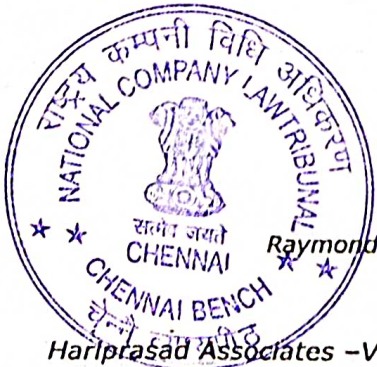
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Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

13. 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)



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-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

h. m. s. f. 4/3/2011
DEPUTY REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH
CORPORATE BHAVAN, 3rd FLOOR,
29, RAJAJI SALAI, CHENNAI-600001

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