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IN THE NATIONAL COMPANY LAW TRIBUNAL BENGALURU BENCH

C.P. (IB) No. 137/BB/2018
U/s 9 of IBC, 2016
R/w Rule 6 of I&B(AAA) Rules, 2016

In the matter of:

Mr. Joji Thomas
Pamapackal (H), Maryland P.O
Kottayam
Kerala - 686 652

- Petitioner /Operational Creditor

Versus

M/s.SGP Software Solutions Private Limited
No.0277, 2nd Main Road, 18th
Cross Sankey Road, Malleshwaram
Bangalore - 560 003.

- Respondent/Corporate Debtor

Date of Order: 24th September, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsel Present:

For the Petitioner : Shri Hari Babu Thota
For the Respondent : Shri Mahesh H.G

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P. (IB) No.137/BB/2018 is filed by Mr. Joji Thomas (Petitioner/Operational Creditor) under Section 9 of the IBC, 2016, R/w Rule 6 of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.SGP Software Solutions Pvt. Ltd. ('Respondent/Corporate Debtor'), on the ground that the Corporate Debtor committed default for an amount of Rs.23,89,663/- (Salary + Leave Encashment + Gratuity- Travel Advance).
2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:



- 1) Mr.Joji Thomas (Petitioner herein) is an erstwhile employee of Corporate Debtor. Registered address at Pamapackal (H), Maryland P.O. Kottayam Dist., Kerala 686 652. The Petitioner has filed the instant Company Petition on 25.06.2019. The Petitioner, offered the post of "Vice President-Product Management" w.e.f 2nd June, 2014 and total emolument of Rs.1,40,166.67 and he was worked in the Corporate Debtor office from. 2nd June, 2014 to 13th January, 2017. The Petitioner has resigned and his resignation was accepted and relieved by the Corporate Debtor vide letter dated 13th January, 2017.
- 2) M/s. SGP Software Solutions Private Limited (Respondent herein) was incorporated on 26.11.2013. Registered office at No.0277, 2nd Main Road, 18th Cross, Sankey Road, Malleshwaram Bangalore - 560 003. The Authorised Capital Rs. 5,01,00,000/- divided into equity shares of 50,10,000 Rs.10/- each. The paid up capital of Rs.4,25,00,000/- divided into 42,50,000 share of Rs.10/- each.
- 3) When the Corporate Debtor failed to pay the salary from February 2016 to January 2017 and he has issued a Demand Notice dated 1st May, 2018 to the Corporate debtor by demanding the Respondent to pay the outstanding amount of Rs.23,89,663/- (Salary + Leave Encashment + Gratuity - Travel Advance).
3. Heard Shri Hari Babu Thota, learned counsel for Petitioner and Shri Mahesh H.G, learned Counsel for Respondent. We have carefully perused the pleadings of the parties and extant provisions of the Code and the law on the issue.
4. Shri Hari Babu Thota, learned Counsel for Feticioner, while reiterating various averments made in the Company Petition and pointing out contents of various documents filed in support of the case, has further submitted that the instant Company Petition is filed in accordance with law, and debt and default in question is not in dispute. And he has also suggested a qualified Resolution Professional, namely, M.Thimmarayaswamy, with Regn.No. **IBBI/IPA-003/IP-N00091/2017-18/10891**, who has also filed



written Consent in Form-2 dated 03.04.2019, by inter declaring that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor and that there are no disciplinary proceedings pending against him with the Board or ICSI. Therefore, he urged the Adjudicating Authority to admit the case by initiating CIRP as prayed for.

5. The Respondent has filed a memo dated 19.09.2019, and also a Letter dated 10.09.2019, which reads as under:

"It is humbly submitted that the Operational Creditor has initiated above proceedings on the ground that the Corporate Debtor is liable to make a payment of Rs.23,89,663/- on various heads. The Corporate Debtor has informed the undertaking counsel that he is not in a position to repay the aforesaid amount and consequently the debt.

No Objection for initiation of CIRP of SGP Software Private Limited."

Therefore, the Respondent has no objection to initiate CIRP against the Respondent Company i.e SGP Software Private Limited mentioned in the vide letter dated 10.09.2019.

6. The above facts and circumstances supported by material documents in support of the Petition, has prima facie established that the Corporate Debtor is unable to pay the outstanding amount in question, and thus committed debt and default in question. The Petition is filed in accordance with law, also issued statutory Demand notice dated 1st May, 2018 by calling upon the Respondent to pay the outstanding amount in question. However, the Respondent has not given any reply to the said Demand notice issued by the Petitioner. Therefore, the instant Company Petition is a fit case to initiate CIRP, imposing moratorium etc.
7. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, under Section 9(5)(i) and other extant provisions of the Code, C.P. (IB) No.137/BB/2018 is hereby admitted with the following consequential directions:



- (1) We hereby appointed M.Thimmarayaswamy, with Regn.No. **IBBI/IPA-003/IP-N00091/2017-18/10891**, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely M/s.SGP Software Solutions Private Limited to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.
- (2) The following moratorium is declared prohibiting all of the following, namely:
- 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;
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
 - e. 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.
 - f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.



- g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file his progress reports to the Adjudicating Authority from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on 24th October, 2019.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

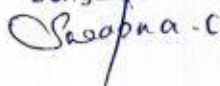

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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OF THE ORIGINAL


Deputy Registrar
National Company Law Tribunal
Bengaluru Bench


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