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

IBA/606/2020

(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 ***VRMX Concrete Private Limited***

SALEM MINES & AGGREGATES
Represented by its partner P.Subramani
No.9, Nagarathinam Nagar Extension,
Thiruneermalai Road, West Tambaram,
Chennai- 600 045

...Operational Creditor

-Vs-

VRMX CONCRETE PRIVATE LIMITED
No.1 Mount View Building,
2nd Floor, Old No 110, New No 111-A
Mount Road, Gunidy
Chennai- 600 032

...Corporate Debtor

Order Pronounced on ***21st March 2022***

PRESENT:

For Operational Creditor : Ms. Rathi Devi, Advocate
For Corporate Debtor : Mr. Thirumavalavan, Advocate

CORAM :

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

ORDER

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

Under Adjudication is IBA/606/2020 that has been filed by **SALEM MINES & AGGREGATES** (hereinafter referred to as

'Operational Creditor') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **VRMX CONCRETE PRIVATE LIMITED** (hereinafter referred to as **'Corporate Debtor'**) seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part- I of the Application states the particulars of the Applicant from which it is evident that the Operational Creditor is a partnership firm with PAN No: ACOFS2929L and the address of the Operational Creditor is stated to be No.9, Nagarathinam Nagar Extension, Thiruneermalai Road, West Tambaram, Chennai- 600 045.

3. Part- II of the Application states the particulars of the Corporate Debtor from which it is evident that the Respondent/ Corporate Debtor is a Private Limited Company incorporated on 19.07.2018 under the Companies Act, 2013, with CIN: U45500TN2018PTC123789. The Registered office of the Corporate Debtor as per the Application is stated to be Old No.110, New No.111-A, 2nd Floor, Mount View Building, Mount Road, Guindy,

Chennai-600032. As per part- III of the Application, the Applicant has not proposed the name of the IRP (Interim Resolution Professional) and has left it to this tribunal to appoint the same.

4. Part IV of the application signifies the amount of debt to the tune of Rs.2,67,34,353/-(Rupees Two Crore Sixty Seven Thousand Thirty Four Lakhs Three Hundred and Fifty Three) as the outstanding dues that is payable by the Corporate Debtor as per the Debt Confirmation Letter dated 01.06.2020. Further, the date of default is not stated by the Applicant Operational Creditor in Part IV of the Application.

5. The Affidavit verifying the Application is placed as 'Annexure- 3' of the Application typeset and one Mr. P. Subramani, Partner of the Operational Creditor, has been duly authorized by the Resolution dated 20.09.2020 placed at 'page 2' of the Application typeset to verify the said application on behalf of the Operational Creditor.

6. The Applicant herein has attached the following list of invoices in order to prove the existence of operational debt along with the Application and the same is enumerated hereunder:-

i. Invoice No. 579 dated 30.09.2019
ii. Invoice No. 583 dated 30.09.2020

iii. Invoice No. 589 dated 30.09.2019
iv. Invoice No. 613 dated 15.10.2019
v. Invoice No. 685 dated 31.10.2020
vi. Invoice No. 782 dated 30.11.2019
vii. Invoice No. 889 dated 31.12.2019
viii. Invoice No. 967 dated 31.01.2020
ix. Invoice No. 968 dated 31.01.2020
x. Invoice No. 1050 dated 29.02.2020
xi. Invoice No. 1142 dated 31.03.2020
xii. Letter of Confirmation of Accounts dated 01.04.2020
xiii. Letter of Confirmation of Accounts dated 01.06.2020
xiv. Demand Notice in Form- III 25.09.2020

7. The Statutory Demand Notice, Form 3 as mandated under Section 8 of the IBC, 2016 was sent by the Operational Creditor to the Corporate Debtor on 25.09.2020, demanding the outstanding dues amounting to Rs.2,67,34,353/- and the Corporate Debtor had replied to the same vide reply notice dated 30.09.2020 stating that the balance confirmation letter dated 01.06.2020 issued by the erstwhile Corporate Debtor and that they are willing to renegotiate based on the Books of Accounts. Further, it was stated in the Reply notice that the Balance confirmation letter dated 01.06.2020 was issued based on the coercion of the erstwhile directors. s

8. The Ld. Counsel for the Operational Creditor submitted that, this is a clear case of admission of debt based on the Balance Confirmation Letter issued by the Corporate Debtor dated 01.06.2020 and it was submitted that the Corporate Debtor had

clearly admitted the debt and Respondent's stand that the Balance confirmation letter dated 01.06.2020 was issued based on the coercion of the erstwhile directors holds no good in the eyes of law.

9. The Respondents/Corporate Debtor have filed their Counter statement in this matter. The Ld. Counsel for the Corporate Debtor submitted that, the Respondent was hugely affected by the problems caused by the erstwhile directors and there is a huge outstanding in the market of Rs.7,04,09,447/- and they are resolving to all possible measures to collect the same and repay the pending dues liable to be paid by them.

10. It is clearly averred in Para (e) the counter statement filed by the Corporate Debtor that they are interested in settling the dues with the Operational Creditor amounting to Rs. 1,77,56,632/- in 18 instalments and further, they have stated that as per the Book of Accounts Rs.2,65,82,397/- is the outstanding dues payable to the Operational Creditor and there is a difference of Rs. 1,52,056/- as the Operational Creditor had claimed Rs.2,67,34,353/- as per the Demand Notice dated 25.09.2020.

11. The Operational Creditor has filed a rejoinder and it was submitted that the Operational Creditor is not agreeing with the

repayment schedule of the Corporate Debtor to repay the outstanding in 18 months, as they are an MSME and has to survive on its own.

12. The Ld. Counsel for the Operational Creditor submitted that the internal management disputes of the Corporate Debtor are not the subject matter of this Application and the Corporate Debtor has admitted to the liability in the Counter statement filed and thus are liable to pay the 'debt' outstanding as claimed in Part –IV of the Application.

13. Heard the submissions and perused the records placed before us. This Application under Section 9 of the IBC, 2016 has been filed by the Applicant/ Operational Creditor herein on 29.10.2020. The list of invoices due and payable by the Corporate Debtor as listed in the Application is enumerated hereunder:-

S. No	Invoice	Invoice Date	Amount (Rs.)
1.	Invoice No. 579	30.09.2019	18,85,758.00
2.	Invoice No. 583	30.09.2020	21,063.00
3.	Invoice No. 589	30.09.2019	31,42,667.00
4.	Invoice No. 613	15.10.2019	14,29,598.00
5.	Invoice No. 685	31.10.2020	24,64,430.93
6.	Invoice No. 782	30.11.2019	30,68,208.23
7.	Invoice No. 889	31.12.2019	49,44,008.04
8.	Invoice No. 967	31.01.2020	50,01,615.00
9.	Invoice No. 968	31.01.2020	10,02,267.00
10.	Invoice No. 1050	29.02.2020	54,89,038.00
11.	Invoice No. 1142	31.03.2020	26,47,525.00
	Total		**3,10,96,178.00**

14. From the list of invoices, it can be seen that 'Invoice No. 583' dated 30.09.2020, 'Invoice No. 685' dated 31.10.2020 and 'Invoice No. 1142' dated 31.03.2020 falls within the purview of Section 10A of the IBC, 2016 and the same is excluded from the total debt due and payable by the Corporate Debtor.

15. Succinctly put, even after the exclusion of the invoices mentioned *'supra'*, the total debt amount outstanding falls very well within the pecuniary limit of more than Rs.1 Crore as fixed by the Central Government in *'Notification S.O 1205(E) dated 24.3.2020'*. Therefore, this Tribunal has the pecuniary jurisdiction to adjudicate over this present Application.

16. Further, from the Letter of Confirmation of Accounts dated 01.06.2020 issued by the Corporate Debtor and the Counter Statement dated 16.09.2021 in which the Corporate Debtor had admitted to the debt amount and have also proposed a Schedule of repayment of 18 months, itself confirms *prima facie* the existence of a 'Operational debt' and its 'default' on the part of the Corporate Debtor.

17. The Corporate Debtor in this present Application had issued the Letter of Confirmation of Accounts dated 01.06.2020 and in this

regard the order of the Hon'ble NCLAT becomes applicable were it is categorically stated that a person acknowledging his liability vide a balance confirmation letter should be conscious of his liability and the same should be honoured by the said person. The Hon'ble NCLAT in the matter of **Lakshmi Narayan Sharma -Vs- PNB and Others** has held as follows:-

> 32. To be noted, that Section 18 of the Limitation Act, 1963 does not enjoin that an 'acknowledgement' has to be in any particular form or to be express. It must be borne in mind that an 'acknowledgement' is to be examined resting upon the attendant circumstances by an admission that the writer owes a 'Debt'. No wonder, an 'Unconditional Acknowledgement' implies a promise to pay because that is the natural inference if there is no other contrary material.
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> **33. Further, to treat the writing signed by an individual as an 'Acknowledgement', the person acknowledging must be conscious of his liability and the commitment ought to be made in respect of that liability.**

18. Further, it can be seen that, the Corporate Debtor on 06.09.2020 had released a part payment of Rs. 24,64,430/- towards the amount due and payable and the Operational Creditor in their submissions have duly stated that the same had been adjusted towards the outstanding dues before issuance of the Statutory Demand Notice under Form-III dated 25.09.2020. 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, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

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. 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;

20. 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.
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> (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
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> (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;
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> (b) a surety in a contract of guarantee to a corporate debtor.

21. 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:
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> 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.

22. 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 Jan 2022 – June 2022 appoints **Ms. Ganesan Geetha** with Reg. No. ***IBBI/IPA-001/IP-P00857/2017-2018/11439 (email id:- kumarsgeetha@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.

23. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

24. 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 IBC, 2016 and file his report within 30 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.

25. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

26. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

27. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-***(Rupees Two Lakh 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.

28. 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.

29. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

30. Post this IBA/606/2020 for hearing on **23.05.2022.**

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Vinita. K