IBBI

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH-II, CHENNAI

IBA/304/2020

(Filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s.Star Trace Private Limited***

Mr. Harsan Kumar,
Director
of M/s. Umiya Development Centre
India Private Limited,
1st Floor, No. 19, Narasingapuram Street,
Mount Road, Chennai – 600002

..... *Operational Creditor*

-Vs-

M/s. Star Trace Private Limited
New No.5, Old No.7,
Jeevanandham Street,
Redhills,
Chennai – 600002

..... *Corporate Debtor*

Order Pronounced on 9th August 2021

CORAM

R. SUCHARITHA, MEMBER (JUDICIAL)
B. ANIL KUMAR, MEMBER (TECHNICAL)

For Operational Creditor	:	*Jayesh B. Dolia, Advocate*
For Corporate Debtor	:	*R. Uma Shankar, Advocate*

ORDER

Per: **R. SUCHARITHA, MEMBER (JUDICIAL)**

The present application is moved by **M/s. Umiya Development Centre Private Limited** (hereinafter referred to as

"Operational Creditor") under Section 9 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency and Resolution Process against **M/s. Star Trace Private Limited** (hereinafter referred to as *"Corporate Debtor"*).

2. 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 also a Private Limited Company incorporated on 03.09.1998 and the Registered Office of the Corporate Debtor as per the application is stated to be situated at New No.5, Old No.7, Jeevanandham Street, Redhills, Chennai – 600052. As per Part-III of the application, it is seen that the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the same. However, subsequently, the Operational Creditor has filed a memo and proposed the name of one Mr. K. Ganesan, to be appointed as the Interim Resolution Professional, in relation to the Corporate Debtor.

3. From Part-IV of the application, it is seen that the Operational Creditor has claimed a sum of Rs.7,74,25,437/- (Rupees Seven Crore Seventy Four Lakh Twenty Five Thousand Four Hundred and Thirty Seven Only) as on 20.02.2019 which is due and payable by the Corporate Debtor with commercial rate of interest at 18% per

annum. It is stated in Part-IV of the application that the said debt has become due and payable as on 03.02.2018.

4. Part-V of the application discloses the details of the documents attached by the Operational Creditor in order to prove the 'Operational Debt' and the documents contains the Demand Notice, the Invoices and the Ledger statement and also the e-mail confirmation on the part of the Corporate Debtor.

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is in the business of supply of MS Plates and during the course of its business they have supplied MS Plates to the Corporate Debtor on various dates and raised invoices for the period between August 2017 to February 2018. It was submitted that the total value of the goods purchased by the Corporate Debtor from the Operational Creditor aggregates to a value of Rs.18,13,70,322.66/-, for which, the Corporate Debtor has paid a sum of Rs.10,37,46,928/-. Further, it was submitted that despite repeated requests made by the Operational Creditor, the Corporate Debtor has failed to pay the balance amount which was due and payable to the Operational Creditor.

6. Pursuant thereto, it is seen the Operational Creditor has raised Demand Notice in Form III as mandated under Section 8 of the IBC,

2016 on 27.12.2019, which was received by the Corporate Debtor on 28.12.2019, from which, it is seen that the Corporate Debtor has replied on 06.01.2020. The reply of the Corporate Debtor to the demand notice is extracted hereunder:

> *"Further reference to the above, due to discrepancy in the supply not in line with us, we are requested several times to come in person to solve it and in last 10 days via telephonic discussion and send messages also. As on today no one from your company is visited to meet us to solve the issues. There are several billing related issues to be sort out and also several GST related issues to be sort out".*

7. The Operational Creditor has also filed an affidavit as mandated under Section 9 (3) (b) of IBC, 2016 stating that after issuance of demand notice, the Corporate Debtor has not paid any amount to the Operational Creditor. Under such circumstances, it was submitted by the Learned Counsel for the Operational Creditor that the debt due on the part of the Corporate Debtor is proved beyond reasonable doubt and prayed for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

8. The Corporate Debtor has filed Counter. The Learned Counsel for the Corporate Debtor submitted that, at the outset, the Application as filed by the Operational Creditor is not maintainable, in view of the fact that the Corporate Debtor has given reply to the demand notice and that the goods were not supplied in line with the

purchase order issued by the Corporate Debtor and also there are several billing related issues and also the issues regarding the GST payment. It was submitted by the Learned Counsel for the Corporate Debtor that the materials have been supplied by the Operational Creditor were not as per the HSN Code mentioned in the invoices. Further it was also submitted that there were numerous discrepancies in the invoices and bills raised by the Operational Creditor. In this context, it was also submitted that the Corporate Debtor has rejected those materials which did not comply with the requirements as stated by the Corporate Debtor and also requested the Operational Creditor to replace the same and since there was no response from the Operational Creditor, it was submitted that the Corporate Debtor has issued Debit Notes on 30.04.2019 for the balance amount.

9. The Learned Counsel for the Corporate Debtor has also submitted that the Operational Creditor has not provided the necessary proof with regard to the payments made towards GST. Further, it was also submitted that they have tried to amicably sort out the disputes between the parties; however the Operational Creditor has failed to take any steps either to replace the goods or to clarify the discrepancies in the billing and the supply. Under such circumstances, it was submitted by the Learned Counsel for the Corporate Debtor that, since the Corporate Debtor disputes the claim

of the Operational Creditor, the same has to be adjudicated only by a Competent Arbitral Tribunal as per the Purchase Order and as such prayed for the dismissal of the present application.

10. The Operational Creditor has filed rejoinder and the Operational Creditor denies all the allegations made by the Corporate Debtor in the counter and stated that it is false on the part of the Corporate Debtor to state that there is a dispute between the parties since in the reply notice dated 06.01.2020 issued by the Corporate Debtor, no details with respect to the dispute were mentioned. Also, it was submitted that the Corporate Debtor has failed to provide any documents to prove that the dispute exists between the parties prior to the issuance of the Demand Notice dated 27.12.2019. Further, it was submitted that the alleged debit notes dated 30.04.2019 were issued by the Corporate Debtor only after the Payment Notice was issued by the Operational Creditor on 20.02.2019 and that the Corporate Debtor never had any issues with the quality of the goods supplied by the Operational Creditor. It was also submitted that the Operational Creditor has duly paid the GST Returns in respect of the invoices as submitted by the Operational Creditor and proof of the same was also annexed with the Typed Set filed along with the rejoinder. Under such circumstances, it was prayed by the Learned Counsel for the Operational Creditor to reject the contentions raised

by the Corporate Debtor and to admit the application for initiation of CIRP against the Corporate Debtor.

11. Heard the submissions made by the Ld. Counsel for the parties. From the submissions made by both the parties, it is seen that the following issues are required to be decided by this Tribunal;

(i) whether there exists any dispute between the parties prior to the issuance of the Demand Notice;

(ii) Whether the Operational Creditor has proved the 'Operational Debt' and the 'default' committed on the part of the Corporate Debtor.

12. On perusal of the counter filed by the Corporate Debtor, it is seen that the Corporate Debtor, throughout the averments made in the counter, seems to have only alleged that there exists a dispute between the parties. However, in order to substantiate the said averments made in the counter, no documentary evidence or proof has been filed by the Corporate Debtor to show that there exists a real dispute between the parties. As per the contention of the Corporate Debtor, if the materials supplied by the Operational Creditor is found to be defective, no correspondence whatsoever was exchanged between the parties in relation to the supply of the defective materials to the Corporate Debtor has been placed on record by the Corporate Debtor and all these allegations seem to be

only a moonshine defence raised by the Corporate Debtor in order to defeat the claim of the Operational Creditor.

13. Further, in relation to the Debit Notes issued by the Corporate Debtor on 30.04.2019, it is seen that for the invoices raised for the period from 2017 to 2018, the Corporate Debtor has kept silent for a long time and only after the Operational Creditor has issued a final reminder notice on 20.02.2019 seeking for the payment of Rs.7,74,25,437/-, the Corporate Debtor, for the first time raises a Debit Note, in order to thwart the claim of the Operational Creditor. Resultantly, in so far the issue No.1 is concerned, we hereby come to a conclusion that there is no dispute in relation to the supply of goods by the Operational Creditor to the Corporate Debtor and also those defences raised by the Corporate Debtor are afterthought and also all these defences have been raised by the Corporate Debtor very much after the issuance of the Demand Notice which cannot be termed as a dispute as envisaged under Section 9 of IBC, 2016.

14. As regards issue No. (ii) is concerned, it is seen that all the invoices raised by the Operational Creditor squarely falls for the period from 2017 to 2018 and the present application was filed before this Tribunal on 21.02.2020 and also the services provided by the Operational Creditor and the failure to make payment by the Corporate Debtor will fall within the meaning of "Operational Debt", as stated under Section 5(20) of the IBC, 2016.

15. 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. The Operational Creditor has proposed the name **Mr. K. Ganesan, Reg. No. IBBI/IPA-002/IP-N00927/2019-2020/12975 (Email: ganesank453@gmail.com),** and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take such other and further steps in this regard 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 suspended as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

16. 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;

17. 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 mange 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.

18. 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.

19. 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)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond