

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

IBA/106/2020

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

In the matter of **M/s. T2T Designs Private Limited**

M/s. Kishore Enterprises,

Through its Proprietor Mr. Kishore Kumar Khicha,
Having office at Old No.137, New No.40,
Choolai High Road, First Floor,
Choolai,
Chennai 600 012.

... Operational Creditor

-Vs-

M/s. T2T Designs Private Limited,

No.2, Kasthuri Industrial Estate,
Ponniamman Koil Street,
Ponniamman Nagar,
Ayanambakkam,
Chennai 600 095

... Corporate Debtor

Order pronounced on 12th April 2021

CORAM :

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

For Operational Creditor : B. Sarath Babu, Advocate

For Corporate Debtor : None appeared

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. This is an Application filed by one M/s. Kishore Enterprises, (hereinafter referred to as "**Operational Creditor**"), a

proprietorship firm through its Proprietor Mr. Kishore Kumar Khicha under Section 9 of IBC, 2016 seeking thereof to initiate Corporate Insolvency Resolution Process against M/s. T2T Designs Private Limited (hereinafter referred to as **“Corporate Debtor”**)

2. From the Part I of the Application, it is seen that the Operational Creditor is a Proprietorship Firm. Part II of the Application, discloses the fact that the Corporate Debtor is a Private Limited Company incorporated on 10.02.2011 with the CIN No.U36103TN2011PTC079146 and the Registered office address of the Corporate Debtor as per the Application is stated to be situated at No.2, Kasthuri Industrial Estate, Ponniamman Koil Street, Ponniamman Nagar, Ayanambakkam, Chennai 600 095, Tamil Nadu. Part III of the Application discloses the fact 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.

3. From Part IV of the Application, it is seen that the Operational Creditor has claimed a principal sum of Rs.1,23,651/- along with the interest of Rs.65,871/- and in total a sum of Rs.1,89,522/- which is due and payable by the Corporate Debtor to the Operational Creditor.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor has supplied namely, Sheets facia

exterior crodding to the Corporate Debtor, for which they have raised necessary invoices which are as follows: -

INVOICE No.	DATE OF INVOICE	DUE DATE OF INVOICE	OUTSTANDING AMOUNT (₹)	INTEREST @ 18% P.A.
8640	18-04-2017	21-04-2017	41,551	22,540
8644	24-04-2017	27-04-2017	54,734	29,475
8654	12-06-2017	15-06-2017	27,367	13,856
TOTAL			1,23,651	65,871
TOTAL OUTSTANDING DUES			1,89,522	

5. It is submitted by the Learned Counsel for the Operational Creditor that as per the said invoices, the Corporate Debtor is liable to pay a sum of Rs.1,89,522/- to the Operational Creditor which includes interest at the rate of 18% per annum. The Learned Counsel for the Operational Creditor further submitted that, since the said amount was not forthcoming from the Corporate Debtor, Demand Notice as stipulated under Section 8 of IBC, 2016 was sent to the Corporate Debtor in Form 3 and Form 4 on 26.07.2019 and the same was received by the Corporate Debtor on 29.07.2019. The Operational Creditor has also filed an affidavit as mandated under Section 9 (3)(b) of IBC, 2016 and it is stated in the said affidavit that despite issuance of the statutory Demand Notice under Section 8 of the IBC, 2016 to the Corporate Debtor and also to the Directors of the Corporate Debtor, they have failed to clear the outstanding dues and also not replied to the Demand Notice issued by the Operational Creditor. It is also stated in the said Affidavit that the Corporate Debtor has not brought to the

notice of the Operational Creditor of any dispute pending in relation to the said transactions.

6. Under the circumstances, it was submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor has committed 'default' in repayment of the 'operational debt' to the Operational Creditor and as such prayed for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

7. In relation to the Corporate Debtor, it is seen that the matter first came up for hearing on 09.03.2020 and this Tribunal noted that despite notice to the Corporate Debtor none was present and hence directed the Registry of this Tribunal to intimate to the Registered Office address of the Corporate Debtor about the next date of hearing.

8. Subsequently, when the matter came up for hearing on 17.09.2020, it is seen that there was no appearance on the part of the Corporate Debtor. Thereafter, it is seen that when the matter was posted before this Tribunal, there was no representation on behalf of the Corporate Debtor and finally this Tribunal on 10.03.2021 was constrained to hear the matter in the absence of the Corporate Debtor. Thus, it is seen that the Corporate Debtor is

deliberately avoiding to appear before this Tribunal for the reasons best known to it.

9. From the submission made by Learned Counsel for the Operational Creditor and from the documents placed in support of the claim being made in Part IV of the Application, it is seen from the invoices which are filed by the Operational Creditor are all raised in the months of April and June 2017 and the present Application is being filed on 16.12.2019 and as such the present Application under Section 9 of IBC, 2016 falls well within the period of limitation, as Annexure II (6) at Page No. 37 of the typed set statement of account maintained of the Corporate Debtor in its ledger has also been filed by the Operational Creditor showing the principal sum as outstanding. Further, it is also seen that the Corporate Debtor has not replied to the Demand Notice sent by the Operational Creditor and has also not brought to the notice of the Operational Creditor any dispute which is pending in relation to the said transaction.

10. 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 the Corporate Debtor.

11. Further in relation to the pecuniary jurisdiction enhanced from Rs.1 lakh to Rs. 1 crore on and from 24.03.2020, it is seen the present Application was filed before this Tribunal on 16.12.2019 and as such this Tribunal has got pecuniary jurisdiction to entertain the present Application.

12. 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 **L. Bhadri** with Registration No. **IBBI/IPA-001/IP-P02059/2020-2021/13245** (email id:- *l.bhadri@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 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;

13. 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.

14. 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.

15. 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.

16. 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. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond