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

**CP/1118/IB /2018**

*(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 **UNIQUE ROOF PRIVATE LIMITED***

Muthuiah Thevar Rajapandian  
Resolution Professional  
Registration No: IBBI/IPA- 003/IP- N00090/2017-18/10854  
**Unique Roof Private Limited**  
3-158- Bharathiyar Street  
Indian Bank Colony  
Narayanpuram  
Madurai, Tamil Nadu- 625 014

*... Applicant/Operational Creditor*

**-Vs-**

SCM Garments Private Limited  
Rep. By its Directors,  
57, VOC Nagar (South)  
Valayankadu  
Tirupur- 641 603  
Tamil Nadu.

*... Respondent/Corporate Debtor*

*Order pronounced on 17<sup>th</sup> December 2021*

**CORAM :**

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

**SAMMER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor : Muthaiyah Tevar Rajapandian, RP*

*For Corporate Debtor : B.SarathBabau, Advocate*

## **ORDER**

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

Under consideration an Application is filed by Unique Roof private Limited (hereinafter referred to as 'Operational Creditor'), represented by the Resolution Professional 'Mr. Muthaiyah Thevar Rajapandian' under Section '9' of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC, 2016') against SCM Garments Private Limited (hereinafter referred to as 'Corporate Debtor') seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Application was received on 07.08.2018.

2. At this juncture it becomes relevant to record that, this Application was initiated by the operational creditor, Unique Roof Private Limited under Section 9 of the IBC, 2016 on 07.08.2018 before this Tribunal. Subsequently, the company Unique Roof Private Limited was admitted for Corporate Insolvency Resolution Process by this Tribunal in order dated 04.10.2019 in IBA/316/2019. The Resolution Professional of the Applicant company 'Unique Roof Private Limited', Mr. Muthaiyah Thevar Rajapandian by an amendment Application dated 10.12.2019 has entered representation, as the Applicant, as he had taken up his duties under Section 25 of the Code.



3. Part I of the Application discloses the details of the Operational Creditor from which it is evident that the Operational Creditor is a Private Limited Company.

4. Part II of the Application discloses the details of the Corporate Debtor from which it is evident that the Corporate Debtor is also a Private Limited Company incorporated on 3/04/2006 under the Companies Act, 1956 with CIN No: U18101TZ2006PTC012698 and the registered office of the Corporate Debtor as per the Application is stated to be situated at 57, VOC Nagar (South), Valayankadu, Tirupur, Tamil Nadu- 641 063. From Part – III of the Application, it is seen that the Applicant has not proposed the name of the IRP and left it to this Tribunal's discretion.

5. Part IV of the Application discloses about the details of the 'operational debt' and it is seen that the Operational Creditor has claimed a sum of Rs.25,89,741/- (Rs. Twenty Five Lakhs Eighty Nine Thousand Seven Hundred and Forty One) towards principal and Rs.2,55,628/- (Rupees Two Lakhs Fifty Five thousand six hundred and twenty eight) towards interest @ 18% per annum up to the date of 29.05.2018. Thus the total debt amount claimed till the date of 29.05.2018 amounts to Rs.28,45,369/-(Rupees Twenty Eight Lakhs Forty Five Thousand Three Hundred and Sixty Nine).

Further it is averred in the application that the default occurred in various dates between 28/10/17 to 23/12/17.

6. Part V of the Application discloses the list of documents filed by the Operational Creditor so as to prove the 'operational debt', which are as follows;

a) *Purchase Orders*

- i. 16GENPOG-706 dated 20/05/16
- ii. 16 GENPOG-707 dated 20/05/16
- iii. 16GENPOG-1152 dated 10/06/16
- iv. 16 GENPOG-1476 dated 27/06/16
- v. 16 GENPOG-3070 dated 2/09/16
- vi. 16 GENPOG-3077 dated 2/09/16
- vii. 16 GENPOG-3118 dated 3/09/16
- viii. 16 GENPOG-3415 dated 15/09/16
- ix. 16 GENPOG-3518 dated 20/09/16
- x. 16 GENPOG-3519 dated 20/09/16
- xi. 16 GENPOG-3619 dated 22/09/16
- xii. 16 GENPOG-3748 dated 28/09/16
- xiii. 16 GENPOG-6121 dated 31/12/16
- xiv. 16 GENPOG-6783 dated 30/01/17
- xv. 16 GENPOG-7783 dated 09/03/17
- xvi. 17 GENPOG-919 dated 08/05/17
- xvii. 17 GENPOG-1788 dated 10/06/17
- xviii. 17 GENPOG-3226 dated 08/08/17

b) *Invoices*

- i. Invoice No.960 dated 28/10/17
- ii. Invoice No.963 dated 30/10/17
- iii. Invoice No.974 dated 2/11/17
- iv. Invoice No.982 dated 3/11/17
- v. Invoice No.986 dated 4/11/17
- vi. Invoice No.992 dated 5/11 /17
- vii. Invoice No.995 dated 6/11/17
- viii. Invoice No.1001 dated 7/11/17
- ix. Invoice No.1015 dated 9/11/17
- x. Invoice No.1024 dated 13/11/17
- xi. Invoice No.1032 dated 14/11/17
- xii. Invoice No.1061 dated 20/11/17
- xiii. Invoice No.1084 dated 24/11/17
- xiv. Invoice No.1192 dated 23/12/17

c) Demand Notice dated 29.05.2018

10. The Ld. Counsel for the Respondent has filed the counter and the Additional Counter. The Ld. Counsel submitted that, the corporate debtor is involved in the garment export business and they engaged the Applicant company to construct pre-fabricated shed and roof work. Further, the Corporate Debtor is a garment exporter, which requires the work is to be completed on time, but the shed erected by the Applicant Company herein, was susceptible to a lot of water leakage and the same cannot be used to manufacture export quality garments.

11. The Ld. Counsel for the Respondent submitted that, out of the 14 Invoices raised by the Operational Creditor/Applicant company the corporate debtor herein had paid 13 of them and Purchase order 17 GENPOG -3226 dated 08/08/2017 is pending to be cleared.

12. It is averred in the Additional counter filed by the Respondent that, the total cost of the project is worth Rs.2,14,61,195/- and the Corporate debtor has already paid Rs.2,03,30,930/- to the Applicant company, which can be seen from the Ledger account statement filed in pages 13-23 of the typeset of documents.

13. Heard both the parties and perused the documents placed on record. The Applicant submitted, that the Corporate Debtor is liable

to pay a total sum of Rs.28,45,369/-(Rupees Twenty eight lakh forty five thousand three hundred and sixty Nine), as Operational debt in response to the abovementioned invoices. 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 present Application has been filed on 07.08.2018, which is well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore and as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case.

14. The Applicant has proved the existence of an Operational debt and the same can be seen from the Ledger Account statements filed in the Additional Counter typeset of the Corporate Debtor filed on 04.03.2020. Apropos, it amounts to the debt being 'admitted' by the Corporate Debtor. Further, on Para 11 of the Additional counter filed by the Corporate Debtor, a clear admission of the pending payment of the purchase order 17 GENPOG -3226 dated 08/08/2017 can be seen.

15. Further it can also be seen that, there is no pre-existing dispute with regard to the services rendered or work done by the



operational creditor, as no objection had been raised by the Corporate Debtor before the issuance of the Statutory Demand Notice Form- 3, dated 28.07.2018.

16. 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.

17. 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 July 1<sup>st</sup> 2021- December 31<sup>st</sup> 2021 appoints **K.J.VINOD** with Registration No. **IBBI/IPA-003/ICAI-N-00291/2020-2021/13451** (email id:- [kjvinod05@rediffmail.com](mailto:kjvinod05@rediffmail.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;

18. 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.

19. 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.

20. 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.

21. 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-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-

**R. SUCHARITHA**  
MEMBER (JUDICIAL)

*Vinita Varshini*