(8)

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

IBA/1064/2019

(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 ***M/s. EAP Infrastructures Private Limited***

Prop. Mahaveer Bhandari and Sons HUF,
Karta: Mr. Mahaveer Bhandari,
16, Venkatrayan Lane,
Park Town, Chennai – 600 003.

... *Operational Creditor*

-Vs-

M/s. EAP Infrastructures Private Limited,
42, Rajendra Prasad Road, Nehru Nagar,
Chrompet, Chennai – 600 044.

... *Corporate Debtor*

Order pronounced on 2nd September 2021

CORAM :

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

For Operational Creditor : Pawan Jhabakh, Advocate

For Corporate Debtor : None appeared

ORDER

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

This is an Application filed by **Prop. Mahaveer Bhandari and Sons HUF Karta: Mr. Mahaveer Bhandari** (hereinafter referred to as **"the Operational Creditor"**) against **M/s. EAP Infrastructures Private Limited** (hereinafter referred to as **"the

Corporate Debtor") under Section 9 of the Insolvency & Bankruptcy Code, 2016, seeking thereof to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Operational Creditor is a Hindu Undivided Family (HUF). From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 02.08.2011 bearing CIN: U45205TN2011PTC081758. The registered office address of the Corporate Debtor as per the Application is stated to be situated at 42, Rajendra Prasad Road, Nehru Nagar, Chrompet, Chennai – 600044. From Part-III of the Application, it is seen that the Operational Creditor has not disclosed the name of the Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of Rs.22,58,945/- which is due and payable by the Corporate Debtor from 05.07.2019. From Part-V of the Application, it is seen that the Operational Creditor has enclosed the list of documents in order to prove the existence of the operational debt, which are as follows: -

A) *Tabular Statement reflecting the Operational Creditor's Invoice against which payment is outstanding from the Corporate Debtor.*

B) *Tabular Statement with details of invoices raised by the Operational Creditor for which payment has been made by the Corporate Debtor.*

C) *E-mail dated June 22, 2019 from the Corporate Debtor to the Operational Creditor.*

D) *Copies of 4 cheques returned unpaid by the banker (with remarks as "Payment stopped by Drawer") dated June 30, 2019 for an aggregate amount of Rs.19,14,024/- along with the Banker's Cheque return advice.*

E) *Record of Default with the Information Utility.*

F) *Copy of Invoice Number 285/2018-19 dated January 05, 2019 (with Corporate Debtor's GRN ID 40118-EAP/PR/GRN/18-19/4287) for an amount of Rs.19,885/-.*

G) *Form-3 notice dated 04.07.2019 issued by the Operational Creditor to the Corporate Debtor along with proof of service.*

H) *Bank Statement of the Operational Creditor issued by ICICI Bank.*

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor was engaged by the Corporate Debtor for supplying various construction materials (Half Bricks, Hill Earth, Red Soil, River Sand and Nice Manufactured Sand (goods) for the Corporate Debtor's Palm Rivera, Royal Castle, Sun City and Temple Waves projects at Chennai. It was submitted by the Learned Counsel for the Operational Creditor that they have supplied goods

to the aforesaid construction projects of the Corporate Debtor from May 2016 to October 2018 and for the aforesaid supply of the goods the Operational Creditor has raised 58 invoices on the Corporate Debtor and out of the said 58 invoices, the Corporate Debtor has cleared payment for about 27 invoices, however, with some delay in payment.

5. Thereafter, it was submitted that the Operational Creditor has repeatedly followed up with the Corporate Debtor to pay the outstanding amount of Rs.19,34,145/- and in pursuance of the same the Corporate Debtor has issued a post dated cheques aggregating for a sum of Rs.19,14,024/- in favour of the Operational Creditor dated 30.06.2019 towards the payment of 30 invoices and in respect of one invoice dated 05.01.2019 for a sum of Rs.19,885/- it was submitted that the Corporate Debtor has not issued any cheque.

6. The Learned Counsel for the Operational Creditor submitted that after issuing the said cheque, the Corporate Debtor vide e-mail dated 22.06.2019 requested the Operational Creditor to hold the Cheques until 30.09.2019. However, the Operational Creditor has replied to the said e-mail stating that the amount payable in respect of the goods supplied by the Operational Creditor has already fallen overdue by over 250 days and therefore, it would

not be possible to hold on the cheques. Subsequently, when the Operational Creditor has presented the cheques to its bankers for its realization, the same were returned with an endorsement 'Payment Stopped by Drawer'.

7. Under such circumstances, it was submitted that the Operational Creditor has issued a notice of Demand as stipulated under Section 8 of the IBC, 2016 to the Corporate Debtor on 04.07.2019 which was received by the Corporate Debtor on 08.07.2019. From the Affidavit filed under Section 9(3)(b) it is evident that the Corporate Debtor has not raised any dispute in respect of the outstanding amount which is due and payable to the Operational Creditor nor paid the operational debt within 10 days from the date of receipt of the Demand notice. Hence, the present Application has been filed by the Operational Creditor before this Tribunal on 08.08.2019 for initiation of CIRP as against the Corporate Debtor.

8. In relation to the Corporate Debtor, it is seen that when the matter came up for hearing before this Tribunal on 03.12.2020, the Learned Counsel for the Corporate Debtor sought time to file counter and subsequently on 21.01.2021 when the matter came up for hearing, the Learned Counsel for the Corporate Debtor again sought time to file counter and finally when the matter taken up

for hearing on 15.03.2021 the Corporate Debtor has not filed its counter and hence the right to file Counter was closed by this Tribunal. However, the Corporate Debtor was granted a liberty for making submission with the available records. Thereafter, it is seen from the records that none appeared on behalf of the Corporate Debtor. Hence, we are constrained to proceed with the matter in the absence of the Corporate Debtor.

9. From the documents submitted by the Operational Creditor it is seen that they have supplied goods to the Corporate Debtor and raised invoices for the period from May 2016 to October and also the Corporate Debtor in discharge of their liability has issued a cheque in favour of the Operational Creditor which was also dishonoured. Thus, the Operational Creditor has proved that there is an 'operational debt' and 'default' which is being committed on the part of the Corporate Debtor. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016.

10. 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 08.08.2019, which is well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 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 and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

11. 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 July – December 2021 appoints **MR. RADHAKRISHNAN SURESHKUMAR,** with *Reg. No. IBBI/IPA-001/IP-P01487/2018-2019/12295 (email id:- carsuresh2009@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. 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 Code and file his report within 20 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.

12. 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 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.

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.1,00,000/-***(Rupees One 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.

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. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond