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**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 11-02-2020**

**PRESENT: SHRI R.VARADHARAJAN, MEMBER-JUDICIAL
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)**

**APPLICATION NUMBER :
PETITION NUMBER : IBA/1052/2019
NAME OF THE PETITIONER(S) : DISHA COMMUNICATIONS PVT LTD
NAME OF THE RESPONDENT(S) : SRI VARADARAJA FOOD EXPORTS PVT LTD
UNDER SECTION : SEC 9 RULE 6 OF IBC**

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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REPRESENTATION BY WHOM

	<i>Keer Chitran Devi</i> <i>C.S. MOZUGAPPAN</i>	<i>Counsel for CD</i> <i>Counsel for Petitioner</i>	<i>[Signature]</i> <i>[Signature]</i>
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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/1052/IB/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. Sri Varadaraja Food Exports Private Limited*

M/s. Disha Communications Private Limited

... Operational Creditor

-vs-

M/s. Sri Varadaraja Food Exports Private Limited

... Corporate Debtor

Coram:

**R. VARADHARAJAN,
Member (Judicial)**

**ANIL KUMAR B,
Member (Technical)**

For Operational Creditor : C.T. Murugappan, Counsel
For Corporate Debtor : Keerthikiran Murali, Counsel

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ORDER

Per: Mr. R. VARADHARAJAN, MEMBER (JUDICIAL)

Order delivered on 11.02.2020

1. This Application has been filed invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code-2016”) in the format as prescribed under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “AAA Rules”) by the Applicant in the capacity of the Operational Creditor viz., M/s. Disha Communications Private Limited against the Corporate Debtor viz., M/s. Sri Varadaraja Food Exports Private Limited.

The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.



2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company. Part-II of the said Application discloses the particulars of the Corporate Debtor from which it is seen that the Corporate Debtor is having its Identification Number as U01403TN2015PTC098971 and having its Registered Office at No.60, Varalakshmi Nagar, 4th Street, Maduravoyal, Chennai, – 600 095. Perusal of Part-III of the Application shows that the Operational Creditor has not proposed any Interim Resolution Professional (IRP). From Part-IV of the Application, it is seen that a sum of Rs.2,74,86,933/- as on 22.03.2018 is being claimed by the Operational Creditor as Operational Debt in relation to the transaction arising in view of bringing airtime advertisement made by the Operational Creditor across various press, TVs and Radios for the brand 'Abirami Rice'. Part V of the said Application discloses the



documents on which the Applicant seeks to rely its claim as made in Part IV of the Application.

3. Perusal of record of proceedings as available shows that upon notice, the Corporate Debtor has duly entered appearance through its Counsel and no reply has been filed as on date by the Corporate Debtor, and in the said circumstance, the matter was heard by this Tribunal and upon representation by the Learned Counsel for the Corporate Debtor who has submitted that even though efforts were made by the Corporate Debtor to settle the matter as between the Corporate Debtor and the Operational Creditor and with other creditors similarly, however, the settlement was not successful and that the claim is not disputed.

4. In the said circumstance, in relation to the merits of the claim as made in the Application, the Learned Counsel for the Operational Creditor has drawn the



attention of this Authority to the documents as annexed along with the Application. From the documents as annexed, it is seen that at pages 6 to 43 contains Press Space Bill raised from time to time to the Corporate Debtor for services being rendered by the Operational Creditor. In this connection, the Learned Counsel for the Operational Creditor points out that the credit period given in the Letter of Agreement dated 08.07.2016 stipulates that the bills as raised by the Operational Creditor is required to be paid within 30 days from the said bills and that in case of any objections on the said bills, it is required to be made within 7 days from the date of receipt of the said bills and if no objection is raised within the said time period, the objections would not be entertained thereafter.

5. It is also pointed out by the Learned Counsel for the Operational Creditor that in relation to the mode of payment as contemplated in the said Letter of Agreement



dated 08.07.2016, the Corporate Debtor is required to make payments by way of a crossed Cheque only drawn in the name of the Operational Creditor namely Disha Communications Private Limited.

6. The Learned Counsel for the Corporate Debtor further points out that since the Corporate Debtor defaulted the payment of a sum of Rs.2,74,86,933/- in terms of the Letter of Agreement dated 08.07.2016, a Notice of Termination dated 17.04.2019 was issued by the Operational Creditor to the Corporate Debtor terminating the Agreement dated 08.07.2016 with immediate effect, the copy of which is placed at page 50 of the typed set filed with the Application. Despite the termination of the said Agreement dated 08.07.2016 and calling the Corporate Debtor to settle the outstanding amount due to the Operational Creditor along with the interest, no amount was forthcoming.



7. In the said circumstance, the Demand Notice under Section 8 of the I&B Code, 2016 dated 05.06.2019 was issued to the Corporate Debtor to the address as given in the said notice. The Track Consignment Report in relation to the delivery of Notice is also annexed along with Application at page 46A of the typed set filed with the Application to which no reply notice seems to have been sent by the Corporate Debtor.

8. One Mr. VR Babu Veerappan has filed an Affidavit dated 26.06.2019 on behalf of the Operational Creditor in compliance of Section 9 (3) (b) of the I&B Code, 2016, wherein under Para 3, it has been deposed that the Operational Creditor has not received any notice of dispute with regard to the unpaid operational debt, copy of which is placed at pages 52 and 53 of the typed set filed with the Application. The Operational Creditor has also filed the statement showing bill-wise details of amount due to the Operational Creditor by the Corporate

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Debtor at page 51 of the typed set filed along with the Application.

9. In the absence of any Reply to the Demand Notice issued as well as to the present Application filed by the Operational Creditor, the claim as made in the Application seems to be admitted by the Corporate Debtor which is evident from the submissions made by the Learned Counsel for the Corporate Debtor that in spite of efforts being made by the Corporate Debtor to settle the claim made by the Operational Creditor, however, the same could not be succeeded which turns out that the Corporate Debtor is not in a position to pay the liability which is owed to the creditors in this case.

10. From the list of documents annexed, it is evident that the claim as made by the Operational Creditor is within the prescribed period of limitation of 3 years. The claim amount as made in the Application is also in excess



of Rs.1,00,000/- being the statutory minimum amount fixed under Section 4 of the I&B Code, 2016 for approaching this Tribunal by the creditors, in the instant case by Operational Creditor and further in relation to the Corporate Debtor the registered office of which is situated within the State of Tamilnadu, amenable to its territorial jurisdiction, this Authority deem it fit to admit the instant Application and to initiate the Corporate Insolvency Resolution Process (CIRP) as against 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 Application 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 proposed any IRP, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India appoints **Ms. Srividhya Subramanian**



(IBBI/IPA-001/IP-P00659/2017-18/11129) (email id:-
srividhya.subramanians@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.

12. However, during the pendency of the moratorium period in terms of Section 14(2) 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.



- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

13. 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.



14. The Operational Creditor is directed to pay a sum of **₹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.

15. 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. IRP named as above to intimate the RoC in relation to the initiation of CIR Process of the Corporate Debtor.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

P. ATHISTAMANI