

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH – II, CHENNAI**

CP/IB/192(CHE)/2022

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

*In the matter of **STALWART INTERNATIONAL TRADING PRIVATE LIMITED***

Sulaiman Abdul Gaffor

P.O. Box 7217,
Salmiya 22083,
Kuwait

... Financial Creditor

-Vs-

Stalwart International Trading Private Limited

Reg Office at:
117, Sir Thyagaraya Road,
Citi Tower, Basement, T, Nagar,
Chennai – 600 017

... Corporate Debtor

And

IA(IBC)/302(CHE)/2023

in

CP/IB/192(CHE)/2022

Sulaiman Abdul Gaffor

P.O. Box 7217,
Salmiya 22083,
Kuwait

... Applicant

-Vs-

Stalwart International Trading Private Limited

Reg Office at:
117, Sir Thyagaraya Road,
Citi Tower, Basement, T, Nagar,
Chennai – 600 017

... Respondent

*Order Pronounced on **12th December, 2023***





CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present: -

For Financial Creditor : Mr.P.V. Balasubramaniam, Advocate
Mr.Siddarth. P, Advocate

Corporate Debtor :Ex-parte

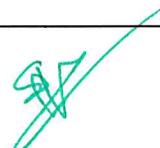
ORDER

Under Adjudication is CP(IB)/192(CHE)/2022 which has been filed by **Sulaiman Abdul Gaffor** (hereinafter referred to as 'Financial Creditor') under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Stalwart International Trading Private Limited** (hereinafter referred to as 'Corporate Debtor'). 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 (IRP).

2. In Part – I of the Application, it is stated that the Financial Creditor is an individual having residence at P.O. Box – 7216, Salmiya 22083, Kuwait.

3. Part - II of the Application lays down the details of the Corporate Debtor. It is stated that that the Corporate Debtor is a Company incorporated under the Companies Act, 1956 on 11.05.2012 with CIN: U74999TN2012PTC085849. The registered





office of the Corporate Debtor is situated at 117, Sir Thyagaraya Road, Citi Tower, Basement, T, Nagar, Chennai – 600 017. The Authorised Share Capital of the Corporate Debtor is Rs.40,00,00,000/- and the Paid-up Share Capital is Rs.1,00,000/-.

4. In Part - III of the Application, the Financial Creditor has proposed the name of the "Interim Resolution Professional".

5. In Part-IV of the Application, it is stated that a total sum of Rs.1,00,00,000/- (Rupees One Crore only) is being claimed by the Financial Creditor as the principal amount of the Financial Debt. Additionally, a sum of Rs.50,00,000/- is being claimed as the interest portion of the said debt. The date of 20.08.2021 is construed as the date of default.

6. Part – V of the Application discloses about the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial Debt', which are extracted as follows;

- a) Copy of master data along with signatory details of Corporate Debtor - Annexure I-1
- b) Copy Memorandum of Understanding dated 23.11.2012 - Annexure I-2.
- c) Copy of cheque No. 000557 dated 20.11.2012 drawn on the Commercial Bank of Kuwait Annexure 1-3.
- d) Copies of bank account statements - Annexure I-4.
- e) The email dated 6.12.2013 Annexure 1-5
- f) Copy of the email dated 19.04.2014 - Annexure 1-6.
- g) Copy of the Letter of Undertaking dated 26.11.2014 Annexure I-7

- h) Copy of the Acknowledgement of Risks and Liability dated 26.11.2014 Annexure 1-8.
- i) Copy of the Deed of Indemnity dated 26.11.2014 Annexure I - 9.
- j) Copy of the Plaint in O.S. No. 2322/2017 Annexure I - 10.
- k) Copy of the Decree dated 30.07.2018 in OS No. 2322/2017 Annexure I - 11.
- l) Copy of the Demand Promissory Note dated 20.08.2021 Annexure I - 12.

7. It is stated that the Financial Creditor had advanced KD 51,500 (Kuwaiti Dinars Fifty-one Thousand Five Hundred) equivalent to Rs.1,00,00,000/- (Rupees One Crore) to one Solution Managers International as per the instructions of the Corporate Debtor vide a Cheque bearing number '900557' dated 20.11.2012 based on an oral understanding, also reduced into writing as a Memorandum of Understanding dated 23.11.2012. It is stated that the said Memorandum of Understanding records that the said amount will be repaid as Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lakhs) inclusive of interest by the Corporate Debtor.

8. It is stated that the Corporate Debtor had sought the said amount from the Financial Creditor for meeting its finances in respect of a business called Solution Managers International in Kuwait.

9. It is also stated that the Corporate Debtor had undertaken and promised to repay a sum of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs) starting from December, 2013 to May, 2014



by issuance of Cheques valued Rs.25,00,000/- (Rupees Twenty-five Lakhs) each month.

10. It is stated that the Corporate Debtor failed to make the payment as agreed and sent an email through its Director Mr.M. Kevin dated 06.12.2013 requesting for further time to repay the monies owed to the Financial Creditor. Meanwhile, the Corporate Debtor issued a Cheque in respect of its liability towards the Financial Creditor. It is stated that another email was sent by the Corporate Debtor through its Director Mr.M. Kevin dated 19.04.2014 whereby the Corporate Debtor requested to defer the encashment of the said Cheque.

11. It is further stated that the Directors of the Corporate Debtor entered into an arrangement to settle the entire liability of the Corporate Debtor towards the Financial Creditor. A Letter of Undertaking, Acknowledgement of Risk and Liability, and Deed of Indemnity all dated 26.11.2014 were executed.

12. It is also stated that the Corporate Debtor failed to repay as per their promises and assurances made. The Financial Creditor learned that a Suit O.S. No. 2322 of 2017 was filed by a Director of the Corporate Debtor (Mr.M. Kevin) against the other (Mr. Arunachalam) seeking an Order of restraint from disturbing him to clear the dues pertaining to the Corporate Debtor - which came to be decreed on 30.07.2018. The said decree is placed on record. It is stated that though the Decree is in respect



of an inter se arrangement between the Directors of the Corporate Debtor, the said document is being relied upon to show the liability of the Corporate Debtor vis-à-vis the Financial Creditor admitted as late as 2018.

13. It is further stated that when the Financial Creditor demanded the Corporate Debtor to repay the monies owed to him, the Corporate Debtor issued a Promissory Note dated 20.08.2021 whereby the latter agreed to pay a sum of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs). Thus, the liability is undisputed and repeatedly admitted by the Corporate Debtor.

14. With respect to the Corporate Debtor, the Financial Creditor at the time of filing the Company Petition duly served on the registered email ID (info@stalwartgroup.net) which is reflected on the MCA Website through an email dated 08.08.2022. However, the registry notice addressed to the registered office of the Corporate Debtor returned unserved. This Adjudicating Authority vide order dated 15.09.2022 permitted the private notice on the Corporate Debtor. Since, the notice was returned to the Financial Creditor as 'No Such Person', this Adjudicating Authority had subsequently directed the Financial Creditor to effect paper publication. Compliance Affidavit dated 12.11.2022 has been filed vide SR. No. 6213 dated 24.11.2022.



15. After giving sufficient opportunity for appearance and representation to the Corporate Debtor, this Adjudicating Authority vide order dated 17.01.2023 set the Corporate Debtor as *ex-parte*.

16. Pending adjudication of the Company Petition, the Financial Creditor *inter alia* filed an interlocutory application (IA(IBC)/302(CHE)/2023) seeking an injunction from creating any encumbrance / alienating an immovable property. Vide order dated 21.02.2023, this Adjudicating Authority passed the following order:

"Ld. Counsel Mr.PV.Balasubramaniam appears on behalf of the Applicant. Ld. Counsel Mr. Saranath appears on behalf of the Respondent.

*Query put forth by Ld. Counsel for Applicant is that there was a promissory note executed on 20.08.2021 on behalf of the Company for an amount of Rs.150.00 lakhs with interest @ 12% payable to the Financial Creditor. **Since, we are yet to form a view regarding the admission of the Company Petition, it would be apposite to maintain status-quo with regard to the property referred to in the captioned application till the pronouncement/passing of the order in the CP(IB)/192(CHE)2022 on admission.***

Ordered accordingly. List the matter on 21.03.2023 for further hearing."

17. Heard the submissions of Financial Creditor and perused the pleadings and the documents on record.

18. It is seen that the debt of the Corporate Debtor was acknowledged from time to time in various documents. Pertinently, the promissory note dated 20.08.2021 annexed along with the Company Petition at Page 46, executed by the Corporate Debtor clearly acknowledges the liability of the Corporate Debtor to the

Financial Creditor. The same is sufficient for the purpose of this Application. The said acknowledgement is clearly within limitation as this Company Petition has been filed on 08.08.2022 and the threshold requirement of Rs.1 crore for admission is clearly met. Thus, the Financial Creditor has *prima-facie* established a case for admission of the Corporate Debtor. We therefore allow the application and order to initiate CIRP against the Corporate Debtor.

19. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under 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;

20. However during the pendency of 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.

(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.

21. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(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.

22. The Financial Creditor has proposed the name of Mr.K.Sridhar, having Reg.No. IBBI/IPA-001/IP-P01005/2017-2018/11656 as a Interim Resolution Professional (IP) who has not filed his consent in Form-2. However, upon verification from the IBBI website, it is seen that the said person does not hold valid Authorization for assignment held AFA only till 31.05.2023. Thus, we appoint **Mr.Palanigounder Eswaramoorthy**, having Reg. No. IBBI/IPA002/IPN00284/201718/10842, mail: eswarfcs@gmail.com



having valid AFA till 22.08.2024 as the Interim Resolution Professional.

23. **Mr. Palanigounder Eswaramoorthy**, is directed to take charge of the Corporate Debtor's management immediately. The IP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant / Financial Creditor is directed to remit a sum of Rs.2,00,000/- to and in favour of the IRP for meeting out the initial expenses in relation to the CIR Process of the Corporate Debtor. The said amount shall be adjusted and ratified on account of the Financial Creditor.

24. 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 IBC, 2016. 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.

25. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the

Corporate Debtor are directed to extend all assistance and cooperation to the IP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

26. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial 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.

27. Accordingly, the **CP(IB)/192(CHE)/2022** stands **admitted** and **IA(IBC)/302(CHE)/2023** stands **disposed of**.

— Sd —

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)

*Order pronounced under Rule 151 of NCLT Rules 2016, by **Hon'ble Technical Member Ravichandran Ramasamy** on behalf of the Bench comprising of **Sanjiv Jain, Member (Judicial)** and **Ravichandran Ramasamy, Member (Technical)**.*

B. Chandra

Court Officer