IBBI

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

IBA/03/2020

(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)

In the matter of ***M/s. Spacex Furniture Private Limited***

Saurab Mittal
Director
M/s. Excel Auto Tube Industries Private Limited
No.1/7, 2/7, Vaidhyanathan Street,
Tondiarpet,
Chennai – 600 018

... Operational Creditor

-Vs-

M/s. Spacex Furniture Private Limited
No. 399/2-A, Sunguvarchatram Road,
Kattavakkam Village,
Wallajabad,
Kanchipuram – 631604

...Corporate Debtor

Order Pronounced on 9th August 2021

CORAM :

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

For Operational Creditor : Mudit, Advocate
For Corporate Debtor : Rengarajan, Advocate

ORDER

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

The present application is moved by one M/s. Excel Auto Tube Industries Private Limited (hereinafter referred to as "**Operational Creditor**") under Section 9 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency and Resolution

Process as against M/s. Spacex Furniture Private Limited (hereinafter referred to as "**Corporate Debtor**").

2. From Part-I of the application, it is seen that the Operational Creditor is a Private Limited company. From Part-II of the application, it is seen that the Corporate Debtor is also a Private Limited Company incorporated on 05.04.2011 and the Registered Office of the Corporate Debtor as per the application is stated to be situated at No.399/2-A, Sunguvarchatram Road, Kattavakkam Village, Wallajabad, Kanchipuram – 631604. From Part-III of the application, it is seen that the Operational Creditor has proposed one Mr. Anil Kumar Khicha as the IRP and has also filed his written consent in Form-2.

3. Part-IV of the application, discloses the details of the debt. from which it is seen that the Operational Creditor has claimed a sum of Rs.33,99,179/- (Rupees Thirty Three Lac Ninety Nine Thousand One Hundred and Seventy Nine Only) which is due and payable by the Corporate Debtor.

4. Part-V of the application discloses the details of the documents filed along with the application in order to prove the operational debt and it contains the Invoices raised by the Operational Creditor in

Form-3 Demand Notice in Bank statement of the Operational Creditor.

5. The Learned Counsel for the Operational Creditor submitted that in accordance with the commercial understanding as agreed between the parties, the Operational Creditor supplied tubes to the Corporate Debtor for the period from December 2017 to February 2018 and raised invoices to the tune of Rs.33,99,179/-. It was submitted by the Learned Counsel for the Operational Creditor that, the Corporate Debtor without any rhyme or reason has withheld the payment to be made to the Operational Creditor and also there is no deficiency in the supply of goods made by the Operational Creditor.

6. It was submitted that since no payment was forthcoming from the Corporate Debtor, it is seen that the Operational Creditor has issued a Demand Notice in Form-3 as mandated under Section 8 of IBC, 2016 to the Corporate Debtor on 16.10.2019. It was submitted by the Learned Counsel for the Operational Creditor that as against the said sum of Rs.33,99,179/-, the Corporate Debtor has made a payment of Rs.2,00,000/- on 22.10.2019 after issuance of demand notice dated 16.10.2019.

7. Thus, it was submitted that as against the demand notice issued by the Operational Creditor, the Corporate Debtor has not

made any reply, however has paid a sum of Rs.2,00,000/- to the Operational Creditor. Hence it was submitted that the debt and default on the part of the Corporate Debtor is proved by the Operational Creditor and thus sought for the initiation of Corporate Insolvency Resolution Process as against the Corporate Debtor.

8. In relation to the Corporate Debtor, it is seen from the record of proceedings that when the matter was came up for hearing on numerous occasions, the Corporate Debtor was represented by a Counsel and time was sought on the pretext that the settlement was about to arrive between the parties. Thereafter, it is seen that there was no representation on behalf of the Corporate Debtor subsequently and hence this Tribunal by its order dated 08.12.2020 has set the Corporate Debtor as *ex-parte*. Pursuant to that, it is seen that the matter came up for hearing for atleast 8 times before this Tribunal and that it was submitted on the part of the Corporate Debtor that they are taking steps to set aside the ex-parte order. However, this Tribunal on 09.07.2021 has passed the following order:

> "As per the order dated 23.03.2021, the default invoices have been submitted by the Applicant. Matter was heard on 23.03.2021. The Respondent was set ex-parte on 08.12.2020. Ld. Counsel Mr. Rengarajan appeared on 23.03.2021. However, till date no application to set aside the ex-parte order has been filed in the Registry. Counsel for the Respondent states that he is taking steps to set aside the ex-parte order. It is almost seven months since the Respondent was set ex-parte. Hence, the request of the Counsel for the Respondent is declined.
>
> Heard the Counsel for the Applicant. **Order Reserved".**

9. Thus, it is seen that the Corporate Debtor under the garb of settlement is trying to delay the proceedings before this Tribunal. The Corporate Debtor has not denied that the amount is due and payable to the Operational Creditor, hence the default on the part of the Corporate Debtor is proved beyond any reasonable doubt. Under the said circumstances, we are constrained to initiate the CIR Proceedings in relation to the Corporate Debtor with the directions as follows:

10. 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. The Operational Creditor has proposed the name **Mr. Anil Kumar Khicha, Reg. No. IBBI/IPA-001/IP-P00422/2017-2018/10745** and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

11. 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;

12. 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.

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. 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