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

CP(IB)/56(CHE)/2022

(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 **CETHAR CONSTRUCTIONS LIMITED**

JMC PROJECTS (INDIA) LIMITED
Rep by its Authorised Representative,
Having Registered Office at:
A-104, Shapath – 4,
Opp. Karnavati Club,
S.G. Road, Ahmedabad,
Gujarat – 380 015.

...Applicant / Operational Creditor

-Vs-

CETHAR CONSTRUCTIONS LIMITED
[CIN: U45203TN2008PLC067668]
6A, Lewsons Road, GVR Complex,
3rd Floor, Cantonment, Tiruchirappalli,
Tamil Nadu - 620001.

...Respondent / Corporate Debtor

Order Pronounced on 25th November, 2022

CORAM:

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor: Ms. Harini Subramani, Advocate
For Corporate Debtor: Ex-parte

ORDER

***Per:* DR. DEEPTI MUKESH, MEMBER (JUDICIAL)**

This Application has been filed by **JMC PROJECTS (INDIA) LIMITED** (hereinafter referred to as the 'Operational Creditor') on

21.02.2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **CETHAR CONSTRUCTIONS LIMITED** (hereinafter referred to as the 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part - I of the Application, it is seen that the Applicant is the Operational Creditor The registered office address as per the Application is stated to be situated at A-104, Shapath – 4, Opp. Karnavati Club, S.G. Road, Ahmedabad, Gujarat – 380 015. Further, Part-I lays down the one Mr. Shailendra Kumar Tripathi, the CEO and Managing Director of the Applicant / Operational Creditor is authorised by way of a Board Resolution dated 14.05.2021 which is placed on record, to swear the Affidavit for the Applicant Company. Affidavit dated 16.02.2022 filed verifying the present Application was filed for the same.

3. Part - II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Company incorporated under the Companies Act, 1956 on 08.05.2008 with CIN: U45203TN2008PLC067668. The registered

office of the Corporate Debtor is situated at 6A, Lewsons Road, GVR Complex, 3rd Floor, Cantonment, Tiruchirappalli, Tamil Nadu – 620 001. The Authorised Share Capital of the Corporate Debtor is stated to be Rs.6,00,00,000/- (Rupees Six Crores Only) and the and Paid-up Share Capital is stated to be 5,09,93,000/- (Rupees Five Crore Nine Lakhs and Ninety Three Thousand Only).

4. From Part – III of the Application, it can be seen that the Operational Creditor has not proposed any Insolvency Professional and has left it to the discretion of this Tribunal.

5. From Part-IV of the Application, it can be seen that a total sum of Rs. 15,55,42,768/- (Rupees Fifteen Crore Fifty-Five Lakh Forty-Two Thousand Seven Hundred and Six-Eight Only) is being claimed by the Operational Creditor as the Operational Debt and 15.07.2019 is stated to be the date of default. The statutory notice of demand dated 17.12.2021 has been sent to the E-mail ID 'harish.kumar.100@gmail.com' as reflected in the MCA Masterdata and the physical notice is stated to have been delivered to the Corporate Debtor against which neither response nor payment were made, thus the present Application came to be filed on 21.02.2022 before this Tribunal.

6. Part – V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in

order to prove the 'Operational debt', which are extracted as follows;

i. Copy of the Arbitral Award dated 29.01.2019

ii. Copy of Corrected Arbitral Award date 15.03.2019

iii. Statutory Demand Notice dated 17.12.2021

7. It appears that this Tribunal vide order dated 04.04.2022 directed the Registry to take fresh notice and place the track report on record. It can be seen from the tracking report that the notice sent to the Corporate Debtor to the address as reflected in the MCA Masterdata were returned with the caption *'No such person in the address'*. The apart the Operational Creditor was also directed to take private notice on the Corporate Debtor and file an Affidavit of Service and the same was complied by way of an Affidavit of Service filed before this Tribunal vide Diary No. 2944 on 28.04.2022. It appears that the private notice sent by the Operational Creditor were also returned with the caption *'No such person in the address'*. On the next date of hearing when the matter was posted for appearance of the Corporate Debtor, there was no representation for the Corporate Debtor.

8. Despite sufficient opportunity, the Corporate Debtor failed to appear before this Tribunal. Thus, the Corporate Debtor was set *ex-parte* vide order dated 29.04.2022 by this Tribunal. Thereafter the matter was heard on 24.06.2022, 22.08.2022, 02.09.2022 and

19.09.2022 and 31.10.2022 and none appeared for the Corporate Debtor on the said dates.

9. The background of the transactions between parties before this Tribunal had arisen due to certain outstanding claims with respect to a 'Letter of Intent' dated 21.09.2012 and 'Work Order' dated 22.11.2012 issued in favour of the Operational Creditor by the Corporate Debtor. It is stated that the Operational Creditor had invoked arbitration for adjudication of the dispute as per the terms of the contract and that the Hon'ble High Court of Madras in O.P. No. 189 of 2017 vide order dated 31.07.2017 appointed Justice (Retd) K.P. Sivasubramaniam as the Sole Arbitrator.

10. The adjudication before the Sole Arbitrator came to be concluded by way of an Award dated 29.01.2019 passed in favour of the Operational Creditor. It is further stated that due to certain typographical and computational errors in the above said Award, the same were stated to be corrected in terms of Section 33 of the Arbitration & Conciliation Act, 1996 by way of a supplementary Award dated 15.03.2019 by the said Sole Arbitrator.

11. It is pertinent to note the that the Operational Creditor has construed 15.07.2019 as the date of default which is 4 months in addition to the date of the supplementary Award for the purpose of the present Application. The Operational Creditor submits that the

aforesaid addition is for the purpose of attaining finality of the said Award in terms of any proceedings under Section 34(3) of the Arbitration & Conciliation Act, 1996.

12. The position of the Operational Creditor to fix 15.07.2019 as the date of default is agreeable and is in line with the decision of the Hon'ble High Court of Hyderabad in the case of *S. Sundharshan Rao v. The Citizen Co-operative Society Limited* [MANU/AP/0052/ 2016]. The relevant portion of the aforesaid Judgement is as under:

> *"6. ...Thus, if a period of four months elapses from the date the arbitral award has been received by a party, its right to get the same set aside under Section 34 of the 1996 Act gets exhausted. In other words, the arbitral award can get enforced any time after lapse of four months from the date the parties receive the copy of the arbitral award, but do not prefer to challenge the same in terms of Section 34."*

13. We have perused the Application and the documents relied upon by the Operational Creditor. The Operational Creditor has proven the existence of debt and default on the part of Corporate Debtor. The present Application being filed on 21.02.2022 falls within the period of limitation. The Operational Creditor is also saved and benefitted by the *Suo Moto* extension orders of the Hon'ble Supreme Court, which extends the limitation period.

14. The registered office of the Corporate Debtor is at 6A, Lewsons Road, GVR Complex, 3rd Floor, Cantonment, Tiruchirappalli, Tamil Nadu – 620 001, which is within the jurisdiction of this Tribunal and this Tribunal has power to entertain and decide this application. 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 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 2022 – December 2022 appoints **Mr.R.Thamodharan** with Registration Number **[IBBI/IPA-001/IP-P02292/2021-2022/13592]** and having *E-mail ID:-* ***[thamodharansubi@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.

15. 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 the 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;

16. 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 the 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 arrangements 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.

17. 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.

18. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** *(Rupees Two 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 with Regulation 6 of Insolvency and

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. 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 is also furnished with a 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-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

V.Shreekumar