

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO.1, MUMBAI BENCH

CP(IB) 4303(MB)/2019

(Under Section 9 of the IBC, 2016)

Mr. Suresh Devasi
(Sole Proprietor of M/s. Supervue Enterprises
...Petitioner/Operational Creditor

Vs

Kshama Builders and Developers Pvt Ltd
... Respondent/Corporate Debtor

Order delivered on 11.2.2020

Coram:

Hon'ble Member (Judicial) Smt Suchitra Kanuparthi

Hon'ble Member (Technical) Shri V Nallasenapathy

For the Petitioner: Mr. Deepak Dongare

For the Respondent: None present

Per: Suchitra Kanuparthi, Member (Judicial)

It is a Company Petition filed u/s 9 of Insolvency and Bankruptcy Code, 2016 by the Operational Creditor, viz. Mr. Suresh Devasi, Sole Proprietor of M/s. Supervue Enterprises stating that this Operational Creditor on the request and demand of the Corporate Debtor supplied ready mix concrete and provided ancillary services as pumping and related services to the Corporate Debtor throughout Mumbai and adjacent areas during the period between January, 2017 to May, 2017 and raised a total of 47 Invoices, amounting to Rs.1,00,61,208/-. Copies of the invoices are annexed with the Petition as Annexure D.

2. The Operational Creditor in its Petition submits that as against the invoices raised, the Corporate Debtor has made a part payment of Rs.29,43,578/- . Therefore, the total outstanding principal amount to be paid by the Corporate Debtor works out to Rs.71,17,630/- in respect of the 30 invoices. The invoices raised upon the Corporate Debtor clearly

provided the interest @18% per annum. Therefore, an amount of Rs.31,86,594/- has accrued towards the interest @18% per annum from the date of default. Accordingly, the total outstanding amount works to Rs.1,03,04,224/- (principal + interest)

3. The Operational Creditor has annexed the copy of the ledger account maintained by it for the account of Corporate Debtor for the period between 1.4.2016 to November, 2019 as Annexure E.

4. Since the Corporate Debtor having failed to make payment of the remaining amount, in spite of several repeated reminders to the Corporate Debtor, the Operational Creditor on 21.9.2019 sent Form 3 notice under the Insolvency and Bankruptcy Code, 2016 (Code) to the Corporate Debtor calling upon them to make the payment of its outstanding debt of Rs.1,01,49,755/- with interest within 10 days of receipt of the notice. The said Form 3 notice was received by the Corporate Debtor on 27.9.2019. Since there was no reply to the said notice, the Operational Creditor filed this Company Petition under Section 9 of Code on 9.5.2019.

4. This Company petition was listed for hearing on 5.12.2019 wherein a direction was given to the Operational Creditor to issue court notice on the Corporate Debtor. The Operational Creditor has filed the affidavit of service which shows that the court notice was served on the Corporate Debtor.

5. Thereafter, this matter came up for hearing on 4.2.2019 when no one represented from the Corporate Debtor side.

6. On perusal of the material documents placed before this Bench, it appears that Corporate Debtor failed to make the payment of the outstanding amounts due to the petitioner, despite receipt of the demand notice, which proves that the Corporate Debtor defaulted in making the payment.

7. The Operational Creditor has not proposed the name of the insolvency resolution professional. However, this Bench has obtained the consent of Ms. Nayana Premji Savala to act as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code along with declaration of the proposed IRP, in Form 2, that no disciplinary proceeding is either pending or initiated against him.

7. The Petition under Section 9 of I&B Code, 2016 filed by the Operational creditor for initiation of CIRP in prescribed Form No.5, as per

the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

8. Accordingly, this Petition is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

1. That this Bench as a result of this prohibits:
 - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor in respect of its property including any activity 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 possession of the corporate debtor.
2. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
3. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
4. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency

resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

5. That the public announcement under section 13 of the I&B Code regarding initiation of corporate insolvency resolution process should be made immediately.
6. That this Bench appoints Ms. Nayana Premji Savala, a registered insolvency professional having Registration Number [IBBI/IPA-003/IP-N00051/2017-18/10491] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code.
9. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor, and the Interim Resolution Professional by way of email. Compliance report of the order by Designated Registrar is to be submitted immediately.

V NALLASENAPATHY
Member (Technical)

SUCHITRA KANUPARTHI
Member (Judicial)