

405

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

IBA/135/2020

*(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. Saravana Stores Gold Palace Pvt. Ltd.

Mangala Ranka

Proprietrix of
M/s. Ranka Corporation
No.6, Singaram Street,
T. Nagar,
Chennai – 600017

...Operational Creditor

-Vs-

M/s. Saravana Stores Gold Palace Pvt. Ltd.

No.2, Old Mahabalipuram Road,
Rajiv Gandhi Nagar, Sholingallur,
Chennai, Kancheepuram,
Tamilnadu – 600119

...Corporate Debtor

Order Pronounced on 4th October 2021

CORAM :

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

*For Operational Creditor : Aswany Ajay Kumar, Advocate
Ojas Law Firm*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This application is moved by one Smt. Mangala Ranka,
Proprietrix of M/s. Ranka Corporation (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. M/s. Saravana Stores Gold Palace Private Limited incorporated on 15.05.2017 (hereinafter referred to as "**Corporate Debtor**").

2. From Part-I of the application, it is seen that the Operational Creditor is a Proprietrix of M/s. Ranka Corporation. From Part-II of the application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 15.05.2017 and the Registered Office of the Corporate Debtor as per the application is stated to be situated at No.2, Old Mahabalipuram Road, Rajiv Gandhi Nagar, Sholingallur, Chennai, Kanchipuram, Tamil Nadu – 600119. From Part-III of the application, it is seen that the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part-IV of the application, it is seen that a sum of Rs.19,33,681/- (Rupees Nineteen Lakh Thirty Three Thousand Six Hundred and Eighty One only) along with interest 18% per annum is claimed to be in default which is to be paid by the Corporate Debtor. From Part-V of the application, it is seen that the Operational Creditor has filed the lists of documents in order to prove the existence of "Operational Debt" and the documents contain the Invoices and the Ledger statement of the Corporate

Debtor and also the Demand Notice sent by the Operational Creditor.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is an Authorized dealer of ITC-Notebooks/Stationery and during the year of 2018, the Corporate Debtor approached the Operational Creditor requesting them for supply of ITC-Notebooks/Stationery and they undertook to clear all the payments within 21 days from the date of invoice raised/delivery of goods. Accordingly, the Operational Creditor has supplied the goods to the Corporate Debtor and has raised invoices in respect of the same. It was also submitted that the goods which were supplied by the Operational Creditor were received by the Corporate Debtor without any demur. Further, it was submitted that the Corporate Debtor has defaulted in payment of certain invoices raised and the default in the payment of the amount aggregates to the tune of Rs.19,33,681/-.

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor had approached the Corporate Debtor to settle the outstanding payment and in spite of the repeated requests and demands made by the Operational Creditor, the Corporate Debtor has been giving evasive replies. It was further submitted that the Operational Creditor has issued Demand notice

in Form-3 as mandated under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor on 21.08.2019 which was delivered to the Corporate Debtor on 27.08.2019, to which, the Corporate Debtor has not preferred to send any reply and has also not made any payments towards the outstanding due. It is also seen from the records that the Operational Creditor has filed an affidavit as mandated under Section 9(3)(b) of the IBC, 2016 setting out the details that no amount was received from the Corporate Debtor, after the issuance of the Demand notice and also that there was no dispute raised by the Corporate Debtor in this regard. Under the said circumstances, it was submitted that the Operational Creditor was constrained to file the present application before this Tribunal seeking to initiate the CIRP against the Corporate Debtor.

6. In relation to the Corporate Debtor, it is seen from the records that when matter came up for hearing before this Tribunal on 03.03.2020, the Corporate Debtor was represented by a Counsel and sought time to file reply. Thereafter, when the matter subsequently came up for hearing on 09.11.2020, there was no representation on behalf of the Corporate Debtor and the matter was posted for hearing 08.12.2020. On 08.12.2020, when the matter was again called, there was no representation on behalf of



the Corporate Debtor and as such this Tribunal was constrained to pass an order of *ex-parte* against the Corporate Debtor. Thereafter, the matter came up for hearing on multiple occasions on the part of the Operational Creditor to argue the same. In the meantime, on 12.03.2021, the Learned Counsel for the Corporate Debtor appeared through Video Conferencing and submitted that an application to set aside the *ex-parte* was filed in the Registry.

7. Subsequently, when the matter came up for hearing on 01.04.2021, the Respondent was not ready with the matter and as a result of which, the matter was adjourned on 27.05.2021. Finally, the matter was taken up for hearing on 19.07.2021, on which date there was no representation on behalf of the Corporate Debtor and this Tribunal was required to hear the arguments in respect of the Operational Creditor and in the absence of the Corporate Debtor and finally reserved the matter for orders.

8. Further, it is seen from the records that the Corporate Debtor at the first instance has not replied to the Demand Notice issued by the Operational Creditor and also fails to set forth any defence before this Tribunal in relation to the Application filed by the Operational Creditor under Section 9 of the IBC, 2016.



9. It is seen that the present application is filed before this Tribunal on 07.01.2020 and all the Invoices raised by the Operational Creditor were during the period from 2017 to 2018 and as such the present application falls well within the period of limitation. The Operational Creditor has also proved the debt and default on the part of the Corporate Debtor and under the said circumstances we have left with no other option than to initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

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. 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 - December 2021 appoints **Mr. Narayanan Srinivasan**, with Reg. No. *IBBI/IPA-001/IP-P01735/2019-2020/12674* (email id:- *naarayansrinivas@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.

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;

11. 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 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.

12. 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.

13. The Operational Creditor is directed to pay a sum of **Rs.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.

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