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

IBA/200/2020

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016)

In the matter of ***Sri Anjaneya Cartons Pvt. Ltd.***

Sai Tirumala Papers Pvt. Ltd.,
Flat No.G-2, Sai Krishna Swarna Residency,
H.No.8-3-224/8/54, G-12, Mahuranagar,
Hyderabad-500 038

... Operational Creditor

-Vs-

Sri Anjaneya Cartons Pvt. Ltd.,
141 & 142, Sidco Industrial Estate,
Thirumudivakkam,
Chennai-600 044

... Corporate Debtor

Order delivered on 7th *March 2022*

CORAM

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

For Operational Creditor: Mr. Roshan Atiq, Advocate
For Corporate Debtor : Mr. L. Sriramn, Advocate

ORDER

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

Heard and dictated in the Open Court on 07.03.2022

This application is filed under Section 9 of the IBC, 2016 by ***M/s. Sai* Tirumala Papers Pvt. Ltd.,** (hereinafter referred to as **'Operational Creditor'**) under Section 9 of the Insolvency &

Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against ***M/s. Sri Anjaneya Cartons Pvt. Ltd.,*** (hereinafter referred to as **'Corporate Debtor'**) for the debt and due payable by the Respondent to the tune of Rs.9,98,798.06 (Rupees Nine Lakhs Ninety Eight Thousand and Seven Hundred and Ninety Eight and Paise six only) to the Applicant/Operational Creditor.

2. Counsel for the Applicant/Operational Creditor submits that they have supplied scrap material to the Respondent under Invoice Nos. 2018-19/0265 dated 29.06.2018, 2018-19/0268 dated 29.06.2018, 2018-19/0347 dated 21.07.2018, 2018-19/0348 dated 21.07.2018 and 2018-19/0497 dated 25.08.2018. The above invoices were raised by the Operational Creditor for the supplies made to the Corporate Debtor. The invoices are enclosed along with delivery challan including other documents to satisfy that these goods were supplied to the Corporate Debtor. Section 8 notice at page 12 and E-Way Bill at page 36 are enclosed along with this application. Counsel for the Petitioner submits that in spite of repeated demands, the Corporate Debtor had failed to make the payment to the tune of Rs.9,98,798.06. The Respondent has filed its counter. The Respondent had also replied to the demand notice dated 25.05.2019 under Section 8 by way of reply

notice dated 19.06.2019 wherein they had raised dispute regarding the quality of the goods supplied by the Applicant/Operational Creditor herein.

3. We have heard both the parties. During the oral arguments, the Counsel for the Respondent states that there has been a longstanding relationship between the Applicant and the Respondent and there were some defects in the goods supplied by the Applicant and that the same was disputed by the Respondent in the year 2015 itself by way of an e-mail. In turn, the Applicant/Operational Creditor has also accepted the dispute and promised to rectify the defect in the subsequent supply of goods.

4. It is pertinent to note that the invoices enclosed along with the application are of the year 2018. It appears that out of the total five invoices raised by the Applicant/Operational Creditor, no dispute has been raised by the Respondent and no documents have been enclosed by the Respondent either by way of e-mail or by way of any other documents to satisfy this Tribunal that there has been pre-existing dispute between the parties. Furthermore, only defence stated by the Respondent in this application is the pre-existing dispute with regard to the defects in the supply of goods made by the Applicant/Operational Creditor. No documents have been filed to satisfy that the same has been enclosed either with counter or with any other documents. In view of the same, it

was submitted by the Counsel for the Operational Creditor that there is a debt and default on the part of the Corporate Debtor. Accordingly, the Operational Creditor has proved existence of debt and default and prayed for initiation of CIRP against the Corporate Debtor. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

5. 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;

6. 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.

7. 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.

10. 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 Jan 2022 – June 2022 appoints **Mr. R. SUGUMARAN** having registration number ***[IBBI/IPA-001/IP-P00677/2017-2018/11147]*** ***(e-mail id:- rsmaran@yahoo.co.in)*** 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.

8. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP 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.

9. 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 and file his report within 30 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.

10. 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/is directed to extend all assistance and

cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

10. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-***(Rupees One 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 to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

12. 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)

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(R. SUCHARITHA)
MEMBER (JUDICIAL)

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