

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT-I)
CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON **24.03.2021 at 2.00 P.M**
THROUGH VIDEO CONFERENCING

**PRESENT: SHRI R. VARADHARAJAN, MEMBER (JUDICIAL)
SHRI ANIL KUMAR B, MEMBER (TECHNICAL)**

IA/MA/IBA/TCP/TCA/CP/CA No : IBA/471/2020
NAME OF PETITIONER : Kapil Agencies
NAME OF RESPONDENT : Harsha Exito Engineering Pvt Ltd & 1 Another
SECTION : Sec 9 Of IBC 2016

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

IBA/471/2020

*(Filed under rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016*

In the matter of **M/s. Harsha Exito Engineering Private Limited**

M/s. Kapil Agencies,

No.126, Manali Ponneri High Road,

Manali, Chennai – 600 068,

Represented by its Partner/Authorized Signatory,

Karun Maheswari.

.... *Operational Creditor*

-Vs-

1. **M/s. Harsha Exito Engineering Private Limited**

Survey No.797/1A & 797/1B1,

200 Ft. Inner Ring Road, Madhavaram,

Ambattur Taluk,

Thiruvallur District – 600 110.

... *Corporate Debtor*

2. **Union of India,**

Represented by its Secretary,

Ministry of Corporate Affairs,

Shastri Bhawan, Dr. Rajendra Prasad Road,

New Delhi – 100 001.

.... *Respondent*

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : Mr. Arul Raj, Advocate

For Corporate Debtor : None appeared

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

Order Pronounced in the Open Court on 24.03.2021

1. This is an Application seeking for the initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, namely, **M/s. Harsha Exito Engineering Pvt Ltd.**, under the provisions of Insolvency and Bankruptcy Code, 2016.
2. This Application has been filed by the Applicant/Petitioner in the capacity of an "Operational Creditor". The total amount of debt due which is claimed is a sum of Rs.40,79,655/-. In support of the Application, Ld. Counsel for the Petitioner represents that the Applicant had initiated prior to this Company Petition, another Petition in IBA/981/2019.
3. During the course of the Proceedings pending before this Tribunal in relation to the said IBA/981/2019, a Joint Memorandum of Settlement was filed on behalf of the parties before this Tribunal on 23.10.2019 wherein the Corporate Debtor undertook to pay a sum of Rs.82,10,587/- by way of four instalments. The schedule of payment has been tabulated in the Joint Memorandum of Settlement on behalf of the parties, the said tabulation is extracted hereunder:-



Sl.No	Date	Amount Rs.
1	19.10.2019	25,00,000/-
2	15.11.2019	19,03,000/-
3	15.12.2019	19,03,000/-
4	15.01.2020	19,04,587/-
Total		82,10,587/-

4. It is also seen from the present Application that the tabulation has been extracted in Part IV of the Application presently filed before this Tribunal. Ld. Counsel for the Applicant further represents that out of the four instalments, which were required to be paid under the Joint Memo of Settlement, only 1st instalment amount of Rs.25,00,000/- has been paid in full by the Respondent / Corporate Debtor and in relation to the 2nd instalment, it is represented by the Ld. Counsel for the Applicant that out of the 2nd instalment amount of Rs.19,03,000/-, only a sum of Rs.18,00,000/- has been paid Rs.18,00,000/- through RTGS and even in relation to 2nd instalment a sum of Rs.1,03,000/- remains due and payable.

5. Taking into consideration the said default in the payment, which has arisen in relation to the part payment of the 2nd instalment remains due and payable and full amount of the 3rd and 4th instalments are unpaid, this Application has been filed before this Tribunal seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.



6. It is also seen from the records of proceedings dated 22.02.2021 when the Company Petition was moved, the following Order was passed by this Tribunal:-

"Ld. Counsel for Petitioner Ms. Shabnam Ashrafi is present through video conferencing mode. None appears for the Corporate Debtor.

It is brought to the notice of this Tribunal that this Petition in IBA/471/2020 is a sequel to the earlier Petition filed by the Petitioner as against the same Corporate Debtor in IBA/981/2019. It is further brought to the notice of this Tribunal by the Ld. Counsel for the Petitioner that a Joint Memorandum of Settlement (JMS) was filed by the parties in IBA/981/2019 which was also taken on record and an Order was passed by this Tribunal dated 23.10.2019 as follows: -

"On the withdrawal Memo filed by the Operational Creditor Counsel seeking liberty to file a fresh Petition in the event settlement arrived at in between the parties is failed, this Bench hereby dismissed this Application as withdrawn with a clarification that this Operational Creditor is always at liberty to file afresh in the event the Corporate Debtor failed to pay in accordance with the settlement arrived at in between the parties.

*Accordingly, this IBA/981/2019 is hereby **dismissed as withdrawn**".*

It is seen from the Order, a liberty is granted to the Operational Creditor to file afresh in the event of Corporate Debtor not acting in accordance with settlement and hence this Petition. Since the typed set in relation to IBA/981/2019 has not been made available, we direct the **Registry** to update the typed set in IBA/981/2019 with the present Petition for the purpose of disposal of the Petition.

Post this matter on **24.03.2021**".

7. Even in today's hearing, there was no appearance on the part of the Corporate Debtor. In the circumstances, we are constrained to proceed with the matter in the absence of the Corporate Debtor. As this Company Petition is only a sequel to the earlier Petition filed in

IBA/981/2019, wherein the Corporate Debtor specifically admitted the debt and has also arrived at a settlement between the parties and which amounts stood unpaid even as of today as brought to the notice of this Tribunal vide the present Company Petitioner in IBA/471/2020. We are constrained in view of the fact that there is an existence of debt owed and the default has been committed on the part of the Corporate Debtor and in the light of the above, this Tribunal is constrained to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor with the following consequences.

8. 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 January – June 2021 appoints **Mr. J. John Ohilvi, having Reg. No. IBBI/IPA-002/IP-N00902/2019-2020/12921, e-mail Id: johnohilvi@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. 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;

9. 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.



10. 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.

11. 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.

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.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

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-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

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