IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
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CP (IB)No.51/CTB/2019

CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)

In the Matter of:
An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:
M/s MT and T Rental Limited, having registered office at 62/2B, New No. 99, Old No. 144, Padur Village, Poonamalle Taluk, Thiruvallur District, Chennai, India – 602105.

.... **Operational Creditor/Applicant**

-Versus-

In the Matter of:
M/s Shree Shankar Infratech Private Limited having Registered Office at AT/PO Behermal, Jharsuguda, Odisha- 768203.

....**Corporate Debtor/Respondent**

Counsels appeared for the Petitioner

1. Rakesh Kumar Mallick.

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Date of pronouncement of Order: 27th day of September, 2019.

ORDER

Per: Ms. Sucharitha R. Member (J)

1. The applicant/ Operational Creditor has filed this application under Section 9 of the Insolvency and Bankruptcy Code of 2016 (brevity IBC against the Corporate Debtor/ Respondent herein) presented by Ms. Nidhi Sharma, Company Secretary authorized by Board of Director, meeting dated 26.03.2018. The application for initiation of Corporate Insolvency Resolution Process against Corporate Debtor/respondent i.e. **M/s Shree Shankar Infratech Private Limited**.

2. The Notice was served on the Corporate Debtor/ Respondent. However, there was no representation for the Corporate Debtor. Notice by way of publication was also taken out by Operational Creditor. However, there was no representation. Hence, Corporate Debtor/ Respondent was set ex-parte on 16.07.2019.

3. The applicant is engaged in the business of providing working solution to Industries with specialized access equipment / machines such as Scissors Lifts, Mobile Access Platforms and other aerial working

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platforms for man and material handling on rent. In course of the business the Corporate Debtor had approached the applicant for hiring of various products of the Applicant such as Piling Rig and Portadeck Mats on rental basis for its worksites at Belpahar, Jharsaguda, Odisha and NTPC Railway project, Rajgarh, Chhattisgarh.

4. The Corporate Debtor issued to work orders dated 16.03.2018 and 29.03.2018. As per the work order the respondent ought to make advance payment of one month rent and was to release 25% of the advance payment on complete mobilization of the equipment and balance 75% within seven days of commission of equipment.

5. Thereafter, the Operational Creditor shall raise monthly invoices on or before 15th day of every month for the charges for the previous completed charter month. The applicant submits that the Corporate Debtor initially released the advance payments of Rs. 9,37,411.50/-. The Corporate Debtor also issue the Cheque dated 28.03.2018 **Cheque Bearing No. 236367** for the amount of Rs. 9,37,500/-. However, the cheque was presented for clearance the same was returned with endorsement "insufficient fund". Thereafter, the applicant issue demand notice dated 04.06.2018 under Section 138 of Negotiable Instrument Act.

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However, the Corporate Debtor did not repay the amount. As per the applicant the following invoices are due and payable.

i) Invoice No. UP/18-19/06/0290 dated 11.06.2018 of Rs. 7,37,500/-

ii) Invoice No. UP/18-19/06/0293 dated 11.06.2018 of Rs. 14,75,000/-

iii) Invoice No. UP/18-19/06/0324 dated 12.06.2018 of Rs. 7,37,500/-

iv) Invoice No. TN/18-19/06/0285 dated 11.06.2018 of Rs. 7,59,920/-

v) Invoice No. TN/18-19/06/0286 dated 11.06.2018 of Rs. 1,28,502/-

vi) Invoice No. TN/18-19/07/0325 dated 16.07.2018 of Rs. 7,59,920/-

vii) Invoice No. TN/18-19/08/0220 dated 13.08.2018 of Rs. 7,59,920/-

viii) Invoice No. TN/18-19/09/0318 dated 24.09.2018 of Rs. 7,59,920/-

ix) Invoice No. TN/18-19/10/0261 dated 10.10.2018 of Rs. 1,41,600/-

6. The applicant submits that out of total billed amount of Rs. 62,59,782/-. The Corporate Debtor has only made the payment of an amount of Rs. 10,87,393.80/-. The balance amount due and payable is sum of Rs. 51,72,388.20/-.

7. The work order is dated 06.03.2018 and last invoices date is 10.10.2018. hence, the claim of the applicant is well within a period of the limitation.

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8. The applicant/Financial Creditor has not proposed the name of any IRP. In view of the same, this Adjudicating Authority appoints **Mr. Sunil Kumar Keswani r**esidence of House No. 31, Canal Linking Road, Ravi Nagar, Raipur, Chhattisgarh, 492 001 having **Registration No.: IBBI/IPA-001/IP-P00819/2017-2018/11396** and **E-mail Id.: sunil.keswani.co@gmail.com.** There is nothing on record to show that any disciplinary proceeding is pending against the proposed IRP. This application is defect free.

9. In view of the above, we are incline to admit the application by following Order.

ORDER

(i) The application filed by the Operational Creditor under Section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **M/s Shree Shankar Infratech Private Limited**.

(ii) Moratorium Order is passed for a public announcement as stated in Sec. 13 of the IBC, 2016. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call

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for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

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 action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(iv) 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.

(v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(vi) The order of moratorium shall affect the date of admission 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

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(vii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the Resolution Professional upon receipt of the copy of this order.

(viii) **Mr. Sunil Kumar Keswani** residence of House No. 31, Canal Linking Road, Ravi Nagar, Raipur, Chhattisgarh, 492 001 having **Registration No.: IBBI/IPA-001/IP-P00819/2017-2018/11396** and **E-mail Id.: sunil.keswani.co@gmail.com** is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency, as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

(ix) We direct the Operational Creditor to deposit a sum of Rs. Two Lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as

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accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

(x) Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petitioner to the IRP, otherwise coercive steps to follow.

xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

xii) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.

Interim Resolution Professional to file 1st Progress Report on **30.10.2019.**

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List the matter on **30.10.2019.**

Let the certified copy of the order be issued upon compliance with requisite formalities.

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Shri Satya Ranjan Prasad
Member (T)

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Ms. Sucharitha R.
Member(J)

Signed on this, the 27th day of September, 2019.

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