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

IBA/768/2019

(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 **Rajkham Infra Private Limited**

Nirmal K.Dhiren, Sole Proprietor of
NKV Home Depot,
No.86A, Poonamallee High Road,
Velappanchavadi, Chennai – 600 077.

... *Operational Creditor*

-Vs-

Rajkham Infra Private Limited,
New No.105, Arcot Road,
Kodambakkam,
Chennai – 600024.

... *Corporate Debtor*

Order Pronounced on **3rd December 2021**

CORAM:

SUCHARITHA R, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor : K. Gaurav Kumar, PCS

For Corporate Debtor : Pradeeep, Advocate

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

Under adjudication is an Application filed by Nirmal K.Dhiren Sole Proprietor of **NKV Home Depot**, a sole Proprietor Firm(hereinafter referred to as **"Operational Creditor"**) under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short, 'I&B Code, 2016) r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Rajkham Infra Private Limited** (hereinafter referred to as **"Corporate Debtor"**)to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Operational Creditor is a Sole Proprietorship Firm and the Sole Proprietor is Nirmal K.Dhiren. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 20.02.2014 bearing CIN :U45209TN2014PTC095128, under the Companies Act, 2013and the Registered Office Address of the Corporate Debtor as per the Application is stated to be situated at New No.105, Arcot Road, Kodambakkam, Chennai – 600 024, Tamil Nadu. From Part-III of the Application, it is seen that the Operational Creditor has not proposed that the name of the IRP and left it to discretion of this Tribunal to appoint the same.

3. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of Rs.5,42,685.74/- (Principal sum is Rs.4,46,949 and Interest amount @ 18% is Rs.95,736.74)which is due and payable by the Corporate Debtor. Part-V of the Application discloses the details of the documents filed by the Operational Creditor, in order to prove its 'operational debt' and the list of documents which filed along with the Application are as follows;

a. Workings for Computation of default

b. Outstanding Invoices

i) Invoice No: 558 dated 28.10.2017

ii) Invoice No: 666 dated 25.11.2017

iii) Invoice No: 737 dated 15.12.2017

iv) Invoice No: 862 dated 18.01.2018

v) Invoice No. 989 dated 14.02.2018

4. Learned Authorized Representative for the Operational Creditor submitted that the Operational Creditor supplied NKV Gypsum to the Corporate Debtor and accordingly issued various invoices. It is further submitted that the payment is due from invoice no: 558 dated 28.10.2017.

5. Learned Authorized representative for the Operational Creditor submitted that, the Operational Creditor has issued a Demand Notice dated 26.03.2019 as stipulated under section 8 of IBC 2016 to the Corporate Debtor and the same has been delivered to the Corporate Debtor on 30.03.2019. Further, perusal of the Affidavit filed under Section 9(3)(b) of IBC, 2016 would shows that, neither the Corporate Debtor has not paid the amount which is outstanding to the Operational Creditor within the period of ten days from the date of receipt of the Demand Notice nor the Corporate Debtor has brought to the notice of the Operational Creditor any dispute regarding the amount which is outstanding. Under the said circumstances, the

Learned Counsel for the Operational Creditor prayed for the initiation of CIRP against the Corporate Debtor.

6. The Learned Counsel for the Corporate Debtor filed a Counter Affidavit and submitted that at the outset, the Application as filed by the Operational Creditor is not maintainable, in view of the fact that the Operational Creditor has arrived the claim pointing on various invoices (14 invoices) however the copies of the same has not been furnished by the Petitioner. It was further submitted by the Corporate Debtor that the Operational Creditor, if the Operational Creditor had really supplied so many goods to the Corporate Debtor, the Operational Creditor must possess the copies of the invoices claimed whereas only five invoices has been produced by the Applicant.

7. The Learned Counsel for the Corporate Debtor has also submitted that the goods supplied by the Vendor/Applicant is a substandard goods and the Respondent is reserving his right to claim his damages in appropriate forum.

8. The Learned Authorized Representative of the Operational Creditor has filed rejoinder and the Operational Creditor denies all the allegations made by the Corporate Debtor in the counter and stated that, after filing of the present petition the Corporate Debtor had sent a DD amounting to Rs.10,000/- vide Demand Draft (DD No.020416)

dated 30.07.2019 towards part payment of dues and the informed through letter dated 05.08.2019 that the remaining payment will be made as early as possible which clearly shows that the Corporate Debtor had acknowledged the debt and assured to settle the same.

9. During the Hearing, the Learned Counsel for the Corporate Debtor submitted that the Corporate Debtor is ready and willing to pay a sum of Rs.4,36,949/- in a deferred manner to the Operational Creditor. The matter has passed over with instructions to both the sides to reconcile within themselves. When hearing resume, both the sides represented before this Hon'ble Tribunal that they are unable to reconcile. Based on the admissions made before, this Adjudicating Authority during the hearing, the Corporate Debtor had admitted the default.

10. Heard submissions made by both the parties and perused the documents placed on record. It is manifestly clear from the record that the Corporate Debtor has sent a Demand Draft of Rs.10,000 and agreed to pay the remaining amount.

11. Also, the acknowledgment of debt by the Corporate Debtor would go on to show that there is an 'operational debt' and the Corporate Debtor has committed 'default' in repayment of such 'operational debt' to the Operational Creditor. Further, it is also

pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option other than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

12. 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 was 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 2021 – December 2021 appoints **Ms. SEETHA THELAGAR** with ***Reg. No. IBBI/IPA-002/IP-N00755/2019-2020/12805 (email id:- tseetha2002@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. 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 Code and file his report within 20 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.

13. 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;

14. 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 mange 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.

15. 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.

16. The Operational Creditor is directed to pay a sum of **Rs.3,00,000/-***(Rupees Three 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.

17. 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-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Sriram Ananth V