IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA

IBA/22/KOB/2020
&
IBA/23/KOB/2020

(Under Section 9 (6) of Insolvency and Bankruptcy Code 2016)

Order delivered on 23rd day of March, 2021

Coram:

Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

In the matter of

M/s Ambani Vitrified Private Limited
Survey No.143 P1/P1,
Morbi Charadva Road,
Unchi Mandal, Morbi0363642
Gujarat-India.

……. Applicant in IBA/22/KOB/2020/Operational Creditor

M/s Airson Ceramic Industries,
8-A, National Highways, Opp.GEB Feeder,
B/h Ambani Ceramic Industries, Lalpar,
Morbi-363642(Gujarat India)

…Applicant in IBA/23/KOB/2020/Operational Creditor

Vs.

M/s Nassco Trading India Private Limited
Registered Office at Building No.7/1245,
Karavaram Panchayath,
Alamcode PO, Attingal, Kerala-695120. India.

……….Respondent in IBA/22/KOB/2020 & IBA/23/KOB/2020/Corporate Debtor

Parties/Counsel present (through video conferencing)

For the Operational Creditors	:Shri Aswin R.Patel, Advocate along with Shri Cimil C.Kottalil, Advocate
For the Corporate Debtor	:No appearance (Exparte)

O R D E R

Since **IBA/22/KOB/2020 and IBA/23/KOB/2020** contain identical claims of the Operational Creditors (1) **M/s. Ambani Vitrified Pvt Limited** and (2) **M/s. Airson Ceramic Industries** against the Corporate Debtor **M/s. Nassco Trading India Private Limited,** as such both the cases are clubbed together and passed the following common order.

2. These applications were filed by, **M/s. Ambani Vitrified Pvt Limited (**IBA/22/KOB/2020) and **M/s. Airson Ceramic Industries** (IBA/23/KOB/2020), Operational Creditors under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) for initiating Corporate Insolvency Resolution Process (CIRP for short) against the Corporate Debtor. The Corporate Debtor was incorporated on 28.04.2010 under the Companies Act, 1956 in the name of **M/s. Nassco Trading India Private Limited'** with CIN No. U52341KL2010PTC025917. It has its Registered Office at Building No.7/1245, Karavaram Panchayath, Alamcode P.O Attingal, Kerala 6951202, in the State of Kerala as per the Master data taken from the Ministry of Corporate Affairs' website and, therefore, the matter falls within the territorial jurisdiction of this Tribunal.

IBA/22/KOB/2020- M/s. Ambani Vitrified Pvt Limited

3. The Operational Creditor is one of the leading manufacturers of vitrified tiles and Corporate Debtor is engaged in the business of supplying and trading of vitrified tiles, wall tiles, flooring tiles etc. During the course of business, from 26.05.2016 to 15.08.2016 the Operational Creditor supplied 12,382 boxes of nano vitrified tiles for an amount of ₹44,02,946/- [Rupees Forty-Four Lakhs Two Thousand Nine Hundred and Forty-Six Only], out of which ₹56,666 [Rupees Fifty-Six Thousand Six Hundred and Sixty-Six only] was paid and thereafter the remaining amount of ₹ 77,34,614 [Rupees seventy Seven Lakh Thirty Four Thousand Six Hundred And Fourteen only] including interest of ₹ 33,88,334 [Thirty Three Lakh Eighty Eight Thousand Three Hundred And Thirty Four only] is due from 30.11.2019. The amount fell due when the Corporate Debtor failed to clear claims against invoice raised by the Operational Creditor. The details of invoices are as under: -

Sr. No.	Invoice Date	Date	Amount (in Rupees)
1	303	26/05/2016	3,71,720
2	553	01/07/2016	4,12,117
3	676	27/07/2016	2,74,948/-
4	679	27/07/2016	2,74,631/-
5	697	30/07/2016	2,74,948/-
6	704	31/07/2016	2,74,948/-
7	705	31/07/2016	2,74,948/
8	710	01/08/2016	3,20,986/
9	713	01/08/2016	3,21,355/-
10	718	01/08/2016	3,21,724/-
11	719	01/08/2016	3,22,092/-
12	720	01/08/2016	3,22,461/-
13	779	15/08/2016	3,15,082/-

14	780	15/08/2016	3,20,986/

4. Due to continuous failure of the Corporate Debtor to honour its commitments, the Operational Creditor issued demand notice dated 12.12.2019 as per Section 8 of the Code. The default was occurred from 21.05.2018 and neither any amount received from the Corporate Debtor nor they refuted the debts.

IBA/23/KOB/2020 - M/s. Airson Ceramic Industries

5. The Operational Creditor is one of the leading manufacturers of Ceramic Tiles. The Ceramic Tiles is used for flooring, walls and basement of homes, offices, shops etc. During the course of business, from 01.04.2016 to 31.04.2017 the Operational Creditor supplied 69,792 boxes of ceramic tiles, for ₹1,83,73,901 [Rupees One Crore Eighty-Three Lakhs Seventy-Three Thousand Nine Hundred and One only], out of which ₹1,16,67,032 [Rupees One Crore Sixteen Lakhs Sixty-Seven Thousand Thirty-Two only] has been paid and thereafter, the remaining amount of ₹67,06,869 [Rupees Sixty-Seven Lakhs Six Thousand Eight Hundred and Sixty-Nine only] is due to the Operational Creditor. The Details of invoices are as under: -

Sr. No.	Invoice Date	Date	Amount (in Rupees)
1	0021	06/04/2016	3,77,212/-

2	0039	09/04/2016	3,77,212/-
3	0425	15/07/2016	3,12,964/-
4	0429	15/07/2016	3,13,800/-
5	0475	28/07/2016	3,13,800/-
6	0505	01/08/2016	3,13,800/
7	0511	02/08/2016	3,13,800/-
8	0518	03/08/2016	3,19,031/-
9	0540	10/08/2016	3,19,031/-
10	0542	10/08/2016	3,19,031/-
11	0545	1/08/2016	3,19,031/-
12	0548	12/08/2016	3,19,031/-
13	0551	13/08/2016	3,19,031-
14	0555	14/08/2016	3,19,031/-
15	0557	14/08/2016	3,19,031/
16	0558	14/08/2016	3,19,031/-
17	0560	15/08/2016	3,19,031/-
18	0562	15/08/2016	3,19,031/-
19	0563	15/08/2016	3,19,031/-
20	0566	16/08/2016	3,19,031/-
21	0579	21/08/2016	3,19,031/-
22	0580	21/08/2016	3,19,031/-

23	0592	23/08/2016	3,19,031/-

6. Despite the invoice were duly received and dues were acknowledged by the Corporate Debtor, they failed to pay the due amount. Hence, the Operational Creditor issued a demand notice under Section 8 of the Code on 31.08.2019. The Corporate Debtor failed to fulfil its obligations to make timely payment against supplies/services provided.

7. Therefore, the Operational creditor filed this Application on 05.03.2020 to initiate Corporate Insolvency Resolution Process, declaration of Moratorium and appointment of Interim Resolution Professional under Section 9 of the I&B Code, 2016.

8. In both cases, the Registry of this Tribunal has also issued notices to the Corporate Debtor intimating the Corporate Debtor about the application filed under Section 9 of the Insolvency and Bankruptcy Code,2016. However, the notices to Corporate Debtor were returned unserved as ‘addressee left’. Thereafter the Operational Creditors were directed to produce fresh address, which they produced in which also the Registry sent notices which were also returned with the postal remarks ‘shop permanently closed’. Under such circumstances the Operational Creditors were directed to issue paper publication. On 02.03.2021 the Operational Creditors filed an affidavit stating that as directed by this Tribunal paper publication has been made in ‘The Hindu’ and ‘The

Deshabhimani' dailies. Despite the paper publication as above none has appeared for the Corporate Debtor. Therefore, the learned counsel for the Operational Creditors was heard through Video Conferencing and the matter was taken for Orders.

9. In both cases, since the Applicants stated that the default was occurred during May 2018, which was not controverted by the Corporate Debtor through their appearance, this Tribunal takes the date of default from May 2018.

10. In view of the above facts, this Tribunal relies on Section 9 (3) (a) (b) (c) of the Code to determine whether process for initiation of CIRP was followed by the Operational Creditor or not. Section 9 (3) is defined as under: -

> *"(3) The operational creditor shall, along with the application furnish—*
>
> *(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;*
>
> *(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;*
>
> *(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt."*

11. It also appears from the Application that the claim amount satisfies the minimum default requirement [prior to the notification of 24^{th} March 2020] under Section 4 of the Code. I have also perused the notice sent under Section 8 (2) of the Code and it is seen that the Corporate Debtor received the notices, however

they did not pay the amount of unpaid outstanding due. Therefore, on all counts the Application deserves to be admitted.

12. In the given facts and circumstances, we are of the view that the present application is complete and the Applicants are entitled to claim its dues, which remain unpaid by the Corporate Debtor. In the light of above facts and circumstances the present application is liable to be **admitted** and CIRP ordered against the Corporate Debtor.

13. As a consequence, the **Application No. IBA/22/KOB/2020 and IBA/23/KOB/2020** are **admitted** in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following: -

I. 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;

II. transferring, encumbering, alienating or disposing off by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

III. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002;

IV. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

1. **It is further made clear that:**

I. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

II. That the provisions of Sub-Section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

III. That the order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

IV. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of IBC.

14 The Applicants have not named any Insolvency Professional to be appointed as the Interim Resolution Professional. Hence, this Bench decided to take a name from the panel of Insolvency Professional for the Kerala State for the period from 01.01.2021 to 30.06.2021. That this Bench hereby appoints **Mr. Renahan Vamakesan** having **Registration No. IBBI/IPA-002/IP-N00630/2018-2019/11897**(**Email-renahanv@gmail.com) (address-Villa 23, Skyline Rosemount Homes, Kunjan Bava Road, Vytilla P.O, Ernakulam, Kerala-682019)** as **Interim Resolution Professional** to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall

comply with the IBBI Regulations/Circulars/Directions issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP/ RP shall carry out his functions as contemplated by Sections 15, 17, 18, 19, 20 and 21 of the IBC.

15. The Applicants/Operational Creditors shall deposit an amount of **₹2,00,000/- [Rupees Two Lakhs]** with the Interim Resolution Professional for initiation of the proceedings as directed by this Tribunal forthwith. This amount is subject to ratification by the CoC.

16. The Registry is directed to immediately communicate this order to the Operational Creditors, the Corporate Debtor and the Interim Resolution Professional.

Dated this the 23rd day of March 2021

Sd/-

(Ashok Kumar Borah)
Member (Judicial)