

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

IBA/577/2020

*(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 **Real Value Promoters Private Limited***

M/s. P.Manickam & Co.

Registered Office:

41/21, Perambur Barracks Road,
Pattalam, Chennai – 600 012.

... Applicant / Operational Creditor

-Vs-

Real Value Promoters Private Limited,

Ambojini, 17-1,
Poes Road II Street,
Teynampet,
Chennai – 18.

... Respondent / Corporate Debtor

*Order Pronounced on **10th May, 2023***

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor: Mr. Sam Jayaraj, Advocate
Mr.Venkada Subban, Advocate*

For Corporate Debtor: Mr.Avinash Krishnan Ravi, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (in short "**IBC**") read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **P.Manickam & Co** (herein referred

to as **"Operational Creditor"**) against **Real Value Promoters Private Limited** (hereinafter referred to as **"Corporate Debtor"**) for initiating Corporate Insolvency Resolution Process (**"CIRP"**) against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Operational Creditor is a partnership firm having its Registered Office at 41/21, Perambur Barracks Road, Pattalam, Chennai – 600 012.
3. Part II of the Application describes the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a private limited company incorporated under the Companies Act, 1956 on 24.08.1995 with CIN: U70101TN1995PTC032687 the registered office of the Corporate Debtor is situated at Ambojini, 17-1, Poes Road II Street, Teynampet, Chennai – 18.
4. In Part III of the Application, the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP).
5. From Part-IV of the Application, the Operational Creditor has claimed a sum of Rs.66,45,368/- including interest at 18% per annum as on 09.03.2019.
6. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default. Following documents have been attached with the application: -

1. Copy of Demand Notice dated 13.03.2019.
2. Copy of Work Order No.RVP/PUR/7295/2012-2013 dated 04.05.2015.
3. Copy of unpaid invoices raised by the Operational Creditor.
4. Copy of the Ledger account and the certified bank statement of the Operational Creditor.
7. It is stated that the Corporate Debtor had availed the services of the Operational Creditor vide work order No.RVP/PUR/7295/2012-2013 dated 04.05.2015. Subsequently, the Operational Creditor raised the invoices on various dates against which the Corporate Debtor made part payments. The Corporate Debtor made its last part payment of Rs.1,00,000/- on 26.07.2017.
8. After completion of all works, the Operational Creditor handed over the work site to the Corporate Debtor and raised a final invoice No. B1/PMC/120/18-19 dated 11.09.2018 for Rs.42,89,491/-, which was not paid by the Corporate Debtor.
9. As the Corporate Debtor failed to honour its commitment, the Operational Creditor issued a Demand Notice dated 13.03.2019. Since there is no reply from the Corporate Debtor, the Operational Creditor Preferred this Application.
10. In the counter, the Corporate Debtor stated that the cause of action for the instant case arose on 04.05.2016 and the application filed was only signed by the Applicant on 15.07.2019. Since the

time between the cause of action and the date of filing of application is more than 3 years, the application is barred by limitation and not maintainable.

11. Having heard the submission of both the parties and on perusal of records it is seen that the Demand Notice under Form-3 dated 13.03.2019 was served at the registered office of the Corporate Debtor on 15.03.2019. This application was filed on 01.08.2019.

12. It is noted that in the bank statement at page 383 of the application, Rs.1,00,000/- has been credited into the Operational Creditor Account under Cheque No. 00762088 on 27.07.2017.

13. The Corporate Debtor has not denied the plea of the Applicant that the above payment was made by it towards the invoices raised by the Operational Creditor. It also did not dispute the invoice and bill raised or the amount claimed by the Operational Creditor. It is thus clear that the Corporate Debtor has acknowledged the debt and default.

15. With respect to limitation, Section 238A of IBC, 2016 provides as follows,

"Section 238A: *The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."*

Section 19 of the Limitation Act, 1963 provides as follows, .

"19. Effect of payment on account of debt or of interest on legacy. Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:"

And Article 137 of the Limitation Act, 1963 prescribes as follows,

PART II—OTHER APPLICATION

137. Any other application for which no period of limitation is provided elsewhere in this Division. Three years. When the right to apply accrues.

Viewing the facts in the light of the above provisions explicates that the provisions of the Limitation Act, 1963 are applicable to proceedings of the IBC, 2016. The payment of Rs.1,00,000/- made by the Corporate Debtor on 26.07.2017 resets the limitation as per Section 19 of the Limitation Act, 1963. Thereupon, a fresh period of 3 years shall be available for the applicant to prefer an application under Section 9 of IBC, 2016. Since the application was filed on 01.08.2019, it is well within the limitation.

16. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, the Application, as filed by the Operational Creditor, is 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 the Insolvency and Bankruptcy Board of India applicable for the period between January 2023- June 2023

hereby appoints **Mr.Mahalingam Suresh Kumar** with Registration Number **[IBBI/IPA-001/IP-P00110/2017-2018/10217]** (*E-mail ID:- msureshkumar@icai.org*) as the "Interim Resolution Professional". The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 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.

17. 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 the 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 subsection, 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;

18. 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 the 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 arrangements 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.

19. 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 the 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.

20. The Operational Creditor is directed to pay a sum of **Rs.5,00,000/-** (*Rupees Five 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 with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

21. Based on the above terms, **IBA/577/2020** stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the Order 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 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 a 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)

Gopishankar. D



-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)