

208

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

**IBA/773/2020**

*(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 **M/s. S.M. Ramcoal Importers Private Limited**

**Green Gold Global Resources Private Limited.,**  
(Formerly known as Green Gold Global Resources LLP),  
302, Bhaskar Apartment, 1321/1,  
Manishpuri, Saket, Indore,  
Madhya Pradesh - 452001

*... Operational Creditor*

-Vs-

**S.M. Ramcoal Importers Private Limited,**  
93C/6Y/B/1, Palai Road West,  
(Techers Colony), Tuticorin,  
Thoothukudi,  
Tamil Nadu – 628 008

*... Corporate Debtor*

*Order pronounced on 13<sup>th</sup> October 2021*

CORAM:

**R.SUCHARITHA, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : G. Ramachandran, Advocate  
For Corporate Debtor : Ex-Parte*

**ORDER**

**Per: R.SUCHARITHA, MEMBER (JUDICIAL)**

This is an Application filed by M/s. Green Gold Global Resources Private Limited (Formerly known as Green Gold Global Resources LLP) (*hereinafter referred to as "Operational Creditor"*) under

Section 9 of the Insolvency and Bankruptcy Code, 2016 against M/s. S.M. Ramcoal Importers Private Limited, (*hereinafter referred as the "Corporate Debtor"*) seeking thereof to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. From Part I of this Application, it is seen that the Operational Creditor is a Private Limited Company incorporated under the provisions of the Companies Act, 2013. From Part II, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 19.06.2013 bearing CIN: U10100TN2013PTC91757 and the Registered Office address of the Corporate Debtor as per the Application is stated to be situated at 93C/6Y/B/1, Palai Road West, (Teachers Colony), Tuticorin, Thoothukudi, Tamil Nadu 628 008. From Part III of the Application, it is seen that the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the IRP.

3. Part IV of the Application states that a sum of Rs.2,65,45,998/- is due and payable by the Corporate Debtor. Part V of the Application discloses the list of the documents which had been filed by the Operational Creditor in order to prove its Operational Debt and the list of documents filed along with the Application are as follows;



- a) Invoice wise Statement and Interest working
- b) Copy of the Invoices and Purchase Orders
- c) Settlement Agreement dated 13.03.2019
- d) Copy of the order of the Hon'ble Tribunal, Chennai Bench Vide Order No. CP/1477/IB/2018 dated 13.03.2019

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor supplied Non-Coking Indonesian Coal based on the purchase orders Nos. PO/SMRPL/0006/17-18 dated 14.11.2017, PO/SMRPL/0010/17-18 dated 16.03.2018, PO/SMRPL/0011/17-18 dated 31.03.2018 raised by the Corporate Debtor and after supply of the materials, the Operational Creditor raised various invoices to the Corporate Debtor for a total sum of Rs.2,03,05,358/-.

5. The Learned Counsel for the Operational Creditor further submitted that as per the Books of Accounts of the Operational Creditor, as on 12.09.2018 the amount payable by the Corporate Debtor was Rs.2,16,60,684/-. It was further submitted that the Operational Creditor sent a Demand Notice in Form-3 under section 8 of the IBC,2016 to the Corporate Debtor demanding payment of Rs.2,16,60,684/- consisting of the dues arising out of supply of goods amounting to Rs.2,04,05,358/- and interest amounting to Rs.12,55,326/-. But the Corporate Debtor failed to pay the dues or

reply to the Demand Notice. Thereafter the Operational Creditor filed an application before this Tribunal in CP/1477/IB/2018 to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

6. It was further submitted by the Learned Counsel Operational Creditor that after filing of the application, the Corporate Debtor proposed for an amicable settlement and also confirmed that the outstanding amount towards supply of goods to be paid to the Operational Creditor was Rs.2,04,05,358/-. Thereafter on 13.03.2019 a Settlement Agreement was executed by the parties. It was further submitted by the Learned Counsel for the Operational Creditor that a Joint Settlement Memo dated 13.03.2019 was filed withdrawing the Company Application filed before the Tribunal and based on the same, the CP/1477/IB/2019 was dismissed as withdrawn by this Tribunal vide its order dated 13.03.2019.

7. It was submitted by the Learned Counsel for the Operational Creditor that in pursuance of the Settlement Agreement, the Operational Creditor had received only a sum of Rs.1,00,000 from the Corporate Debtor and thereafter the Corporate Debtor did not honour any further payment. It was further submitted by the Learned Counsel for the Operational Creditor that as per clause 2

of the Settlement Agreement dated 13.03.2019, the Corporate Debtor shall be liable to pay an interest @18% per annum till the entire amount is paid or recovered.

8. Under the said circumstances, it was submitted by the Learned Counsel for the Operational Creditor that a sum of Rs.2,03,05,358/- is due and payable by the Corporate Debtor towards supply of Goods and Rs.62,40,641/- towards interest @18% on the unpaid invoices. Hence, it was submitted that the total amount which due and payable by the Corporate Debtor aggregates to Rs.2,65,45,998/-. It is further submitted that transaction relating to default for the sale of Goods commenced on 08.12.2017 and ended on 08.05.2018. Further, it was submitted that the date of default was 22.06.2018. The copy of the invoices and purchase orders are annexed as *Annexure-15 (Vol. II at Pg.Nos.157 to 307)*.

9. Under such circumstances, it was submitted that the Operational Creditor has issued a notice of Demand as stipulated under Section 8 of the IBC, 2016 to the Corporate Debtor on 29.01.2020 and it was delivered to the Corporate Debtor on 14.02.2020. From the Affidavit filed under Section 9(3)(b) it is evident that the Corporate Debtor has not raised any dispute in respect of the outstanding amount which is due and payable to the

Operational Creditor nor paid the operational debt within 10 days from the date of receipt of the Demand notice. Hence, the present Application has been filed by the Operational Creditor before this Tribunal on 23.11.2020 for initiation of CIRP as against the Corporate Debtor.

10. In relation to the Corporate Debtor, it is seen from the records that in spite of notice having been served to the Respondent, none appears on behalf of the Corporate Debtor. Therefore on 16.09.2021 this Tribunal has passed the following order;

"As per the Order dated 06.08.2021, the petitioner was directed to issue notice by way of paper publication and it was also effected in the Indian Express in English and Makkalkural in Vernacular dated 25.08.2021.

It is seen that the Petitioner has submitted the copies of the paper publication in the e-format. The Petitioner is directed to submit the physical copies of both the publications by way of filing a memo in the Registry within five days from today.

There is no representation for the Respondent. Called Respondent, absent, the Respondent is set ex-parte.

11. Again on 27.09.2021, this Tribunal has passed the following order;

Learned Counsel for the Petitioner states that notice was served on the Respondent. Subsequently, notice was issued by way of effecting paper publication in English 'The New Indian Express' dated 25.08.2021 and in vernacular 'Makkalkural' dated 26.08.2021. However there is no representation for the



Respondent today. The Respondent called absent, set ex-parte. Heard the Petitioner, order reserved.

12. In such circumstances, we are constrained to proceed in the matter in the absence of the Corporate Debtor. In relation to the debt and default, it is seen that the Corporate Debtor already had entered into a Settlement Agreement with the Operational Creditor and has acknowledged that a sum of Rs.2,04,05,358/- is outstanding due and payable by the Corporate Debtor. Further, it is seen from the records that the Corporate Debtor has not raised any dispute in relation to the amount which is due and payable to the Operational Creditor. All these would go on to show that there is an 'operational debt' and the Corporate Debtor has committed 'default' in repayment of such 'operational debt'.

13. Further, examining this Application from the angle of limitation, it is evident from the perusal of the Invoices as filed by the Petitioner / Operational Creditor that the invoices have been raised during the period commencing from 08.12.2017 and ending in 08.05.2018 and the account being maintained on a running account basis, the present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 23.11.2020 and as such it falls well within the period of limitation. Further, the default arising in the present Application is has happened much before the advent of Covid-19 and hence the

Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

14. 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 as 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 - December 2021 appoints **Mr. Kathiresan Nachimuthu** with Reg. No. **IBBI/IPA-001/IP-P01733/2019-2020/12795 (email id:- kathir.fca@outlook.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. 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;



15. 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.

16. 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.

17. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-** (*Rupees One 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.

18. 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-**  
**(ANIL KUMAR B)**  
**MEMBER (TECHNICAL)**

**-sd-**  
**(R. SUCHARITHA)**  
**MEMBER (JUDICIAL)**

*Raymond*