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

**IBA/849/2020**

In the matter of Sec.9 of Insolvency & Bankruptcy Code 2016

And

*In the matter of M/s. Sreesai Trading India Private Limited*

M/s. Sha Kantilal Jayantilal  
(Proprietor of Mr. Jyantilal Chunilal Doshi)

.. Operational Creditor

Vs.

Sreesai Trading India Private Limited.,  
Represented by its Directors  
Mrs. Shanthi D & Mrs. G. Kamala  
No.5, Panchayath Road, 1<sup>st</sup> Main Road,  
Thirumalai Nagar, Perungudi,  
Chennai - 600 096

.. Corporate Debtor

Order pronounced on **22<sup>nd</sup> July, 2022**

CORAM:

**JUSTICE (RETD.) S. RAMATHILAGAM, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor* : *E.K. Kumaresan, K.Nagendra Prasad  
& G.Prabhu, Advocate*

*For Corporate Debtor* : *S. Balasubramaniam, Advocate*

**ORDER**

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

This Application is filed by M/s.Sha Kantilal Jayantilal as the Proprietor of M/s. Jayantilal Chunilal Doshi (hereinafter referred to as “Operational Creditor”) under Sec. 9 of IBC, 2016 against M/s.Sreesai

Trading India Private Ltd., (hereinafter referred to as “Corporate Debtor”) seeking initiation of Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Applicant is an Individual. From Part – II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 08.07.2016 and Registered Office of the Corporate Debtor as per the Application is stated to be situated at 5, Panchayath Road, 1<sup>st</sup> Main Road, Thirumalai Nagar, Perungudi, Chennai, Kancheepuram-600 096. From Part – III of the Application, it is seen that the Operational Creditor has not suggested the IRP and has left it to the 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 total sum of **Rs.18,15,234/-** which includes Principal amount of Rs.15,33,875/- and Interest amount of Rs.2,81,359/-. The present application is filed by the Operational Creditor before this Tribunal on 30.01.2020.

4. From Part – V of the Application, it is seen that the following documents have been attached by the Operational Creditor in order to prove the ‘operational debt’;

- Copy of the invoice issued by the Operational Creditor and the Statutory Demand Notice as required under Section 8 of the Insolvency and Bankruptcy Code, 2016 issued by the Operational Creditor to the Corporate Debtor.
- Copy of the Speed post receipts & track reports evidencing the dispatch & delivery status of Demand Notice dated 09<sup>th</sup> August 2019.
- Copy of the Form of Demand Notice demanding payment under Insolvency & Bankruptcy Code, 2016.
- Copy of the Ledger Account of the Corporate Debtor in the books of the Operational Creditor
- Copy of the computation sheet showing the details of the outstanding amount and the date of default along with calculation of interest
- Affidavit under Section 9(3)(b) of IBC, 2016

5. The Learned Counsel for the Operational Creditor submitted that they have supplied Basmati Rice to the Corporate Debtor for which, they have raised Invoices for the period from May 2018 till June 2018. The details of invoices and due date are tabulated hereunder:-

Invoice No.	Date	Due Date	Outstanding (A)	Interest on Outstanding (B)
SKJ/0051 9/18-19	30-05-2018	14-07-2018	2,75,000	52,890
SKJ/0057 7/18-19	09-06-2018	24-07-2018	3,60,000	67,463
SKJ/0057 8/18-19	09-06-2018	24-07-2018	3,60,000	67,463
SKJ/0057 9/18-19	07-07-2018	21-08-2018	5,38,875	93,543
			<b>15,33,875</b>	<b>2,81,359</b>
<b>TOTAL OUTSANDING AMOUNT (A+B)</b>				<b>18,15,234</b>

6. It was submitted that the Corporate Debtor has failed to pay the said outstanding amount, in and by which an Interest @ 18% per annum was calculated from the due date as per the terms of invoice.

7. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has received the said Goods and raised no dispute in relation to the quality and quantity of the Goods, however, has failed to pay the outstanding amount which is due and payable to the Operational Creditor. It was submitted that inspite of repeated reminders given to the Corporate Debtor, to clear the outstanding dues, the same was not done by the Corporate Debtor. Hence, it was submitted that the Statutory Demand Notice under Section 8 of IBC, 2016 was issued to the Corporate Debtor on 09.08.2017 and the same was received by the Corporate Debtor.



It was submitted that in response to the same, the Corporate Debtor has not raised any objection and to the said effect, the Operational Creditor has also filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016. Under the said circumstances, the Learned Counsel for the Operational Creditor prayed that the CIRP in respect of the Corporate Debtor be initiated.

8. The Respondent has filed Counter and it was submitted by the Learned Counsel for the Respondent that owing to Covid-19 Pandemic and other market vagrancies, the Corporate Debtor was unable to pay the dues to the creditors and as such, sought time to settle the dues to the Operational Creditor.

9. Heard submissions made by the Learned Counsels for both the parties. It is seen from the averments made in the Counter that the Corporate Debtor has admitted its liability and sought time to settle the matter. It is required to be noted that default in the present case arose during the year July 2018 and the present Application being filed before this Tribunal on 30.01.2020, and as such the Corporate Debtor cannot seek shelter under Section 10A of IBC, 2016. Further, the present Application was filed before this Tribunal, well before the threshold limit was

increased from Rs.1.00 lakh to Rs.1.00 Crore with effect from 24.03.2021. Under the circumstances, since the debt and default in respect of the Corporate Debtor is proved beyond any reasonable time, we are constrained to admit the present Application and initiate CIRP in respect of the Corporate Debtor.

10. The Operational Creditor has not proposed the name of IRP. **Mr. Tirumavalavan C K** with **Reg. No. IBB/PA-001/IP-P02067/2020-2021/13400 (email id:- rvacas48@gmail.com)** is appointed as the Interim Resolution Professional (IRP) from the panel of IRP recommended by IBBI for the period 01.07.2022 to 31.12.2022, upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 21.04.2023. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. 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 15,19,18 of the Code and file his report within 30 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.

11. As a consequence of the Application being admitted in terms of Section 9 of the Code, moratorium as envisaged under 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 Operational 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;

12. However, during the pendency of moratorium period in terms of Section 14(2) 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 arrangements as may be notified by the Central Government in consultation with any Operational sector regulator or any other authority;
  - (b) a surety in a contract of guarantee to a corporate debtor.

13. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (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.

14. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

15. 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, 19, 18 of the IBC, 2016 and file his report within 30 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.

16. The IRP shall comply with the provisions of Sections 13 (2), 15, 19 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as

stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

17. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. Based on the above terms, the Petition stands **admitted** in terms of Section 9 of the Code and the Moratorium shall come into 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 shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned. Operational Creditor is directed to pay to IRP a sum of **Rs. 2,00,000/-** (Rupees Two Lakh) in order to meet the initial expenses.



19. The IRP is directed to file the 1<sup>st</sup> Progress Report before this Tribunal on or before the 45<sup>th</sup> day of initiation of CIRP by this Adjudicating Authority.

20. Post this IBA/849/2020 for hearing on **09.09.2022**.

-Sd -

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd -

**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

*Raymond*