

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH**

**CP(IBC)/44/KOB/2023**

*(Under Section 9 of the IBC, 2016 r/w Rule 6 of  
IBBI(AAA) Rules, 2016)*

***In the matter of Nandanam Tiles and  
Sanitaries Private Limited***

**MEMO OF PARTIES:**

**CHERUMADATHIL SALES CORPORATION**

Represented by its Managing Partner

V.P.Saidalavi

Having place of Business and address at:

37/1453 A, Ground Floor, Gopika Apartment,  
Kumaranasan Road, Cochin – 682020.

**... Petitioner/ Operational Creditor**

Versus

**NANDANAM TILES AND SANITARIES**

**PRIVATE LIMITED**

Sree Dharmasastha Building,

Kunnamkulam Road, Near Sobha City,

Puzhakkal, Thrissur, 680553.

**... Respondent/Corporate Debtor**

**Order delivered on: 19.01.2024**

***Coram:***

**Hon'ble Member (Technical)**

**Hon'ble Member (Judicial)**

**Shri. Shyam Babu Gautam**

**TMT. (Retd.) Justice T Krishna Valli**

***Appearances:***

For the Petitioner : Mr. Akhil Suresh, Advocate

For the Respondent : Mr. Vinay Mathew, Advocate

**ORDER**

**Per: Shyam Babu Gautam, Member (T)**

1. This application has been filed under Section 9 of the Insolvency & Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Cherumadathil Sales Corporation (CIN:32AAEFC2016P1ZP) (hereinafter referred as the 'Operational Creditor') for initiation of Corporate Insolvency Resolution Process against **Nandanam Tiles and Sanitaries Private Limited**, the Corporate Debtor, for alleged default in repayment of Operational Debt of ₹ 1,09,84,984/- (Rupees One Crore Nine Lakh Eighty-Four Thousand Nine Hundred Eighty Four only), due and payable by the Corporate Debtor to the Operational Creditor.
2. The petitioner submits that the Corporate Debtor is a private company registered in the State of Kerala, incorporated in 2016 has its registered

office at D No 7/469, 471, 472, Sree Dharmasastha Building, Kunnamkulam Road, Near Sobha City, Puzhakkal, Thrissur, Kerala is engaged in the business as dealers, importers, exporters, distributors, sellers in all kinds of ceramic tiles, floor tiles, wall panels, sanitaries, sanitary fittings, marbles, granites and all other building materials. The paid-up capital of the Corporate Debtor is Rs. 4,99,00,000/-.

Brief facts of the case are as follows: -

3. The Operational Creditor is a partnership firm involved in the marketing and distribution of bath fittings and sanitary wares, specializing in renowned brands. Operational Creditor was supplying various items of sanitary wares under and running account with the Corporate Debtor and the amounts due to the Operational Creditor were used to be settled from time to time. As of the fiscal year ending on 31.03.2021, the outstanding amount owed by the Corporate Debtor for the purchase of sanitary wares from the Operational Creditor amounted to Rs. 86,51,843/-. Despite no payments received in the subsequent years of 2021-22 and 2022-23, the principal amount due as of 31.03.2023, after adjusting for returned goods, was Rs. 86,49,224/-, excluding interest.
4. Despite the Operational Creditor's efforts, the Corporate Debtor failed to make payments. Through mediation, a settlement was reached, and an agreement was signed on 26.06.2023, acknowledging a debt of Rs. 1,09,84,984/- as of 31.03.2023. The agreement stipulated a 9% p.a. interest rate on the outstanding amount from 31.03.2020 onwards. Although the Corporate Debtor agreed to settle the outstanding amount

in two instalments, with the first payment of Rs. 54,92,492.05/- due on 20.07.2023, the Corporate Debtor defaulted on this commitment.

5. In response to the default, the Operational Creditor issued a demand notice under Section 8 of the IBC on 09.08.2023. The Corporate Debtor, in its reply dated 17.08.2023, admitted the debt claimed by the Operational Creditor of Rs. 1,09,84,984/- and requested additional time to settle the debt in two instalments of Rs. 55 lakhs each, citing financial constraints.
6. The Operational Creditor states that the Corporate Debtor is in operational debt to the Operational Creditor exceeding Rs. 1 Crore and the registered office of Corporate Debtor is in Kerala. The date of default is 31.03.2023. It is stated that the petition is within limitation. The petitioner has produced Annexure A12 NESL Certificate in terms of regulation 21 and A13 bank statements of the Operational Creditor. The OC has filed the following as evidence of debt: -
  - (i) Record of default issued by NESL
  - (ii) Memorandum of Understanding dated 26.06.2023 between the Operational Creditor and the Corporate Debtor.
  - (iii) Demand Notice in Form 3 dated 09.08.2023
  - (iv) Demand Notice in Form 4 dated 09.08.2023
  - (v) Reply dated 17.08.2023 sent by the CD to the demand notice.
7. The Corporate Debtor filed a reply stating that due to the adverse impact in the market due to covid—related and other external reasons

beyond the control of the Corporate Debtor, the Corporate Debtor-Company couldn't clear the amounts due to the Operational Creditor in time and due to the downward fall in the business so the terms of the agreement could not be complied with.

8. Further stated that the Operational Creditor was also made aware of the precarious financial situation in which the Corporate Debtor is placed mainly on account of the huge outstanding debt of Rs.52,69,60,158/- claimed by the South Indian Bank from the Corporate Debtor as on 31.03.2023. The Bank has already initiated proceedings under the SARFAESI Act, 2002. Now the corporate Debtor is making all genuine efforts to reach a one-time settlement (OTS) with the Bank. The Operational Creditor cannot claim any precedence over the secured financial creditor namely the South Indian Bank. Further stated that initiating proceedings against the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016, the Applicant-Operational Creditor will only add fuel to the fire and the Operational Creditor may not stand to gain any benefit out of the present scenario.
9. Heard the submissions and perused the documents placed on record. The debt amounting to Rs. 1,09,84,984/- as on 31.03.2023 is beyond the threshold limit stipulated under IBC, 2016. This petition filed on 16.11.2023, comes well within the period of limitation. From the records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be an 'Operational Debt' as defined under 5(21) of IBC, 2016 and there is a "Default" as defined under Section 3 (12) of the Code on the part of the Corporate

Debtor. It is to be noted that the Corporate Debtor itself has admitted that there is a default in the repayment of the said 'Operational Debt' which is due and payable to the Operational Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regard to the Corporate Debtor in light of any objections raised by the Corporate Debtor.

10. So, in light of the case's facts, circumstances narrated in the preceding paras, and legal provisions envisaged under the code, we believe that this application, as submitted by the Applicant Operational Creditor for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, deserves to be admitted under Section 9 of the IBC, 2016.

11. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.

A. The petition bearing CP (IBC)/44/ KOB /2023, by Cherumadathil Sales Corporation, the Operational Creditor, under section 9 of Insolvency and Bankruptcy Code 2016 read with rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Nandanam Tiles and Sanitaries Private Limited, (CIN: U52609KL2016PTC046116), the corporate debtor is **ADMITTED**.

B. There will be a moratorium under section 14 of the Code.

- C. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority 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 the Code, as the case may be.
- D. Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
- E. The Operational Creditor has proposed the name of one **Mr. Jossy Stephen Kattur, IBBI Registration Number: IBBI/IPA-002/IP-No. 1056/2021-2022/13627,** email: [mail2cheru@rediffmail.com](mailto:mail2cheru@rediffmail.com), as Interim Resolution Professional (IRP) and written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. 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. The fee payable to IRP or as the case may be, the IRP shall

comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out its functions as contemplated by sections 15, and to 21 of the Code.

- F. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.
- G. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- H. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Three Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditors (COC).
- I. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.

12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.
13. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities

SHYAM BABU  
GAUTAM  
**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

Digitally signed by SHYAM BABU  
GAUTAM  
Date: 2024.01.19 15:46:07 +05'30'

T.KRISHNAVALLI  
**T KRISHNA VALLI**  
**(MEMBER JUDICIAL)**

Digitally signed by T.KRISHNAVALLI  
Date: 2024.01.19 15:45:07 +05'30'

Signed on this the 19<sup>th</sup> day of January, 2024.

Krishna