

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

CP(IB)/114(CHE)/2021

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6
of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules,
2016)*

*In the matter of **Sical Iron Ore Terminals Limited***

ITD Cementation India Limited,
National Plastic Building,
A - Subash Road, Paranjpe B. Scheme,
Vile Parle (East),
Mumbai – 400 057.

... Operational Creditor

-Vs-

Sical Iron Ore Terminals Limited,
South India House 73,
Armenian Street,
Chennai – 600 001.

... Corporate Debtor

Order pronounced on 01st March 2022

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**JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : Mr.J.R.Jayanth, Advocate; Mr.Ajith
C.R., Advocate; Mr.Gaurav Chatterjee, Advocate; Mr.Pranava
Charan M.G., Advocate; Mr.Ashwin Anpazhakan, Advocate.*

*For Corporate Debtor : Mr.S.Gopinathan, Advocate
Mr.K.Francis, Advocate*

ORDER

**Per: JUSTICE (RETD) S.RAMATHILAGAM, MEMBER
(JUDICIAL)**

Under Adjudication is CP(IB)/114(CHE)/2021 and that has
been filed by **ITD Cementation India Limited** (hereinafter

referred to as '**Operational Creditor**') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Sical Iron Ore Terminals Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Operational Creditor from which, it is evident that the Operational Creditor is **ITD Cementation India Limited**. As per Part II of the application, the Corporate Debtor is a Public Limited Company with Corporate Identification No.U13100TN2006PLC061022 and the registered office of the Corporate Debtor as per the Application is stated to be at South India House 73, Armenian Street, Chennai – 600 001.

3. As per Part III of the application, the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

4. Part IV of the application signifies the amount of debt to the tune of Rs.2,15,25,550/- as the outstanding dues that is payable

by the Corporate Debtor. It is averred in the application that, the last default occurred on 30.12.2018. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default as follows:

- i. Contract dated 06.02.2008.
- ii. Invoice bearing Ref. No. INV FINAL/SIOR-ITDCem /411/12408AM/11 dated 30.05.20211
- iii. Balance Confirmation by the Corporate Debtor on 10.11.2014.
- iv. Balance confirmation as on 27.12.2019 including details of payment made in balance outstanding.
- v. Calculation Sheet indicating the invoices and the total amount due.
- vi. Statement of Accounts of the Operational Creditor indicating the receipt of the amounts from the Corporate Debtor.
- vii. Payment Forwarding Note issued by the Corporate Debtor

5. It was averred in the application that the Operational Creditor is a company incorporated under the Companies Act, 1956, engaged in the business of Infrastructural development. The Corporate Debtor is a Company inter alia engaged in the development of infrastructure and real estate projects.

6. It was further averred that the Operational Creditor and the Corporate Debtor had entered into a contract on 06.02.2008 for



Design & Detailed Engineering, Supply of materials, Construction, Commissioning and Test Run for off-shore (Jetty) and on-shore civil works for the Iron Ore Port Terminal at Ennore.

7. It was further averred that in compliance of the said contract the Operational Creditor had completed all the works on 25.04.2011 and raised a final bill on 30.05.2011 for a sum of Rs.2,99,33,221/- but the Corporate Debtor had failed to make payment for the said final bill.

8. Pursuant to the completion of the above-said work by the Operational Creditor, the Corporate Debtor had returned all the Performance Bank Guarantees submitted by the Operational Creditor vide letter dated 08.08.2011. The Corporate Debtor on various occasions admitted the liability under the said final invoice dated 30.05.2011.

9. It was further submitted that due to the non-payment of the Corporate Debtor, the Operational Creditor caused Notice of Termination vide letter dated 01.04.2016, to pay a sum of Rs.2,99,33,261/- along with the interest Rs.2,56,11,266/- (calculated from 01.07.2011 till 31.03.2016) totalling to Rs.5,55,44,382/-. Despite receipt of the said letter, the Corporate Debtor has not cleared the outstanding payable to the Operational

Creditor. Subsequently, the Operational Creditor sent another notice dated 11.05.2016 to pay the total outstanding.

10. Afterwards, the Corporate Debtor agreed to pay the outstanding amount in instalments and paid Rs.1,40,00,000/- to the Operational Creditor, where after he paid in instalments from 31.12.2016. The Corporate Debtor made the last payment on 11.12.2018, for a sum of Rs.10,00,000/-. Thereafter no payment was received by the Operational Creditor.

11. It was further submitted that representatives of the parties met at the Office of Corporate Debtor on 27.12.2019, whereas the Corporate Debtor agreed to pay the entire balance by 31.03.2020 and again failed to make the payment.

12. Aggrieved by the inaction of the Corporate Debtor, the Operational Creditor caused Demand Notice to the Corporate Debtor under Section 8 of IBC, 2016, which was delivered on 06.03.2021. Since, no response from the Corporate Debtor, the Operational Creditor filed the present application and sought initiation of CIRP against Corporate Debtor.

13. On the other hand, the Learned Counsel appearing on behalf of Corporate Debtor in the counter statement submitted that the Corporate Debtor is a Special Purpose Vehicle Company established



for developing and operating Iron Ore Terminal at Kamarajar Port Limited (KPL), Ennore.

14. It was further submitted that the Iron Ore Terminal was constructed in the KPL. The terminal was constructed to facilitate the export of iron ore from Karnataka. But in the year 2010 iron ore export was banned by Hon'ble Supreme Court, consequently, the Terminal Project could not commence its commercial operations.

15. It was further submitted that at the insistence of the Corporate Debtor, the KPL permitted the Corporate Debtor to modify the Iron Ore Terminal to handle coal also. Accordingly, tender was floated in 2016. The Corporate Debtor won the bid and commenced the conversion work in the year 2018.

16. It was further submitted that the Operational Creditor was engaged in the year 2008 to construct a berth besides developing a 15 Hectare Stockyard and other civil works as per the contract dated 06.02.2008 within 20 months thereof.

17. It was further submitted that the Corporate Debtor had paid Rs.127,56,37,485/- towards the amount claimed in the final invoice of Rs.130,56,29,535/- before the Iron Ore ban caused stoppage to the project funding from the lenders of the Corporate Debtor. Further, it was submitted that the amount claimed by the Financial



Creditor was to serve as retention money till the facilities are subjected to test runs before and after the commercial operation.

18. It was further submitted that the Corporate Debtor was under financial stress because of the modification work of the needed conversion from Iron Ore Terminal to Coal Terminal. However, the Corporate Debtor paid the part of the outstanding amount of Rs.1,40,00,000/- to the Operational Creditor and assured that the balance of Rs.1,59,53,221/- can be arranged after the commencement of Coal Terminal Operation.

19. Thereafter, the contract between the KPL and the Corporate Debtor regarding the above-said conversion project was terminated on March 2021, due to default raised by the lenders of the Corporate Debtor. Subsequently, the Project assets were transferred and vested with the KPL. Further, it was submitted that the only asset left with the Corporate Debtor is GST input credit of Rs.41,15,49,583/- and other negligible amount.

20. In the meanwhile, one of the shareholders of the Corporate Debtor, MMTC Ltd., approached the Hon'ble High Court, Madras against the termination issued by KPL. In addition to that, the Promoter Company of the Corporate Debtor has also filed the petition before this Tribunal against the termination issued by KPL.




In view of the above submissions, the Respondent sought dismissal of this application.

21. Heard learned counsels for both the parties, on a perusal of the documents placed on record we see that the Corporate Debtor had paid only Rs.127,56,37,485/- towards the final invoice amount of Rs.130,56,29,535/- raised by the Operational Creditor in the invoice No. INVFINAL/SIOR-ITDCem/411/12408AM/11 dated 30.05.2011 and left Rs.2,99,33,221/- as outstanding due.

22. It is pertinent to mention that no tangible proof regarding the retention of money of the Operational Creditor until the Operational tests were done before and after commencement of commercial operation was placed on record.

23. It is also seen that the Corporate Debtor in the Counter statement admitted the debt and default by submitting that it had paid Rs.1,40,00,000/- and its inability to pay the remaining Rs.1,59,53,221/- to the Operational Creditor. It is thus clear that the amount Rs.1,59,53,221/- remaining to be paid by the Corporate Debtor is the 'Operational Debt' as per Section 5(21) of IBC, 2016 and which is above the threshold limit provided in Section 4 of IBC, 2016.



24. During the course of hearing this Adjudicating Authority directed the Corporate Debtor to file the memo regarding the status of pending cases before Hon'ble High Court of Madras and this Tribunal, in which asset of the Corporate Debtor is concerned and the same was not filed.

25. 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 January 2022 - June 2022 at S.No.52 appoints **Mr.S.Shivshanker** with Registration Number **[IBBI/IPA-001/IP-P-02141/2020-2021/13294]** (e-mail id:- **shivshanker93@gmail.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. 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 15,17,18 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.

26. 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 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;

27. 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.

28. 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.

29. 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 with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

30. 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 is 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-

B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-

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

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