

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

CP/938/IB/2018

Under Section 9 r/w Rule 6 of the IBC, 2016

In the matter of M/s. Ambojini Property Developers Private Limited

M/s. Nuvoco Vistas Corporation Limited

---Operational Creditor

V/s

M/s. Ambojini Property Developers Private Limited

---Corporate Debtor

Order delivered on: 10.09.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Operational Creditor: *Shri. A. Kevin Thomas, Advocate*

For M/s. King & Partridge

For the Corporate Debtor : *Shri. KSL Narain, Advocate*

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 09.09.2019

It is a Company Petition filed by the Operational Creditor u/s.9 of the Insolvency and Bankruptcy Code, 2016 ("the Code") for initiation of Corporate Insolvency and Resolution Process ("CIRP") on the ground the Corporate Debtor defaulted in paying principal

amount of ₹34,07,492 and interest of ₹18,09,558 together amounting to ₹52,17,050 as on 20.06.2018.

2. On perusal of this Company Petition, it appears that the Corporate Debtor placed Purchase Order upon the Operational Creditor on 16.10.2015 for supply of ready mix concrete.

3. In pursuance thereof, the Operational Creditor supplied ready mix concrete and simultaneously raised various invoices during the period in between 13.01.2016 to 11.04.2016. The invoices raised by the Operational Creditor are as follows:

<i>Sl.No.</i>	<i>Invoice Details</i>	<i>Date</i>	<i>Amount (₹)</i>
1.	RI/IN4231/2016/000138	13-Jan-16	69,998
2.	RI/IN4231/2016/000150	18-Jan-16	1,15,000
3.	RI/IN4231/2016/000175	20-Jan-16	1,67,500
4.	RI/IN4231/2016/000190	21-Jan-16	50,000
5.	RI/IN4231/2016/000203	22-Jan-16	1,72,500
6.	RI/IN4231/2016/000220	23-Jan-16	77,500
7.	RI/IN4231/2016/000235	25-Jan-16	1,60,000
8.	RI/IN4231/2016/000253	27-Jan-16	1,00,000
9.	RI/IN4231/2016/000290	29-Jan-16	82,500
10.	RI/IN4231/2016/000305	30-Jan-16	55,000
11.	RI/IN4231/2016/000319	31-Jan-16	27,500
12.	RI/IN4231/2016/000355	02-Feb-16	1,07,500
13.	RI/IN4231/2016/000383	04-Feb-16	92,500
14.	RI/IN4231/2016/000401	05-Feb-16	1,42,500
15.	RI/IN4231/2016/000417	08-Feb-16	62,500
16.	RI/IN4231/2016/000431	08-Feb-16	1,57,500
17.	RI/IN4231/2016/000456	09-Feb-16	55,000
18.	RI/IN4231/2016/000476	10-Feb-16	1,07,500
19.	RI/IN4231/2016/000493	11-Feb-16	27,500
20.	RI/IN4231/2016/000512	12-Feb-16	80,000

21.	RI/IN4231/2016/000543	13-Feb-16	70,000
22.	RI/IN4231/2016/000559	15-Feb-16	52,500
23.	RI/IN4231/2016/000581	16-Feb-16	67,500
24.	RI/IN4231/2016/000601	17-Feb-16	65,000
25.	RI/IN4231/2016/000621	18-Feb-16	27,500
26.	RI/IN4231/2016/000650	20-Feb-16	37,500
27.	RI/IN4231/2016/001006	09-Mar-16	85,000
28.	RI/IN4231/2016/001014	10-Mar-16	87,500
29.	RI/IN4231/2016/001068	12-Mar-16	82,500
30.	RI/IN4231/2016/001084	14-Mar-16	1,00,000
31.	RI/IN4231/2016/001103	15-Mar-16	27,500
32.	RI/IN4231/2016/001120	16-Mar-16	32,500
33.	RI/IN4231/2016/001132	17-Mar-16	77,500
34.	RI/IN4231/2016/001160	18-Mar-16	15,000
35.	RI/IN4231/2016/001188	19-Mar-16	40,000
36.	RI/IN4231/2016/001220	22-Mar-16	95,000
37.	RI/IN4231/2016/001229	22-Mar-16	20,000
38.	RI/IN4231/2016/001256	23-Mar-16	17,500
39.	RI/IN4231/2016/001300	26-Mar-16	1,22,500
40.	RI/IN4231/2016/001325	28-Mar-16	47,500
41.	RI/IN4231/2016/001360	29-Mar-16	27,500
42.	RI/IN4231/2016/001370	30-Mar-16	47,500
43.	RI/IN4231/2016/001412	31-Mar-16	50,000
44.	RI/IN4231/2016/001451	04-Apr-16	57,500
45.	RI/IN4231/2016/001482	06-Apr-16	57,500
46.	RI/IN4231/2016/001502	08-Apr-16	22,500
47.	RI/IN4231/2016/001518	09-Apr-16	20,000
48.	RI/IN4231/2016/001547	11-Apr-16	45,000
		Total	34,07,492

4. Subsequent thereto, when the Operational Creditor demanded for payment based on the invoices raised, the Corporate Debtor confirmed the balance payable to the Operational Creditor as on 03.01.2017 is ₹34,07,492 (principal amount) and interest aggregating to ₹18,09,558 @ 24% per annum from the due date of each invoice till 20.06.2018.

5. Thereafter, when payment has not come, this Operational Creditor issued Sec.8 notice to the Corporate Debtor on 18.10.2017 demanding for payment of principal amount along with interest as contemplated in the invoices raised against the Corporate Debtor (interest @ 24% per annum), since there was no reply from the Corporate Debtor to Sec.8 notice sent by the Operational Creditor, the Operational Creditor filed this proceeding before this Bench for initiation of CIRP.

6. The counsel has further stated that this Corporate Debtor paid ₹7,18,711 after the Operational Creditor has initiated these proceedings before this Bench.

7. In view thereof, the Corporate Debtor counsel has sought for deduction of the part payment of ₹7,18,711 from the claim amount appearing in the application.

8. The Corporate Debtor counsel who appeared in the morning seeking time is not present at the time of making submissions, however, since opportunity has been given and the Corporate Debtor counsel having already appeared and there being no defence from the

Corporate Debtor side, we have taken up this matter for hearing today.

9. On hearing the submissions of the Operational Creditor counsel and there being no defence from the Corporate Debtor counsel either to Sec.8 notice or to the Petition filed before this Bench and moreover the Corporate Debtor counsel having made a part payment of ₹7,18,711 after filing this proceeding, we are of the considered view that the Operational Creditor has proved existence of debt as well as default.

10. Since the Corporate Debtor has made part payment, the IRP is hereby directed to determine the claim of the Operational Creditor after deducting the part payment made by him after filing this Company Petition.

11. In view thereof, we hereby admit this Company Petition, by appointing Mr. Dr. L Natarajan as IRP with the directions as follows.

(I) That Moratorium is hereby declared prohibiting all of the following actions, namely,

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
 - (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of moratorium shall have effect from **10.09.2019** till the completion of the corporate insolvency

resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(V) That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints Mr. Dr. L. Natarajan as Interim Resolution Professional (Reg. No. IBBI/IPA-001/IP-P00614/2017-2018/11108), No. 21, Jambulingam Street, Nungambakkam, Chennai-600034 E-mail: natarajan@yahoo.com, with his consent to carry the functions as mentioned under The Insolvency & Bankruptcy Code.

12. Accordingly this petition is hereby **admitted**.

13. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by way of e-mail.

-Sd-
(**S. VIJAYARAGHAVAN**)
Member (Technical)

-Sd-
(**B. S.V. PRAKASH KUMAR**)
Member (Judicial)