

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

CP(IB)/230(CHE)2022

*(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. Fipola Retail (India) Pvt. Ltd.***

M/s. Edifice Solutions Private Limited,

CIN: U45400TG2013PTC091928

Having Registered Office at:

12-2-752/A/2, Flat No. 101,
Akbar & Jalal Plaza, Retibowli,
Gutimalkapur, Hyderabad-500 028
Telangana, India

... Applicant / Operational Creditor

-Vs-

Fipola Retail (India) Private Limited,

CIN: U15532TN2016PTC113906

Having Registered Office at:

No. 5, Cenotaph Road,
Teynampet, Chennai-600 018

... Respondent / Corporate Debtor

Order Pronounced on 2nd May, 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor: Mr. Kamalesh Kannan, Advocate

For Corporate Debtor: Mr. Sidharth, Advocate

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016



has been filed by **M/s. Edifice Solutions Private Limited**, Operational Creditor/Applicant herein having its Registered Office at 12-2-752/A/2, Flat No.101, Akbar & Jalal Plaza, Gutimalkapur, Hyderabad – 500 028, Telengana against the Corporate Debtor **M/s. Fipola Retail (India) Private Limited** having CIN: U15532TN2016PTC113906 with Registered Office at No. 5, Cenotaph Road, Teynampet, Chennai-600 018 for initiating Corporate Insolvency Resolution Process (“**CIRP**”).

2. The facts giving rise to this application are that the Corporate Debtor engaged in the business of selling meat through its outlets, had approached the Operational Creditor for carrying out the interior designing and construction works for its outlets in Jay Nagar (Bangalore), Kaggadasupuram (Bangalore), Vidyanranyapura (Bangalore), Malkajgiri (Bangalore), Maredpally (Hyderabad), Boduppall (Hyderabad) and Mehandipatnam (Hyderabad). The Operational Creditor agreed to provide the services and carry out the projects based on the cost of materials to be used and services to be provided for each project. The Corporate Debtor placed various Purchase Orders with the Operational Creditor as detailed in para-4 at Page 4 of the application **Annexure-II (4) collectively**. Based on the above purchase orders, the Operational Creditor invested money and provided the services and completed various projects within the



timelines without any objection/demur/protest with respect to the quality/quantity of the works. Upon completion of the works, the Operational Creditor raised the invoices as detailed at para-6 in page-5 of the application for a sum aggregating Rs.1,69,34,613/- (Rupees One Crore Sixty Nine Lakhs Thirty Four Thousand Six Hundred and Thirteen only) including GST which were duly received/acknowledged by the Corporate Debtor without any dispute/objection/demur as detailed below:

Purchase Order No.	For Running Invoice-1 Invoice No.; date of invoice; and amount excluding GST (in Rs.)	For Running Invoice-2 Invoice No.; date of invoice; and amount excluding GST (in Rs.)
FP047	TS-21-22-056; March 17, 2022; 18,18,551	TS-21-23-038; August 10, 2022; 9,70,985
FP054	TS-21-22-071; March 29, 2022; 15,78,526	TS-21-23-031; August 10, 2022; 10,55,352
FP062	TS-21-22-070; March 29, 2022; 13,20,588	TS-21-23-032; August 10, 2022; 7,04,310
FP057	TS-21-22-069; March 29, 2022; 16,58,300	TS-21-23-033; August 10, 2022; 13,33,452
FP058	TS-21-22-074; March 29, 2022; 13,21,450	TS-21-23-036; August 10, 2022; 8,34,784
FP066	TS-21-22-073; March 29, 2022; 14,22,607	TS-21-23-035; August 10, 2022; 5,25,732
FP079	TS-21-22-072; March 29, 2022; 15,47,878	TS-21-23-034; August 10, 2022; 8,42,098



3. The Operational Creditor also carried out repair works for which it raised an invoice No.TS-22-23-037 on 08.08.2022 for an amount of Rs.50,150/- (Rupees Fifty Thousand One Hundred and Fifty only) including GST.

4. It is stated that pursuant to the repeated requests of the Operational Creditor, the Corporate Debtor made the partial payments as detailed at para-8 in Page-6 of the application and as on date, a sum aggregating to Rs.1,30,39,796 (Rupees One Crore Thirty Lakhs Thirty Nine Thousand Seven Hundred and Ninety Six only) became due against the Corporate Debtor. Details are as under:

	Amount Paid (in Rs.)	Date of Payment and mode of payment
	6,16,455	January 04, 2022; online transfer
	5,35,093	January 28, 2022; online transfer
	4,10,972	January 28, 2022; online transfer
	5,62,136	February 11, 2022; online transfer
	4,47,657	February 25, 2022; online transfer
	4,47,949	February 11, 2022; online transfer
	1,74,705	April 02, 2022; online transfer
	2,00,000	April 02, 2022; online transfer
	1,50,000	April 02, 2022; online transfer
	4,00,000	April 18, 2022; online transfer
Total	39,44,967	



5. It is alleged that default for the said sum has been committed by the Corporate Debtor which the Corporate Debtor is liable to pay with interest @ 18% per annum. It is alleged that the Operational Creditor had approached the Corporate Debtor for clearance of the outstanding dues through various channels/communication. On 22.08.2022, it had provided statement of accounts and another documents which the Corporate Debtor had acknowledged. Thereafter, the Corporate Debtor sent an email on 24.08.2022 confirming that its project team has approved a sum of Rs.1,30,39,796/- (Rupees One Crore Thirty Lakhs Thirty Nine Thousand Seven Hundred and Ninety Six only) after Joint Measurements under the purchase orders mentioned above **Annexure II (6) (collectively)**.

6. It is alleged that despite acknowledgement/admission by the Corporate Debtor of the debt owed to the Operational Creditor, the Corporate Debtor failed to clear the overdue amounts and intentionally did not respond to the communications/reminders. This made the Operational Creditor send a mail dated 05.09.2022 **(Annexure-II (7))** but the Corporate Debtor neither raised any objection/protest nor made the payment. Thereafter, a demand notice in Form-3 of IBC was served on the Corporate Debtor **(Annexure-I)** but despite service, it did not make the payment



nor sent any reply nor raised any dispute. It is stated that the debt fell due on 29.04.2022.

7. With the application, the Operational Creditor filed the documents at Page 10 in Para-8 of the application as proof as to the existence of operational debt and the amount in default.

8. On getting notice of the application, the Corporate Debtor/Respondent filed its reply wherein it denied the averments/allegations made in the application. It however admitted that it had hired the services of the Applicant//Operational Creditor for its outlets and issued the Purchase Orders as stated above. It is stated that as per the payment terms, the Respondent was required to pay 95% of the total amount in respect of each purchase order on 'pro rata basis' and pay the balance 5% after the completion of the defects liability period. It has already paid 30% of the amount. It is alleged that the Applicant acted in violation of the purchase order inter alia, the services rendered and/or materials supplied by the Applicant were of poor quality and it failed to effect the supplies and complete the work within the stipulated period. It used the substandard materials in various works and committed fraud on the Respondent. It is alleged that the Respondent incurred severe losses because of gross negligent and defective work of the Applicant which led to delay in opening the new outlets.



9. Subsequent to the reply, the Corporate Debtor filed an affidavit wherein it admitted the liability of Rs.1,30,39,796/- (Rupees One Crore Thirty Lakhs Thirty Nine Thousand Seven Hundred and Ninety Six only) and sought liberty to withdraw reply/counter.

10. We have heard the Ld. Counsels for the parties and perused the record.

11. Perusal of the record reveals that the Corporate Debtor had issued the Purchase Orders as detailed above during the period from 20.12.2021 to 12.02.2022 for the interior designing and construction works of its outlets to the Operational Creditor. Upon completion of the works, the Operational Creditor raised the invoices as detailed above. Against the invoices, the Respondent paid a sum of Rs.39,44,967/- (Rupees Thirty Nine Lakhs Forty Four Thousand Nine Hundred and Sixty Seven only). Therefore, a sum of Rs.1,30,39,796/- (Rupees One Crore Thirty Lakhs Thirty Nine Thousand Seven Hundred and Ninety Six only) along with the interest became due and payable by the Corporate Debtor. Despite communications, the Corporate Debtor did not make the payments which made the Operational Creditor send a mail dated 22.08.2022 providing all the details but the Respondent though admitting its liability/confirming that its project team has approved a sum of Rs.1,30,39,796/- (Rupees One Crore Thirty Lakhs Thirty



Nine Thousand Seven Hundred and Ninety Six only) vide mail dated 24.08.2022 but did not make any payment. The Operational Creditor sent a mail dated 05.09.2022 but the Corporate Debtor did not respond. Thereafter, the Operational Creditor sent a demand notice to the Corporate Debtor under Form-3 under IBC via mail dated 06.10.2022 and registered post dated 07.10.2022 but the Corporate Debtor did not respond nor raised any objection/disputes as to the quantity/quality of the works executed by the Operational Creditor. It raised the disputes about the quality for the first time in the reply/counter which reply/counter it withdrew by filing an affidavit vide S.R. No.1720 dated 19.04.2023. It also admitted its liability to pay a sum of Rs.1,30,39,796/- (Rupees One Crore Thirty Lakhs Thirty Nine Thousand Seven Hundred and Ninety Six only) to the Corporate Debtor.

12. It is clear from the purchase orders and the invoices that the Applicant/Operational Creditor had carried out the works for the Corporate Debtor. The Corporate Debtor after making the part payments, committed the default. As on 29.04.2022, a sum of Rs.1,30,39,796/- (Rupees One Crore Thirty Lakhs Thirty Nine Thousand Seven Hundred and Ninety Six only) became due and payable by the Corporate Debtor. The said amount has been acknowledged by the Corporate Debtor vide an email dated 24.08.2022 as well as in the Affidavit filed on 28.03.2023. We



find that the application is filed within limitation as in the present case, the date of default is 29.04.2022, the last payment made was on 18.04.2022 and the application has been filed on 20.10.2022.

13 We are of the view that the application meets the threshold limit of Rs.1.00 crore as provided under Section 4 of IBC for initiating CIRP against the Corporate Debtor. Thus, there is a debt of more than Rs.1.00 Crore and there is default.

14. Taking into consideration the facts and circumstances of the case as well as the position of law, we allow the application filed by the Operational Creditor. The Corporate Debtor **M/s. Fipola Retail (India) Private Limited** is admitted to CIRP under Section 9(5) of the IBC, 2016 as the default is for more than Rs.1.00 Crore. Mr. Deepa Venkat Ramani has been proposed as the Interim Resolution Professional under Part-III of the application. She has given consent in Form-2 with AFA valid till 11.10.2023, we hereby appoint **Ms. Deepa Venkat Ramani** with Registration Number **[IBBI/IPA-002/IP-N00118/2017-2018/10287, E-mail ID: deepa@ksmassociates.net** as the "Interim Resolution Professional". The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the Code 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.

15. 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 subsection, 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;

16. 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.

17. 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 the 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.

18. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (Rupees Two Lakhs 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.

19. Based on the above terms, CP(IB)/230(CHE)/2022 stands **admitted** in terms of Section 9(5) of IBC, 2016 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 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.

20. Accordingly, the petition stands **admitted**.

— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)

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