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

C.P. (IB) No.166/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

RDC Concrete (India) Pvt. Ltd.
37B, Doddanekkundi Industrial Area,
1st Phase, Whitefield Road,
Bengaluru – 560 048. - Petitioner/Operational Creditor

Versus

KNK Construction Pvt. Ltd.
New No.359, Old No.95,
7th Cross, Ashoka Pillar Road,
Jayanagar 1st Block,
Bengaluru – 560 011. - Respondent/Corporate Debtor

Date of Order: 11th December, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Mr. Ricab Chand
For the Respondent : Mr. Lomesh Kiran Nidumuri with
Ms. Sahana Devanathan

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P. (IB) No.166/BB/2019 is filed by M/s. RDC Concrete (India) Private Limited (hereinafter referred to as 'Petitioner/Operational Creditor') under Section 9 of the IBC, 2016 read with Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. KNK Construction Private Limited (hereinafter




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referred to as 'Respondent/Corporate Debtor') on the ground that it has committed default for a total outstanding amount of Rs.1,32,14,015/- (Rupees One Crore Thirty Two Lakh Fourteen Thousand and Fifteen Only) along with interest at 12% due under various invoices.

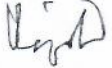
2. Brief facts of the case, as mentioned in the Company Petition and in summary, are as follows:

(1) M/s. RDC Concrete (India) Private Limited (hereinafter referred to as 'Petitioner/Operational Creditor') is a Private Limited Company incorporated on 20.04.1993, under the provisions of Companies Act, 1956 with Corporate Identity Number U74999MH1993PTC172842 and having its registered office in Mumbai and having one of its offices at 37B, Doddanekkundi Industrial Area, 1st Phase, Whitefield Road, Bengaluru-560048. The Company is into the business of manufacture and supply of Ready Mix Concrete (RDC) which is used in the construction of buildings.

(2) M/s. KNK Construction Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor') is a Private Limited Company incorporated on 12.04.2006 under the provisions of Companies Act, 1956 with Corporate Identity Number U45201KA2006PTC038976 and having its registered office situated at New No.359, Old No.95, 7th Cross, Ashoka Pillar Road, Jayanagar 1st Block, Bengaluru-560011. Its Authorised Share Capital is Rs.50,00,000/- (Rupees Fifty Lakhs Only) and Paid-up Share Capital is Rs.25,00,000/- (Rupees Twenty Five Lakhs Only). The Company is into the business of real estate construction activities.

(3) It is stated that the Corporate Debtor and Operational Creditor has been having business relationship for several years. The Corporate Debtor had placed several purchase orders on the




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Operational Creditor for supply of Ready Mix Concrete of various grades, the various purchase orders inter alia among other conditions provided for 100% payment after receipt of the material with inspection with 60 days credit and payment to be made through RTGS.

(4) It is stated that the Operational Creditor supplied the material as required under the Purchase Order under various invoices. Both he the parties had a running account and the Corporate Debtor made certain part payments from time to time. The ledger accounts of the Operational Creditor provides the details of supplies made under various invoices, the part payments made by the Corporate Debtor on various dates and the outstanding balance of Rs.1,32,14,015.51/- payable by the Corporate Debtor.

(5) It is stated that the Petitioner vide letter dated 11.01.2019 sought confirmation of balance as on 31.12.2018 as per the statement of accounts sent to the Corporate Debtor. By the said letter, the Petitioner informed the Corporate Debtor that as per their books, the Corporate Debtor has a debit balance of Rs.1,32,14,015.50/- (Rupees One Crore Thirty Two Lakhs Fourteen Thousand and Fifteen and Paise Fifty only) as on 31.12.2018. The said letter sought for confirmation of the same duly signed and stamped if the balance does not tally with the accounts of the Corporate Debtor then the Corporate Debtor was requested to send the details and enable both the parties to reconcile the accounts. On 13th March, 2019, the Corporate Debtor confirmed the balance of Rs.1,32,14,015/- and affixed the seal and signature.

(6) It is further stated that there is no dispute between the parties with regards to the outstanding amount. It is also stated that the debt has become due under the Sale of Goods Act, 1930, the Indian Contract Act, 1872; the various purchase orders



and the invoices under which the goods were sent and also the balance confirmation correspondence dated 11th January, 2019 and 13th March, 2019. The Operational Creditor requested the Corporate Debtor to make the outstanding payments on several occasions.

- (7) On failure to make the payments, the Operational Creditor issued a Demand Notice dated 25th March, 2019 under Rule 5 of the I&B (Application to Adjudicating Authority) Rules, 2016 inter alia demanding to pay an amount of Rs.1,32,14,015.51/- along with interest at the rate of 12% from the 61st day of the respective invoice within 10 days of the receipt of the demand notice. The Demand Notice was sent by Registered Post bearing No.RK478805126IN and was duly received by the Corporate Debtor on 27th March, 2019.
- (8) It is stated that after the receipt of the said Demand Notice by Indian Post, the Operational Creditor did not receive any payment as demanded and also did not receive any reply/ notice raising any dispute. It is further stated that there is no records of existence of and/or pendency of any suit or arbitration proceeding filed, before the receipt of the Demand Notice as contemplated under the I&B Code, 2016. The Corporate Debtor has not paid any amount towards the default amount outstanding against the Operational Creditor.
- (9) It is also stated that personal notice as ordered by this Tribunal on 10th May, 2019 was duly served and that the Corporate Debtor thereafter appeared through Counsels on 28th June, 2019, 9th July, 2019 and 31st July, 2019. The Corporate Debtor did not file any objections inspite of opportunity being granted by the Tribunal.
- (10) The Operational Creditor has filed the financial statement of the Corporate Debtor for the financial year ending March 2016, March 2017 and March 2018. The financial statements



of the Corporate Debtor for the AY ending March, 2018 shows that total assets of the Corporate Debtor as Rs.136.81 Crores and the total liabilities amount to Rs.105.06 Crores at the end of March, 2018. Profit the period March, 2018 is shown as Rs.4.12 Crores.

(11) In the facts and circumstances there is operational debt of Rs.1,32,14,015/- which is due and payable as defined exceeding Rs.1 Lakh. And there is clear documentary evidence in the form of Purchase Orders, Invoices and balance confirmation letter showing that the aforesaid debt is due and payable and has not yet been paid. It is further stated that no dispute between the parties or the record of pendency of a suit or arbitration proceeding. There is no reply filed by the Corporate Debtor to the Demand Notice, there is no objection filed by the Corporate Debtor to the Petition filed.

(12) The Petitioner has relied upon the judgment of the Hon'ble Bombay High Court in the matter of *Sun N Sand Hotel Limited vs. M/s. V.V. Kamat AIR 2003 Bom 168*.

Therefore, it is prayed to initiate CIRP under the Code with all consequential orders.

3. Heard Mr. Ricab Chand, learned Counsel for the Petitioner and Mr. Lomesh Kiran Nidumuri along with Ms. Sahana Devanathan, and learned Counsels for the Respondent. We have carefully perused the pleadings of both the parties and extant provisions of the Code and the Law on the issue.
4. Mr. Ricab Chand, the learned Counsel for the Petitioner, while reiterating the averments made in the main Company Petition and also in the summary, as briefly stated supra, has further submitted that the debt and default is admittedly is not in dispute and the Respondent has not opposed the claim of the Petitioner and also not



filed any statement of objections. A qualified Insolvency Professional namely Mr. Konduru Prasanth Raju is suggested for appointment as the Interim Resolution Professional in respect of the Corporate Debtor, who also has given his written consent in Form-2 dated 13.08.2019 along with an Affidavit dated 14.08.2019. Therefore, the Application is filed in accordance with law and urged the Tribunal to admit the case.

5. The case is listed for admission on various dates viz.10.05.2019, 13.06.2019, 28.06.2019, 09.07.2019, 31.07.2019, 16.08.2019, 28.08.2019, 19.09.2019, 24.09.2019, 23.10.2019, 14.11.2019, 29.11.2019 and 11.12.2019 and the case is adjourned especially on the request of the learned Counsel for the Respondent to explore the possibility of settlement of the issue. However, so far the issue could not be settled and further the Respondent has also not filed any statement of objections.
6. The above facts and circumstances clearly establishes the debt and default in question having no dispute and having no objections filed by the Respondent. The Adjudicating Authority has granted sufficient time to explore the possibility of settlement of the issue in question. Therefore, there is no option left for the Adjudicating Authority except to admit the case by initiating CIRP in respect of the Corporate Debtor, appointing IRP and imposing moratorium, etc. The Petitioner has also suggested a qualified Insolvency Professional namely Mr. Konduru Prasanth Raju having IP Regn. No.IBBI/IPA-002/IP-N00708/2018-19/12200 to appoint as IRP, who also has filed his written consent in Form-2 dated 13.08.2019 by inter alia affirming that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor herein and that there are no disciplinary proceedings pending against him with the Board or ICSI Institute of Insolvency Professionals.



7. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, under Section 9(5)(i) and other extant provisions of the Code, C.P. (IB) No. 166/BB/2019 is hereby admitted with the following consequential directions:

(1) We hereby appointed **Mr. Konduru Prasanth Raju with IP Registration No.IBBI/IPA-002/IP-N00708/2018-19/12200**, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of Corporate Debtor namely **M/s. KNK Construction Private Limited** and to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

(2) The following moratorium is declared prohibiting all of the following, 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;
- 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.



- e. 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.
- f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
- g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file his progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on **13th January, 2020**.



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

Krishna



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Deputy Registrar
National Company Law Tribunal
Bengaluru Bench

