

IN THE NATIONAL COMPANY LAW TRIBUNAL,**KOCHI BENCH****TIBA NO.15/KOB/2019****(IBA No.630/2019 of NCLT Chennai Bench)***(Under Rule 6 of the IB(AAA)Rules,2016)***Date of Order: 23.10.2019****Applicant/Operational Creditor**

M/s Sidhi Vinayak Enterprises, rep.
 By its Partner, K.R.Rajeesh Kumar,
 G3,-B, 11th street, Sector 1
 Ambattur Industrial Estate,Chennai-600 058.

Vs.

Respondent/Corporate Debtor

M/s Solar Offset Printers Pvt.Ltd.
 Rep. by its Director,
 Plot No.42, Industrial Development Plot,
 Manvila, Kulathoor (PO)
 Thiruvananthapuram-695583.

Counsel for applicant .. Mr.J. Krishnakumar

Counsel for respondent .. Nil

ORDER

This petition has been filed by M/s. SIDDHI VINAYAKA ENTERPRISES, Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') for initiating insolvency resolution process against the Respondent-Corporate Debtor, a company registered under the Companies Act, 1956. The Corporate Debtor was incorporated on 30.07.1992 under the companies Act, 1956 and continues its existence with CIN No. U22212KL1992PTC006647 and has its registered office at Plot No.42, Industrial Development plot, Manavila, Kulathoor P.O Thiruvananthapuram -695 583, in the



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State of Kerala and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

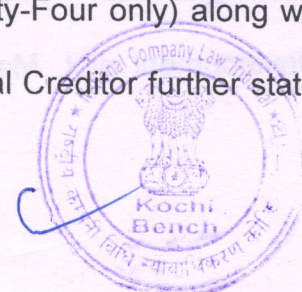
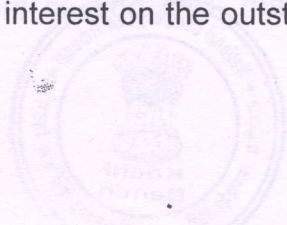
2. The Operational Creditor is involved in the business of dealers and Importer of paper and Boards, indenting and importing, commission agents and any other business incidental thereto.

3. The Corporate Debtor has approached the operational Creditor seeking for supply of light weighted coated paper vide purchase order No.PA 226 dated 02.01. 2019 .Considering the request made by the Corporate Debtor, the Operational Creditor has raised a proforma Invoice No. SV -210/218-2019 dated 02.01. 2019.

4. It is further stated that the Operational creditor had dispatched the goods to the Corporate Debtor on 05.01.2019. And also raised Tax Invoice No.SV-214/2018-2019 dated 05.01.2019 for a sum of Rs.13,56,055/- (Rupees Thirteen Lakh Fifty-Six Thousand and Fifty Five only).

5 The Operational Creditor presented the cheque issued by the Corporate Debtor on 19.02.2019, Cheque bearing No.000442 dated 11.01.2019 for Rs.13,62,025 (Rupees Thirteen Lakh Sixty-Two Thousand Twenty-Five) and the same cheque got dishonoured for want of sufficient funds. On receipt of return of cheque, the operational Creditor had sent an e-mail dated 26.02.2019 to the Corporate Debtor and informed that the cheque was returned for the reason of insufficient funds.

6 It was also submitted that the Operational Creditor had sent a demand notice on 11.03.2019 and requested to pay the unpaid operational debt of Rs.14,09,554/- (Rupees Fourteen Lakh nine thousand five hundred and Fifty-Four only) along with interest on the outstanding principal amount. The Operational Creditor further stated



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that the Corporate Debtor having received the demand notice on 14.03.2019 has failed to repay the unpaid operational debt.

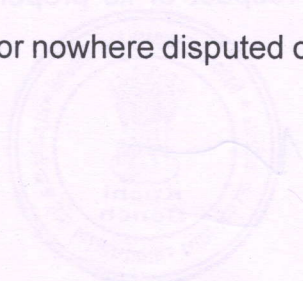
7. It is stated that the corporate debtor has neither given a reply stating that there exists a dispute which is pre-existed and bonafide nor repaid the entire debt, therefore the operational creditor filed this Application to initiate Corporate Insolvency Resolution Process, declaration of Moratorium and appointment of Interim Insolvency Resolution Professional under Section 9 of the Code.

FINDINGS

8. The CIRP Application was transferred from NCLT Chennai to this Bench and renumbered as TIBA/15/KOB/2019. This bench has issued notice to both the Parties on 23rd August 2019 which was duly served to both the parties. In spite of receipt of notice on 26.08.2019 the Corporate Debtor did not turn up nor any counsel present on his behalf before this Tribunal. The Learned counsel for Operational Creditor has submitted that there was no scope for any settlement and therefore, prayed that the Application be considered on merits.

9. After carefully examining all the facts and circumstances of this case, we come to the conclusion that the Operational debt of Rs Rs.14,09,554/- (Rupees Fourteen Lakh Nine Thousand Five Hundred and Fifty-Four only) is not repaid till date.

10. On meticulous perusal of the record and documents appended with the Petition it appears that the Operational Creditor had made several communications for reminding the corporate debtor about the payment of the outstanding debt, as mentioned in Annexure A II (11). From the records, it appeared that the Corporate Debtor nowhere disputed or challenged the amount of debt, which is due to operational



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creditor. But the Corporate Debtor in his reply to the above said e- mail communication stated that due to unexpected reasons the Corporate debtor was unable arrange the fund. Therefore, it clearly proves that the Corporate Debtor had admitted the debt owed by them against the supply of coated paper vide purchase order No. PA 226 dated 02.01. 2019.

11. In the absence of Corporate Debtor, we have relied on the Section 5 (20) and (21) to satisfy that the definition of Operational Creditor and Operational Debt. Further we relied on Section 9 (3) (a) (b) (c) of the Code to determine whether process for initiation of CIRP was followed by the Operational Creditor or not. On both the counts the applications fulfil the conditions laid down in the Code.

12. In view of the above, the instant Application deserves to be admitted. The Application, **TIBA/15/KOB/2019** therefore, is **ADMITTED** and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code as amended:

- 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 off 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

13. It is further directed that the services to the corporate-debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The moratorium shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a Corporate Debtor.

- a) The order of moratorium shall have effect from the date of this order 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.
- b) That the public pronouncement of the corporate Insolvency Resolution process shall be made immediately as specified under Section 13 of IBC.
- c) That this Bench at this moment appoints **Mr. Eswara Pillai Kesavan Nair** having registration No. IBBI/IPA-001/IP-P00448/2017-18/10791 (Email – keaswaran@gmail.com) as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.



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d) We direct the Operational Creditor to deposit a sum of Rs. 2 lakhs with the Interim Resolution Professional namely Mr. **Eswara Pillai Kesavan Nair** to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days for the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor

e) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional.

Dated this the 23rd day of October, 2019

Sd/-
(**Veera Brahma Rao Arekapudi**)
Member (Technical)

Sd/-
(**Ashok Kumar Borah**)
Member (Judicial)

Certified to be True Copy

Ashok Kumar Borah
24/10/19.
Deputy Registrar
National Company Law Tribunal
Kochi Bench

EaMemo No.TIBA/15/KOB/2019/.....

Date: 23.10.2019

To

1. Mr.J.Krishnakumar, Advocate, 60/2546, Komaroth Lane, Azad Road, Kaloor, Kochi-682017 (**Counsel for the applicant**)
2. Mr. Santhosh Kumar, Advocate, Sarad Villa, TC 28/1292, Kunnumpuram, Trivandrum. (**Counsel for the Respondent**).
3. Mr.Easwara Pillai Kesavan Nair, (Email. keaswaran@gmail.com), VIth floor, Amritha Trade Towers, SA Road, Pallimukku, Cochin-682016. (**Interim Resolution Professional**).

