

IBA/38/KOB/2019

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI**

IBA/38/KOB/19

(Under Section 9(6) of Insolvency and Bankruptcy Code, 2016)

Order delivered on 25.10.2019

**Coram: Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)**

In the matter of

M/s Sanghvi Movers Limited
Registered Office: Survey No.92
Tathawade, Taluka-Mulsi, Pune,
Maharashtra-411033, India

.... Operational Creditor/Applicant

Vs.

M/s Albanna Engineering (India) Private Limited
XIV 305 A4(4) 3E, Noel Focus,
Seaport Airport Road, Chittethukara,
CSEZ PO, Kakkanad, Cochin-682037

....Corporate Debtor/Respondent

For Operational Creditor/Applicant : Mr.KB Arunkumar, Advocate

For Corporate Debtor/Respondent : None

ORDER

1. This is a Petition filed under section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter as **I&B Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) on by the Petitioner **M/S. SANGHVI MOVERS LIMITED** (hereinafter as '**Operational Creditor/Petitioner**') against **M/S ALBANNA ENGINEERING (India) PRIVATE LIMITED** (hereinafter as '**Corporate Debtor**').

IBA/38/KOB/2019

2. The Operational Creditor is involved in the business of supply of cranes on a hire/rental basis for various companies. The Corporate debtor is engaged in the business of EPC CONTRACT, Infrastructure and construction works. During the course of their business the corporate Debtor approached the operational creditor for renting cranes, through various work orders and extension orders for executing the work at their designated site at VGO-HDT & DHDT UNIT PROJECT SITE at BPCL, Ambalamughal, Cochin.
3. The Operational Creditor also submitted that based on the work order they provided crane services to the corporate debtor. The cranes were successfully used by the Corporate Debtor to their satisfaction for the purpose for which the said cranes have been rented /leased.
4. The Operational Creditor continued to raise various invoices claiming the outstanding debt. Accordingly, a sum of Rs.11,05,41,206/- (Rupees Eleven Crores Five Lakhs Forty-One Thousand Two Hundred and Six Only) is payable by the Corporate Debtor towards the hire charges for the aforesaid work orders. However, the Corporate Debtor have been irregular in making payments to the Operational Creditor. Till August,2016 a sum of Rs. 3,66,29,015/- (Rupees Three Crores Sixty-Six Lakh Twenty-Nine Thousand and Fifteen Only) was due and payable to the operational Creditor towards the invoices raised from time to time. Thereafter several E-mail communications were given to the corporate Debtor reminding about the payment of dues. Thereafter the Corporate Debtor issued 4 cheques totally amounting to Rs.3,25,00,000/- (Rupees Three Crores Twenty-Five Lakh Only) towards the partial payment of outstanding dues excluding the amount of TDS.

IBA/38/KOB/2019

5. Out of the 4 cheques, the cheques bearing No. 622542 dated 31.07.2016 and No.622543 31.08.2016 and No. 622541 dated 25.08.2016 for Rs.75,00,000/- and Rs1,00,00,000/- and Rs.1,00,00,000/- respectively issued by the Corporate Debtor were returned unpaid vide intimation dated 26.10.2016 by the Bank.
6. Then Operational Creditor also issued a statutory notice dated 07.11.2016 under section 138 of Negotiable Instruments act ,1881 for dishonour of the said cheques. Thereafter a Memorandum of Understanding dated 20.12.2016 was entered between them, to settle the disputes. According to the terms and conditions the Corporate Debtor had to pay the outstanding debt in 11 instalments. Accordingly, the corporate Debtor issued 11 Cheques towards payment of outstanding dues of Rs. 3,20,00,000/- (Rupees Three Crore Twenty Lakh Only) The Cheques bearing No. 252033 dated 15.02.2017, No.252034 dated 28.02.2017 No.252035 dated 15.03.2017 No.252036 dated 30.03.2017 No.252037 dated 15.04.2017 No.252038 dated 30.04.2017 No.252039 dated 15.05.2017 No. 252040 dated 30.05.2017 issued by Corporate Debtor were dishonoured for the reason that "funds insufficient".
7. Therefore, as per clause 3 of the MoU dated 20.12.2016, in case of default to honour the payment schedule, the corporate debtor is liable to pay Rs.3,66,29,015/- along with interest thereon @ 18% per annum from the date of outstanding of respective invoices till the date of realization. After giving credits to payments made by the Corporate Debtor, the said company has to pay rs.2,76,69,791/- (Rupees Two Crores Seventy-Six Lakh Sixty-Nine Thousand Seven Hundred and Ninety-One Only).

IBA/38/KOB/2019

8. Due to continuous failure of the Corporate Debtor to honour its commitments, the Operational Creditor had issued a statutory notice dated 01.11.2017 as per Section 8 of the Insolvency and Bankruptcy Code 2016.
9. The debtor through demand notice claimed payment of an outstanding sum of Rs.2,76,69,791.00/- (Rupees Two Crores Seventy-Six Lakh Sixty-Nine Thousand Seven Hundred and Ninety-One Only). being the total principal amount along with interest at the rate of 24% per annum with in a period of 10 days from the date of receipt of the notice. The said notice was received by the Corporate debtor on 07.11.2017.
10. In response to the same the Corporate Debtor has not issued any reply. Despite the receipt of notice the Corporate Debtor had failed and neglected to pay the said amount to the Operational Creditor. Therefore, it appears that the operational creditor had no intention to pay the said amount to the Operational Creditor.
11. Therefore, the Operational creditor filed this Application to initiate Corporate Insolvency Resolution Process, declaration of Moratorium and appointment of Interim Resolution Professional under Section 9 of the Code on 21.08.2019.
12. The Registry of this Tribunal has also issued a notice to the Corporate Debtor intimating about the application filed under the Insolvency and Bankruptcy Code Under Section 9 and to appear before the Tribunal on 18.10.2019. However, the notice to Corporate Debtor returned unserved as 'addressee left'. Therefore, the application was decided as ex-parte.
13. 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

IBA/38/KOB/2019

initiation of CIRP was followed by the Operational Creditor or not. It also appears that the claim amount in this application is Rs 2,76,69,791/- where the minimum requirement of the amount of default is Rs. 1 lakh only (Section 4). Therefore, in all counts this instant Application deserves to be admitted.

14. In the given facts and circumstances, we are of the view that the present application is complete and the Applicant is entitled to claim its dues, which remain unpaid by the Corporate Debtor. In the light of above facts and records the present application is admitted before bench.

15. As a consequence, the **Application No. IBA/38/KOB/2019** is **admitted** in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following

- 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;

IBA/38/KOB/2019

- 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.

16. 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.

17. The Operational Creditor has suggested the name of **Mr. Vinod Balachandran** having registration **No. IBBI/IPA-001/IP-P01554/2018-2019/12403** (Email Vinod@vinodbalachandran.org) as Interim Resolution Professional. Hence this Bench appoints **Mr. Vinod Balachandran** having registration **No. IBBI/IPA-001/IP-P01554/2018-2019/12403** (Email Vinod@vinodbalachandran.org)

IBA/38/KOB/2019

(address-70/1909,Asoka Road, Kaloor, Kochi-682017, Kerala) 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.

18.The registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional.

Dated the 25th day of October, 2019

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

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

Memo No.IBA/38/KOB/2019/.....

Date: 28.10.2019

1. M. KB Arunkumar, Advocate, 2nd floor, Mega Arcade, Power House Road, Kacheripady, Ernakulam, Cochin-682017. **(Counsel for the Operational Creditor-Applicant).**
2. M/s Albenna Engineering (India) Private Limited, XIV/305 Ar(4), Noel Focus, sEaport Airport Road, Chettethukara, CSEZ PO, Kakkanad, Cochin-682037. **(Respondent).**
3. **Mr.Vinod Balachandran, No.70/1909, Asoka Road, Kaloor, Kochi-682017, Kerala (Interim Resolution Professional).**