(12)

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IBA/470/2020

(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. Thiruchitambalam Projects Limited***

M/s. Sicagen India Limited,
Rep. by its Mr. N. Aravindhraj (Legal Executive),
Having Registered Office at
SPIC House, 4th Floor, Mount Road,
Guindy, Chennai – 600 032.

... ... *Operational Creditor*

-Vs-

M/s. Thiruchitambalam Projects Ltd.,
Rep. by its Managing Director,
No.27/400 K.P. Road,
Ramavaramapuam,
Nagercoil – 629 002.
Tamil Nadu

... ... *Corporate Debtor*

Order Pronounced on 2nd September 2021

CORAM :

SUCHARITHA R, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : S. Ravi, Advocate
For Corporate Debtor : None appeared

ORDER

***Per:* SUCHARITHA R, MEMBER (JUDICIAL)**

Under adjudication is Application filed **M/s. Sicagen India Limited** (hereinafter referred to as **"Operational Creditor"**) under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short, 'I&B Code, 2016) r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Thiruchitambalam Projects Limited** (hereinafter referred to as **"Corporate Debtor"**) to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Operational Creditor is a Limited Company. From Part-II of the Application, it is seen that the Corporate Debtor is a Limited Company incorporated on 02.04.1996 and the Registered Office Address of the Corporate Debtor as per the Application is stated to be situated at 27/400 K.P. Road, Ramavaramapuram, Nagarcoil – 629 002, Tamil Nadu. From Part-III of the Application, it is seen that the Operational Creditor has not proposed that the name of the IRP and left it to discretion of this Tribunal to appoint the same.

3. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of Rs.10,50,911/- which is due and payable by the Corporate Debtor. Part-V of the Application discloses the details of the documents filed by the Operational Creditor, in order to prove its 'operational debt' and the list of documents which filed along with the Application are as follows;

a. Copy of the Purchase Order raised by the Corporate Debtor to the Operational Creditor

b. Copy of the Tax Invoices as per list raised by the Operational Creditor to Corporate Debtor

c. Copy of the Ledger Account

d. Copy of the Debit Note for Interest calculations.

e. Copy of the Demand Letters from October 2014 to December 2019

f. Copy of the Mail letter for acceptance of Demand Notice and assured to early payments

g. Copy of the Balance confirmation letter dated 27.12.2019 by Corporate Debtor.

4. Learned Counsel for the Operational Creditor submitted that, during the course of the business, the Corporate Debtor approached the Operational Creditor to purchase 50 MT of TMT Steels of various sizes for using building constructions and accordingly issued a Purchase Orders No.TP/KAN/001/1/2014 dated 08.09.2014 for 25.250 MT and No.P/TPL/TNPHC/1006/2014 dated 21.09.2014 for the quantity of 22.500 MT.

5. Learned Counsel for the Operational Creditor submitted that they have promptly supplied the materials on time as per the schedule given by the Corporate Debtor and accordingly the Operational Creditor has raised invoices. It is submitted by the Learned Counsel for the Operational Creditor that, as per the

invoices, the credit period for making the payment is after 30 days from the date of delivery of the materials

6. It is also submitted by the Learned Counsel for the Operational Creditor that it is mandatory under the said terms and conditions, the Corporate Debtor is required to make the payment within due date. Further, the Learned Counsel for the Operational Creditor submitted that as per the terms and conditions of the Invoices, if the Corporate Debtor has failed to make the payment within the date, then interest @ 24% per annum shall be charged on the amount due.

7. It was submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor was irregular in the payment and also was in the habit of paying the invoice amount in instalments that too with huge delay and as such it was submitted that the total value of the Invoices pending for payment aggregates to the tune of Rs.10,50,911/-.

8. Learned Counsel for the Operational Creditor submitted that, the Operational has issued a Demand Notice dated 15.02.2019 as stipulated under section 8 of IBC 2016 to the Corporate Debtor and the same has been delivered to the Corporate Debtor. Further, perusal of the Affidavit filed under Section 9(3)(b) of IBC, 2016

would shows that, neither the Corporate Debtor has not paid the amount which is outstanding to the Operational Creditor within the period of ten days from the date of receipt of the Demand Notice nor the Corporate Debtor has brought to the notice of the Operational Creditor any dispute regarding the amount which is outstanding. Under the said circumstances, the Learned Counsel for the Operational Creditor prayed for the initiation of CIRP against the Corporate Debtor.

9. In relation to the Corporate Debtor, it is seen from the records that there was no appearance on the part of the Corporate Debtor and this Tribunal has ordered notice to be issued to the Corporate Debtor and accordingly the Operational Creditor has filed an Affidavit of Service, from which, it is seen that the notice has been served to the Corporate Debtor and inspite of the same the Corporate Debtor remained absent. Under such circumstances, this Tribunal is constrained to proceed in the present matter.

10. Heard submissions made by the Learned Counsel for the Operational Creditor and perused the documents placed on record. Before venturing into the merits of the present case, this Adjudicating Authority is duty bound to examine the present Application within the contours of Section 3 of the Limitation Act,

1963 and to examine the present Application from the aspect of limitation, whether it is pleaded or not by the Respondent.

11. From the list of the invoices attached along with the Application, it is seen that the same has been raised on 08.09.2014 and 21.09.2014. Thereafter, it is seen that on 23.03.2015 the Corporate Debtor has by way of a letter acknowledged the balance as Rs.9,23,623/-. Thereafter, it is also seen that the Corporate Debtor by way of letter dated 19.12.2019 has acknowledged that a balance of a sum of Rs.10,50,911/- is due and payable by the Corporate Debtor to the Operational Creditor. The present Application has been filed before this Tribunal on 31.01.2020. Also from the Ledger statement filed, it is seen that certain transactions were made during the year 2017 and 2018. Thus, viewed from this perspective, the present Application falls well within the period of limitation.

12. Also, the acknowledgment of debt by the Corporate Debtor would go on to show that there is an 'operational debt' and the Corporate Debtor has committed 'default' in repayment of such 'operational debt' to the Operational Creditor. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A

of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option other than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

13. Further, in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor on 31.01.2020.

14. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between July – December 2021 appoints **MR. G. MUKUNDAN** with

Reg. No. IBBI/IPA-001/IP-P01419/2018-2019/12162 (email id:-g.mukundan1955@gmail.com) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days 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 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 sub-section, 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 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 mange 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 arrangement 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 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.1,00,000/-** *(Rupees One Lakh 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 to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to 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 be also furnished with 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.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond