

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SIGNLE BENCH, CHENNAI**

CP/419/ (IB)/CB/2018

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. Keller Ground Engineering India Private Limited**

M/s. Hassan Brothers

...Operational Creditor

Vs.

M/s. Keller Ground Engineering India Private Limited

...Corporate Debtor

Order delivered on 4th of February, 2019

CORAM:

CH.MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

*For Operational Creditor: Mr. Sanjay Kumar Ruia, PCS
For Corporate Debtor : Mr. P. Purushotham, Counsel*

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J)

1. Under Adjudication is CP/419/(IB)/CB/2018 that
has been filed by the Operational Creditor under
Section 9 of the Insolvency & Bankruptcy Code, 2016

(in short, 'I&B Code, 2016') r/w the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against the Corporate Debtor viz., M/s. Keller Ground Engineering India Private Limited. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. The Operational Creditor has claimed Rs.1,06,20,608/- including interest as on 15.03.2018, which the Corporate Debtor failed to pay.

3. The brief facts of the case are that on the basis of the Work Order No. WO/KE/CH/2016/863/009 dated 11.08.2016 issued by the Corporate Debtor, the Operational Creditor has supplied "Kobelco CKL1350" 150 Ton Crawler Crane (for short equipment) to the Corporate Debtor for the purpose of execution of the project of **Indian Oil Corporation Limited** (for short IOCL), at Kochi , on rental basis. The Work Order was

issued to the Operational Creditor pursuant to the Letter of Intent given by the IOCL in favour of the Corporate Debtor for ground improvement work. Copy of the Work Order issued to Operational Creditor is placed at pages 16 to 21 of the typed set filed with the Application.

4. Clause 3 of the Work Order provides the period of hiring, which contemplates that the contract is valid for a period of Five (05) to Six (6) months from the date of receipt of the equipment at site. However, it can be contracted or extended by mutually acceptable terms thereafter, as per Keller's (Corporate Debtor's) requirement.

5. Similarly, Clause 4 of the Work Order stipulates the hiring charges, wherein it has been agreed to pay the rentals Rs.12,00,000 (Rupees Twelve Lakhs Only) for 24 hours a day including maintenance, lunch, tea break for 26 days in a month except Sundays. It has also been recorded in the work order that the Corporate Debtor is having the full right to terminate

the Work Order in full or part in case there is failure in stipulated time as above. There are other conditions with regard to the maintenance and breakdown charges, Fuel, Crew and Boarding, Lodging and Transport as provided in the Work Order.

6. The Insurance and Indemnity clause of Work Order provides that the owner (Operational Creditor) shall arrange for the insurance of the equipment as well as its transit. However, the customer (Corporate Debtor) shall keep the owner indemnified against;

- i. any loss or seizure of the equipment under distress, execution or legal process or loss/destruction/damage to the equipment by fire, accident or any other cause, accidental damages are claimable,
- ii. Any damage to any property of the customer or of any 3rd party due to the equipment,
- iii. All losses, damages, claims, penalties suffered, expenses incurred in defending the suits or proceedings consequent to failure of the customer

to act in accordance with the terms of the agreement,

- iv. Any loss which may be suffered by the owner (except due to owner's default) consequent to confiscation of the equipment by any governmental authority or any public officer or authority under any law of the time being in force while the equipment is under this agreement of the customer, and
- v. Any liability arising out of non-compliance of all statutory requirements and other applicable statutes, regulations and rules.

7. Clause 18 of the Work Order provides that the owner (Operational Creditor) shall provide the equipment on rent for a fixed tenure as may be agreed upon between the customer (Corporate Debtor) and owner (Operational Creditor) as per the provision of the agreement. It further provides that the customer shall not terminate the same, at any time prior to expiry of the stipulated tenure as mentioned in the agreement, however, in the event the customer (Corporate


Debtor)decides to terminate the agreement prior to the tenure as mentioned above, a notice of **thirty (30)** days in writing shall be required to be given by the customer (Corporate Debtor) to the owner (Operational Creditor), failing which the customer shall be liable to pay *additional rentals for the shortfall in the notice period* and customer shall solely bear all mobilization and demobilization expenses of the equipment.

8. The Work Order also provides for ***force majeure*** under Clause 26 which stipulates that the owner (Operational Creditor) shall not be held liable for any loss, delay, damage or other casualty suffered or incurred owing to earthquakes, floods, ***strikes***, fires, explosions, act of God, war, action of Government nor any other cause which is beyond the reasonable control of the owner, and any failure or delay by owner (Operational Creditor) in the performance of any of its obligations owing to the above causes shall not be considered as breach of agreement.

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9. The Corporate Debtor has requested the Operational Creditor for a discount of 50% on rental owing to the losses incurred due to local protest and litigation, however, the Operational Creditor vide its communication dated 22.10.2016 refused to consider the said request. The Operational Creditor vide communication dated 10.01.2017 informed the Corporate Debtor that due to irresponsible behaviour on the part of the people of Corporate Debtor, all the wire ropes of the new crane got damaged and it was asked to get the new ropes from Kobelco to which the Corporate Debtor never bothered to address.

10. The Corporate Debtor vide its e-mail communication dated 30.03.2017 again requested for waiver on rental charges for the idling period. Considering the persistent request on the part of the Corporate Debtor, the Operational Creditor allowed a discount of **Rs.2 Lakhs** on each Invoice starting from the month of **March, 2017**. After availing the discount,



the Corporate Debtor did **not** remit rental charges against Invoices raised after April, 2017.

11. The Corporate Debtor has all of a sudden on 29.06.2017 sent an e-mail to the Operational Creditor stating that the said e-mail be treated as **cancellation** of Work Order *w.e.f. 30.06.2017* requesting to demobilize the resources immediately from the site for which the Police protection would be provided by the IOCL and it was also informed to the Operational Creditor that the gates would be open the next day. Immediately, on 01.07.2017 the Operational Creditor informed the Corporate Debtor that it could not enter the IOCL gate because of local agitation and it was further reminded that to procure wire ropes for the crane and notified that the hire charges of the crane will be calculated till the date of dismantling.

12. The representative for the Operational Creditor has referred to the communication dated 07.07.2017 which was sent by the Corporate Debtor to the Operational Creditor referring to the notice they

received from the IOCL vide letter dated 04.03.2017 informing about the temporary suspension of works and also referred to few other letters received from the IOCL, in particular, the letter dated 29.06.2017 wherein the IOCL informed the Corporate Debtor about the arrangements for demobilisation of the equipment belonging to the Operational Creditor and also appraising the Corporate Debtor to ensure that the completion of balance works, is not suffered for want of the equipment once the site activities are resumed. Besides, it was assured by the Corporate Debtor to the Operational Creditor that the Corporate Debtor had partially cleared the outstanding during the suspension period and *any further payment would be made after the receipt of the same from the IOCL.*

13. The Operational Creditor sent a letter dated **11.07.2017** to the Corporate Debtor expressing that *the monthly running bills will be continued till the date of demobilisation of the crane from the site,* and in response to the said letter, the Corporate Debtor issued

a letter 08.08.2017 stating that it has already cleared all contractual dues for equipment hired upto the valid contract period agreed. It has also been stated that the Corporate Debtor repeatedly expressed its intention to IOCL to permit it to demobilise the equipment and is trying its best with IOCL to have the equipments demobilised. It shows that the IOCL and the Corporate Debtor were not willing to demobilise the equipment for the reason that the work has to be continued at any cost despite the local agitation. The Operational Creditor sent a communication dated 10.08.2017 acknowledging the payment made by the Corporate Debtor for the April billing and reminded to clear the outstanding amount of Rs.20,00,000/ for the months of May and June, 2017 and asked the Corporate Debtor to make necessary arrangements for demobilisation. *In reply to the communication dated 10.08.2017, sent by the Operational Creditor to the Corporate Debtor, the Corporate Debtor vide its communication dated 18.10.2017 has suggested to the Operational Creditor to defer the demobilisation of the equipment till the*

Corporate Debtor receives prior intimation from IOCL about the revised dates for demobilisation of the equipment. In response to the above e-mail the Operational Creditor sent an email dated 24.10.2017 stating that the demobilisation could not be done and that the charges and expenses should be reimbursed by the Corporate Debtor.

14. Finally, the Operational Creditor vide its communications dated 27.11.2017, asked the Corporate Debtor to clear all the outstanding dues on the Invoices raised till the date of mobilisation of the crane on 03.11.2017. The details of various amounts were mentioned in the said letter including the damage caused to the crane as per the field inspection report dated 08.11.2017.

15. The Operational Creditor has sent a Demand Notice dated 15.03.2017 under Section 8 of the I&B Code, 2016 to the Corporate Debtor, wherein the amount claimed; the details of transaction on account of which debt fell due and the date of default are being

mentioned, copy of which is placed at pages 11 to 15 of the typed set filed with the Application, which has been delivered. The postal receipts of sending the notice and track delivery report is placed at pages 51 and 52 of the typed set filed with the Application, to which no reply was given by the Corporate Debtor.

16. The Operational Creditor has complied with Section 9 (3) (b) & (c) of I&B Code, 2016, by filing Affidavit, wherein under Para 2, it has been deposed that the Operational Creditor has not received any notice of dispute from the Corporate Debtor relating to the unpaid operational debt. Copy of the Affidavit is placed at pages 56 to 58 of the typed set filed with the Application. The Bank certificate issued by the Chief Manager of UCO Bank and statement of accounts are placed at pages 70 to 72B of the typed set filed with the Application.

17. The Corporate Debtor has filed a detailed **Reply** along with consolidated typed set of documents on 08.06.2018 wherein it has been stated that the IOCL

invited tenders for Ground Improvement Works for the Cochin LPG Import Terminal at Puthuvypin on 21.11.2015. The Corporate Debtor was the successful bidder and a Letter of Intent was issued by the IOCL in favour of Corporate Debtor on 19.05.2016. It is further submitted that Pursuant to the above award of contract, the Corporate Debtor placed orders on various vendors including the Operational Creditor.

18. It is contended by the Corporate Debtor that the IOCL project was mired in controversy and was the subject matter of local protest and litigation before National Green Tribunal (herein referred to NGT) which permitted work inside the project site to be continued subject to the norms laid down in the Environmental Clearance. It is further stated that the locals continued with their protest despite the Tribunal and Court orders permitting work to be continued inside the project site which resulted in suspension of work from 16.02.2017. Though the IOCL informed the Corporate Debtor that the suspension is being revoked on 14.06.2017, however the suspension had to be re-

invoked within 72 hours of revocation in view of continued protest which disabled the Corporate Debtor or any of its contractors including the Operational Creditor from entry into the site.

19. The Corporate Debtor further submitted that the contract between the Operational Creditor and the Corporate Debtor was due to expire on February, 2018, however, the contract tenure was extended till March, 2017 vide Amendment 009 dated 10.02.2017. There was no further extension of the contract tenure thereafter and the contract stood expired at the end of March 2017. Vide e-mail communication dated 29.06.2017, it was informed to the Operational Creditor that the contract for hire of the crane was cancelled with effect from 30.06.2017 and requested the Operational Creditor to demobilise the equipment from the site which falls within the scope of the Operational Creditor in terms of Clause 5 of the Work Order.

20. The Corporate Debtor submits that vide its letter dated 08.08.2017, the Operational Creditor was informed that all the sums due under the contract has been duly cleared until the valid contract period and there are no sums outstanding under the contract and in response to the above said letter, the Operational Creditor vide their letter dated 10.08.2017 requested the Corporate Debtor to pay the balance of Rs.20 Lakhs alleged to be due as on 10.08.2017 and not an amount of Rs.67,20,000/- as claimed in the present Application.

21. The Corporate Debtor contends that all the equipment including that of the Operational Creditor were demobilized from the site from 23.10.2017 and completed on 03.11.2017. After having demobilized its crane, the Operational Creditor changed its stand and demanded vide letter dated 27.11.2017 a sum of Rs.67,20,000/- as being due from the Corporate Debtor until October, 2017, though there was no extension of the contract after March, 2017, and

therefore, the claims made by the Operational Creditor are frivolous and bogus.

22. The Corporate Debtor submits that an amount of Rs.47,20,000/- has been claimed for the period after cancellation of the contract by the Corporate Debtor. The Operational Creditor has not disclosed the fact of cancellation of the said contract and has portrayed as if there was an existing contract and consequential dues till October 2017, though there was no valid extension of the contract after March, 2017 and the non-disclosure of the cancellation of the contract and not providing the relevant documents of cancellation expose that the Operational Creditor has not come with clean hands.

23. The Corporate Debtor alleges that claim of the Operational Creditor for crane hire charges after March, 2017 is malicious and has been vehemently disputed by the Corporate Debtor vide letter dated 08.08.2017, stating therein that all the terms due under the contract has been duly cleared until the

valid contract period and there are no sums outstanding under the contract and in view of the pre-existing dispute raised by the Corporate Debtor and the disputed nature of the claims made by the Operational Creditor, the present Application under the I&B Code, 2016 is not maintainable.

24. Heard the representative for the Operational Creditor and the Counsel for the Corporate Debtor at length and perused the pleadings and documents filed by both the parties.

25. The representative for the Operational Creditor has submitted that the Work Order was inked by the parties on 11.08.2016 for a duration of 6 months, and after deployment of the equipment, three Invoices were raised by the Operational Creditor dated 05.06.2017, 30.06.2017 and a consolidated Invoice dated 01.11.2017 respectively. The representative for the Operational Creditor has referred to a communication dated 29.06.2017 placed at page 26 of the consolidated typed set of documents filed with the Reply and

submitted that the IOCL (principal contractor) has given permission for demobilisation of the equipment belonging to the Operational Creditor, and also ensured the Corporate Debtor that the completion of balance work is not suffered for want of the equipment once the site activities are resumed, however, the Corporate Debtor did not make any attempt to demobilise the crane. The representative for the Operational Creditor has further referred to the letter dated 07.07.2017 sent by Corporate Debtor informing the Operational Creditor that the Corporate Debtor had *partially* cleared the outstanding during the suspension period and any further payment would be made after the receipt of the same from the IOCL and in spite of numerous e-mail communications dated 11.07.2017, 10.08.2017 and 21.11.2017, the Corporate Debtor *neither objected to such claim nor did raise any dispute with regard to the said amount.* The Counsel for the Corporate Debtor contended that a dispute was raised by the Corporate Debtor vide letter dated 08.08.2017, stating that it has already cleared all the contractual

dues for equipment hired with them up to the valid contract period agreed between both the parties, and also paid additional one-month rental sum considering the relationship which the Corporate Debtor had with the Operational Creditor and informed the Operational Creditor to demobilise all the equipment, machinery mobilised at site with immediate effect.

26. The representative for the Operational Creditor rebutted the contentions raised by the Counsel for the Corporate Debtor, and submitted that the Corporate Debtor in its communication dated 08.08.2017 has never raised a dispute with regard to the services provided by the Operational Creditor or any dispute with regard to the payment to be made to the Operational Creditor, as the same is clear from the contents of the letter dated 08.08.2017. He has further submitted that the Demand Notice is served on 14.03.2018 as per Section 8 (2)&(a) of the I&B Code 2016, the Corporate Debtor failed to bring to the notice of the Operational Creditor within a period of 10 days of the receipt of the Demand Notice or copy of the

invoice mentioned in sub-section (1), the existence of any dispute, the pendency of the suit or arbitration and there is no pre-existing dispute as claimed by the Corporate Debtor. The rebuttal given by the representative for the Operational Creditor on the issue of pre-existing dispute is plausible. The dispute raised at the first time in the reply filed is not substantiated with any document sent prior to the filing of reply. Therefore, the dispute raised is spurious and merely a bluster. Thus, the objection raised by the Counsel for Corporate Debtor stands rejected.

27. The representative for the Operational Creditor has submitted that the Corporate Debtor had deducted Tax at Source (TDS) which itself shows an acknowledgement of liability on the part of the Corporate Debtor. The representative for the Operational Creditor has further submitted that as per Form 26AS, the Corporate Debtor had booked total TDS of Rs.1,05,53,846/- in its books of account whereas the actual payment received including TDS deducted and deposited is Rs.97,84,926/- which

clearly shows that the total TDS credited exceeds the total payment received, and therefore, the deduction of TDS is an admission of liability in the books of the Corporate Debtor, to which the Corporate Debtor has admitted at Para 33 of the Reply as well as during course of arguments that there is unpaid sum/liability under the contract, the Corporate Debtor agrees to make a payment of Rs.10 Lakhs claimed by the Operational Creditor to be covered by TDS deducted by the Corporate Debtor but the said amount was never paid.

28. In order to reinforce his arguments the representative for the Operational Creditor has referred to the letter dated 07.07.2017 sent by the Corporate Debtor, wherein it was informed that the Corporate Debtor had partially cleared outstanding during the suspension period and that further payments shall only be made subject to receipt of corresponding payments from IOCL, and submitted that contents of the communication dated 07.07.2017 as well as the reply given by Corporate Debtor at Para 33 would manifest a clear acknowledgement of liability on the part of the

Corporate Debtor. This Authority finds force in the submissions made by the representative for the Operational Creditor and the defence taken by the Corporate Debtor is an afterthought and has no legs to stand. Thus, the defence taken by the Corporate Debtor stands rejected.

29. The Counsel for the Corporate Debtor would contend that the contract itself stands discharged in view of impossibility of performance of the contract due to local protest over which the Corporate Debtor had no control in terms of Section 56 of the Indian Contract Act, 1872. The Counsel has further submitted that the project faced stiff resistance from the locals who apprehended this contract to be a serious threat to the environment and due to which the project had run into rough weather and has become impossible to perform. The Counsel for the Corporate Debtor has placed reliance upon the case **Alluri Narayana Murthy Raju Vs. District Collector, Visakhapatnam**, reported in AIR 2008 Andhra Pradesh 264, wherein it has held [Para 29] that “From these uncontroverted facts, the

conclusion is inevitable that on account of the events that have taken place subsequent to entering into the contract, which were beyond the contemplation and control of the parties to the contract, performance of contract has become impossible...” (Emphasis is supplied)

30. Repudiating the contention made by the Counsel for the Corporate Debtor, the representative for the Operational Creditor has submitted that on the one hand, the Counsel for the Corporate Debtor submitted that the contract ended in March, 2017 and they have made payments till April, 2017; however, when the Operational Creditor claimed for the dues pertaining to the period from May, 2017 to October, 2017, the Counsel stated that there was frustration of contract due to strikes. The representative for the Operational Creditor has further stated that if the contract would have ended in March 2017, then there would have been no frustration, because for the frustration of contract to exist, there has to be a contract in the first place, and further the blatant denial without any iota



of proof does not render the facts untrue. The representative for the Operational Creditor has further submitted that the strike has been going on since the beginning of the contract, the Corporate Debtor never expressed the concerned of there being an impossibility in performance of contract. In order to support his arguments, the representative for the Operational Creditor has referred to Para 34 (b) (c) and (e) of the Reply filed by the Corporate Debtor which clearly reveals that matter was *subjudice* before the NGT, which had vide its Order dated 13.07.2016 clarified that the work of the compound wall and inside the site was permitted to be carried on, whereas the Work Order pertaining to the Operational Creditor was signed on 11.08.2016, thus the local issue was in existence prior to the issuance of Work Order. In other words the event(s) which have been happening prior to entering into the contract, could not be ~~legally~~ taken as valid ground to plead that the performance of contract has become impossible, that too, is being raised at the

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first time in the reply filed. Therefore, the defence taken by the Corporate Debtor falls flat.

31. In connection with the above, the representative for the Operational Creditor would place reliance on the judgement of Hon'ble Apex Court given in **Satyabrata Ghose Versus Mugneeram Bangur & Co. & Anr.**, reported AIR 1954 SC 44, wherein the Court has laid down as follows:-

"It must be pointed out here that if the parties do contemplate the possibility of an intervening circumstance which might affect the performance of the contract, but expressly stipulate that the contract would stand despite such circumstance, there can be no case of frustration because the basis of the contract being to demand performance despite the happening of particular event, it cannot disappear when the event happens. As Lord Atkinson said in Matthey v. Curling (1), "a person who expressly contracts absolutely to do a thing not naturally impossible is not excused for non-performance

because of being prevented by the act of God or the King's enemies..... or vis major"."

In the case on hand, the doctrine of frustration of contract is not applicable, as the IOCL had engaged the Corporate Debtor for ground improvement work and the NGT's Order is dated 13.07.2016, whereas, the Work Order was issued by the Corporate Debtor on 11.08.2016. Thus, the Corporate Debtor contemplated the possibility of the intervening circumstance, for which the Operational Creditor cannot be held responsible, as the Corporate Debtor was performing the contract with IOCL out of its own volition.

32. Even otherwise also, Clause 26 of the Work Order dated 11.08.2016, provides that *"the customer (Corporate Debtor) agrees that the owner (Operational Creditor) shall not be held liable for any loss, delay, damage or other casualty suffered or incurred owing to earthquakes, floods, **strikes**, fires, explosions, act of God, war, action of Government nor any other cause which is beyond that reasonable control of the owner..."*.

In the light of the facts, circumstances and legal position as stated above, the Operational Creditor cannot be held *liable for any loss, delay, damage incurred by the Corporate Debtor owing to strikes which was beyond the reasonable control of Operational Creditor.* Thus, the defence of impossibility in performance of contract taken by the Corporate Debtor stands rejected.

33. It has been stated in the Work Order that the duration of the Work Order was for a period of 5 to 6 months from the date of receipt of the equipment at site; but from the pleadings, it is not clear as to when the mobilization of the equipment's got completed at the site. However, from the pleadings it reflects that duration of the Work Order was due to expired on February 2017, but the same was extended till March 2017 vide amendment 009 dated 10.02.2017. Further, it appears from e-mail communication dated 29.06.2017 that was sent by the Corporate Debtor to the Operational Creditor that the contract for hire of the crane is cancelled w.e.f 30.06.2017. As per the

terms of the contract it was incumbent upon the Corporate Debtor to give 30 days' notice in writing, failing which the customer (Corporate Debtor) was liable to pay additional rentals for the shortfall in the notice period. But, the Corporate Debtor did not give notice of 30 days as contemplated in the Work Order prior to cancellation of the contract. If the date of termination of the work contract is taken as 30.06.2017, then the customer (Corporate Debtor) is liable to pay additional rentals for the equipment for the month of July, 2017 due to the shortfall in the notice period.

34. In view of it, the customer (Corporate Debtor) is liable to make payment of rentals at the rate of Rs.10 lakhs per 24 hours a day including maintenance, lunch, tea-break for 26 days in a month except Sundays. The Operational Creditor has allowed the discount of Rs.2 Lakhs on each Invoice starting from the month of March 2017, and it is admitted fact that no payment has been made to the Operational Creditor from May, 2017 onwards upto the month of July,

2017. Besides the above, it appears from the pleadings that the equipment of the Operational Creditor remain in the custody of the Corporate Debtor till the date of mobilization of the cranes i.e. 03.11.2017, as the Operational Creditor was not able to demobilize the machinery due to the situation that has been prevailing at the site, for which the Operational Creditor can in no way be held responsible. In these circumstances, the Operational Creditor is legally entitled to the rentals for the equipment upto the month of October, 2017.

35. The Operational Creditor has specifically stated in the Application that due to irresponsible behaviour on the part of the personnel of the Corporate Debtor, all the wire ropes of the new crane got damaged and it was asked to the Corporate Debtor to get the new wire ropes, but the same has not been complied with by the Corporate Debtor, whereas the Corporate Debtor as per Work Order was under obligation to keep the Operational Creditor indemnified against any loss, damage or seizer of the equipment during the

execution of the project at site as has been mentioned in the preceding paragraphs. The representative for the Operational Creditor in support of his contention has referred to the Inspection Report dated 08.11.2017 on the basis of which the damage to the crane wire rope is estimated at Rs.33,70,163/-. The Corporate Debtor has also filed one Inspection Report and taken the defence that the personnel of the Operational Creditor were on the job to operate the cranes, therefore, it is not liable. But, the defence taken by the Corporate Debtor appears to be an afterthought and stands **rejected**. Since the claim of the Operational Creditor pertaining to the rentals for the equipment is clearly made out, which is due from May, 2017 upto the month of October 2017, which the Corporate Debtor failed to pay. Therefore, it is needless to go into the details of the damages as claimed by the Operational Creditor, because this is not a recovery Tribunal. Thus, a clear default is established on the part of the Corporate Debtor in making the due



payments of rentals of the equipment as claimed by the Operational Creditor.

36. In the light of the facts, circumstances and legal position stated above, the multifaceted defence that has been projected by the Corporate Debtor is inconsistent and a mere bluster. Therefore, the pleas taken by the Corporate Debtor including the plea about pre-existing dispute, which is raised at the first time after filing the Application by the Operational Creditor, stand rejected.

37. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Bench is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, CP/419/(IB)/CB/2018 is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed. w

38. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is ordered to prohibit 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 (54 of 2002);

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(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.

39. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

40. Mr. Vinod Radhakrishnan Nair, is hereby appointed as IRP, as has been proposed by the Operational Creditor. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of I&B Code, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.



41. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the I&B Code, 2016.

42. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016. The e-mail and other details of the IRP are as follows: -

Mr. Vinod Radhakrishnan Nair,

Reg. No: IBBI/IPA-001/IP-P01352/2018-19/12083

No.B-1204, Sanpada Sea Queen Heritage CHS,

Plot No.6, Section-18, Sandapad,

Navi Mumbai – 400 705

Email:vinod@nairca.com

Mobile No: 7039500000



43. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

44. Order is pronounced in open court.


[CH.MOHD SHARIEF TARIQ]
MEMBER (Judicial)

P. ATHISTAMANI