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(15)

NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 27.08.2018

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER :
PETITION NUMBER : CP/344/IB/2018
NAME OF THE PETITIONER(S) : AJANTHA FLAT OWNERS ASSOCIATION
NAME OF THE RESPONDENTS : GREEN PEACE CONSTRUCTION PVT LTD
UNDER SECTION : 9 RULE 6

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
			REPRESENTATION BY WHOM

HEMA SRINIVASAN

ADVOCATE

Heard

M. RAJAMANICKAM

ADVOCATE

M. Raju

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

CP/344/(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. Ajanta Flat Owners' Association.

... Operational Creditor

Vs.

M/s. Green Peace Construction Private Limited.

... Corporate Debtor

Order delivered on 27th of August, 2018

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Operational Creditor(s) : Ms. Hema Srinivasan, Counsel.

*For Corporate Debtor (s) : M/s. M.Rajamanickam,
Mr. R.Rajesh Vivekananthan, Counsels.*

ORDER

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

1. Under Adjudication is CP/344/(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. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).


2. Heard the Counsels for the Operational Creditor and Corporate Debtor and perused the pleadings including the documents placed on the case file.

3. The Operational Creditor has claimed an outstanding debt to the tune of Rs.1,15,00,000/- along with Rs.31,08,588/- which is due and payable by Corporate Debtor, but it failed to pay the same.

4. The case of the Operational Creditor is that the Corporate Debtor viz., M/s. Green Peace Construction Private Limited, has entered into a Joint Development Agreement (JDA) dated 07.03.2010 with the members of Ajanta Flat Owners for construction of 54 Flats with

such specifications agreed upon in the said JDA. The copy of JDA is placed at pages 1 to 63 of the typed set filed with the Application.

5. The Operational Creditor has referred to Para F - 'Warranty Clause' of the JDA, wherein it has been recorded that if any structural defect is found in the building, within a period of 18 months from the date of handing over possession of the flats to the individual "OWNERS" and the Association, the "PROMOTER" shall effect appropriate repair works without monetary liability on the part of the "OWNERS", and the "PROMOTER" shall also rectify, water leakages, plumbing defect or defects in either electrical wiring, or lifts, pointed out by the respective "OWNERS". It has been submitted by the Operational Creditor that there has been an obligation on the part of the Corporate Debtor for the period of 18 months from the date of possession of the flats to effect repair work without any monetary liability on the part of the owners.

6. The Corporate Debtor completed the structure of the apartments, but failed to complete substantial work relating to other facilities including provision for two gensets, lift, external painting, provision of the reticulated gas connection, and compound wall and gym equipment among others. The Corporate Debtor has sent a communication dated 02.01.2015 to the Secretary, Ajanta Flat Owners' Association, the copy of which is placed at page 65 of the typed set filed with the Application wherein the Corporate Debtor has acknowledged the outstanding list of pending jobs, and also the details of the work which was to be carried out as repair work by the Corporate Debtor and cost estimate of pending jobs is given under Annexure 'A' at page 64 of the typed set filed with the Application which carries estimate value amounting to Rs.55 Lakhs worked out by Corporate Debtor and Rs.115.50 Lakhs as per the estimate value of the Operational Creditor. 

7. The Operational Creditor demanded a Bank Guarantee from the Corporate Debtor for the pending works. However, the Corporate Debtor has sent Letter dated 17.01.2015 to the Secretary of the Operational Creditor, expressing its inability in providing a Bank Guarantee, but agreed to deposit an amount of Rs.50 Lakhs in the Association's account as part payment for the completion of the pending works and also assured to make the final payment required to complete the pending jobs by June, 2015. The copy of Letter dated 17.01.2015 is placed at page 67 of the typed set filed with the Application,

8. On 22.01.2015, the Corporate Debtor acknowledged the liability for the pending works and issued a post-dated cheque in favour of the Operational Creditor for a sum of Rs.1 Crore, as part payment. However, on presentation of the said cheque issued by the Corporate Debtor before the Bank, the same was returned on 19.05.2015 with an endorsement 'insufficient funds'. The Letter dated

22.01.2015 and the cheque issued by the Corporate Debtor dated 01.05.2015 are placed at pages 68 and 69 of the typed set filed with the Application.

9. The Operational Creditor has also drawn the attention of this Bench towards the Minutes of Meeting signed by the parties, copy of which is placed at pages 76 and 77 of the typed set filed with the Application wherein it has clearly been admitted that the Corporate Debtor will provide fund of Rs.80 Lakhs and will complete the project by March, 2016 or assign some property for disposal to get funds for completion of project. In other words, the construction of the flats has been handed over but remaining work was not completed by the Corporate Debtor, due to which the above noted correspondence ^{was} exchanged between the Operational Creditor and the Corporate Debtor.

10. The Corporate Debtor has sent a communication dated 03.05.2016 to the Operational Creditor informing that the Corporate Debtor now, is in a position to complete all pending jobs as per JDA or to


deposit the money required to complete the jobs in AFOA's account by 15th May, 2016, and sought support of the Association and Owners of Ajanta Flats. The copy of the letter dated 03.05.2016 is placed at page 78 of the typed set filed with the Application. Besides the above, the details of some of the works which were to be performed and cost estimation to complete the same by the Corporate Debtor are given by the Operational Creditor under the document placed at page 79 of the typed set filed with the Application. The Operational Creditor viz., M/s. Ajanta Flat Owners' Association has also written a letter to the Corporate Debtor on 05.05.2016 giving breakup of the charges and other dues which were required for completion of the work. The copy of which is placed at pages 80 and 81 of the typed set filed with the Application. Another communication was sent on 06.05.2016 to the Corporate Debtor by the Secretary of M/s. Ajanta Flat Owners' Association (the Operational Creditor) assuring its cooperation, which is placed at page 82 of the typed set filed with the Application.

11. On 27.04.2017, one more communication has been sent by the Operational Creditor viz., M/s. Ajanta Flat Owners' Association to the Corporate Debtor, wherein the expenditure incurred on repair works of Ajanta Flats during the period 2016-2017 was shown as Rs.20,73,309/- and the earlier such expenditure of Rs.10,35,279/-, totalling Rs.31,08,588/-. The copy of the said document is placed at page 84 of the typed set filed with the Application.

12. It is on record that the Operational Creditor has completed the job which was to be completed by the Corporate Debtor for which it (CD) agreed for making payments and even offered for providing property for sale for raising the funds. Thus, the Applicant has rendered the services on behalf of the Corporate Debtor by completing left over job of the Corporate Debtor. Therefore, the Applicant is an 'Operational Creditor' as defined under Section 5 (20) and the debt ✓

due is ‘Operational Debt’ as defined under Section 5 (21) of the I&B Code, 2016.

13. The Operational Creditor has sent a Demand Notice dated 16.01.2018 under Section 8 of the I&B Code, 2016, to the Corporate Debtor wherein the total amount of debt with interest is Rs.115 Lakhs, along with Rs.31,08,588/- is claimed. The JDA and other documents, under which debt has become due, are being referred in the preceding paragraphs. The copy of the notice is placed at pages 111 to 114 of the typed set filed with the Application.

14. The Operational Creditor has also fulfilled the requirements of Section 9 (3) (b) & (c) of the I&B Code, 2016, by filing Affidavit, wherein under para 2, it has been deposed that notice of demand had been served in Form 3 which was issued on 16.01.2018 by the Operational Creditor and for the first time, some issues have been raised by the Corporate Debtor in its reply dated 29.01.2018. However, no prior notice of 

any dispute had been sent and this was an afterthought only in response to notice sent in Form-3 by the Operational Creditor. The copy of the Affidavit is placed at pages 9 to 10 of the typed set filed with the Application. Therefore, it is clear that, before receiving notice under Section 8 given by the Operational Creditor, the Corporate Debtor never raised any dispute. The Bank certificate issued by the State Bank of India is also placed at pages 87 to 110 of the typed set filed with the Application.

15. The Reply has been filed by the Corporate Debtor on 23.04.2018 wherein the details of JDA are given. The Corporate Debtor has alleged that title deeds of two flats have not been given to the Corporate Debtor. The Counsel for the Corporate Debtor has been referring to the said document for the purpose that the Corporate Debtor could not get loan from Bank and it was left to raise loan from the private financier at very high rate of interest. Under Para 2 of the reply, it has been stated that there is no 'Operational Debt' and the

Application is not maintainable under Section 9 of the I&B Code, 2016. It has also been stated that the Corporate Debtor is not having any agreement or *privity* of contract with Operational Creditor, which is contrary to the communications exchanged between the Operational Creditor and the Corporate Debtor. The total claim of the Operational Creditor has been denied by the Corporate Debtor. The Corporate Debtor has raised some counter claims. In short, it has been urged that the Operational Creditor has no *locus standi* to file the present Application, and debt is ^{not} due and payable by the Corporate Debtor. But the Corporate Debtor's ^{counsel} failed to support its arguments with documentary evidence. w

16. It has been stated that the minutes of meeting filed evidencing the claim of the Operational Creditor shows ~~s~~ that only 10 members had attended the meeting for approval for initiation of the legal action, and the Application has not been filed on behalf of 80 members. It has been contended that the Application m

is not maintainable. However, no documentary evidence has been placed on record by the Corporate Debtor to substantiate its contentions.


17. The contents of the reply given by the Corporate Debtor to the Notice dated 16.01.2018 sent by the Operational Creditor under Section 8 of the I&B Code, 2016, ~~shows~~ that the Corporate Debtor has admitted that the pending work was not completed by the Corporate Debtor, and during the course of arguments, the Counsel for the Corporate Debtor has fairly admitted that work was pending. The Counsel for the Operational Creditor has again referred to the document placed at page 64 of the typed set filed with the Application which gives complete picture of the pending work and estimation therefor, that has been got done by the Operational Creditor as was agreed upon by the Corporate Debtor, but the payments were not made by the Corporate Debtor, due to which instant application under Section 9 of I&B Code, 2016, has been filed against the Corporate Debtor.

18. The Counsel for the Corporate Debtor during the course of arguments has submitted that the Operational Creditor is in dominating position and is oppressing the Corporate Debtor, but there is no evidence on record that at any point of time, the Corporate Debtor has knocked the door of any legal forum to get JDA cancelled or any other communication which has been made between the parties as has been referred to hereinabove. Therefore, the argument that has been advanced by the Corporate Debtor is not supported by any of the documents placed on record. It is worthwhile to record that during the course of arguments, the Counsel for the Corporate Debtor has submitted that if the Power of Attorney is provided the Corporate Debtor will complete the pending works, but the left over work has already been done by the Operational Creditor. Therefore, in the light of the facts and circumstances of the case, and the record placed on file, the debt is ✓

due and payable, which the Corporate Debtor has failed to pay to the Operational Creditor.

19. 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/344/(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.

20. 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);

(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.

21. 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. 

22. The Operational Creditor has not proposed the name of IRP, therefore, **Mr. Muthuiah Thevar Rajapandian** is appointed as IRP, whose name appears in the Panel of Insolvency Professionals recommended by the IBBI. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP shall file the declaration disclosure statement in the Registry of NCLT, Chennai Bench, within two working days from the date of the receipt of this Order. 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 the 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.

23. 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.

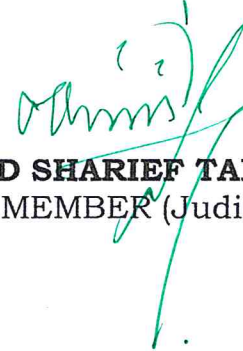
24. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

25. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor. The E-mail ID and other details of the IRP are as follows: -

Mr. Muthuiah Thevar Rajapandian,
Reg. No: IBBI/IPA-003/IP-N00090/2017-18/10854
Email Id: rajapandianm1955@gmail.com
Mobile No: 94870 74173.



26. Order is dictated and pronounced in the open court in the presence of Counsel for the Operational Creditor and Corporate Debtor.



[CH.MOHD SHARIEF TARIQ]
MEMBER (Judicial)

P. ATHISTAMANI