

19

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

IA/180/IB/2020 in IBA/316/2019

*(filed under Sections 17, 18, 20, 25 (2) (b) read with Section 60 (5) of
the Insolvency and Bankruptcy Code, 2016)*

In the matter of **M/s. Unique Roof Private Limited**

Muthuiah Thevar Rajapandian,

Resolution Professional of

M/s. Unique Roof Private Limited,

Registration No. IBBI/IPA-003/IP-N00090/2017-18/10854

3/158, Bharathiyar Street,

Indian Bank Colony,

Narayanapuram,

Madurai, Tamil Nadu – 625 014

... Applicant

-Vs-

Sri Meenakshi Metals

221, Chellappan Street,

Kattor,

Coimbatore – 641 009 .

... Respondents

Order pronounced on 15th July 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

Applicant / RP : Muthuiah Thevar Rajapandian

For Respondents : K. Elango, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

1. This is an Application filed by the Applicant viz., Muthuiah Thevar Rajapandian, Resolution Professional of M/s. Unique Roof

Private Limited under Sections 17, 18, 20, 25 (2) (b) read with Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) seeking reliefs as follows:-

"The Hon'ble Tribunal may be pleased to direct the respondent to pay the balance outstanding to the Corporate Debtor in pursuant to the supplies made by the Corporate Debtor to the respondent company and pass any such other order, orders, direction and directions and thus render justice".

2. It is seen from the averments made in the Application that the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor viz., M/s. Unique Roof Private Limited was initiated by this Tribunal vide order dated 04.10.2019 passed in IBA/316/2019 and the Applicant herein was appointed as the Interim Resolution Professional (IRP).

3. Thereafter, it is seen that the Applicant has caused a public announcement under Section 15 of the IBC, 2016 on 11.10.2019 calling for claims to be submitted by the Creditors of the Corporate Debtor. Subsequent to the above, a Director, whose powers stood suspended, of the Corporate Debtor upon initiation of CIRP had filed an appeal before the Hon'ble NCLAT and it is seen that the said appeal is still pending adjudication as represented by the IRP.



4. Learned Resolution Professional has submitted that the Corporate Debtor is engaged in the activities of making steel building design as per the purchase order and manufacturing of steel structure, sale of steel materials etc.

5. It was submitted by the Learned Resolution Professional that upon perusal of the records of the Corporate Debtor, the Applicant found that there are certain receivables which are yet to be received by the Corporate Debtor from the Respondent. In this regard, it was submitted that the Corporate Debtor issued a quotation for supply of structural materials to the Respondent on 20.08.2018 for supply of structural materials at their work place. In pursuance of the same, it is seen that the Respondent has issued a purchase order to the Corporate Debtor and based on the same, the Corporate Debtor has supplied the materials to the Respondent and has raised invoices on various dates and delivered the materials to the Respondent at their workplace.

6. It was submitted that the Respondent has issued the work completion report on 26.02.2019 as against the total invoices amount of Rs.71,15,205/-, the Respondent has paid a sum of Rs.68,46,304/- and as such a balance amount 2,68,901/- along with overdue interest @ 18% Rs.48,402/- aggregating to Rs.3,17,303/- is due from the Respondent to the Corporate Debtor

as on date and the same is being reflected in the Books of the Corporate Debtor as due and payable by the Respondent.

7. Under such circumstances the Applicant has filed the present Application seeking thereof to direct the Respondent to pay the balance amount pending of Rs.3,17,303/- to the Corporate Debtor in pursuance to the supply being made by the Corporate Debtor to the Respondent.

8. The Respondent has filed the counter. Learned Counsel for Respondent submitted that as per the agreed terms and conditions, the cost for supplying materials and for completing the structure was agreed at Rs.71,15,205/- and it was agreed that an advance payment of 60% of the money was to be released against the supply along with purchase order, 30% on delivery of entire materials and the balance 10% on completion of the work. Further, it was submitted that the Corporate Debtor had agreed to complete and hand over the building on 17.12.2018, however the Corporate Debtor had handedover the incomplete building on 26.02.2019 and that in the Work Completion Report dated 26.02.2019, the Respondent has mentioned that "the painting work was pending".

9. The Learned Counsel for the Respondent submitted that the work ought to have been completed within a period of 20 days,



however the Corporate Debtor took more than 3 months to handover even the incomplete building. Further, it was submitted that the Corporate Debtor did not fabricate the staircase and that as per the drawing the staircase should have a width of 1200mm, however the Corporate Debtor had fabricated the staircase with a width of less than 1000mm. Further, it was submitted by the Learned Counsel for the Respondent that the Corporate Debtor had violated many terms and conditions agreed between the parties and had caused a lot of hardship to the business of the Respondent, for which the Respondents are contemplating to initiate Arbitration proceedings against the Corporate Debtor. Further, in the reply affidavit, the Respondent has raised many technical defects in relation to the size and quantum of materials supplied by the Corporate Debtor. Under such circumstances, the Learned Counsel for the Respondent submitted that the Corporate Debtor has breached its contractual obligations and the Applicant is not entitled for any amount to be paid by the Respondent and hence sought for the dismissal of the present Application.

10. The Applicant / Corporate Debtor has filed a rejoinder and the Applicant has sought to refute the contentions being made in the counter and has also sought to deny the same as false. The Applicant has stated in the rejoinder that the delay on the part of the Corporate Debtor to supply the materials was attributable only

to the Respondent since they have not kept the site ready for delivery of materials and as such it is the Respondent who was not cooperating with the Corporate Debtor and not *vice versa*.

11. It was submitted that there is no defective work being done by the Corporate Debtor and as on date there is no correspondence and e-mail communication from the Respondent regarding this issue. It was also submitted that the Respondent has issued the work completion Certificate dated 26.02.2019 and after issuance of work completion certificate, the Respondent is not having any right to raise the objection.

12. Heard the submissions made by Learned Counsels for the parties and perused the records including the pleadings placed on file. From the submissions made by the Learned Counsel, *prima facie* it is seen that there is a gross violation of the terms and conditions by the Corporate Debtor in relation to the supply and service of materials to the Respondent and as such the Applicant, being the Resolution Professional of the Corporate Debtor, having taken charge from 10.10.2019, was also not in a position to explain as to what transpired between the parties and also ignorant of the dispute which exists between the parties prior to his appointment. However, from the documents placed on record, it can be seen that the Corporate Debtor has acted in violation to



the terms and conditions of the purchase order / work order and has also not completed the project on time. Hence, we are of the considered view that the Corporate Debtor is not entitled to any payment further to be made by the Respondent in this regard, in view of the defects pointed out by the Respondent, all being anterior to the date of initiation of the CIRP by this Tribunal.

13. Further proceedings before this Tribunal being summary in nature, this Tribunal cannot indulge in the luxury of taking evidence from the parties unlike a Civil Court and thereby coming to a conclusion as to any sum which is due and payable by both the parties.

14. Thus, in view of the reasoning stated *supra*, the Application as filed by the Applicant stands **dismissed**, however without costs.

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

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

Raymond