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

IA/946/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-

1. **M/s. Hindustan Foods Limited**
Factory: SY No. 44, 49,
Balanagar Mandal,
Peddayapally Village,
Mahabub Nagar,
Hyderabad,
Telangana – 509 202.
2. M/s. Hindustan Foods Limited
Corporate Office
No.03, Level – 2, Centrium
Phoenix Market City,
15 LBS Marg, Kurla,
Mumbai – 400 070

... Respondents

Order pronounced on 15th July 2021

CORAM :

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

Applicant / RP : Muthuiah Thevar Rajapandian
For Respondents : Arvindh Pandian, Senior 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 amount of Rs.80,75,916/- 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 11.03.2019, 05.06.2019 and 02.07.2019 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 on 13.03.2019 and 12.07.2019 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 07.01.2020 as against the total invoices amount of Rs.5,51,70,195/-, for which, the Respondent has paid a sum of Rs.4,82,10,718/- and as such a balance amount Rs.69,59,477/- along with overdue interest @ 18% Rs.11,16,439/- aggregating to Rs.80,75,916/- 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.80,75,916/- 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 Senior Counsel for Respondent submitted that the Applicant have suppressed many material facts in respect of the supplies being made by the Corporate Debtor. At first, it was submitted that the Purchase Order provides for the Bank Guarantee for 10% of the

total value, 5% after completion of Erections and specifically 5% / 10% of the purchase price will be linked to the Performance Guarantee which is valid for one year once the project is completed, however in the present case the Corporate Debtor has failed to provide any Bank Guarantee as per the agreed terms of the Purchase order.

9. The Learned Senior Counsel for the Respondent submitted that the project was supposed to be completed by the Corporate Debtor by July 2019 as committed by them in their letter dated 28.03.2019 and the same remained incomplete till January 2020, with a delay of more than 6 months. Further, it was also alleged that the Corporate Debtor has failed in delivering the materials and completing the project as per the scheduled timelines as agreed between them and the project was delayed beyond reasonable time.

10. Further it was submitted that eventhough, the Learned Resolution Professional have acknowledged in the Application that they have paid an amount to the extent of Rs.4,82,10,718/-, the Learned Resolution Professional has failed to bring the correct facts in relation to the same and that the Corporate Debtor has failed to file the respective GST Returns and further have failed to deposit



the GST Tax (Statutory Tax) collected from the Respondent in advance amounting to Rs.83,34,900/-.

11. The Learned Senior Counsel for the Respondent submitted that the Respondent communicated to the Corporate Debtor, informing them about the appointment of evaluator viz. M/s. Spectraa – Desgin I Project I Cost Management Consultants, to evaluate the pending work left by the Corporate Debtor and to reconcile the additional cost and expenses incurred by the Corporate Debtor due to the failure in completing the work assigned to them in time. The said evaluation of M/s. Spectraa – Desgin I Project I Cost Management Consultants have completed the process of reconciliation and have also submitted its report, which shows that the GST Amount is yet to be paid by the Corporate Debtor.

12. The Learned Senior Counsel for the Respondent submitted that as on date there is no amount which is pending to be paid to the Corporate Debtor since the Corporate Debtor has failed to pay the GST amount and the Respondent has already paid the GST amount, which is admittedly less than 10% of the contract value and is also linked to the performance guarantee which is to be paid by the Applicant as per the terms of the Purchase Order. Thus, it was submitted that the Corporate Debtor has breached in 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.

13. 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*.

14. 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 07.01.2020 and after issuance of work completion certificate, the Respondent is not having any right to raise the objection.

15. 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 series of mail exchanged between the parties. 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 and as such 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.

16. 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.

17. Further as per the reconciliation statement given by M/s. Spectraa – Desgin I Project I Cost Management Consultants, it is



seen that the Corporate Debtor has not paid the GST Amount which was collected from the Respondent, however has filed the present Application claiming for the balance amount to be paid by the Respondent.

18. 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