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NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 26/09/2017 AT 10.30 AM

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

APPLICATION NUMBER :
PETITION NUMBER : CP/577/ (IB)/2017
NAME OF THE PETITIONER(S) : LARSEN & TOUBRO LTD
NAME OF THE RESPONDENT(S) : HALLMARK LIVING SPACE PVT LTD
UNDER SECTION : 9 RULE 6

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
1.	VISHNU MOHAN	Counsel for Respondent	
2.	R. MURARI (SENIOR COUNSEL) FOR PREETI MOHAN (JM LEGAL.)	COUNSEL FOR PETITIONER	

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IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CP/577/(IB)/CB/2017

Under Section 9 of the Insolvency and Bankruptcy Code 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

M/s. Larsen & Toubro Limited

Vs.

M/s. Hallmark Living Space Private Limited

Order delivered on 26th of September, 2017

CORAM :

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN MEMBER (TECHNICAL)

For Operational Creditor (s) : Sr. Counsel, Mr. Murari
For Corporate Debtor(s) : Counsel Vishnu Mohan

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under Adjudication is CP/577/(IB)/2017 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 Ld. Sr. Counsel for the Operational Creditor and Counsel for the Corporate Debtor, and perused the record.

3. In the Petition, the Operational Creditor submitted that the outstanding debt is amounting to Rs.23,15,52,800/- which was due and payable on account of part completion of civil construction work as per the agreement dated 06.01.2014. As per the terms of agreement, payment towards running bills had be on a monthly basis as per actual work done. 75% of monthly progress bills were to be paid within 7 days and balance 25% within 21 days from the date of submission of the said bill. The Operational Creditor

has carried the civil construction work as per the said agreement, but the Corporate Debtor did not pay for the bills submitted. The Operational Creditor has placed the communications of the Corporate Debtor at pages 122 and 126 of the typed set filed with the Petition wherein the Corporate Debtor in categorical terms admitted the outstanding amount due and payable to the Operational Creditor. Ultimately, notice under Section 8 of I&B Code, 2016 has been given to the Corporate Debtor, copy of which is placed at page 127 of the typed set filed with the Petition to which reply has been given by the Corporate Debtor on 28.07.2017 mentioning therein that they expect to make the payment at least within the period of 3 to 4 months. The copy of the reply is also placed on record.

4. Counsel for the Corporate Debtor submitted that vide communication dated 14.10.2014, the quality issue was raised by the Corporate Debtor. However, the Counsel for the Corporate Debtor has not been in a position to substantiate his contention with

documentary proof. The Counsel for the Corporate Debtor also submitted that the claim made on the basis of the invoices of the year 2014 is time barred. Besides that, the Counsel submitted that the Corporate Debtor has entered into agreement with the individual customers for providing the residential houses under construction. At the end, the Counsel submitted that the Corporate Debtor has appointed an investment Banker, Nisus Finance to raise fresh funds or in fact to sell the entire asset to meet their obligations to the lenders and Operational Creditor.

5. The outstanding amount relating to the invoices for the year 2014 may have become time barred but the rest of the amount for the subsequent invoices is not barred by the time. However, the issue with regard to the non-applicability of the Limitation Act to the proceedings of the I&B Code, 2016, stands settled by the Hon'ble NCLAT in "**Neelkanth Township and Construction (P) Ltd. Vs. Urban Infrastructure Trustees Ltd.**", wherein it has been held that the Limitation Act is not applicable to the I&B

Code 2016. Therefore, the plea with regard to the limitation taken by the Counsel for the Corporate Debtor stands rejected. Further, the appointment of an investor Banker may not lead to additional infusion of funds as envisaged by the Corporate Debtor. However, this aspect can be taken care of by the IRP. The IRP should also take particular care to have the housing projects completed for facilitating the occupation of the same by individual investors.

6. The Operational Creditor has complied with the requirements under Section 9 (3) (b) and (c) of the I&B Code, 2016 by filing an Affidavit and Bank certificate stating therein that the Corporate Debtor has not raised any dispute in relation to the outstanding debt claimed by the Operational Creditor and nothing has been paid in the accounts of the operational Creditor as part of the outstanding debt.

7. The Operational Creditor has fulfilled all the requirements of law and has also proposed the name of IRP after obtaining the written consent in Form-2. We

are satisfied that Corporate Debtor committed default in making payment of the outstanding debt. Therefore, CP/577/(IB)/CB/2017 is admitted and we order the commencement of the Corporate Insolvency Resolution Process which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

8. We appoint Mr. S. Dhanapal, as IRP, who has been proposed by the Operational Creditor. There is no disciplinary proceedings pending against the IRP as evidenced from Form-2 and his name is reflected in IBBI website. The IRP is directed to take charge of the Corporate Debtor's management immediately. He 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.

9. We declare the moratorium 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. We order 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.

10. 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.

11. 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 is expected to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the Application is disposed of.

12. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP 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.

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

The address details of the IRP are as follows: -

Mr. S. Dhanapal,
Insolvency Professional,
Suite No. 103, First Floor, Kavary Complex, 96/104,
Nungambakkam,
Chennai- 600 034.
Ph.044-42652127
Email: csdhanapal@gmail.com
Registration number: IBBI/IPI-002/IP-N00060/2016-17/10112.

S. Vijayaraghavan .

S. VIJAYARAGHAVAN
MEMBER (Technical)
PAM

CH. MOHD SHARIEF TARIQ
CH. MOHD SHARIEF TARIQ
MEMBER (Judicial)