

NATIONAL COMPANY LAW TRIBUNAL
DIVISIONAL BENCH
CHENNAI

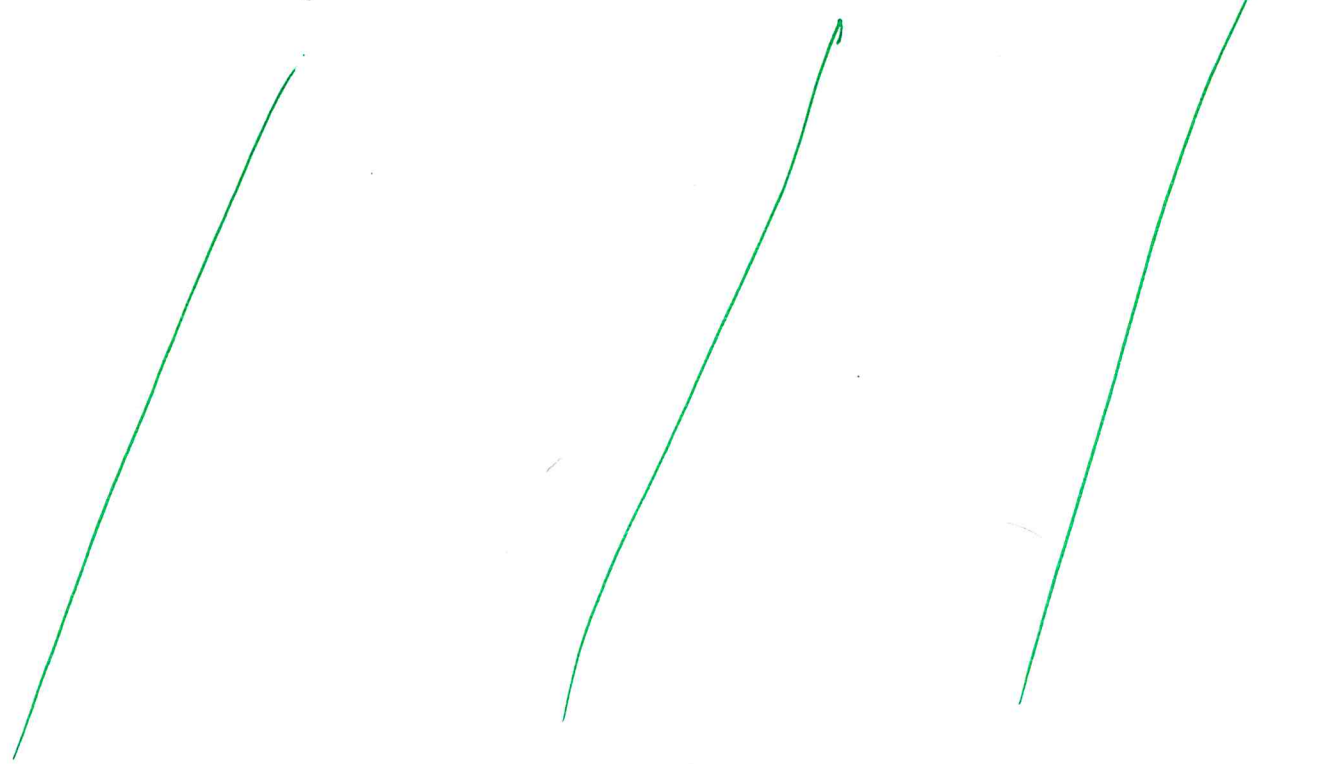
ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 09/06/2017 AT 02.30 PM

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

APPLICATION NUMBER :
PETITION NUMBER : IND/1123/(IB)/CB/2017
NAME OF THE PETITIONER(S) : SYNERGY PROPERTY
NAME OF THE RESPONDENT(S) : SMARTCITY (KOCHI) INFRASTRUCTURE PVT LTD
UNDER SECTION : 9 RULE 6

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

	H. KARTHEK SESHADRE N.P. vijay Kumar v. Hari Kumar PH ARVINDH PANDIAN SENIOR COUNSEL Namshini / J+M Legal	Counsel for Respondents	v. Hari Kumar
		Counsel for Applicant	Arvindh?



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

Arguments heard on 09.06.2017
Order passed on 09.06.2017

CP/ 484 (IB)/CB/2017
(IND/1123/(IB)/CB/2017)
(Under Section 9 of the Insolvency And Bankruptcy Code 2016)

M/s. Synergy Property Development Services Pvt. Ltd.

Vs

M/s. Smart City (Kochi) Infrastructure Pvt. Ltd.

Applicant (Operational Creditor) Represented by :

Counsel Mr. PH Arvindh Pandian, Sr. Counsel

Respondent (Corporate Debtor) Represented by :

Counsel Mr. H. Karthik Seshadri

CORAM :

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

ORDER

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. Under adjudication is an application filed under section 9 of Insolvency and Bankruptcy Code, 2016 (I&B Code 2016, for short) by the Operation Creditor, the detailed grounds have been referred therein. The prayer made is to admit the application and to initiate the Corporate Insolvency Resolution Process under the I&B

Code, 2016, by appointing an Interim Insolvency Professional. The Operational Creditor has given the statutory notice as per Section 8 of the I&B Code, 2016 read with the relevant Rules, on 07.01.2017 wherein he has raised the total claim to the tune of Rs.2,01,19,763/-, out of which, the defaulted amount is Rs.1,58,48,579/-. The Operational Creditor has also filed an Affidavit as per Section 9 (3) (b) of the Code, disclosing that the Corporate Debtor has not issued any notice with regard to the existence of dispute in relation to the unpaid operational debt. The bank certificate and Invoices based on which the claim has been made are also placed on record. The Corporate Debtor has given the reply to the notice which is placed at page 239 of the Application wherein for the first time, the objections have been raised. In para 2(e), the Corporate Debtor made a reference stating that *“in fact, the principal amount claimed in the Demand Notice is only INR, 1,58,48,579/-, while the interest amount illegally applied and arbitrarily demanded for the first time vide the Demand Notice is INR 42,71,183/- constituting as much as 27% of the principal amount demanded”*.

2. The Respondent Corporate Debtor has also filed counter wherein, it has been stated that the contracts which were to be completed by October, 2015, have not been completed within the stipulated time. However, the extensions were granted to the Operational Creditor. Admittedly, there are certain conditions as to the determination of delay and lapses. But, one of the terms of contracts provides that *“if the construction duration exceeds for the reason not attributable to the PMC, then, the contract shall be extended and the fee will be paid to PMC for the additional duration on the monthly basis as per agreed monthly drawdown fee plus 10%”*. The extension of the contract is based on the condition that there are reasons not attributable to the PMC. In other words, the extension of the contract could only be granted when the reasons for delay were not attributed to the PMC. This makes clear that the extension of contracts *per se* is for the reasons not attributed to PMC. Therefore, the plea that has been taken by the Corporate Debtor is not in accordance with the terms of the contract. Hence, once the extension is given and the work is executed, the Corporate Debtor is liable to pay the dues.

3. In the aforesaid circumstances, after having been satisfied that all the requirements under law have been fulfilled, we are inclined to admit the Petition and 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.

4. We appoint Mr. P. Sriram, as Interim Insolvency Professional proposed by the operational creditor. The Interim Insolvency Professional 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 Code within three days from the date the copy of this order is received, and call for submissions of claim under section 15 of IBC 2016 in the manner as prescribed. It is stated here that no disciplinary proceeding is pending against the Interim Insolvency Professional and his name is reflected on the website of the Insolvency and Bankruptcy Board of India. 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



IBC 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 less or where such property is occupied by or in the possession of the corporate debtor.

5. The Registry is directed to inform the Insolvency Resolution Professional to take charge of the entity and make compliance with this order as per the provisions of I&B Code, 2016.

6. Accordingly, the application is admitted. The Registry is directed to communicate this order to the operational

creditor and the corporate debtor. Order pronounced in open court.

S. Vijayaraghavan

S. VIJAYARAGHAVAN
MEMBER (TECHNICAL)

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Ch. Mohd Sharief Tariq

CH. MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)