

(26)

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 10/08/2017 AT 10.30 AM

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

APPLICATION NUMBER :
PETITION NUMBER : CP/537/ (IB)/2017
NAME OF THE PETITIONER(S) : RIO GLASS SOLAR SA
NAME OF THE RESPONDENT(S) : SHRIRAM EPC LTD
UNDER SECTION : 9 RULE 6

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

1. S.R. RAGHUNATHAN
ROHAN RAJASEKARAN
PREETHI. S. ARASU

Counsel for Petitioner

Preethi S. Arasu

2. P.H. Arvinth Pandian
Sr. Adv.
Vishnu Mohan

for Respondent

Vishnu Mohan



IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CP/537/(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. Rio Glass Solar SA

Vs.

M/s. Shriram EPC Ltd.

Order delivered on 10th of August, 2017

CORAM :

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

For the Petitioner(s) : Counsel Mr. S. R. Raghunathan and
Rohan Rajasekaran

For the Respondent(s): Sr. Counsel Mr. P. H. Arvinth Pandian and
Mr. Vishnu Mohan

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under adjudication is an application that has been filed by M/s. Rio Glass Solar SA (Operational Creditor) represented by its Power of Attorney Agent,



Mr. Jose Maria Villanueva Fernandez, Poligno Industrial Villallana, S/N, 33695, Pola De Lana, Asturias, Spain against M/s. Shriram EPC Limited (Corporate Debtor), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code 2016, for short) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Application has been filed to initiate Corporate Insolvency Resolution Process against the Corporate Debtor on account of the default made in making payment of the outstanding debt to the tune of EUR 4,151,570.52 plus interest of EUR 251,028.18 along with expenses for the Arbitral Award dated 12.02.2015 [USD 87000 with simple interest at 3.5% p.a.]

2. The Operational Creditor has demanded the outstanding debt on account of "delivery 4" being 41,850 parabolic mirrors, which were not collected and had been stored by the Operational Creditor after manufacturing. The Operational Creditor had requested for Arbitration dated 14.05.2013 and after



due contest, the Arbitral Tribunal was pleased to award in favour of the Operational Creditor dated 12.02.2015 which has become final and binding on the Corporate Debtor.

3. The Corporate Debtor has challenged the Award in OP No. 625/2015 before Hon'ble High Court of Madras and the High Court vide its order dated 27.09.2016 has dismissed the Petition holding that under Section 34 of the Arbitration and Conciliation Act, 1996 the challenging of the Award dated 12.2.2015 is not maintainable. It is also on record that the Operational Creditor has filed a Petition under Section 47 of the Arbitration and Conciliation Act, 1956 to pass an order that the foreign award dated 12.2.2015 be deemed to be a decree of the court and a direction to enforce and execute the said Award as decree in favour of the Operational Creditor and against the Corporate Debtor.



4. The Hon'ble High Court of Madras vide Order dated 09.02.2017 passed in OP No. 587/2015 has allowed the prayer of the Operational Creditor making the Award dated 12.02.2015 as decree of the court. The Operational Creditor has also placed on record an Affidavit under Section 9 (3) (b) of the I&B Code, 2016 which is available at page 208 of the Application and under para 6, it is mentioned that no notice was given by the Corporate Debtor in relation to any dispute relating to the unpaid operational Debt. The Operation Creditor has also placed on record the Bank statement issued by Caixa Bank, Corporate Banking Unit, Paseo De La Castellana, 7 P1, 28046 Madrid (Tel 91412800), showing that the Operational Creditor has not deposited any of the outstanding debt in the account of the Operational Creditor.

5. The Operational Creditor has also issued Demand Notice under Section 8 of the I&B Code, 2016 on 05.05.2017 claiming the outstanding debt to which the Corporate Debt has given reply on 12.05.2017



stating therein that there exists a dispute but it has not been made clear that what is the dispute and before which authority the same is *sub judice*.

We have heard the Ld. Counsel for the Operational Creditor and Ld. Sr. Counsel for the Corporate Debtor and perused the record.

6. The Counsel for the Petitioner has submitted his arguments in support of the Application stating that the relevant provisions of the I&B Code, 2016 have been complied with and the Corporate Debtor failed to make the payment of the outstanding debt as has been mentioned in the Application and prayed to initiate the Corporate Insolvency Resolution Process and declare moratorium. He has also proposed the name of the IRP viz., Mr. C. Ramasubramaniam after obtaining written communication in Form-2.



7. The Counsel for the Corporate Debtor has opposed the Application *inter alia* on the following grounds:-

(i) The Application is not filed by the Operational Creditor himself and the same has not been signed and verified by a proper person.

(ii) The Bank statement which has been filed in compliance with Section 9 (3) (c) of the I& B Code, 2016 is not admissible, and

(iii) That the Arbitral Award dated 12.02.2015 has not attained the finality.

8. The first objection is that the Application has not been filed and verified by the proper person But, as seen from the record that there is an extract of the resolution passed by the Board of Directors of the company at the meeting held on 27th day of April, 2017 wherein it had been resolved that M/s. Advani & Co. (Barristers at Law) Indian Law Firm was authorised to file the Petition against the Corporate Debtor.



Pursuant to which Mr. S. R. Rajagopal, S.R. Raghunathan, Rohan Rajasekaran and Preeti S. Arasu, Advocates, have been engaged and Company Petition was filed and signed by the authorised person. It has also been placed on record by the Counsel for the Operational Creditor that the resolution is backed by the Power of Attorney Agent viz. Jose Maria Villanueva Fernandez. Therefore, the objection raised by the Counsel for the Corporate Debtor is devoid of merits and stands rejected.

9. The second objection raised by the Counsel for the Corporate Debtor is that the Bank certificate that has been issued by Caixa Bank is not admissible because the same has not been issued by the Financial Institution as defined in Sub-section (14) of Section 3 of the I&B Code, 2016. But it is a fact that the Operational Creditor has no account in India. Therefore, it is not at all possible to produce certificate from any Bank in India. If the arguments of the Counsel for the Corporate Debtor are considered, then,



the same will render the provisions of I&B Code otiose. In other words, the purpose and object of the legislation would be defeated. It is also placed on record that the Corporate Debtor has not claimed that he has made any payment in the Bank account of the Operational Creditor and on this count he has not disputed the Bank statement filed by the Operational Creditor. The Respondent has not specifically denied the fact of default. In view of it, his objection stands rejected.

10. The third objection is that the Arbitral Award dated 12.02.2015 has not attained the finality. But, at the time of the arguments, the Counsel has not been able to place on record any copy of the Appeal or any order of any Appellate Court showing the pendency of the Appeal. Therefore, this objection also stands rejected.

11. Since the Application filed by the Operational Creditor is complete in all respect, we admit the Application [CP 537/IB/CB/2017] and order the commencement of the Corporate Insolvency Resolution



commencement of the Corporate Insolvency Resolution process which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

12. We appoint Mr. C. Ramasubramaniam, as Interim Resolution Professional (IRP) as 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 Respondent 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 in the manner prescribed.

13. 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.

14. 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.

15. 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 admitted.

16. The Petitioner 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.

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

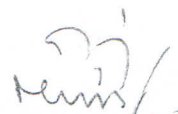


The address details of the Interim Resolution

Professional are as follows: -

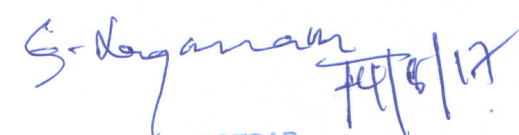
Mr. C. Ramasubramaniam,
Insolvency Resolution Professional
IP Registration No.IBBI/IPA-002/IP-N00052/2016-
2017/10096,
"Srinidhi" G4, RMC Flats,
No.1, Venkatesapuram Colony, Vadapalani,
Chennai- 600 026.


S. VIJAYARAGHAVAN
MEMBER (T)
PAM


CH. MOHD SHARIEF TARIQ
MEMBER (J)



Certified to be True Copy


DEPUTY REGISTRAR
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