

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-995(ND)/2018

In the matter of

**VMS Equipment Pvt. Ltd.
Plot No. 7, Second Floor,
Pocket-H, L.S.C., Sarita Vihar,
New Delhi- 110076**

.....Operational Creditor

V/s

**Primrose Infratech Pvt. Ltd.
Flat No. 251-B, First Floor,
LIG Flats, Pockets-12, Jasola,
New Delhi- 110025**

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Present:

Order delivered on 21.12.2018

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SMT. DEEPA KRISHAN, HON'BLE MEMBER (T)**

Present:

For the Petitioner: Mr. Fanish Kumar Rai &
Mr. Dhiraj Kumar Advocates
For the Respondent: Mr. Ravindra Singh Advocate

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The petitioner is in the business of leasing heavy machinery used in Real Estate Construction work. The Corporate Debtor who is a Real Estate Developer had hired a fixed Tower Crane Model TC6040 vide a work order dated 18.05.2015 on a monthly rent of Rs. 2,12,000/-. The validity of the said work order was initially for a period of 12 months and was later extended to 31.10.2016 on renewed terms.

2. As per the statement of account maintained by the petitioner, a sum of Rs. 7,48,911/- is the outstanding amount payable by the Corporate Debtor. This outstanding liability is after due adjustment of the advance and payments received by the Operational Creditor. A demand notice dated 18.04.2018 under Section 8 of the Code was issued to which the Corporate Debtor failed to respond. The aforesaid notice has now been followed up by filing the present petition praying for initiation of Corporate Insolvency Resolution of the Corporate Debtor for its inability to liquidate its debts. The petition is annexed with necessary compliances under Section 9(3) (b) & 9(3)(c) of the Code.

3. On receipt of notice through the process of the Bench, appearance was put in on behalf of the Corporate Debtor. They seek to resist the present petition on grounds that they had asked the Operational Creditor to remove the machines from their sites, as no work was being carried



out on account of a financial crunch. They were therefore not able to meet their financial obligations.

4. The submission made on behalf of the Corporate Debtor tantamounts to an admission of their inability to liquidate the financial obligations, more particularly of the operational debt claimed in this case. There is no averment of existence any prior dispute. In view of the facts of this case, the Operational Creditor is entitled to the prayer made herein.

5. Accordingly, the petition is Admitted. A moratorium in terms of Section 14 of Code comes into effect forthwith, staying:

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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;

(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.

Further,

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

“Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

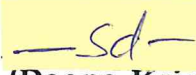
6. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Anil Matta, Registration No. IBBI/IPA-001/IP-P00223/2017-18/10422, email: mattaassociates@gmail.com

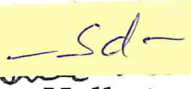
Mobile No. 9811190720 duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17,18,20 and 21 and file his report.

7. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP, for which he shall be liable to account for.

8. Copy of the order be communicated to both the parties as well as to the IRP.

9. To come up on 30th January, 2019 for further consideration.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)