

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI**

**BENCH- III**

**CP-IB-313/ND/2018**

**CORAM: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**SHRI V.K.SUBBURAJ, MEMBER (TECHNICAL)**

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

**IN THE MATTER OF:**

**Falcon Waterfree Europe, GmbH**

**...Applicant**

**Versus**

**Enswico (India) Private Limited**

**...Corporate Debtor/  
Respondent**



**MEMO OF PARTIES**

**Falcon Waterfree Europe, GmbH,  
c/o von Allem AG, Treuhandgesellschaft,  
Chamerstrasse 44/PF 844,  
CH-6331 Hunenberg,  
Switzerland**

**...Operational Creditor/Applicant**

**Versus**

**Enswico (India) Private Limited  
C-1, Panchsheel Enclave  
New Delhi-110017**

**...Corporate Debtor**

Counsel for the Petitioner : Mr. Alishan Nagree, Mr. Dhruv Manchanda,  
Advocate  
Counsel for the Respondent : None

**ORDER**

**Delivered on: 29.08.2018**

1. The above petition has been filed under the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity IBC,2016) by Falcon Waterfree Europe, GmbH (for brevity “Operational Creditor/ Applicant”), having identification number – CHE-102.076.492 against the Enswico (India) Private Limited (for brevity “Corporate Debtor”) having CIN no:

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U90000DL2013PTC248316. It is submitted by the Operational Creditor that Corporate Debtor raised purchase orders on the operational creditor for purchase of products, against which the operational Creditor supplied Products to the Corporate Debtor under a Distribution Agreement dated July 1, 2015 for exclusive distribution in India of Key-system Products, being technologies for waterless urinals (“Products”). The Distribution Agreement comprised the Distribution Agreement, a cover Sheet and [certain] schedules, all of which were incorporated by reference in the Distribution Agreement. That the present case arises out of the above Work Orders executed between the Operational Creditor and the Corporate Debtor and pursuant to which, payment amounting to CHF 129,825.45 (Swiss Francs One Hundred and Twenty Nine Thousand Eight Hundred and Twenty Five and Forty Five cents) and US \$ 5,000 (United States Dollars Five Thousand only) have become due as on 22.11.2016.

2. The Operational creditor has placed on record the copy of the Distribution Agreement between Falcon Waterfree Europe and Enswico (India) Private Limited dated 08.01.2015 and copy of Purchase Orders raised by the Corporate Debtor between September 2015 to August 2016. Thereafter the Operational Creditor had raised invoices between 28.10.2015 to 09.09.2016.



Copy of correspondences exchanged between the Operational Creditor and the Corporate Debtor is also annexed.

3. Since the payment of the balance amount was pending for long, a statutory demand notice dated 13.10.2017 was issued by the Operational Creditor as required under the provisions of IBC,2016 wherein the amount in default in a sum of CHF 129,825.45 (Swiss Francs One Hundred and Twenty Nine Thousand Eight Hundred and Twenty Five and Forty Five cents) and US \$ 5,000 (United States Dollars Five Thousand only) was demanded and calling upon the Corporate Debtor to repay the unpaid Operational Debt within 10 days or to demonstrate that the amount claimed as in default has been paid or in the alternative to provide for the existence of any dispute in relation to the unpaid Operational Debt. The said notice was duly received by the Corporate Debtor on 08.11.2017 and the receipt of the same has been placed on record.
4. In view of lack of response by way of payment of the amount claimed in default or notice of dispute being issued to the Operational Creditor on the part of the Corporate Debtor, the present application has been preferred after dispatch of advance copy of the application to Corporate Debtor under Section 9 of IBC,2016 read along with attendant rules seeking for the initiation of Corporate insolvency Resolution Process (CIRP) as against the Corporate



Debtor wherein an amount of debt in a sum of CHF 129,825.45 (Swiss Francs One Hundred and Twenty Nine Thousand Eight Hundred and Twenty Five and Forty Five cents) and US \$ 5,000 (United States Dollars Five Thousand only) which became due and payable after the expiry of 7 days from the date of the respective invoices as the claim amount or the amount in default. In relation to service of the advance copy of the Application it is seen from the affidavit of service and the order passed by this Tribunal dated 19.04.2018 that it has been recorded to have been served. Further it is also evident from the records dated 05.06.2018 that notice of the proceedings before this Tribunal has also been duly served upon the Corporate Debtor but there has been no representation on the part of the Corporate Debtor.

5. Under the circumstances this Tribunal has constrained to proceed with the matter in the absence of the Corporate Debtor since the notice had been delivered to the Corporate Debtor thereby making the service complete as the Corporate Debtor had deliberately avoided receiving and replying to the notice addressed to it.
6. That the Operational Creditor has filed an affidavit along with the petition as mandated under section 9 (3) (b) of the Insolvency and Bankruptcy Code, 2016 thereby submitting that no dispute is pending between Operational

Creditor and Corporate Debtor before any Tribunal/Court or any Judicial forum with respect to the outstanding amount , dated 27.02.2018.

7. In the circumstances mentioned above and since the Corporate Debtor despite repeated attempts have not appeared before this Tribunal and had in fact refused to receive any notice and a default of debt due to the Operational Creditor is also in existence as evidenced from the records remaining unsatisfied as evident prima facie, this Tribunal is of the considered view that this petition requires to be admitted and that CIRP process is required to be initiated against the Corporate Debtor.
8. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Sanjeev Bindal, No. IBBI/IPA-002/IP-N00345/2017-18/10995, email: Sanjeev.bindal@rkca.net, Mobile: 9810801651, as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

(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 Securitization 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.

However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(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.

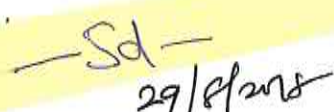
The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

(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.


10. The Applicant is directed to pay a sum of rupees two lakhs to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
11. Based on the above terms, the Application/Petition stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of Resolution Professionals forwarded by IBBI, be also furnished with copy of this order forthwith by the Registry.

  
29/08/2018

**Dr. V.K. SUBBURAJ**

**MEMBER (TECHNICAL)**

U.D.MEHTA/K

  
29/08/18

**(R.VARADHARAJAN)**

**MEMBER (JUDICIAL)**