

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

Before Shri Jinan K.R., Hon'ble Member (J)

CP (IB) No. 215/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 8 and 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

**Oriental Agencies (Unit of Oriental Power Electrical Pvt. Ltd.)**, having its registered office at Room No.608, 6<sup>th</sup> floor, South Block, Todi Corner, 32, Ezra Street, Kolkata- 700 001, West Bengal having Identification No. U51505WB2005PTC104980;

... Applicant / Operational Creditor

-Versus-

In the matter of:

**EMT Megatherm Private Limited**, having its registered office 1, Taratala Road, Kolkata, 700 088, West Bengal having Identification No. U29299WB1988SGC044800;

.... Respondent/Corporate Debtor

Counsel appeared:

1. Mr. Pranay Agarwal, Advocate ] Operational Creditor

Date of Pronouncement of Order: 31.07.2018

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## ORDER

This is an application filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) by the Operational Creditor namely, **Oriental Agencies (Unit of Oriental Power Electrical Pvt. Ltd.)** for initiating Corporate Insolvency Resolution Process in respect of **EMT Megatherm Private Limited**/Corporate Debtor due to non-payment of the outstanding dues of Rs.2,71,318/- along with an interest till 24<sup>th</sup> November, 2017.

2. The applicant contends that they had supplied goods to the Corporate Debtor on various occasions as per the purchase orders given by the Corporate Debtor vide Order No.160158 dated 27.08.2015 with the terms thereof agreed between the Operational Creditor and the Corporate Debtor. On 08.12.2015, the invoice no. E-226/2015-16 was generated against order no.160158 dated 27.08.15 for a sum of Rs.3,73,904/-, out of which payment of a sum of Rs.93,658/- was made on 15.09.2016 and payment of Rs.1,00,000/- was made on 03.12.2016 to the Operational Creditor. Again, another order was placed by the Corporate Debtor vide Order no.160237 dated 11.12.2015 for which Invoice no. E-230/2016-17 dated 16.11.2016 for an amount of Rs.6,720/- was generated but no payment was made against the same. The Corporate Debtor started making delayed payments as above but finally stopped making any payments against the invoices due.

3. The Corporate Debtor subsequently stopped accepting calls from the Operational Creditor. Accordingly, the Invoices along with a statement of detailed computation of amount in default, which were raised by the Operational Creditor are collectively annexed hereto and marked as **Annexure "D" and "E"**

to the petition. Based on the said goods supplied as per the purchase orders, invoices were raised but no unpaid payment whatsoever was made to the Operational Creditor. An amount of Rs.2,71,318/- inclusive of interest till 24.11.2017 remains payable by the Corporate Debtor. In this context, the ledger sheets showing the details of unpaid invoices reflecting the amount due has been annexed as above with the petition.

4. The applicant further contends that the Operational Creditor raised several invoices in favour of the Corporate Debtor for the supply of the ordered items and the Corporate Debtor was liable to make payment to the Operational Creditor against the said invoices. The Corporate Debtor received all invoices but has not made the payment of the outstanding dues. The said amount is due from the Corporate Debtor with interest. Since the Operational Creditor and the Corporate Debtor were in regular transactions, the Corporate Debtor was assuring the payment, thus there has been an inordinate delay in believing such false assurances. Despite demand, the respondent failed to make payment of the due amount. Hence, the applicant sent a demand notice dated 25<sup>th</sup> November, 2017 by Speed Post under Form 3 of the Code to the Corporate Debtor asking for the long outstanding payment but it was not replied back by the Corporate Debtor although it was delivered to the Corporate Debtor. The copy of the demand notice along with is annexed and marked as **Exhibit "F"** to the petition.

5 The Applicant contends that the operational debt has become due under the said Invoices. The said Invoices constitutes a legal, valid and binding contract between the Operational Creditor and the Corporate Debtor, under which the Corporate Debtor is liable to pay the Operational Creditor for the supply of the purchase order items.

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6. The Board of Directors vide their resolution passed in a meeting dated 22<sup>nd</sup> November, 2017 resolved that “an application under appropriate provisions of the Insolvency and Bankruptcy Code, 2016 be filed for initiation of Insolvency Resolution Process in respect of EMT Megatherm Private Ltd. and Shri Rahul Balasaria be and is hereby authorised to take all necessary steps in connection with filing of the said application with National Company Law Tribunal, Kolkata. Shri Rahul Balasaria is also authorised to sign and verify the application on behalf of the company, appoint advocates and Interim Resolution Professional and to do all such acts and things as may be required and advised by the advocates.” A copy of the Board Resolution has been annexed with the petition marked as **Annexure “B”**.

7. The Applicant has submitted the copies of Bank Statements evidencing the transactions between the operational creditor and the Corporate Debtor, copies of which are annexed to the application by the Operational Creditor as **Annexure “H”** to the petition.

8. As per the Supplementary Affidavit dated 22<sup>nd</sup> February, 2018 therein enclosing the Affidavit of Service of the Notice of Petition/ Application on the Corporate Debtor, the applicant submitted that the letter of service along with the postal receipt is annexed and marked with the letter **“X” of the Supplementary Affidavit**. The Corporate Debtor received the demand notice but not chosen to file any reply. In order to strengthen its contentions, the applicant produced the copy of invoice as **Exhibit “D”**, copy of demand notice **Annexure “F”**, affidavit in compliance with section 9(3)(b) and certificate in compliance with section 9(3)(c) of the Code.

9. It is further averred by the Applicant that though the Corporate Debtor received the Demand Notice, which is evident from the Track Report dated 29<sup>th</sup> November, 2018 at page no.75 of the application, the Corporate Debtor preferred not to give any reply to the Demand Notice within 10 days. It is also contended by the Applicant that there has been no notice given by the Corporate Debtor raising any dispute with regard to the unpaid operational debt. Again, no information regarding the payment of the unpaid operational debt has been provided by the Corporate Debtor.

10. The applicant proposed the name of Mr. Pradeep Goenka of Bajarang Kunj, Room No.412 & 413, 2B, Grant Lane, 4<sup>th</sup> floor, Kolkata- 700 012, having Registration No.IBBI/IPA-002/IP-N00294/2016-17/10851 as the Insolvency Resolution Professional. But the name proposed by the Applicant is not mentioned in the list of the IBBI recommended for appointment as IRP/ Liquidator for the Corporate Debtors located in the States of Bihar, Jharkhand, Odisha, West Bengal, etc.

11. The Respondent/Corporate Debtor did not appear at the time of hearing and was called absent and declared *ex parte*.

12. Heard the Ld. Counsel appearing for the Applicant and perused the records.

13. This is an application filed by the Operational Creditor under section 9 of I&B Code for initiating the Corporate Insolvency Resolution Process as against the Corporate Debtor. The Operational Creditor admittedly supplied goods in terms of various purchase orders placed by the Corporate Debtor and the corporate debtor admittedly received goods from the applicant and not denied the receipt of goods. The Corporate Debtor neither turned up at the time of

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hearing nor raised any disputes in respect of goods supplied on the basis of purchase orders and invoices issued to the Corporate Debtor, copies are annexed to the application (**Exhibit "C"**). From the records, it transpires that the Corporate Debtor was in receipt of the demand notice. The Respondent did not choose to send a reply within the stipulated period of 10 days and not brought the existence of any dispute in respect of the amount found due to the applicant.

14. It is submitted on the side of the Operational Creditor that the entire claim as claimed in the application is due from the Corporate Debtor and the respondent did not raise dispute upon receipt of the demand notice. The respondent did not pay any part of due amount and therefore, this is a fit case in which CIRP is to be initiated against the corporate debtor.

15. The applicant herein, in the instant case, has succeeded in proving that all the requirements to be meted out under Section 9(5)(2) are complied. An affidavit under section 9(3)(b) and bank certificate under section 9(3)(c) have been produced. The applicant has also proposed the name of the IRP and there is no proceeding pending against the proposed IRP. However, the proposed name is not found in the current list published by IBBI. Another name of Mr. Animesh Mukhopadhyay of West Bengal having Email id [animesh\\_fea@yahoo.co.in](mailto:animesh_fea@yahoo.co.in) and Registration No. IBBI/IPA-001/IP-P00124/2017-18/10266 may be approved. Therefore, this application is liable to be admitted.

16. In the result, the application is admitted upon the following orders:

### ORDER

- (i) The application filed by the Operational Creditor under Section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for

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initiating the Corporate Resolution Process in respect of **EMT Megatherm Pvt. Ltd.** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

- (ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
  - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v) 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.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- vii) 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 Sec.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.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.
- (ix) Mr. Animesh Mukhopadhyay of West Bengal having Email id [animesh\\_fea@yahoo.co.in](mailto:animesh_fea@yahoo.co.in) and Registration No. IBBI/IPA-001/IP-P00124/2017-18/10266 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan. As per the amended

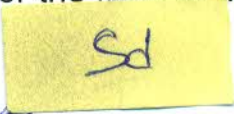
provision of the I&B Code, he has to finalise the Resolution Plan on or before 105 days from the date of admission of CIRP.

x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors. He shall produce Form 2 and written communication upon acceptance of the order.

xi) Registry is hereby directed to communicate the order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **31.08.2018** for the filing of the progress report.

  
(Jinan K.R.)  
Member (J)

*Signed on this, the 31<sup>st</sup> day of July, 2018.*