

✓

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI**

CP/1083/(IB)/CB/2018

Under Section 9 Rule 6 of the IBC, 2016

In the matter of M/s. Sri Karunambikai Mills Private Limited


M/s. ANNAI WIND FARMS INDIA PRIVATE LIMITED
(CIN: U40108TZ2004PTC011074)

...Operational Creditor

V/s

M/s. SRI KARUNAMBIKAI MILLS PRIVATE LIMITED
(CIN: U17111TZ1956PTC000170)

Corporate Debtor

Order delivered on: 26.08.2018 

Coram:

CH.MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)


S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Petitioners/OC: *Shri. P.J. Rishikesh, Advocate*
Shri. P. J. Sri Ganesh, Advocate

For the Respondent/CD: *Shri. P. H. Arvindh Pandian, Sr. Advocate*
For Sandeep Kumar, Advocate

ORDER

Per: CH.MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under Consideration is an application filed by M/s. Annai Wind Farms India Private Limited (in short, '**Petitioner/Operational Creditor**') against M/s. Sri Karunambikai Mills Private Limited (in short, '**Respondent/Corporate Debtor**') under section 9 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') 

r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**') on grounds of respondent's inability to repay the debt.

2. The Petitioner/OC is a Private Limited Company registered under the companies Act, 1956 and having its registered office at Door No.26, V.V.Chetty Street, Red Fields, Coimbatore-641045 in the state of Tamil Nadu. The Operational Creditor is inter-alia engaged in the business of electricity generation from wind etc. Whereas the Respondent/Corporate Debtor is a Private Limited Company registered under the Companies Act, 1956 and having its registered office at P. B. No. 2, Mill Road, Somanur P.O, Coimbatore- 641668 in the state of Tamil Nadu.

3. The learned counsel appearing on behalf of the Petitioner/OC submitted that the Respondent/CD approached the petitioner and expressed its requirements for supply of electricity for the spinning mill run by the Respondent/Corporate Debtor. Accordingly, the Petitioner/OC has started supplying the electricity from the year 2005. In this regard the Operational Creditor have maintained a running bank account with respect to the supply of electricity made to the Respondent/CD. The payments were made by the Respondent/CD on an Adhoc basis from time to time. It has further

been submitted that the Petitioner/OC raised invoices for a sum of Rs. 34,64,016/- which was due and payable by the Respondent as on 01.04.2015. The last invoice was raised on 31.05.2016. The Petitioner/OC further submitted that the Respondent/CD was highly irregular in making payments. The Respondent/CD last paid of Rs. 5,81,755/- was made on 24.05.2017 vide cheque No. 851604. Thereafter no payment was made by the Respondent/CD despite repeated reminders by the Petitioner/OC. The Respondent/CD had vide letter dated 08.05.2018 issued a balance confirmation of Rs. 38,53,278/- that is due and payable to the Petitioner/OC.

4. It has further been submitted that the Respondent/CD had issued two cheques each for Rs. 3,00,000/- on 21.06.2018 and 24.07.2018. The Operational Creditor had deposited first cheque into the bank which was dishonoured due to **“insufficient fund”**. Hence, second cheque was not deposited.

5. It is further submitted that the petitioner after making several requests for settling the dues with the respondent and having waited for a long period of time for his legitimate dues, sent a Demand Notice dated 02.07.2018 as per the provisions under section 8 of the IB Code 2016 r/w Rule 5 of the IB Rules 2016 calling upon the

respondent to make the payment of the outstanding dues of Rs. 38,53,278/- along with interest @ 12% per annum. But no response was given by the Respondent/CD.

6. The learned Counsel for the Respondent/CD filed the counter but did not resist the application and prayed for passing orders on merits.

7. After hearing submissions of the counsel for the Petitioner and Respondent and having perused the records, this Adjudicating Authority is satisfied that the petitioner has clearly made out the case that the Corporate Debtor has defaulted in making the payments of the outstanding debt. The petitioner has proved the transactions by placing on record the *Invoices, Demand Notice, financial transactions and Bank statements*.

8. Therefore, the instant petition is admitted and we order the commencement of the Corporate Insolvency Resolution Process (**in short CIRP**) which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

9. We appoint Shri. K. Ranganathan Seshadri as Interim Resolution Professional (IRP) proposed by the Operational Creditor. There is no

disciplinary proceedings pending against the IRP 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 as prescribed.

10. 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 and 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.

11.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.

12.The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed 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.

13.The Applicant/OC as well as 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.

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

15. The address details of the IRP are as follows: -

Shri. K. Ranganathan Seshadri
Regn. No: (IBBI/IPA-001/IP-P00899/2017-18/11496)
No. 403, Nagammai Building,
2nd Floor, Dr. Nanjappa Road,
Gandhipuram, Coimbatore-64018.
E-mail: kr.seshadri@gmail.com
Mobile No: 9500919005

S. Vijayaraghavan
(S. VIJAYARAGHAVAN)
MEMBER (Technical)

TJS


(CH. MOHD SHARIEF TARIQ)
MEMBER (Judicial)