

THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

TP No.88/2017 IN CP No.235/2016
UNDER SECTIONS 433 (e), (f), 434 AND 439 OF I& B CODE, 2016

IN THE MATTER OF MAHLE FILTER SYSTEMS (INDIA) PRIVATE LIMITED
VS
CONCUR MARKETING PRIVATE LIMITED

Order delivered on: 02nd March, 2018

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Counsel present: For Petitioner: M/S. AARNA LAW, Advocates.

BETWEEN

Mahle Filter Systems (India) Pvt. Ltd.,
1, Sri Aurobindo Marg,
New Delhi – 110 016.

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Petitioner/Operational Creditor

AND

Concur Marketing Private Limited,
80-(U2), "Aniketana", 14th 'B' Main,
II Phase, West of Chord Road,
Mahalakshmiipuram
Bengaluru – 560 086.
Karnataka.

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Respondent/Corporate Debtor

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial):

Heard on: 30.11.2017, 08.12.2017, 05.01.2018 and 22.01.2018.

ORDER

This Petition was originally filed before the Hon'ble High Court of Karnataka, under Sections 433 (e) and 433 (f) read with Sections 434 and 439 of the Companies Act, 1956 in Company Petition No.235/2016 for winding up of the Respondent Company under the directions and supervision of the Hon'ble High Court by appointing an Official Liquidator, High Court of Karnataka as Liquidator of the Respondent Company with all powers under the Companies Act, 1956, by awarding cost of this petition and for such further or other reliefs as the Court deems fit in the facts and circumstances of the case in the interest of justice.

Consequent upon the establishment of National Company Law Tribunal, the said case was transferred to this Tribunal and the same was renumbered as T.P. No.88/2017 and the said case was taken up under Section Sections 433 (e)/433 (f) of Companies Act, 1956 (Now Section 8 of the I & B Code, 2016).

The petitioner is seeking admission of the petition, declaring moratorium on the Corporate Debtor Company, direction for public announcement of initiation of Corporate Insolvency Resolution Process and for appointment of the Interim Resolution Professional as per the provisions of Insolvency & Bankruptcy Code, 2016.

The Operational Creditor has filed Form No.5 stating that the Operational Creditor is a private limited company engaged in the business of manufacturing and exports of Automotive and Industrial Filtration solutions for the automotive industries in India. The Corporate Debtor a private limited company is to carry on the business of trading, manufacturing, marketing, export & import of readymade garments, textiles, consumer goods, mineral water and related activities, trading, marketing, agency and consultancy in auto parts, industrial products and related goods. The Respondent Company was the aftermarket dealer of the Petitioner Company since the year 2009. The Petitioner Company had sold various automotive filters to the Respondent Company for the purposes of reselling the same in the aftermarket segment.

It is the case of the Operational Creditor that the Corporate Debtor had not made any payments, despite repeated demands for payment of the outstanding amount of Rs.28,87,085/- (Rupees twenty eight lakhs eighty seven thousand and eighty five only). It is the case of the Operational creditor that it issued a demand notice as required under Section 8 of I & B Code on 02.11.2015 by speed post and also by Registered post. However, the notice sent by speed post was returned back unserved with a postal endorsement "Door Locked No such firm" and the notice sent by Registered post was returned back with an endorsement "Left". In the circumstances, the Petitioner, in order to meet the statutory requirement of service of notice on the Corporate Debtor, had issued a paper notification and

published the above notices in the newspapers being Deccan Chronicle and Kannada Samyukta both of Bengaluru edition on 10th February, 2016. The Operational creditor has further stated that it has also sent a scanned copy of the notice to the corporate debtor to its registered e-mail address as available on the Ministry of Corporate Affairs website on 3rd January, 2018 and the said e-mail has not bounced back and therefore, it is stated that the same may be considered as duly served on the corporate debtor, and the same to be treated as in compliance with Rule 6 (2) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

It is the case of the Operational Creditor that demand notice was served on the Corporate Debtor and there was no reply. The Operational Creditor has filed a letter dated 23.08.2017 of Standard Chartered Bank, Gurgaon, about the payments received by them to the account of the operational creditor from the corporate debtor. According to the Operational Creditor, a sum of Rs.28,87,085/- (Rupees twenty eight lakhs eighty seven thousand and eighty five only) is due from the Corporate Debtor which is due towards sale of automotive parts such as oil filters, air filters and filter parts for the automobile industry. The Operational Creditor has suggested the name of Shri R.L. Bhatia, Registration No. IBBI/IPA-002/IP-N00013/2016-17/10017, C-295, Vikaspuri, New Delhi – 110 018, Tel. No.011-28547113, 9868008747, E. Mail rlbhatiaadv@gmail.com, as Interim Resolution Professional and the said Interim Resolution Professional in his letter dated 3rd October, 2017, has expressed his willingness for the appointment and also certified that there are no disciplinary proceedings pending against him.

The Tribunal has issued notice on 10th December, 2017 to the corporate debtor but there is no representation from the corporate debtor. This Tribunal is therefore satisfied that the application made under Sub-section (2) of Section 9 is complete, that there is no repayment of the unpaid operational debt, the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor, no notice of dispute has been received

by the operational creditor and that there is no disciplinary proceeding pending against the proposed resolution professional.

This Bench admits this Petition under Section 9 of the code declaring moratorium for the purposes referred to in Section 14 of the Code with the following directions:-

- i. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- ii. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- iii. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- iv. That the order of moratorium shall have effect from 02nd March, 2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, whichever is earlier.
- v. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the code.
- vi. That this Bench hereby appoints Shri R.L. Bhatia, Registration No. IBBI/IPA-002/IP-N00013/2016-17/10017, C-295, Vikaspuri, New Delhi – 110 018, Tel. No.011-28547113, 9868008747, E. Mail rlbhatiaadv@gmail.com as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

Accordingly, this Petition is admitted.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RATAKONDA MURALI) 2/3/18
MEMBER, JUDICIAL

psp.