

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

CP/114/(IB)/CB/2018

Under Section 9 rule 6 of the IBC, 2016

In the matter of M/s. Velohar Infra Private Limited

M/s. PADMAVATHI DISTRIBUTORS
(Sole Proprietorship)

...Operational Creditor

V/s

M/s. VELOHAR INFRA PRIVATE LIMITED
(CIN: U45200TN2009PTC072746)

... Corporate Debtor

Order delivered on: 29.08.2018

Coram:

K. Anantha Padmanabha Swamy, Member (Judicial)

S. Vijayaraghavan, Member (Technical)

For the Petitioners/OC: *Shri. K.C Krishna Moorthy, Advocate*

For the Respondent/CD: *Ex-Parte*

ORDER

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

1. Under Consideration is a Company Petition filed by M/s. Padmavathi Distributors (in short, 'Petitioner/Operational Creditor') against M/s. Velohar Infra 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').

2. The petitioner/OC is a Wholesale Distributor, having its registered office is situated at 37/99, Flat No.T-2, Sharan's Jayam, Bazulla Road, T. Nagar, Chennai-6000017 and engaged in the business of outdoor pole lights, electric street lights & k lite outdoor pillar lights etc. Whereas the respondent company, is a private limited company incorporated under the Companies Act, 1956, having its registered office at No.1F, 7th Cross Street, Woodcreek County, Nandambakkam, Chennai-600016.
3. The learned counsel appearing on behalf of the Petitioner/OC submitted that the Respondent/CD approached the petitioner and expressed its requirements for Street light fittings at Purva Windermere (Phase-1 External), Palikaranai, Chennai-600100 and accordingly, the petitioner supplied the said materials to the Corporate Debtor in terms of the consideration for total price of Rs. 56,83,213.23/- through Invoice No. 96. Dated 03.08.2015 and delivery challan dated 10.08.2015 and which was acknowledged by the Corporate Debtor on 05.08.2015 and balance material was delivered through challan No. 104. As per the purchase order the payment has to be made within 45 days from the date of bill received/ material delivered at the site and a post-dated cheque will be given before dispatch the material. As per the terms of the purchase order the corporate debtor has given post-dated cheque

bearing No. 004588 dated 15.09.2015 for Rs. 56,83,213/- to the Operational Creditor.

4. It is further submitted that the corporate debtor sent a letter dated 12.09.2018 to the Operational Creditor stating not to present the cheque until further instructions. Thereafter the operational creditor contacted with the corporate debtor as to when the cheque can be presented, the Corporate Debtor has replied and stating to present the cheque during the 2nd week of the December, 2015. Accordingly, the Operational Creditor has deposited the cheque on 14.12.2015 which was returned with an endorsement **“payment stopped by the drawer”**. Thereupon, the Operational Creditor issued a legal notice dated 28.12.2015 demanding the payment with interest, which notice was returned with an endorsement **“unclaimed door is locked”**. Thereafter, the Corporate Debtor sent a letter dated 30.12.2015 to the Operational Creditor to come and collect five post-dated cheques dated 30.01.2016 to 30.05.2016 for a sum of Rs. 48,83,213/- and another cheque for sum of Rs. 5,00,000/- dated 30.12.2015. The Operational Creditor sent a reply to the corporate debtor on 31.12.2015 demanding 50% of claim amount to pay the payment and balance by way of giving three post-dated cheques and to close the account by 31.03.2016.

5. It is further submitted that since the Corporate Debtor failed to pay amount, the Operational Creditor has issued a Statutory Notice on 08.12.2016 through their advocate which was received by the corporate debtor on 10.02.2016. Thereafter, the Corporate Debtor paid a sum of Rs. 3,00,000/- out of Rs. 56,83,2013/- and failed to remaining balance of Rs. 53,83,213/- alongwith interest 24% p.a to the Operational Creditor. Thereafter the Operational Creditor filed C. P No. 158 of 2016 before the Hon'ble High Court of Madras. When the matter is pending before the Hon'ble High Court of Madras, the Corporate Debtor has approached the Operational Creditor for settlement and accordingly a settlement agreement dated 05.12.2016 was entered between both the parties. The Corporate Debtor has admitted their liability and agreed to pay the said amount in 4 monthly instalments commencing from December, 2016 to March, 2017 and also issued four Post-dated cheques drawn on "**Bank of Baroda**", Chennai-600091 as follows:

Sl.No.	Date	Cheque Number	Amount in Rs.
1	28.12.2016	000855	7,94,405/-
2	10.01.2017	000852	17,94,404/-
3	15.02.2017	000853	17,94,404/-
4	18.03.2017	000856	10,00,000/-

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6. The Operational Creditor had presented 1st and 2nd cheques and the same was returned as “**Funds Insufficient**”. Thereafter the Operational Creditor issued a notice under section 138 of the Negotiable Instrument Act on 28.01.2017 & 04.03.2017 respectively. It has Further been submitted that the Corporate Debtor subsequently sent a sum of Rs. 2,00,000/- by RTGS transfer to the Operational Creditor’s bank account on 14.03.2017 and failed to pay the balance amount due. Hence, the Operational Creditor has filed a petition before the Saidapet Magistrate Court for dishonour of the cheques, and the same is pending.
7. At this juncture, the Hon’ble High Court of Madras has transferred C.P No 158 of 2016 to this Tribunal, pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016 and this Tribunal dismissed the CP for not filing certain documents.
8. 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 04.10.2017 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 remaining balance of Rs. 77,74,820/- (Balance Rs. 51,83,213/- and interest of Rs. 25,91,607/- at 24% p.a from form 15.09.2015 to 15.10.2017) and claimed to be

an Operational Creditor under the provisions of the IB Code 2016 and prayed for initiating of Corporate Insolvency Resolution Process against the Respondent/CD.

9. Before proceeding with the matter, it is necessary to mention herein that the Respondent was set ex-parte vide order dated 27.07.2018 due to non-appearance on several occasions. The Respondent neither gave a reply to the Demand Notice dated 04.10.2017 nor filed any counter nor caused appearance before this Adjudicating Authority in spite of several notices. The petitioner has also placed on record proof of sending notices and alongwith the acknowledgement and also filed an affidavit and bank statement under section 9(3)(b) and 9(3)(c) of I & B Code. The Petitioner has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process.
10. After hearing submissions of the counsel for the petitioner and having perused the record, this Adjudicating authority is satisfied that the petitioner has clearly made out the case by establishing that the Corporate Debtor has defaulted in payment of the dues on various occasions to the petitioner. Also, the petitioner has placed documentary evidence viz. Invoices, Demand Notice, dishonoured cheques, statutory notices and financial transactions and Bank

statements showing that default has occurred which the Corporate Debtor was responsible. In the circumstances, having satisfied ourselves with the submissions put forth by the learned counsel for the petitioner, we hereby admit the instant petition.

11. As per the submission of the counsel for the petitioner, the Petitioner has complied with all the requirements as stipulated under the provisions of the IB Code, 2016 and the rules framed thereunder.
12. 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.
13. The petitioner has not proposed name of any Insolvency Resolution Professional and prayed this tribunal to appoint one. We appoint Shri. M. Murugesan as Interim Resolution Professional (**IRP**) whose name is reflected in the panel drawn by IBBI and against whom no disciplinary proceedings are pending.
14. The Registry is directed to communicate this order and intimate Shri. M. Murugesan regarding his appointment as IRP to obtain his consent in Form 2 at the earliest.
15. We declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution

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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.*

16. 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.

17. 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. Accordingly, the application is admitted.

18. The Petitioner/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.

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

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

Shri. M. Murugesan
Reg. No. IBBI/IPA-002/IP-N00527/2017-18/11679
E-Mail ID: vasamu60gmail.com
Mobile No: 8754037002



(S. Vijayaraghavan)
Member (Technical)



(K. Anantha Padmanabha Swamy)
Member (Judicial)

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