

**In the National Company Law Tribunal  
Single Bench, Chennai**

**TCP/258/(IB)/CB/2017**

Under Section 9 of the IBC, 2016

**In the matter of**

Mechano Engineering Works

V/s

Propel Valves Private Limited

Order delivered on: 11.08.2017

For the Petitioner/OC: Shri Ramakrishnan Viraraghavan, Sr. Advocate

For the Respondent/CD: Shri A.K. Mysamy, Advocate

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

**ORDER**

1. Under Consideration is a Company Petition filed by Mechano Engineering Works (in short, '**Petitioner/Operational Creditor**') against Propel Valves Private Limited (in short, '**Respondent/Corporate Debtor**') under section 433 (e) and (f), 434 (i) (a) and 439 (i) (b) of the Companies Act, 1956 before the Hon'ble Madras High Court which has been transferred to this tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016. Now, pursuant to the Central Government notification number GSR 119(E) dated 07.12.2017, this petition needs determination as per the provisions of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**').

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. Shri Ramakrishnan Viraraghavan, the learned senior counsel appearing on behalf of the petitioner/OC submitted that the Petitioner is in business of manufacturing industrial pipeline valves whereas the Respondent/CD is carrying on business as Manufacturers, dealers, importers & exporters of industrial valves made up of any metal. The petitioner has been manufacturing and supplying industrial valves and connected products with the trade name 'MEC' of which the respondent company is also aware. In the ordinary course of business, the petitioner/OC, based on faith and trust and on a running account basis, supplied its various products to the respondent/CD on credit basis that too when the respondent was facing a severe credit shortage. It is also submitted that the respondent received and acknowledged the goods without raising any disputes with regard to rates, quality and quantity of the products supplied by the petitioner.
4. It is further submitted that the petitioner, after making several requests to settle his dues and having waited for a long period of time for his legitimate dues, issued statutory notices dated

12.10.2013 and 16.10.2013 under section 434 of the Companies Act, 1956, calling upon the respondent to make the payment of the principal amount of Rs. 12,45,907/- and thus now claimed to be an Operational Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.

5. Shri Mysamy, the learned counsel appearing on behalf of the respondent/CD submitted that the petition is false, vexatious and not maintainable on various grounds. He submitted that the instant petition is fit to be rejected on technical grounds for non-compliance of section 8(1), 9 (3) (a) (b) (c) of the IB Code 2016.
6. It is further submitted that there are several litigations pending between the petitioner and respondent. He submitted that the respondent has filed a company petition no. TCP/216/2013 under section 397 r/w section 398 of the Companies Act, 1956 against Mr. K.G. Balasubramaniam, the husband of the petitioner and the said petition is still pending before Division Bench of NCLT, Chennai. He also submitted that to take revenge, the petitioner's husband has filed a company petition no. TCP/139/2016 against the respondent which is also

pending before Division Bench of NCLT, Chennai. It is also submitted that the Respondent has filed O.S. 12911 of 2014 before the City Civil court, Hyderabad for the violations under the Trade Marks Act claiming a sum of Rs. 1 crore as damages from the petitioner and the said suit is still pending. Therefore, the counsel for the respondent submitted that there are several 'disputes' pending between both the parties.

7. The counsel for respondent also relied on 2 judgements passed by the Hon'ble NCLAT i.e. **Seema Gupta Vs Supreme Infrastructure India Ltd & Ors. And Era Infra Engineering Ltd. Vs Prideco Commercial Projects Pvt Ltd** wherein it was observed that giving a prior notice u/s 8 of the IB Code 2016 is mandatory before ignition of the Corporate Insolvency Resolution Process. Therefore, the learned counsel finally submitted that the instant petition is fit to be rejected in limini.
8. In the Rejoinder filed by the petitioner, it is submitted that the prior notice u/s 8 of the IB Code 2016 is applicable only on fresh matters and not to the matters transferred from the Hon'ble High Courts to the NCLT Benches (Adjudicating Authority).



9. The counsel for the respondent placed a judgement of Hon'ble NCLAT in **Smart Timing Steel Ltd. Vs National steel and Agro Industries Ltd.** to show that in compliance of section 9 (3) (c), the petitioner has to enclose a certificate from the financial institutions who maintain accounts of the petitioner confirming that there is no payment of an unpaid operational debt by the corporate debtor. The petitioner counsel in his Rejoinder stated that the certificate from the banker is based on an extract of the Bank statement. Therefore, the non-filing of the certificate is not fatal when the entire bank statement, which is properly stamped and signed is available before the adjudicating authority and the application cannot be rejected on this ground.
10. The counsel for respondent further contends that the Invoices filed alongwith the instant petition are fabricated and some of them have been signed by Mr. K.G. Balasubramanian and also there are defects in the invoices. In reply to this this, the counsel for the petitioner submitted that the respondent already availed input tax credit based on the invoices raised and the respondent cannot question the invoices when the dues were claimed by the petitioner.

11. In view of the counter submissions of the petitioner counsel by way of Rejoinder, the above referred judgements are not applicable in support of the contentions of the respondent, as the facts and circumstances of this present case are otherwise.
12. As per the submissions of the petitioner, the Petitioner has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016 as well as MCA Notification dated 29.06.2017. The Operational Creditor has also proposed Mr. S. Rajendran as Interim Insolvency professional and placed on record his consent letter in Form-2.
13. After hearing submissions of both the counsel and having perused the record, I am of the opinion that there is no dispute pending between the parties under the meaning and definition of section 5 (3) of the IB Code 2016 as the aforesaid pending matters are nowhere connected to the payment of dues in question. Also, there is no technical lacuna as the petitioner has complied with all the requirements under the law. This Adjudicating authority is satisfied that the petitioner has made out his case by establishing that this Corporate Debtor has defaulted the payment dues on various occasion to this petitioner/OC and there is no dispute between the parties. In

the circumstances, I am inclined to admit the instant application.

14. Therefore, the instant petition is admitted and I order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day of this order is passed.

15. I appoint Mr. S. Rajendran 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.

16. I 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. I 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.*

**17.** 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.

**18.** 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.

19. The Petitioner/OC as well as the Registry is 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.

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

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

Mr. S. Rajendran  
Regn No: (IBBI/IPA-002/IP-N00098/2017-2018/10241)  
No. 188/87, 2<sup>nd</sup> floor, Evalappan Mansion,  
Habibullah Road, T. Nagar, Chennai – 600017  
Email: cs.srajendran.associates@gmail.com  
Mobile No: 9444648589



**K. ANANTHA PADMANABHA SWAMY**  
**Member (J)**

RLS