

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

TCP/232/(IB)/CB/2017

Under Section 9 of the IBC, 2016

In the matter of

Metecno (India) Private Limited
V/s
Hyosan Automative India Private Limited

Order delivered on: 16.08.2017

For the Petitioner/OC: Shri T.R. Ramesh, Advocate

For the Respondent/CD: Shri K.S. Ilangovan, Advocate

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

ORDER

1. Under Consideration is a Company Petition filed by Metecno (India) Private Limited (in short, '**Petitioner/Operational Creditor**') against Hyosan Automative India 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 T.R. Ramesh, the learned counsel appearing on behalf of the petitioner/OC submitted that the Petitioner is in business of providing various corporate services to companies and other business concerns whereas the Respondent/CD is engaged in the business of manufacturing and sale of engineering equipments relating to automotives. It is submitted that the petitioner had supplied materials to Respondent and raised certain purchase orders to the tune of Rs. 15,48,406.68/- for which the respondent paid only Rs. 5,23,465/- on 31.05.2012, leaving a balance payable by the respondent to petitioner to the tune of Rs. 10,24,961.68/- and the respondent also acknowledged the same vide its letter dated 04.07.2013.
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 a statutory notice dated 25.01.2013 under section 434 of the Companies Act, 1956, demanding the payment of Rs. 10,24,961.68/- alongwith interest @ 24% per annum 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 K.S. Ilangovan, the learned counsel appearing on behalf of the Respondent/CD vehemently objected to the contentions raised by the counsel for the petitioner and stated that the instant petition is false, vexatious and not maintainable. He further submitted that the claim made by the petitioner was disputed right from the beginning and even, the respondent had raised dispute to the demand letter dated 25.01.2013.
6. It is further submitted that the petitioner did not supply the required material within the specified time as specified in contract. He also submitted that the petition is liable to be dismissed as the petitioner is facing a corporate insolvency resolution process in TCP/142/IB/2017 and therefore, a corporate debtor undergoing corporate insolvency resolution process is not entitled to make an application as per section 11 of the IB Code 2016.
7. 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 I&B Code, 2016 as well as MCA Notification dated 29.06.2017.

8. It is also pertinent to mention that the respondent in his written submission has stated that the petitioner is already facing corporate insolvency resolution process in TCP/142/IB/2017. However, when the same was verified from the record of the registry, it was found that the aforementioned case is still pending and there is no any order as such with regard to initiation of the corporate insolvency resolution process against this petitioner. Therefore, this submission of the respondent is not sustainable.
9. After hearing submissions of the counsel for the petitioner and respondent and having perused the record, 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 occasions to this petitioner/OC and there is no dispute between the parties. In the circumstances, I am inclined to admit the instant application.
10. 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 this order is passed.

11.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.*

12.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.

13. It is necessary to mention herein that the Petitioner has not proposed the name of an IRP and prayed before the Adjudicating Authority to make a reference to the Insolvency and Bankruptcy Board of India (IBBI) for recommending the name of an IRP. Therefore, the Registry is directed to make a reference to IBBI for recommending the name of an IRP.

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



K. ANANTHA PADMANABHA SWAMY
Member (J)

RLS