

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

**CP/474/(IB)/CB/2017**

Under Section 9 of the IB Code, 2016

In the matter of

**M/s. Eastern Plastix**

**with**

**M/s. Southern Polypet Private Limited**

*Order delivered on: 31.08.2017*

Coram:

**Ch. Mohd Sharief Tariq, Member (J)**

**S. Vijayaraghavan, Member (T)**

*For Operational Creditor: Mr. Aashish Jain Lunia, Advocate*

*For Corporate Debtor: Ms. Goda Raghavan, Advocate*

*IRP*

*:W. Gowri,*

**ORDER**

**Per: Ch. Mohd Sharief Tariq, Member (J)**

1. Under adjudication is a Petition filed by M/s. Eastern Plastix against M/s. Southern Polypet Private Limited under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, **IB Code, 2016**) r/w the Insolvency & Bankruptcy (Application to Adjudicating Authority Rules, 2016).

2. Before we proceed with this matter, it is pertinent to mention herein that the Application of the Operational Creditor was admitted on 30.05.2017, by which the Corporate Insolvency Resolution Process was initiated, and moratorium was declared. The IRP was appointed on 12.06.2017, who was directed to cause public announcement in relation to Corporate Insolvency Resolution Process.
3. Ms. W. Gowri, the IRP filed a report (overview) before this Bench on 28.08.2017 and submitted that she is unable to carry out the function of an IRP, as the Operational Creditor as well as Corporate Debtor did not extend any assistance since her appointment as IRP. She also submitted that due to non-payment by the Operational Creditor, she could not cause public announcement as per Section 15 of the IB Code 2016, due to which meeting of the Committee of Creditors (CoC) could not be convened.
4. She further submitted that when she visited the office of Corporate Debtor, the Corporate Debtor refused to give the custody and control of all the assets including its business records, so she could not discharge her duties. In view of

the circumstances, the IRP prayed for appropriate directions.

5. Mr. Kalyan Jhabak, the learned Counsel for the Operational Creditor submitted that more time be given for making payment for effecting public announcement.
6. Ms. Goda Raghavan, the learned Counsel for Corporate Debtor submitted that after becoming aware of the orders, an Application for recalling the order was filed on 14.06.2017 which was taken for arguments on 21.06.2017 and rejected. However, she did not deny the factum of the misconduct committed by the Corporate Debtor in the course of Corporate Insolvency Resolution Process in this matter.
7. After perusing the report filed by the IRP and hearing the submissions of the IRP and the Counsels for both the parties, it is clear that, both the Operational Creditor and Corporate Debtor deliberately did not extend the required assistance to the IRP as stipulated under the IB Code 2016 during the period of moratorium and Corporate Insolvency Resolution process. Thus, the Operational Creditor misused

the process of law and the Corporate Debtor has committed misconduct in the course of Corporate Insolvency Resolution Process.

8. The prayer of the Counsel for Operational Creditor for granting more time for effecting 'Public Announcement', is devoid of merits, because the Operational Creditor deliberately did not co-operate with the IRP for a period of two months and 19 days i.e. from 12.06.2017 to 31.08.2017, for the reasons best known to them. From the conduct of the Operational Creditor, it appears that, they are no more interested to continue the Corporate Insolvency Resolution Process, and the moratorium.

9. It is also on record that, the time period of 30 days of IRP has already lapsed, the Public Announcement was not made and no meeting of CoC has been constituted till date. It is well settled that time is essence of the Corporate Insolvency Resolution Process and the moratorium as per the provisions of the I&B Code, 2016. In the circumstances, there is no option, but to recall the orders dated 30.05.2017 and 12.06.2017 because the Corporate Insolvency



Resolution Process got frustrated due to lapse of more than three months. Accordingly, the orders dated 30.05.2017 and 12.06.2017 stand vacated, and the IRP is relieved.

10. Consequently, the Operational Creditor and Corporate Debtor are liable for misusing the process of law and misconduct committed in the course of Corporate Insolvency Resolution Process respectively. Therefore, we are constrained to impose fine to the tune of Rs. 50,000/- (Rupees Fifty Thousand Only) on Operational Creditor and Rs.1,00,000/- (Rupees One Lakh Only) on Corporate Debtor. Both are directed to deposit the respective amount of fine in the Registry within two weeks from the date this order is uploaded on the website of NCLT. The amount of fine shall be credited to the PAO, MCA, Chennai.

11. The Operational Creditor is also directed to pay a fee of Rs. 20,000/- to the IRP.

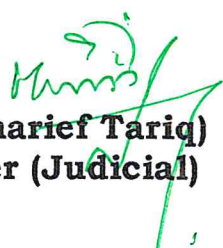
12. Subject to the payment of the amount of fine, the Corporate Debtor stands released from the rigour of Corporate Insolvency Resolution Process and the

Moratorium. Accordingly, the Corporate Debtor shall be free to function independently through its Board of Directors.

13. In terms of the above, the matter stands closed.

*S. Vijayaraghavan.*

**(S. Vijayaraghavan)**  
**Member (Technical)**  
RLS

  
**(Ch. Mohd. Sharief Tariq)**  
**Member (Judicial)**