

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

TCP/130/(IB)/CB/2017

Under Section 9 of the IBC, 2016

In the matter of

N. Nagarajan

V/s

M/s. Auro Mira Biopower India Private Limited

Order delivered on: 01.09.2017

For the Petitioner/OC: Shri B. Dhanraj, Advocate

For the Respondent/CD: Shri Sriram, Advocate

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

ORDER

1. Under Consideration is a Company Petition filed by N. Nagarajan (in short, '**Petitioner/Operational Creditor**') against M/s. Auro Mira Biopower 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 B. Dhanraj, the learned counsel appearing on behalf of the petitioner/OC submitted that the Petitioner is carrying on the business of supplying Raw materials such as rubber wood, Biomass, wood bark etc. which are used as fuel for Bio Mass power plants whereas the Respondent/CD is engaged in the business of generating, developing, distributing and supplying power by setting up power plants. It is submitted that, during the course of his business, the petitioner had supplied raw materials for its bio mass power plants situated at three places namely, Shanmugapuram Village, Kallupatti and Ramanadu. Thus, a commercial relationship was established from the year 2011 and the respondent company also acknowledged the receipt of goods. It is also submitted that the respondent company made only meagre payments from time to time.
4. It is further submitted that the petitioner had been regularly following the respondent for payment dues and the respondent's staff assured that the petitioner would be tendered his dues shortly. The petitioner thereafter, learnt that respondent company had slowly started closing its bio mass

power plants one after another and as on date, all the bio mass power plants that the respondent company operated in South Tamilnadu came to be closed.

5. It is also submitted that the petitioner understands that the suppliers and creditors such as the petitioner had preferred a police complaint for cheating and other offences against the directors and officers of the respondent company as everything resulted in false promise and no payment was made to the petitioner.
6. 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 06.03.2014 under section 434 of the Companies Act, 1956, demanding the payment of Rs. 20,54,615.75/- alongwith interest with interest @ 18% per annum as on 06.03.2014 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.
7. Shri Sriram, the learned counsel for the Respondent/CD caused appearance and submitted that the Respondent Company is not running anymore. Moreover, he neither filed

any counter nor resisted in relation to the appointment of IRP and declaration of moratorium against the corporate debtor and also submitted that he has no objection, if petition is admitted.

8. 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 as well as MCA Notification dated 29.06.2017.
9. After hearing submissions of the counsel for the petitioner & 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 occasion 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 pertinent 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