

(10)

NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH  
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI  
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 25/07/2017 AT 10.30 AM

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL  
SHRI S. VIJAYARAGHAVAN, MEMBER-TECHNICAL

APPLICATION NUMBER :  
PETITION NUMBER : TCP/135/ (IB)/2017  
NAME OF THE PETITIONER(S) : EMERSON PROCESS MANAGEMENT CHENNAI LTD  
NAME OF THE RESPONDENT(S) : SHRIRAM EPC LTD  
UNDER SECTION : 433 (e)(f)

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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N.MURALI .

P.R. RENGANATH

Counsel for the Petitioner

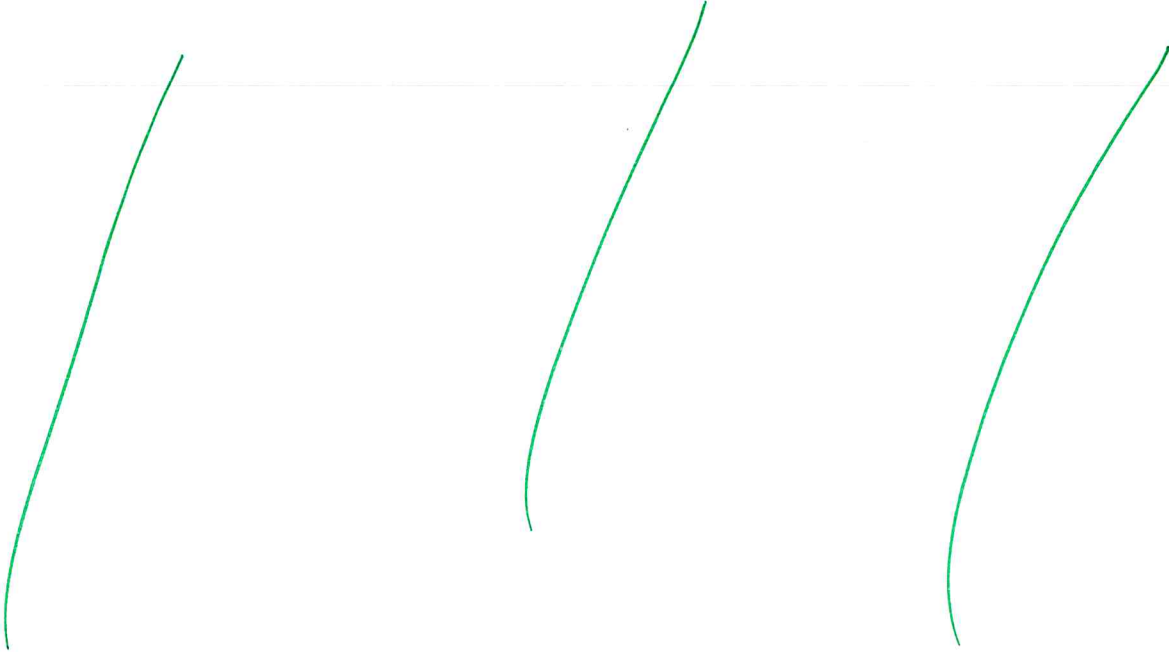


P.H. Arwindh Pandian

Sr. Adv.

for Vishnu Mohan

Counsel for Respondent



## ORDER

Counsel for Petitioner present. Counsel for Respondent also present. Counsel for the Petitioner submitted that he has complied with the provisions of section 9(3)(b) and (c) of I&B Code, 2016 to which the Counsel for Respondent raised objection stating that the affidavit filed and the bank certificate (CD) is not as per the provisions of the IBC, 2016. The reasons are that there is no mention of the fact that the Corporate Debtor has not raised the dispute and the bank certificate is not authenticated. It is also on record that the Operational Creditor has filed the suit No.402/2016 before the Hon'ble High Court of Madras for recovery of the amount which the Corporate Debtor failed to make the payment. Counsel for Respondent citing the judgment of NCLAT given in M/s. MCL Global Steel Pvt. Ltd & another vs M/s. Essar Projects India Ltd. & others submitted that the matter is sub judice and the same falls within the term "dispute" to which the Counsel for Petitioner submitted that suit has been filed in order to overcome the period of limitation and the object of filing the petition under section 9 is to trigger the process of Corporate Insolvency against the Corporate Debtor and declaration of the moratorium. Counsel for Petitioner <sup>further</sup> submitted that the suit has been filed by the Operational Creditor and the Corporate Debtor did not raise any dispute on its own and submit that there is no provision in the IBC 2016, which bars the Petitioner to file the petition under section 9, <sup>even if,</sup> a suit for recovery of the outstanding debt is pending. However, the petitioner can achieve his goal and get his money back through recovery suit. There <sup>fore,</sup> Petitioner cannot be allowed to forum shop. Hence, the Petition is dismissed in view of the pendency of the civil suit.



(S. VIJAYARAGHAVAN)  
MEMBER (TECHNICAL)  
ghk

  
(CH. MOHD SHARIEF TARIQ)  
MEMBER (JUDICIAL)