

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

CP/666/(IB)/CB/2017

Under Section 9 of the IB Code, 2016

In the matter of

M/s. Precision Machine & Auto Components Private Limited

V/s

M/s. Everon Castings Private Limited

Order delivered on: 29.12.2017

Coram:

K. Anantha Padmanabha Swamy, Member (Judicial)

S. Vijayaraghavan, Member (Technical)

For the Petitioner/OC: Shri A.G Sathyanarayana, Advocate

For A.K Mysamy & Associates LLP

For Respondent/CD: Shri B. Karthikyan, Advocate

ORDER

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

1. Under Consideration is a Company Petition filed by M/s. Precision Machine & Auto Components Private Limited (in short, '**Petitioner/Operational Creditor**') against Shri Everon Castings Private Limited (in short, '**Respondent/Corporate Debtor**') under section 9 of the Insolvency and Bankruptcy Code 2016 (In short, '**I & B Code 2016**') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 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. The Applicant Company is Company registered under the Companies Act, 1956 and having its office at 26, 25, Mount Poonamalle High Road, Rajeswari Colony, Nandambakkam, Chennai – 600 089. The Petitioner Company is carrying on the business of machining industrial valve parts and other products etc. whereas the Respondent/CD is also a Company Registered under the Companies Act, 1956, having its registered office at Survey No. 97/1-B, Arasampalayam Village, Kinathukadavu, Pollachie – 642109 and it is engaged in the business of steel castings etc.
4. Shri A.G Sathyanarayana, the learned counsel appearing on behalf of the Petitioner/OC submitted that the Respondent/CD approached the petitioner and expressed its requirements for Machining Products and accordingly, the petitioner supplied the said products from time to time under various specified invoices. It is also submitted that the goods were delivered on Credit basis against specific invoice, bill etc. given the nature of the business and as a result the

petitioner has always maintained a running account for the respondent.

5. It is further submitted that the Respondent has not made any payments towards the subject debt Invoice Nos: U3-L/3589 to U3-L/6671 dated 30.03.2015 to 13.06.2015 and the supplies are covered under 36 invoices. The payment has to be made within 60 days of the invoice. The Respondent has confirmed/acknowledged an outstanding payment of Rs. 30,60,850/- (without TDS) and stated that they hope to complete the payments by March, 2017 letter dated 28.11.2016.
6. It is further submitted that the petitioner, after making several requests for settling the dues with the respondent waited for a long period of time for the legitimate dues. However, the Operational Creditor did not receive any part of his legitimate dues and hence sent a Demand Notice dated 31.05.2017 as per the provisions under section 8 of the IB Code 2016 r/w Rule 5 of the IB Rules 2016 calling upon the respondent to make the payment of the outstanding Principal Amount of Rs.30,60,850/- and Interest 15% p.a on Rs.30,60,850/- i.e Rs.10,77,902/- and Total amount of Rs. 41,38,752/- from Corporate Debtor and claiming 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. The learned counsel for the Respondent/CD caused appearance and submitted that that it is having the business transaction with the Operational Creditor since the year 2013 onwards and the claim has been made for the undelivered machining products. The Corporate Debtor has supplied materials to the Operational Creditor towards service work order which were neither delivered after processing nor returned to the Corporate Debtor. In fact the Corporate Debtor has suffered substantial losses due to the non-delivery of the products. The question of default in payment to the Operational Creditor never arose. The Operational Creditor in support of the affidavit has submitted a forged letter dated 28.11.2015 and the Corporate Debtor has lodged a police complaint at Coimbatore under Sections 420, 120B and 465. It has also been decided to initiate civil proceedings to recover the goods which are illegally held in possession of the Operational Creditor. Therefore, the Corporate Debtor has prayed for dismissal of the application.

8. It is the version of the petitioner that an amount of Rs. 41, 38,752/-. Is due from the Corporate Debtor towards supply of machining products whereas the contention of the Corporate Debtor is that no such default in payment ever arose. The Corporate Debtors has also submitted that the Operational Creditor has filed this application on the basis of a forged letter dated 28.11.2016 for which it has already filed criminal complaints before police authorities. It is on record that the Operational Creditor has supplied the machine products covered under various invoices and issued legal notice 28.02.2017 followed by demand notice dated 31.05.2017. The Corporate Debtor has not made submissions within 10 days that a dispute is pending and it has not made any payment. The submission that the Corporate Debtor has filed a criminal complaint for the forged letter cannot be considered for the reason that it is only pointing finger against the Applicant without any proof.
9. 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 and the rules framed thereunder.

10. 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 proved by placing overwhelming evidence that default has occurred which the Corporate Debtor was responsible to pay. In relation to the allegation as pointed out by the counsel for respondent, it is pertinent to mention that the petitioner has established clearly that the amount in default is genuine and is supported by the documentary evidence placed. The petitioner has also placed on record proof of sending notices and its deliveries and also filed an affidavit and bank statement under section 9(3)(b) and 9(3)(c) of I & B Code. The Petitioner has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. Therefore, we are of the opinion that the said objection is not a valid ground of rejection of the instant petition. In the circumstances, we are inclined to admit the instant application.

11. The instant petition is admitted and we 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.

12. We appoint Shri. S. Muthuraju as Interim Resolution Professional (**IRP**) proposed by the Financial 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.

13. We 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 and 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.*

14. 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.

15. 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.

16. The Petitioner/OC as well as the Registry are 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.

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

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

Shri. S. Muthuraju
Regn. No: (IBBI/IPA-002/IP-N00009/2016-2017/10013)
No.3, Sundaram Brothers Layout,
Opp. To All India Radio, Trichy Road,
Ramanathapuram, Coimbatore-641045,
E-Mail: smrajunaidu@gmail.com
Mobile No. 9994103021



(S. Vijayaraghavan)
Member (Technical)



(K. Anantha Padmanabha Swamy)
Member (Judicial)

TJS