

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

IBA/155/2020

*(Under Sections 9 of the Insolvency and Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority Rules, 2016)*

In the matter of ***M/s. Karaipudur Common Effluent Treatment
Plant Private Limited***

Eco Pure Technologies (P) Ltd.

No.12, MLP Buildings,
Near Kumar Gas Service,
Mangalam Road, Tirupur,
Tamil Nadu – 641 604

.. .. . *Operational Creditor*

-Vs-

Karaipudur Common Effluent Treatment Plant (P) Ltd.

Sf No. 10/1, 13/1, Moolakkattu Thottam,
Karaipudur Village,
Arulapuram Post, Tirupur,
Tamil Nadu – 641 605

.. .. . *Corporate Debtor*

Order Pronounced on 31st May 2021

CORAM

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

*For Financial Creditor : Suresh Kumar, Advocate
For Corporate Debtor : S. Diwakar, Advocate*

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. This Application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 ("hereinafter referred to as

IBC, 2016”) by **M/s. Eco Pure Technologies Private Limited** (hereinafter called as “*Operational Creditor*”) for the purpose of initiating the Corporate Insolvency Resolution Process (CIRP) against **M/s. Karaipudur Common Effluent Treatment Plant Private Limited** (hereinafter called as “*Corporate Debtor*”).

2. From Part – I of the Application it is seen that the Operational Creditor is a Private Limited Company. Part – II of the Application discloses that the Corporate Debtor is also a Private Limited Company incorporated on 02.09.2003 under the provisions of the Companies Act, 1956 and the Registered Office Address as per the Application is stated to be situated at Sf. No. 10/1, 13/1, Moolakkattu Thottam, Karaipudur Village, Arulpuram Post, Tirupur, Tamil Nadu – 641 605. Part – III of the Application discloses the fact that the Applicant has not proposed the name of the Interim Resolution Professional and left it to the discretion of this Adjudicating Authority (*hereinafter for brevity referred as “AA”*) to appoint the same.

3. Part – IV of the Application discloses about the details of the debt from which it is seen that a total sum of Rs.80,00,000/- (Rupees Eighty Lakhs Only) is claimed to be in default, excluding interest and the date of default is stated to be April 2018. The present Application is filed before this AA on 10.01.2020.

4. The Learned Counsel for the Operational Creditor submitted that they have been providing the service of Operation and Maintenance and Management services to Zero Liquid Discharge facility at Karaipudur Common Effluent Treatment, which belongs to the Corporate Debtor and was also supplying various utilities and consumables. The Operational Creditor was providing services based upon an Agreement entered into between the parties on 04.01.2016 and executed on 29.03.2016. It was submitted by the Learned Counsel for the Operational Creditor that they are maintaining a running account with the Corporate Debtor for the supply of services and utilities and as per their ledger balance, the Corporate Debtor was obliged to pay a sum of Rs.1,31,45,095/- as on 01.04.2019.

5. The Learned Counsel for the Operational Creditor submitted that the parties have mutually agreed for the closure of the contract existed between them and hence the Operational Creditor and the Corporate Debtor had mutually agreed for settling the dues as per the terms and conditions laid down in the Agreement dated 22.08.2019. As per the said agreement, it was decided that the Operational Creditor would cease to carry out Operations and Maintenance and Management Services to the Corporate Debtor and the Corporate Debtor would make a final settlement of outstanding operational debt of Rs.1.30 Crore to the Operational Creditor.

Further, it was submitted that the Corporate Debtor has confirmed that the Operational Creditor has handed over maintenance of the effluent treatment plant in full and there was no obligation on the Operational Creditor under the contract of Operations and Maintenance and Management Services. It was submitted that the Corporate Debtor has agreed to release the Final settlement of Rs.1.30 Crore as per the Schedule mentioned below;

- a. Rs.50 Lakh paid as two payments of Rs.25 Lakh immediately.
- b. Rs.40 Lakh to be paid on 05.10.2019
- c. Rs.40 Lakh to be paid on 05.11.2019

6. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has paid the first payment of Rs.50 Lakh as agreed between the parties, however has failed to pay the remaining sum of Rs.80 Lakh. Hence, it was submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor has failed to pay the amount of Rs.80 Lakh which is due and payable to the Operational Creditor and as such the Operational Creditor has also issued a Demand Notice as mandated under Section 8 of IBC, 2016 to the Corporate Debtor on 24.10.2019, which was duly received by the Corporate Debtor on 26.10.2019 and the Corporate Debtor has also replied to the said Demand Notice on 18.11.2019, i.e. after the expiry of 10 days. The Operational Creditor

has also filed an Affidavit as required under Section 9(3)(b) of IBC, 2016 wherein it has been stated that the Corporate Debtor has neither disputed the amount nor paid the outstanding sum to the Operational Creditor. Under the circumstances, the Learned Counsel for the Operational Creditor submitted that the debt and default on the part of the Corporate Debtor is proved and prayed for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

7. The Corporate Debtor has filed counter and it was submitted by the Learned Counsel for the Corporate Debtor that the Respondent has appointed one Mr. Suruli Murugan, as the Manager and the liaison officer for the Respondent in respect of all things pertaining to the Operational Creditor and that the said Mr. Suruli Murugan has colluded with the Operational Creditor and began to siphon the amount from the Corporate Debtor by raising false bills. It was submitted by the Learned Counsel for the Corporate Debtor that without carrying any due diligence, the Corporate Debtor and its Directors have executed the Memorandum of Understanding on 22.08.2019, agreeing to make a sum of Rs.1.30 Crore to the Operational Creditor. Further, it was submitted that after termination of the contract with the Operational Creditor, the Corporate Debtor has appointed one M/s. Enviro Care India Private Limited to take up Operations and Maintenance of the Corporate

Debtors machinery vide agreement dated 11.11.2019 and upon the report being submitted by M/s. Enviro Care India Private Limited, it was submitted that the Operational Creditor has acted in total violation of the terms of contract and has raised many false bills. It was further submitted that the Chairman Cum Managing Director of the Corporate Debtor is illiterate and the Operational Creditor had taken advantage of the same and cheated and misrepresented to him regarding various issues, including siphoning of huge amount from the Corporate Debtor's Company.

8. The Learned Counsel for the Corporate Debtor submitted that in the reply to the Demand Notice letter dated 18.11.2019, the Corporate Debtor has categorically stated the misfeasance and the lackadaisical approach of the Operational Creditor in handling the Corporate Debtor's machinery and that the Corporate Debtor has to incur heavy expenditure towards repairing and replacing various machinery and that in this regard, the Corporate Debtor has spent a sum to the tune of Rs.7 Crore. Further, it was submitted that as on date, the Corporate Debtor has paid a sum of Rs.22.79 Crore on various bills being raised by the Operational Creditor and that only the disputed bills alone is pending to be paid. Thus, it was submitted by the Learned Counsel for the Corporate Debtor that there is no outstanding amount which is lawfully due and payable by the Corporate Debtor to the Operational Creditor and under such

circumstances has sought for the dismissal of the present Application.

The Operational Creditor has filed rejoinder and a perusal of the same discloses the fact that they sought to deny the allegation made by the Corporate Debtor in their counter and reiterate that as per the MoU dated 22.08.2019, the balance sum of Rs.80 Lakh is due and payable by the Corporate Debtor.

9. Heard the submissions made by the Learned Counsel for the parties and perused the records. At the outset, we would like to point out here that, after the orders have been reserved in the present matter, it was brought to the notice of this Tribunal by the Registry that the Corporate Debtor had moved an Application seeking time to settle the matter with the Operational Creditor, however the said Application has not been listed for hearing before this Tribunal till date and in the said circumstances, untrammelled by the facts which are stated in the said Application for settlement, this AA proceeds to pass orders in the present Application.

10. From the facts, narrated above it is seen that the issue which is required to be decided delves around the fact as to the Memorandum of Understanding dated 22.08.2019, wherein the parties have arrived at a consensus, in and by which the Corporate

Debtor is required to pay a sum of Rs.1.30 Crore and thereby the Corporate Debtor having paid a sum of Rs.50 Lakh whether can now, at this point of time raise a dispute as to the remaining sum of Rs.80 Lakh.

11. A perusal of the typed set of documents filed along with the counter shows that the Corporate Debtor has placed on record the letter of dispute, all of which pertains to the period after issuance of the Demand Notice. In this context, it is necessary to refer to Section 8 of IBC, 2016

8. Insolvency resolution by operational creditor. –

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor –

(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the payment of unpaid operational debt-

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. – For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the

corporate debtor demanding payment of the operational debt in respect of which the default has occurred

(emphasis supplied)

12. A perusal of Section 8(2)(a) of IBC, 2016 manifests the fact that upon the receipt of the Demand Notice, the Corporate Debtor is required to bring to the notice of the Operational Creditor, the existence of any dispute **before** the receipt of the Demand Notice. In the present case, the Demand Notice was sent to the Corporate Debtor on 24.10.2019 and the same was received by the Corporate Debtor on 26.10.2019 and in their reply letter dated 18.11.2019, the Corporate Debtor has not brought to the notice of the Operational Creditor as to any dispute between the parties which has been raised, before the issuance of the Demand Notice. Only after the issuance of the Demand Notice on 24.10.2019, the Corporate Debtor for the first time has sought to refute the dues which is payable to the Operational Creditor.

13. Further, as per the Memorandum of Understanding dated 22.08.2019 entered into between the parties, whereby the dues of the Operational Creditor had been crystallized and in pursuance of the same the Corporate Debtor has also released an amount of Rs.50 Lakh to the Operational Creditor. Thus, in order to defeat the claim of the Operational Creditor for the remaining sum of Rs.80 Lakh, the Corporate Debtor for the first time sought to attribute

certain allegations towards the Operational Creditor, which cannot be considered as 'dispute' in terms of Section 8(2)(a) of IBC, 2016.

14. Thus, from the discussion made supra and from the documents placed in support of the claim being made in Part IV of the Application, it is seen that the Corporate Debtor is liable to pay the said sum of Rs.80 Lakh to the Operational Creditor as per the Memorandum of Understanding dated 22.08.2019 and has committed a default in payment of the same.

15. Further, the said debt has fallen due on the last date of invoice being 05.11.2019 and the present Application is being filed before this Tribunal on 10.01.2020 and hence the present Application falls well within the period of limitation.

16. Thus the Operational Creditor has proved the existence of an 'Operational debt' and the Corporate Debtor has committed 'default' in the repayment of the said 'Operational debt' to the Operational Creditor and in the said circumstances we are constrained to initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

17. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from

24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the present Application has been filed on 10.01.2020, which is well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

18. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition, as filed by the Operational Creditor, is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January – June 2021 appoints **Mr. Govindarajan M**, with Registration No. *IBBI/IPA-003/IP-N00293/2020-2021/13290* (email id: - *govind.ayyan@gmail.com*) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process

for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant

or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

19. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central

Government in consultation with any financial sector regulator or any other authority;

- (b) a surety in a contract of guarantee to a corporate debtor.

20. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

21. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-

R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond