

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.281/BB/2019
U/s.9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of

M/s. Ontop General Trading LLC,

Rep. by Authorized Representative

Mr. Abhimanyu Kumar

At Bengaluru, Karnataka.

Shop No.3, NAIF Building, Ayal Nasser,

P.O. Box No.29866, DEIRA,

Dubai, U.A.E

- Petitioner/Operational Creditor

Versus

M/s. Southern Batteries Private Limited

Plot No. 30, KIADB, Industrial Area,

Bommasandra,

Bengaluru – 560 099

- Respondent/Corporate Debtor

Date of Order: 26th August, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Smt. Suman Hegde

For the Respondent : None

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)



1. C.P. (IB) No.281/BB/2019 is filed by M/s. Ontop General Trading LLC, (Petitioner/Operational Creditor), U/s. 9 of IBC, 2016, R/w. Rule 6 of I&B (AAA) Rules, 2016, by inter alia, seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Southern Batteries Private Limited (Respondent/Corporate Debtor) on the ground that the Corporate Debtor has committed, default for an amount of USD. 67,250/- (Sixty Seven Thousand Two Hundred and Fifty only).
2. Heard Smt. Suman Hegde, learned Counsel for the Petitioner and none appeared for the Respondent. We have carefully perused the pleadings of the party and extant provision of the Code.
3. Smt. Suman Hegde, learned Counsel for the Petitioner/Operational Creditor has filed a Memo for Withdrawal dated 19.08.2019 (which is taken on record) which reads as under:

“the case was filed under dairy no.4418/2019 under insolvency and bankruptcy code, 2016, under section 9 of IBC 2016, as operational creditor, but upon careful perusal of the facts and information it has been decided that the Applicant/Petitioner is falling under section 7 i.e. Financial Creditor.

Hence the same may be permitted to be filed under section 7 of IBC 2016, with fresh application with liberty to file afresh considering the above facts and circumstances.”
4. Since the Company Petition is not yet admitted by the Adjudicating Authority, the learned Counsel for the Petitioner/Operational Creditor wanted to withdraw the instant Company Petition, filed U/s. 9 of the IBC, 2016, and with liberty to file fresh Company Petition U/s. 7 of the Code, we are inclined to permit the Petitioner/Operational to withdraw the instant Company



Petition by reserving liberty to the Petitioner to file fresh Company Petition U/s. 7 of IBC Code, 2016 in accordance with law.

5. In the result, C.P.(IB).No.281/BB/2019 is disposed of as withdrawn by reserving liberty to the Petitioner/Operational Creditor to file fresh Company Petition U/s. 7 of IBC Code, 2016, in accordance with law. No order as to costs.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi