IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB)-3517/MB/C-IV/2018

Under section 9 of the Insolvency & Bankruptcy Code, 2016

In the matter of

M/s Mahalakshmi Trading Corporation
...Operational Creditor

Versus

En Power Solutions Private Limited
[CIN: U40100MH2010PTC208971]
... Corporate Debtor

Order Delivered on 16.10.2019

Coram:

Mr. Rajasekhar V.K.	:	Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy	:	Hon'ble Member (Technical)

Appearances:

For the Operational Creditor	:	Adv Krishna Baruah i/b Pragyna Legal, Advocate
For the Corporate Debtor	:	Adv Sumit Yadav, i/b Mr Kenny Thakker, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by M/s Mahalakshmi Trading

Corporation ("the Operational Creditor"), a partnership firm represented by its Partner, Sandeep V Agrawal seeking to initiate Corporate Insolvency Resolution Process (CIRP) against En Power Solutions Private Limited ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares and incorporated on 13.10.2010 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U40100MH2010PTC208971. Its registered office is C/o Madhu Nair, 504, Old Ramdaspeth, Near Lendra Park, Nagpur, Maharashtra 440010. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 05.09.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.1,88,96,396.00 (Rupees one crore eighty-eight lakh ninety-six thousand three hundred and ninety-six only) as principal and Rs.1,28,79,866.00 (Rupees one crore twenty-eight lakh seventy-nine thousand eight hundred and sixty-six only) as interest as on 30.03.2016, which is the date of default.

4. The case of the Operational Creditor is as follows: -

(a) The Operational Creditor supplied MS Plates, sheets, Channels, Angles, Beams, Columns and RS Joist to the Corporate Debtor based on Purchase Orders (11 Nos.) issued between 01.07.2015 and 02.05.2016 (both dates inclusive). The Purchase Orders are placed at pp.84-96 of the Petition.

(b) Invoices dated between 28.01.2016 and 16.07.2016 (both dates inclusive) along with associated lorry receipts have been placed on record as **Exhibit 'III'** at pp.37-83. The invoices provide for interest in case of delayed payments, to be charged at the rate of 24% per annum.

(c) Bank statements are also attached as **Exhibit 'IV'** at pages 116-170.

(d) The total debt due and payable to the Operational Creditor is Rs.3,17,76,262.00 (Rupees three crore seventeen lakh seventy-six thousand two hundred and sixty-two only) inclusive of interest, as mentioned at pages 3-4 of the Petition.

5. The Operational Creditor had served a Demand Notice in Form 3 dated 01.06.2018 to the Corporate Debtor (**Exhibit 'I'**, pp.14-24) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice.

6. The Corporate Debtor has not submitted any reply in the matter. However, Mr Sumit Yadav, Learned Counsel appeared for the Corporate Debtor at the hearing on 27.09.2019.

7. We have heard the submissions of both sides and perused the records.

8. There is no reply either to the Demand Notice dated 01.06.2018 (pp.14-24), nor to the Petition itself in spite of repeated opportunities. The receipt of the Demand Notice by the Corporate Debtor is evidenced by the postal receipts and tracking information placed at pp.25-30 of the Petition.

9. Mr Sumit Yadav, Learned Counsel for the Corporate Debtor, appeared during the hearing on 27.09.2019 and submitted that the Corporate Debtor is not in a position to pay the amount due to the Operational Creditor. This statement is recorded. There is, therefore, a clear-cut admission on the part of the Corporate Debtor about its inability to clear the operational debt.

10. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

11. The Operational Creditor has proposed the name of **Mr Amit Chandrashekhar Poddar,** Registration No.IBBI/IPA-001/IP-P00449/2017-18/10792, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in

Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

12. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP(IB) No.3517/MB-IV/2018** filed by **M/s Mahalakshmi Trading Corporation,** the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **En Power Solutions Private Limited [CIN: U40100MH2010PTC208971],** the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Operational Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium,-

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of

Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) **Mr Amit Chandrashekhar Poddar,** Registration No.IBBI/IPA-001/IP-P00449/2017-18/10792, having address at 'AKSHAT,' No.7, Vijay Nagar, Katol Road, Near Durga Mata Mandir, Opp NCC Office, Nagpur, 440 013 [email: amitpoddar.ca@gmail.com, Mobile: 9422118000], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

RAJASEKHAR V.K.
Member (Judicial)

16.10.2019