

J.P.P

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

**IBA/1130/2019** filed Under Section 9  
of the Insolvency and Bankruptcy Code,  
2016 and Rule 6 of the Insolvency and  
Bankruptcy [Application to Adjudicating  
Authority], Rules, 2016

In the matter of **M/s. Base Electrical and Electronic Solutions Pvt. Ltd.**

**M/s. FOMRA ELECTRRONICS PRIVATE LIMITED**  
No.250, Govindappa Naicken Street,  
Parrys,  
Chennai - 600 001

.. *Operational Creditor*

- Vs -

**M/s. BASE ELECTRICAL AND ELECTRONIC SOLUTIONS PVT. LTD.**  
No.151, Old No.68,  
1<sup>st</sup> Floor, T.T.K. Road,  
Alwarpet  
Valasaravakkam,  
Chennai - 600 087

.. *Corporate Debtor*

*Order delivered on 11<sup>th</sup> December 2019*

CORAM:

**R. VARADHARAJAN, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For the Operational Creditor : Gaurav Kumar Jain, PCS*  
*For the Corporate Debtor : None appeared*

**ORDER**

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**

**Heard and dictated in open Court on 11.12.2019**

Learned Counsel for the Applicant/Operational Creditor  
present. None appears for the Corporate Debtor. This Application

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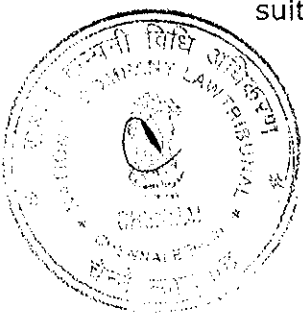


has been filed by the Applicant in the capacity as an Operational Creditor as against the Corporate Debtor claiming a sum of Rs.27,95,490/- (Rupees Twenty Seven Lakhs Ninety Five Thousand Four Hundred Ninety only) comprising of Rs.17,01,983/- being the Principal amount and Rs.10,93,507 being the interest amount at the rate of 24% per annum. The claim arises by way transaction of supply of cables by the Applicant/Operational Creditor to the Corporate Debtor. As mentioned in the Part-II of the application filed under Insolvency and Bankruptcy Code, 2016, read with I&B (AAA) Rules, 2016, the registered office of the Corporate Debtor is stated to be at 40-B, S.M.S. Layout-North, Ondipudur, Coimbatore-641016, Tamilnadu and the Corporate Debtor was incorporated on 15.07.2008 with Company's Identification No.U31103TZ2008PTC014640. The Nominal Share Capital of the Corporate Debtor is stated to be Rs.35,00,000/- and Paid Up Share Capital Rs.1,20,000. The Applicant/Operational Creditor has not proposed the name of Interim Resolution Professional (IRP) in Part-III of the application. Part-5 of the application discloses the records and evidences of default as laid upon by the applicant/operational creditor in relation to the claim amount which include post-dated cheques which has been issued by the Corporate Debtor and the cheque return memos in relation to the cheques issued by the Corporate Debtor. Despite notice to the Corporate Debtor, none

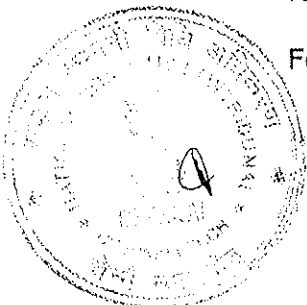


appeared on the part of the Corporate Debtor though proof of service has been filed in the form of an affidavit before this Tribunal. The counsel for the Petitioner during the course of submissions brings to the notice of this Tribunal that in the earlier round, the Corporate Debtor had given post-dated cheques which were given for the claim amount by entering into a settlement deed dated 04.02.2019 which persuaded the Petitioner to seek for withdrawal of Petition CP/1259/(IB)/2018 filed before this Tribunal. As a sequence, this Tribunal taking note of the representation made by the Petitioner and the Corporate Debtor dismissed the Petition as withdrawn as a settlement has been arrived at between the parties.

2. The counsel for the Applicant has pointed out the settlement deed dated 04.02.2019 wherein it is seen that the Corporate Debtor has admitted the claim of Rs.21,55,683/- (Rupees Twenty One Lakhs Fifty Five Thousand Six Hundred and Eighty Three) repayable in 7 instalments for which post-dated cheques have also been issued as reflected in the settlement deed dated 04.02.2019. It is also pointed out by the learned AR that in case if the Corporate Debtor fails to honour the settlement deed, liberty has been given to the Operational Creditor to pursue/resume/reopen CP/1259/(IB)/2018 under the provisions of Insolvency and Bankruptcy Code, 2016 or file any other suit for recovery of amount from the Corporate Debtor as per law for

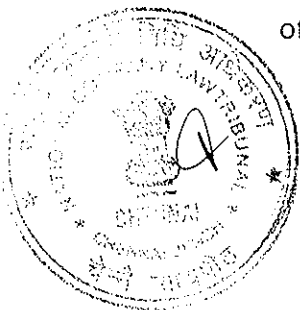


the time being in force. In view of the non-adherence on the part of the Corporate Debtor to honour the settlement deed dated 04.02.2019 and the post-dated cheques therein when the same was presented by the Applicant, there is a patent default on the part of the Corporate Debtor. It is further represented by the Applicant/Operational Creditor even after receipt of demand notice by the Corporate Debtor as evidenced from Page 31 to 35 of the application read along with the typed set of documents, no payments had been received. As rightly pointed out by the learned counsel for the petitioner in the earlier round, the Corporate Debtor specifically admitted the claim amount towards principal and in relation to the interest amount claim a portion of it and despite it, the Corporate Debtor has committed a default which is also evidenced by the fact that the post-dated cheques which has been issued by the Corporate Debtor pursuant to the settlement deed which persuaded the Petitioner in the earlier round to withdraw the Petition had been defaulted. In the circumstances there is a clear evidence in the case of the existence of operational debt and the default of such operational debt which is payable by the Corporate Debtor to the Operational Creditor as defined under Section 3(12) of the Insolvency and Bankruptcy Code, 2016. The amount claimed is Rs.27,95,490/- (Rupees Twenty Seven Lakhs Ninety Five Thousand Four Hundred Ninety only) which is in excess of Rs.1,00,000/- being



the threshold limit fixed under Section 4 and in view of the absence of any existence of any dispute and further in relation to the Corporate Debtor the registered office of which is situated within the State of Tamilnadu, this Tribunal has no hesitation in admitting this Petition and in initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

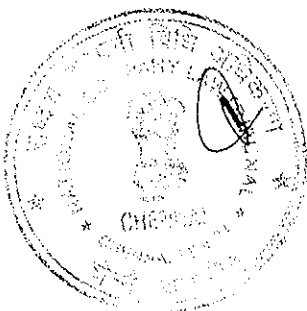
3. By taking into consideration the facts mentioned supra, we are inclined to **admit** the Application as has been filed by the Operational Creditor and consequently Corporate Insolvency Resolution Process is initiated. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints **Mr. Vengetrao** with Registration Number *IBBI/IPA-002/IP-N00445/2017-18/11331* (Email id:- *kvengetrao@gmail.com* Mobile No: +91 9840112546) 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.
4. However, during the pendency of the moratorium period in terms of Section 14(2) 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.

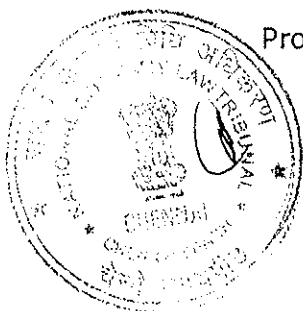
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

5. 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.

6. The Operational Creditor is directed to pay a sum of **₹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.

7. Based on the above terms, the IBA/1130/2019 stands **admitted** in terms of Section 9(5) of IBC, 2016. 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.

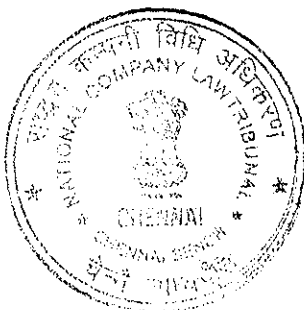
-SD-  
**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

*KNP / Raymond*

-SD-  
**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)



13/12/18



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