IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IBA/1089/2019

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of M/s. **Forza Castings Private Limited**

Fine Product Enterprises
12 – 15, New Dhamu Nagar,
Puliyakulam Road,
Coimbatore – 641 037

... *Operational Creditor*

-Vs-

M/s. Forza Castings Private Limited,
116/1, 170/3d/171/7,
Pathuvampalli Village,
Coimbatore – 641 045.

... *Corporate Debtor*

Order pronounced on 23rd March 2021

CORAM :

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

For Operational Creditor : *Athiban Vijay, Advocate*
For Corporate Debtor : *None present*

ORDER

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

1. This is an Application filed under Section 9 of Insolvency and Bankruptcy Code, 2016 *(hereinafter referred to as "IBC,2016")* by **Fine Products Enterprises** *(hereinafter referred as Operational Creditor)* seeking thereof to initiate Corporate Insolvency

Resolution Process (CIRP) against **M/s. Forza Castings Private Limited** *(hereinafter called as Corporate Debtor)*.

2. From Part I of the Application, it is seen that this Application has been filed by the Applicant in the capacity as Partnership firm represented by its Partner B. Shanthi. From Part II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 01.06.2010 having Corporate Identification Number CIN : U27104TZ2010PTC016097 and as per the Application the Registered Office address of the Corporate Debtor is stated to be situated at 166/1, 170/3d/171/7, Pathuvampalli Village, Coimbatore – 641045.

3. Part III of the Application discloses the fact that Applicant has not proposed the name of an Interim Resolution Professional (IRP) and left it to the discretion of this Tribunal to appoint the IRP. From Part IV of the Application it is seen that the Operational Creditor has claimed a sum of Rs.6,72,086/- as due and payable by the Corporate Debtor.

4. Part V of the Application discloses the list of Purchase Order issued and Invoices raised by both the parties respectively and also the Statement of Accounts and the cheques issued by the Corporate Debtor.

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is a dealer engaged in offering wide range of engineering tools and the during the year 2018 – 19, the Corporate Debtor approached the Operational Creditor for supply of grinding wheels and after due negotiations, the Corporate Debtor issued three purchase orders dated 07.06.2018, 18.07.2018 and 03.09.2018 bearing P.O. No. 652, 662 and 682 respectively. As per the said Purchase order, the Operational Creditor supplied goods to the Corporate Debtor and raised various Invoices which are detailed as follows;

INVOICE NO.	INVOICE DATE	AMOUNT RECEIVABLES FROM THE CORPORATE DEBTOR (₹)
CINC301541	08.06.2018	1,62,840
CINC302313	10.07.2018	1,62,840
CINC302523	18.07.2018	10,762
CINC303381	24.08.2018	40,710
CINC303597	03.09.2018	I,88,215
CINC304901	30.10.2018	32,568
CINC304996	08.11.2018	32,568
CINC305112	14.11.2018	37,996
CINC305268	20.11.2018	3,587
TOTAL		**6,72,086**

6. It was submitted by the Learned Counsel for the Operational Creditor that the supplies were completed between the period 08.06.2018 and 20.11.2018 and for all the supplies being made by the Operational Creditor, the Corporate Debtor without any rhyme or reasons is withholding the payments and also it was submitted

that the supplies rendered by the Operational Creditor did not suffer from any deficiencies.

7. The Learned Counsel for the Operational Creditor submitted that despite completion of obligation by the Operational Creditor and acknowledging the receipt of the goods by the Corporate Debtor, the Corporate Debtor has failed to make the payments in so far as the goods supplied to the tune of Rs.6,72,086/-. It was submitted that the Corporate Debtor has received the goods supplied by the Operational Creditor without any demur or protest and no dispute towards the quality of material, amount of invoice or debit note or of whatsoever nature was raised by the Corporate Debtor.

8. It was submitted that the Operational Creditor in accordance with Section 8 of IBC, 2016 has caused a Demand Notice to the Corporate Debtor on 29.06.2019, which was delivered to the Corporate Debtor on 01.07.2019 and inspite of the same, the Corporate Debtor has not replied to the said Demand and an Affidavit under Section 9(3)(b) of IBC, 2016 to this effect is also filed by the Operational Creditor. In the circumstances, Learned Counsel for Operational Creditor has submitted that debt and default on the part of the Corporate Debtor is proved and as such prayed for initiation of the CIRP against the Corporate Debtor.

9. In relation to the Corporate Debtor it is seen from the records that the matter first came up for hearing on 21.11.2019 before this Tribunal. It is seen that on 05.02.2020, one Authorized Representative on behalf of the Corporate Debtor appeared before this Tribunal, however this Tribunal noted that since there was no authorization letter or Board Resolution available on record, his appearance was not entertained and directed him to produce the authorization letter / Board Resolution. Subsequent thereafter, it is seen that there was no representation on behalf of the Respondent. Thus, it is seen that the Corporate Debtor is deliberately avoiding to appear before this Tribunal for the reasons best known to them.

10. From the submission made by Learned Counsel for the Operational Creditor and from the documents placed in support of the claim being made in Part IV of the Application, it is seen that the claim as made by the Operational Creditor is admitted by the Corporate Debtor and there is no dispute in relation to the same. Further, the said debt fell due on the first date of invoice being 08.06.2018 and the present Application being filed before this Tribunal on 16.09.2019 and hence the present Application falls well within the period of limitation.

11. Thus the Operational Creditor has proved the existence of an 'Operational debt' and its 'default' on the part of the Corporate Debtor and in the absence of any objection being raised by the Corporate Debtor, we are of the considered view that the Corporate Debtor has committed 'default' in the repayment of the 'Operational debt' to the Operational Creditor and in the said circumstances we are constrained to initiate the CIRP in relation to the Corporate Debtor.

12. Further in relation to the pecuniary jurisdiction enhanced from Rs.1 lakh to Rs. 1 crore on and from 24.03.2020, it is seen the present Application was filed before this Tribunal on 16.09.2019 and as such this Tribunal has got pecuniary jurisdiction to entertain the present Application.

13. 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. S. Dehaleesan,** with Registration No. *IBBI/IPA-001/IP-P01807/2019-2020/12907*

(email id:- dehaleesan@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;

14. 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 mange 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.

15. 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.

16. 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.

17. 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-	-SD-
(ANIL KUMAR B)	**(R.VARADHARAJAN)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Raymond