

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT III, MUMBAI BENCH**

C.P. (I.B) No. 842 of 2022

Under Section 8 & 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016.

In the matter of **M/s. EnerMech India Pvt. Ltd.** having its registered address AML Centre — 1, 4th Floor, Paper Rox Road, Off Mahakali Caves Road, Andheri (East), Mumbai — 400 059

CIN: U74120MH2012FTC228587

...Petitioner/ Operational Creditor

V/s.

Gopinath Engineering Co. Pvt. Ltd.

having its registered address at; 15 C Wing, Mezzanine Floor, Satyam Owners Premises CHS Ltd, M.G Road, Satyam Shopping Center, Ghatkopar - (East),

Mumbai - 400077

CIN: U99999MH1983PTC029832

...Respondent/Corporate Debtor

Order Reserved on: 02.06.2023

Order Pronounced on: 11.07.2023

Coram: Shri H.V. Subba Rao, Hon'ble Member (Judicial)

Smt. Madhu Sinha, Hon'ble Member (Technical)

For the Petitioner: Mr. Rajeeq Peermohideen a/w Taneem Zaiwala and Mr. Indrajeet Deshmukh, Advocates.

For the Respondent: Mr. Rahul Sarada, a/w Ms. Pooja i/b Manoj &Co, Advocates

Per: Smt. Madhu Sinha, Member (Technical)

ORDER

1. This Company Petition is filed by **M/s. EnerMech India Pvt. Ltd.** (hereinafter called as “**Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Gopinath Engineering Co. Pvt. Ltd.**, (hereinafter called as “**Corporate Debtor**”) by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called as “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Operational Debt of **Rs. 6,27,22,716.00** /- as on 30th June 2022.

A. Submissions on behalf of the Operational Creditor.

- a. Sometime in the year 2020, Hindustan Petroleum Corporation Limited (“HPCL”) issued Tender No. 20000577-HD-48002 inviting offers for performance of various services such as carrying out Bolt Torquing, in- situ Machining jobs and also carrying out jobs on heaters and columns, piping jobs, hire charges for various types of equipment, etc.

- b. The Operational Creditor states that the Gopinath Engineering Co. Pvt. Ltd. i.e., the Corporate Debtor made an offer to HPCL in response to the said tender, for the consideration of Rs. 15,85,67,590 (Rupees Fifteen Crores Eighty-Five Lakhs Sixty-Seven Thousand Five Hundred and Ninety only), exclusive of GST, which was accepted by HPCL vide Letter of Acceptance dated 12th January 2021.
- c. Thereafter, various discussions and correspondence, Petitioner of this Company Petition was contracted by the Corporate Debtor to provide work services for Rs. 8,04,56,359/- (Rupees Eight Crores Four Lakhs Fifty-Six Thousand Three Hundred and Fifty-Nine Only), inclusive of GST.
- d. In lieu of the services provided by the Operational Creditor, the Operational Creditors raised invoices against the due payments. However, the Corporate Debtor defaulted in payment of invoices from 24 June 2021 and was unable to cure this default even after multiple assurances and promises.
- e. Therefore, the Operational Creditor raised and sent a Demand Notice dated 31st May 2022 to the Corporate Debtor. Since the said Demand Notice was returned undelivered, Demand Notices dated 6th June 2022 and 18th June 2022 were addressed to the

Corporate Debtor and the Directors of the Corporate Debtor respectively.

- f. Since no payments were forthcoming from the Corporate Debtor after delivery of the said Demand Notices, the Operational Creditor was constrained to file the present Petition.

B. Submissions on behalf of the Corporate Debtor:

1. The Corporate Debtor has filed a detailed reply dated 5th December 2022, opposing all the contentions raised by the Operational Creditor in the present petition. In their reply, the Corporate Debtor has raised the contention mainly on the ground of pre-existing dispute between the parties. The Corporate Debtor states that Hindustan Petroleum Chemical Limited ("**HPCL**") awarded a contract to the Corporate Debtor to carry out certain job work at its Mumbai Refinery which was further sub-contracted by the Corporate Debtor to the Petitioner Company. The Corporate Debtor states that time was of essence in the contract, hence was to be carried out on round-the-clock basis. Further in case of any delay, HPCL was entitled to make deductions/ price reductions for every day of delay beyond the time schedule and was also entitled to levy penalties on the Respondent as per the contract terms. The Corporate Debtor states that the HPCL has still not made final payments for this contract.

2. Further, Mr. Abhay Mehta, employee of the Petitioner had first represented to the Corporate Debtor that the Petitioner would fund the entire project being undertaken by the Respondent w.r.t to the HPCL refinery. However, after receiving the sub-contracts from the Corporate Debtor, Mr. Abhay Mehta informed the Corporate Debtor that the Petitioner could fund only that part of the work which was being executed by the Petitioner and not the entire project being awarded by HPCL to the Corporate Debtor.
3. By an email dated 14th April 2021, the Corporate Debtor informed the Petitioner that HPCL had complained *inter alia* about the slow progress of work being carried out at their site. At a stage where the progress of the work ought to have been to the extent of 50% whereas the actual work done by the Petitioner was only up to 5%. As stated earlier, time was of essence of the contract, but the Petitioner has delayed in execution. This has exposed the Corporate Debtor to levy of penalty and/ or recovery of liquidated damages by HPCL. All this was highlighted by the Corporate Debtor in its email dated 22nd April 2021 sent to the Petitioner.
4. Despite the above, the Petitioner did not take any remedial measures. The issues raised by the Corporate Debtor in the emails dated 14th April 2021 and 22nd April 2021 to touch upon the aspects such as quality of services performed by the Petitioner and breach by the Petitioner of representations & warranties given to the Corporate

Debtor. The Corporate Debtor pointed out regarding the slow pace *inter alia* of piping work being carried out by the Petitioner which was recorded by the Corporate Debtor in an email dated 2nd May 2021 addressed to the Petitioner.

5. Despite the slow pace of work and the same being pointed out to it, the Petitioner took no steps to remedy the same. As a result, by email dated 22nd May 2021, HPCL complained to the Corporate Debtor regarding the same. Since the work being complained about by HPCL was being handled by the Petitioner, immediately upon receipt of the said email from HPCL, the Corporate Debtor addressed an email dated 23rd May 2021 to the Petitioner pointing out that the manpower in the heater jobs was very low and no one was monitoring the work. Since the Petitioner knew it was at fault, the Petitioner, by email dated 23rd May 2021, did not dispute the position set out in the email dated 23rd May 2021 addressed by the Corporate Debtor or the complaints raised by HPCL. By another email dated 23rd May 2021 addressed by the Corporate Debtor to the Petitioner, the Corporate Debtor categorically pointed out that the way the Petitioner was carrying out the work was unacceptable. The Petitioner did not dispute the contents of the emails addressed by the Corporate Debtor and in fact made a show of some action being taken at its end by addressing another email dated 23rd May 2021 asking its team to monitor each activity more closely.

6. The Corporate Debtor kept requesting the Petitioner that in case of all RA bills, the Petitioner must submit details of actual work done including details of rental and consumables along with site certification, equipment entry/ exit details etc. so that if there were further amounts, the same could also be released. By email dated 15th June 2021, the Petitioner forwarded to the Corporate Debtor certain documents such as purchase order etc. Immediately thereafter, on the same date, the Corporate Debtor responded to the email addressed by the Petitioner stating that the Petitioner must submit details of actual work done including details of rental and consumables along with site certification, equipment entry/ exit details etc. It is pertinent to note that HPCL till date has not released the final payments for this contract due to various violations /deviations by the Petitioner.

7. The Petitioner also failed to release the payments of its own workers/ employees who were engaged for the project. This resulted in labourer's complaining to the office of the Assistant Labour Commissioner. As per the terms of the sub-contracts, the Petitioner was under an obligation to pay wages and salaries to its workers and labourers. If the labourers remained unpaid, they could file complaints against the Corporate Debtor as well as HPCL before the Assistant Labour Commissioner. Under the labour laws, the principal i.e. the Corporate Debtor and even its principal i.e. HPCL could have been made liable for such payment. The same could have resulted in stoppage/ further delay in work and

caused grave reputational damage to the Corporate Debtor as well as to HPCL. The same was pointed out by the Corporate Debtor in its email dated 27th August 2021 addressed to the Petitioner. HPCL addressed an email dated 13th May 2021 to the Corporate Debtor in this regard. Despite the Corporate Debtor not being at fault, the non-payment of salaries and wages by the Petitioner reflected a negative image of the Corporate Debtor before its client *viz.* HPCL.

8. By email dated 14th September 2021, HPCL called upon the Corporate Debtor to resolve the labour non-payment issue and update the same to HPCL. The incompetence of the Petitioner was also communicated by the engineers engaged by the Petitioner itself. It is submitted that there are hundreds of workers who have communicated the non-payment of their wages over the period of the contract.
9. Till date, the Petitioner has not provided any documents to the Corporate Debtor in support of its RA bills/ tax invoices beyond the ones in respect of which the Corporate Debtor has already made payment to the Petitioner. The course of discussions between the director of the Corporate Debtor Mr. Nair and Mr. Abhay Mehta admitted before the Corporate Debtor that he and Mr. Rohit Kumar were overworked, and hence, could not visit the site more often and the site management was left in the hands of incompetent supervisors. It is on this account that the Petitioner incurred more

expenses because of wastage of resources such as material and labour. The Corporate Debtor is not liable in respect of the additional work that the Petitioner claims to have performed.

10. The total contract value of the sub-contracts awarded by the Corporate Debtor to the Petitioner was Rs. 5,52,26,675/-. Therefore, the invoices raised beyond this figure are bad in law and beyond the terms of the sub-contracts. The statement in Part IV of the Petition that “... *the Operational Creditor was contracted by the Corporate Debtor to provide work services as part of the contract of the Corporate Debtor with HPCL for Rs. 8,04,56,359/- ...*” is without any basis. The total contract value of the sub-contracts awarded by the Corporate Debtor to the Petitioner was Rs. 5,52,26,675/- and the same is clearly borne out from the sub-contracts. Thus, the Petitioner has raised a claim for an additional of Rs. 2,26,09,684/- in respect of which there are no sub-contracts. There is no proof in the form of certification from HPCL that the Petitioner has carried out this work and/ or that the Petitioner has made payments to the workers. This shows that there is a pre-existing dispute about the existence and/ or the amount of the alleged debt.
11. Furthermore, the Petitioner has incorrectly raised three invoices of Rs. 1,88,40,748/- (page no. 76 of the Petition), Rs. 1,13,84,286/- (page no. 79 of the Petition) and Rs. 47,20,000/- (page no. 80 of the Petition) aggregating to Rs. 3,49,45,034/- because of the alleged

additional work done by the Petitioner due to the errors/ mistakes and inefficiencies of the Petitioner. The Corporate Debtor is not liable to pay the same at all.

12. The Petitioner has further charged interest on its alleged outstanding invoices. Furthermore, the Petitioner claims to be an MSME and has charged exorbitant rate of interest on its alleged outstanding invoices. The Corporate Debtor states that since there is no alleged outstanding due in favour of the Petitioner, the question of charging interest does not arise. the sub-contracts executed between the Corporate Debtor and the Petitioner did not provide for payment of any interest. Hence, the interest has been wrongly charged. Furthermore, the Petitioner has not produced any document/ record based on which it claims to be entitled to charge exorbitant rates of interest under the MSME Act. The dues dates of payment set out by the Petitioner in Exhibit G @ pg. 113 of the present Petition is also imaginary.
13. It is important to note that the Corporate Debtor has paid amounts aggregating to Rs. 2,66,24,749/- to the Petitioner as Ad-hoc/ mobilization and labour payments. It is an admitted position between the parties that the said payment has been made by the Corporate Debtor. The same is clearly recorded in the ledger account of the Corporate Debtor in the books of the Petitioner.

14. The Corporate Debtor is also contractually entitled to deduct a sum @ 0.5% per day subject to a maximum of 5% of the sub-contract value. Since the Petitioner did not complete the work and left the site, the Corporate Debtor is entitled to recover a sum of 27,61,334/- (being 5% of the aggregate sub-contract value of Rs. 5,52,26,675/-). Furthermore, HPCL has deducted 15% of each invoice value towards non-submission of statutory documents and that is due to the breach of the Petitioner. Therefore, the same must be borne by the Petitioner in terms of the contract. Therefore, it is the Corporate Debtor that is entitled to recover money from the Petitioner. This amount is contractually agreed between the parties.

15. These disputes were raised by the Corporate Debtor much prior to the issuance of the Demand Notice dated 6th June 2022 by the Petitioner. The present Petition is filed without any authority from the Board of Directors of the Petitioner to file proceedings for initiation of corporate insolvency resolution process against the Corporate Debtor. Therefore, there is a pre-existing dispute between the parties. The Petitioner has suppressed all documents/ details/ information/ correspondence regarding the pre-existing disputes between the parties

FINDINGS AND OBSERVATIONS

1. Heard the Counsel appearing for Operational Creditor and Counsel appearing for the Corporate Debtor and perused the documents, available on record. The present Petition has been filed by Enermech India Private Limited seeking to initiate CIRP against the Corporate Debtor i.e., Gopinath Engineering Co. Private Limited for defaulting to pay the outstanding amount due and payable in respect of performance of services under a sub contract dated 12.01.2021 entered between the Corporate Debtor and the Operational Creditor. Upon the perusal of Part-IV of the Petition, the total amount claimed to be in default stands at Rs. 6,27,22,716/- including interest as on 30.06.2022 with the date of default being 24.06.2021. This Petition has been filed by the Operational Creditor u/s. 9 of the Code on 27.07.2022, which is within the limitation period. The Counsel for the Operational Creditor has drawn the attention of the Bench to the fact that the Demand Letter/Notice initially was issued on 31.05.2022 and upon the change of the registered address, it was delivered to the Directors of the Corporate Debtor on 18.06.2022. It is undisputed fact that the Corporate Debtor has not replied to the notice issued under section 8 dated 31.05.2022 and 18.06.2022. From the submission of the parties, the short point for consideration for this Adjudicating Authority is:

Whether there is any discernible pre-existing dispute surrounding the debt claimed to be due and payable by the Corporate Debtor?

2. The first and the foremost contention of the Corporate Debtor is that there were pre-existing disputes by virtue of the alleged failure of the Operational Creditor to conduct the work allocated under the subcontract in a timely manner, since time was of essence for completion of the performance of assigned services. Therefore, the said disputes were already existing and remained unresolved as the Operational Creditor failed to fulfill the demand. In this regard, the Operational Creditor has drawn attention of this Bench to an e-mail dated 04.08.2021 and 17.11.2021 wherein the Corporate Debtor has independently admitted the claim of the Operational Creditor. The relevant portion of the emails dated 4th August 2021 and 17th November 2021 are reproduced hereinbelow for ready reference:

i. Email dated 4th August 2021 (Page 26 of the Rejoinder)

From: Rajunair<rajugnair@gmail.com
Sent: 04 August 2021
To: Shivram Ghurav
CC: Rohit Kumar; Abhay Mehta; Chetan Mistry (chetan@imprint.net.in);
[Joaquim Dsouza](mailto:Joaquim.Dsouza)
Sub: Re: Repayment

Dear Sir,

I sincerely regret the delay in replying to your email. We have been tied up with various activities related to completion of the shutdown contract.

You are aware that the covid pandemic has affected the schedule of our project and the work which was to be completed by early June 2021 has not yet achieved 100% completion. This has in turn resulted in cost overruns and delayed payments.

We are doing our best to complete balance activities which will help us to get our payments released from HPCL. This will help us to release the payments to M/s. Enermech.

As discussed during our last meeting at site, there have been many learnings for Enermech from this project which I hope will help Enermech in its future projects. We should discuss this part in detail at a later stage because some critical aspects which affected our current project should not be repeated when we work together again in future.

Regarding pending payments, I appreciate the fact that Enermech has been very supportive, and I assure you that all dues will be paid to Enermech.

Considering the current situation and the projected receipts I can assure that we will clear all your payments as per the terms of the contract within two months i.e. by first week of October 2021.

We will be releasing a major amount, approx. Rs.100 lakhs in the coming one month and balance amount in the next one month.

The timeline of the project had to be revised due to non-availability of manpower and other resources due to the lockdown restrictions. This was an unforeseen circumstance, and we have all taken the hit financially and otherwise due to the same. I seek your support and co-operation on the same.

The market is full of opportunities, and we look forward to a mutually beneficial long-term association with M/s. Enermech.

Regards;

*Raju Gopinath Nair,
Managing Director*

ii. Email dated 17th November 2021 (page 100 of the Petition)

From: Rajunair<rajugnair@gmail.com

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT III, MUMBAI BENCH

C.P. (I.B) No. 842 of 2022

Sent: 17 November 2021 06:57

To: Sandeep Sharma <ssharma@enermech.com>; James
Nguyen james.nguyen@enermech.com; Chetan Mistry
(chetan@imprint.net.in); <chetan@imprint.net.in> Shivram Gurav
<sgurav@enermech.com>; Chua Li
Kheng <lkchua@enermech.com>; Sneha Rajguru
<srajguru@enermech.com>; Joaquim Dsouza
Joaquim.dsouza@enermech.com; Swee Cheng
Ng <sng@enermech.com>; Darren Seet dseet@enermech.com

Subject: Shutdown Contract

*“Since the last two months we have been tangled in a legal case due to which we were unable to release any payment to Enermech during this period. The final hearing of the case is on 2nd December 2021 after which things will normalize and we will be in a **better position to release payments to Enermech. We will release all due payments to Enermech at the earliest.**”*

3. Therefore, it is clear from the above correspondence that the Corporate Debtor had admitted the liability through the above e-mails. Further, Mr. Raju Nair who is director of the Corporate Debtor has in fact agreed to release Rs. 1,00,00,000/- (*Rupees One Crores Only*) to the Operational Creditor in September 2021 and the balance in October 2021. Unquestionably by this e-mail, the Corporate Debtor has admitted its liability to the Operational Creditor. It is also observed that Mr. Raju Nair, the Director of the Corporate Debtor vide email dated 4th August 2021 in reply to email dated 19th July 2021 admitted to the Operational Creditor that due to Covid-19 pandemic the schedule of the project and the work which was to be completed by early June 2021 has been delayed. Therefore, it is observed from the above correspondences shows that no breach was committed by the Operational Creditor for the work done by

it and the delay, if any, in completion of the project was due to pandemic and not due to Operational Creditor. The Corporate Debtor had admitted to having delayed payment to the Operational Creditor, with many assurances to rectify the terms subject to which the Operational Creditor was to carry out the contractual works.

4. The Corporate Debtor in order to substantiate the ground of pre-existing dispute has annexed an email dated 14.04.2021 at Exhibit B at page no 26 to Affidavit -in-Reply, complaining about the services provided by the Operational Creditor. While, rebutting to this contention, Operational Creditor submitted that if any such coercion or duress was there, the Corporate Debtor wouldn't have given the undertakings one after the other letter raising complaints relating to work. Therefore, it is observed that the Corporate Debtor has belatedly raised the purported issues, which were never agitated before. In addition to the above, the Corporate Debtor has not even replied to the Demand Notice raising the above issues.
5. The next issue raised by the Corporate Debtor is that the Operational Creditor is not entitled for the claimed amount in the present case as the contract value awarded by the Corporate Debtor to the Petitioner is of Rs. 5,52,26,675/- wherein the Petitioner has raised the claim of Rs. **6,27,22,716.00** /-. Further, the Petitioner has raised an additional claim of Rs. 2,26,09,684/-, however, there are no sub-contracts pertaining to the said amount. Countering this contention, the Operational Creditor

contended that he was the sub-contractor appointed by the Corporate Debtor for the work contract taken by it from HPCL. There was no dispute by the Corporate Debtor on the amounts claimed by the Operational Creditor till the time of filing the present Petition. To substantiate the contention the Operational Creditor has drawn the attention of the Bench to the fact that the invoices were raised by the Operational Creditor upon the Corporate Debtor were timely uploaded on the online portal of the Goods and Services Tax Network in the name of the Corporate Debtor respectively. Pursuant to which, the Corporate Debtor has claimed 'Input Tax Credit' for the said invoices, without raising any dispute on them, which shows that the amounts raised under the invoices are admitted as being due and payable to the Operational Creditor. The said fact has not been denied by the Corporate Debtor in its argument which annexed as *Exhibit B Colly, Page 22 to 24, Rejoinder of the Operational Creditor*. Furthermore, Operational Creditor vide e-mail dated 19th July 2021, informed the Corporate Debtor that its contract with the Corporate Debtor for providing shut down services at HPCL site is almost complete. The Operational Creditor in the said email highlighted the fact that the invoices issued to the Corporate Debtor for the work done by the Operational Creditor has not been released and the Operational Creditor has already spent amounts in procurement of materials/services and payment of personnel wages and salaries engaged for execution of the contract. The Operational Creditor once again requested the Corporate

Debtor to release payment of all invoices to it. (*Exhibit D colly Page 27, Rejoinder of the Operational Creditor*).

6. It is noteworthy to mention here that has been no demur or protest on the part of the Corporate Debtor when the invoices were issued to it. Upon the bare perusal of the documents on record the Corporate Debtor was required to pay said invoices within 7 days from the date when they were issued, which were neither paid nor disputed by the Corporate Debtor.
7. The Operational Creditor has further contended that the Corporate Debtor is relying upon emails in its reply for pre-existing disputes which cannot be considered as a dispute as these emails were exchanged between parties to resolve hurdles in day to day execution of work. There has been no real dispute on the amounts or invoices raised by the Operational Creditor. It is further observed that the emails relied upon by the Corporate Debtor in its reply are more specifically in the month of May and April 2021. The email whereby the Corporate Debtor has appreciated the work of the Operational Creditor and has promised to pay its dues is dated 04.08.2021 which is later to raising the disputes by Corporate Debtor. It is further observed that in case there was any breach on the part of the Operational Creditor, the Corporate Debtor would not have assigned work to Operational Creditor after the email dated 4th August 2021, as work done through the work orders dated 12th August

2021 and 16th August 2021. **(Exhibit "N to P", Page Nos.132 to 142 of the Petition)**

8. The next contention of the Corporate Debtor that the Operational Creditor failed in paying the salaries of the labourers/ employees, executing its work, and issuing final bill to the Corporate Debtor. Rebutting to the contention the Operational Creditor has annexed emails showing dues paid to the workers with the document annexed at **(Exhibit C to, Page 25 of the Rejoinder)** wherein the work was completed by the Operational Creditor **(Email dated 19th July 2021 Exhibit D Colly to Rejoinder)** and submission of RA bills and final bills **(Exhibit M, P, S and T of the Petition (Page 71,77,81 of the Petition and Exhibit F & G Page 29 to 31 and 35 of the Rejoinder).**
9. The Operational Creditor contended that he did not have any contract with HPCL, and therefore there was no question of the Operational Creditor getting certifications and/or reconciliations from HPCL. The bills and the supporting documents were submitted to the Corporate Debtor. The Operational Creditor was a sub-contractor appointed by the Corporate Debtor under its contract with HPCL for carrying out specific work under the various work orders. Upon completion of such works, the Corporate Debtor had to make payments to the Operational Creditor and produce 'No Dues Certificate 'to HPCL to get its balance payment.
10. The Operational Creditor has further contended that the Corporate Debtor is trying to shift the onus of its performance on the Operational

Creditor though it was Corporate Debtor who was the contractor of HPCL. All certifications and/or reconciliations were thus required to be done by the Corporate Debtor and not by the Operational Creditor. Further, there is nothing in the record to show that any penalty has been imposed by HPCL upon Corporate Debtor due to service offered by the Operational Creditor. It is also noted that no proceedings or notice or document have been placed on record to show that any action has been taken by HPCL against Corporate Debtor because of the Operational Creditor. Therefore, the argument of the Corporate Debtor about levying of penalty and delay in execution of work cannot be availed by him.

11. The Operational Creditor was not the only subcontractor appointed by the Corporate Debtor to do work for HPCL. The Corporate Debtor has neither terminated the contract with the Operational Creditor, nor even issued any notice or filed any proceeding against the Operational Creditor due to lack or inefficiency in the service of the Operational Creditor. On the contrary, the Corporate Debtor has admitted paying the dues of the Operational Creditor. Vide emails dated 22nd November 2021 (*Page 87 to 89 D of the Petition*), 8th December 2021 (*Exhibit BB Page 163 to 164 of the Petition*), 25th January 2022 (*Exhibit CC page 165 to 166 of the Petition*) and 27th January 2022 (*Exhibit DD Page 167 of the Petition*), the Operational Creditor had continuously followed up with the Corporate Debtor for payment of its pending invoices however there is no reply to the said emails.

12. The Operational Creditor has contested that being a registered MSME, the Operational Creditor is entitled under section 16 of MSME Act thereof to recover interest from the Corporate Debtor for the delay in payment of the Operational Creditor's invoice, which delay is counted 7 days after the date of submission of the invoice. Each invoice categorically mentions that *"Delay interest as per the provisions of MSME Act shall be chargeable for delay in payment of invoices as per terms of PO/WO/Contract."*
13. Having regard to the factual matrix of the present case, the Bench is satisfied that the Operational Creditor has proved that debt claimed under the present Application is an unpaid debt. Further, the pre-existing disputes claimed by the Corporate Debtor are prior to the event of the admission of the liability to pay the dues by the Corporate Debtor. Even in case of pre-existing disputes, if any, the Corporate chose to procure services from the Operational Creditor rather than terminating the contract which shows the willingness of the Corporate Debtor to continue the business relationship further with the Operational Creditor.
14. Therefore, based on the above circumstances, this Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code **admits** this petition.

Accordingly, the above Company Petition is admitted by passing the following:

ORDER

The Company Petition bearing CP (IB) No. 842 (MB)/2022 filed by M/s. EnerMech India Pvt. Ltd., (“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 Gopinath Engineering Co. Pvt Ltd., (“the Corporate Debtor”)

I. That this Bench as a result of this prohibits:

- a) 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;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational 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 possession of the corporate debtor.

- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator; b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The Operational Creditor has proposed the name of Mr. Pankaj Sham Joshi, having registration number IBBI/IPA-002/IP-N00507/2017-2018/11556, e-mail: pjoshi.ip@gmail.com; contact info: 9820436268 as IRP for conducting CIRP of the Corporate Debtor along with his consent letter to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- VII. 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.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- IX. 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.
- X. 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/-
MADHU SINHA
MEMBER (TECHNICAL)
//RENUKA//LRA//

SD/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)