

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/266(CHE)/2022

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

*In the matter of **M/s. EDAC Engineering Limited***

**Mr. Kannaia Pillai Selvam,
Proprietor of M/s. Clarion Enterprises,
SP 92, Ambattur Industrial Estate,
Ambattur, Chennai-600 058**

... Petitioner / Operational Creditor

-Vs-

**M/s. EDAC ENGINEERING LIMITED,
Registered Office:
97, Mount Road,
Chennai -600 032**

... Respondent / Corporate Debtor

*Order Pronounced on **8th August, 2023***

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor: Mr. S. Satyanarayanan, Advocate
Mrs. D. Pavithra, Advocate
Mr. S. Venkateshan, Advocate
For Corporate Debtor: Mr. N. Suresh SAH, Advocate*

ORDER

(Hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This petition under Section 9 of the Insolvency and
Bankruptcy, 2016 ("**IBC**") read with Rule 6 of the Insolvency and

Bankruptcy Board of India (Petition to Adjudicating Authority) has been filed by **Sri. Kannaia Pillai Selvam, Proprietor of M/s. Clarion Enterprises** (hereinafter referred to as "**Petitioner/Operational Creditor**") against **M/s. EDAC Engineering Limited** (hereinafter referred to as "**Respondent/Corporate Debtor**") for initiation of Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor.

2. **Part-I** of the Petition sets out the particulars of the Petitioner/Operational Creditor whose office is situated at SP 92, Ambattur Industrial Estate, Ambattur, Chennai-600 058. **Part-II** sets out the details of the Corporate Debtor which has its Registered Office at 97, Mount Road, Chennai-600 032 within the jurisdiction of this Tribunal. The Corporate Debtor as per the details was incorporated on 26.06.1987 with Nominal Share Capital of Rs.197,20,00,000/- (One Hundred and Ninety Seven Crores and Twenty Lakhs only) and Paid-Up Share Capital of Rs.167,39,34,000/- (Rupees One Hundred and Sixty Seven Crores Thirty Nine Lakhs Thirty Four Thousand only).

3. In **part-III** of the Petition, the Petitioner has proposed the name of the Interim Resolution Professional viz., CA Kathiresan Nachimuthu.



4. **Part-IV** sets out the details of the debt i.e. Rs.5,49,93,600/- (Rupees Five Crores Forty Nine Lakhs Ninety Three Thousand Six Hundred only) which includes principal amount of Rs. 2,85,20,363/- (Two Crores Eighty Five Lakhs Twenty Thousand Three Hundred and Sixty Three only) and interest of Rs.2,64,73,237/- (Rupees Two Crores Sixty Four Lakhs Seventy Three Thousand Two Hundred and Thirty Seven only) and date of default as **18.04.2021**.

5. The case of the Petitioner/Operational Creditor, in brief, is that the Operational Creditor had supplied various types of Electrodes to the Corporate Debtor against the purchase orders issued by the Corporate Debtor. The Operational Creditor raised 187 invoices during the period from 03.03.2017 to 17.02.2021 for a total sum of Rs.2,96,32,900/- (Rupees Two Crores Ninety Six Lakhs Thirty Two Thousand Nine Hundred only) against which, it received Rs.11,12,536/- (Rupees Eleven Lakhs Twelve Thousand Five Hundred and Thirty Six only) as per the details tabulated below :

Date of Invoice	Invoice No	Receipt Rs./-
03/03/2017	1373/16-17	1,47,021
21/04/2017	0071/17-18	5,66,797
11/11/2017	385/17-18	10,550
12/12/2017	487/17-18	41,218
21/08/2018	563/18-19	1,09,142
16/10/2019	529/19/20	75,648
23/03/2020	1058/19/20	1,62,160
Total Received for above invoice.		11,12,536

6. The Petitioner has also placed the details of the Outstanding Invoices as on 30.04.2021 as **Annexure-1** and the copy of Purchase Orders issued by the Corporate Debtor as **Annexure-2**. It is alleged that the Operational Creditor followed up for the balance payments outstanding with the Corporate Debtor but the Corporate Debtor did not make the payments. It has placed the emails and correspondences as **Annexure-3** and alleged that the Corporate Debtor has committed default in making outstanding payment of Rs.2,85,20,363/- (Rupees Two Crore Eighty Five Lakhs Twenty thousand Three Hundred and Sixty Three only). It is alleged that the Corporate Debtor breached the terms and conditions of the Purchase Orders and the Invoices. The Operational Creditor has placed the Statement of Account as **Annexure-4** and stated that on 04.05.2022, it had sent a Demand Notice under Section 8 of the IBC to the Corporate Debtor calling upon the Corporate Debtor to make the payments which was duly served upon the Corporate Debtor but despite that, it did not make the payments. It is stated that as per the invoices, interest @ 24% per annum is payable on overdue bills. The Petitioner has also filed E-way bills in respect of the supplies made to the Corporate Debtor.

7. On getting notice of the petition, the Respondent filed its reply alleging that the Petition is false and frivolous and is barred

by limitation. It is stated that as per the letter dated 04.04.2022, there were 188 pending invoices whereas in the petition, the Operational Creditor has stated that the payment against 187 invoices is pending. In the letter dated 04.10.2021, the Operational Creditor has stated that it has received Rs.5,40,000/- (Rupees Five Lakhs Forty Thousand only) and the due amount as on 30.09.2021 is Rs.3,06,75,242/- (Rupees Three Crores Six Lakhs Seventy Five Thousand Two Hundred and Forty Two only) but in the letter dated 11.02.2022, the Operational Creditor had alleged that it has received Rs.24,74,110/- (Rupees Twenty Four Lakhs Seventy Four Thousand One Hundred and Ten only) and due amount is Rs.2,90,15,901/- (Rupees Two Crores Ninety Lakhs Fifteen Thousand Nine Hundred and One only) whereas in the Petition, the Petitioner has stated that it has received only Rs.11,12,536/- (Rupees Eleven Lakhs Twelve Thousand Five Hundred and Thirty Six only). It is alleged that the Operational Creditor had supplied the materials with delay at every site on several occasions which caused lot of difficulties to complete the project on time. Due to delay, it incurred huge loss and could not get payments from their clients which fact it had informed to the Operational Creditor on several occasions raising several disputes vide letter dated 31.03.2022 which the Operational Creditor never responded. It is stated that the Corporate Debtor settled most of the invoices. It is stated that had the Corporate Debtor not paid

for any of the invoices in the year 2017, how and why the Operational Creditor would supply the material again and again to the Corporate Debtor till the year 2021. It is stated that the purchase order contains Clause No.13 for resolution of disputes through arbitration but the Operational Creditor instead filed the Petition which is not maintainable.

8. Rejoinder is filed by the Operational Creditor wherein it reiterated what has been stated in the Petition. It is stated that the Corporate Debtor has admitted its liability in the meeting held on 22.01.2021 and in its email dated 31.03.2022 sent to the Petitioner. Last payment of Rs.1,62,160/- (Rupees One Lakh Sixty Two Thousand One Hundred and Sixty only) was made to the Petitioner on 23.03.2020 and as such the Petition is not barred by limitation. It is stated that presence of arbitration Clause in the Purchase Order does not bar the Petitioner to initiate CIRP against the Corporate Debtor by virtue of Section 238 of IBC. It is stated that in all, 187 invoices remained unpaid. Only Rs.11,12,536/- have been paid against the invoices. It is stated that the Petitioner had been supplying the Electrodes to the Corporate Debtor since 2017 and the Corporate Debtor never raised any issue of delay. It is stated that there is no dispute as to the quality and the quantity and the defence taken by the Corporate Debtor is an afterthought.



9. We have heard Ld. Counsels for the parties and perused the documents.

10. It is an admitted case of the parties that the Petitioner/Operational Creditor used to supply various types of Electrodes to the Corporate Debtor. The Petitioner has placed the copy of the Purchase Orders at page 18 to 215 of the typed set placed by the Corporate Debtor with the Operational Creditor. The Petitioner has also placed details of outstanding invoices referring the invoice number, date of invoice, invoice amount, balance and the name of the project at Page 216 to 219 of the typed set. It has also placed the copy of the invoices at page 220 to 303, 357 to 433 of the typed set which clearly find mentioned that interest @ 24% per annum will be charged on overdue bills. The invoices are for the period from 21.04.2017 till 23.04.2018. E-way bills and some of the invoices which are placed at page 304 to 489 of the typed set show that Electrodes were supplied to the Corporate Debtor at various sites which were received and acknowledged by the Corporate Debtor.

11. In the instant case, the Petitioner has placed the correspondences / e-mails sent to the Corporate Debtor requesting the Corporate Debtor to make the payment against the outstanding dues. The Corporate Debtor has responded some of the e-mails sent by the Operational Creditor. In the mail dated

05.03.2020 at page 518 of the typed set, it was stated that they have submitted the request letter to BHEL, Neyveli and are expecting the payment. They will release their next payment in a week time. The Operational Creditor had sent a mail dated 20.05.2020 to the Corporate Debtor giving the details of the outstanding balance amounting to Rs.3,01,75,694/- and also requested to communicate on the following:

Any short supply from our side
Any quality issue you have experienced
Any complaint made by you and not attended by us
Any delay in supply from our side or
were there any supplies/services which were not in accordance with your
Purchase Orders' Terms and Conditions.

12. Vide letter dated 04.10.2021, the Operational Creditor had called for the balance confirmation as on 30.09.2021 as Rs.3,06,75,242/- (Rupees Three Crores Six Lakhs Seventy Five Thousand Two Hundred and Forty Two only). On 24.03.2022, the Operational Creditor had written a letter to the Corporate Debtor that their account shows a debit balance of Rs.2,90,15,901/- (Rupees Two Crores Ninety Lakhs Fifteen Thousand Nine Hundred and One only) as on 24.03.2022 towards supplies of Welding Electrodes and Consumables at their site against the purchase orders. The said letter was replied by the Corporate Debtor vide letter dated 31.03.2022 stating that they have faced lot of difficulties due to delay in supplying of Welding Electrodes which

had been discussed with them many time. They are still stuck with their payment from their clients due to delay in supply. It has caused huge financial difficulties to them. They are yet to know the full damage on account of this.

13. Record shows that prior to this letter, no complaint was made by the Corporate Debtor as to the delay in supply. No bill/damage were claimed on this account. As seen from the record, the Operational Creditor had been supplying materials to the Corporate Debtor since 2017 and this issue of delay was raised from the first time in the year 2022 when the Operational Creditor called upon the Corporate Debtor to give the balance confirmation. There is no document to show that there was delay in supplying the material or the delay had caused financial difficulties to the Corporate Debtor. It appears that this issue was raised by the Corporate Debtor to avoid its liability to pay the dues of the Operational Creditor. The issue of delay was raised for the second time in reply to the notice that too was sent after the expiry of ten days period as stipulated under Section 8 of IBC. It appears that moonshine defence has been taken by the Corporate Debtor to deny payments to the Operational Creditor. There is no dispute as to the quality and quantity of the goods supplied by the Operational Creditor.

14. It is true that purchase order contains a Clause as to the resolution of the suits through arbitration but in this case, there is no dispute as to the quality and the quantity. Till the sending of notice under Section 8 of IBC and filing of the Petition, the Corporate Debtor neither approached for resolution of disputes through arbitration nor claimed any damages from the Operational Creditor. It is well settled law that the proceedings under IBC can be initiated even if there exists an arbitration clause in the agreement for resolution of disputes.

15. In the present case, there is no denial as to the existence of debt and the default committed by the Corporate Debtor. The debt is more than the threshold limit of Rs.1.00 Crore (Rupees One Crore only) as defined under Section 4 of the IBC.

16. As regards limitation, the statement of accounts filed by the Operational Creditor show that the last payment was made by the Corporate Debtor in the year 2020. This Petition has been filed on 26.08.2022. There is also acknowledgement of debt as seen from the email of the Corporate Debtor which was within the period of three years from the date the debt became due. That being the position, we are of the opinion that this Petition is within the limitation and cannot be said to be barred by limitation.

17. Taking into consideration the facts and circumstances of the case as well as the position of law, we allow the Petition filed by

the Operational Creditor. The Corporate Debtor **M/s. EDAC Engineering Limited** is accordingly admitted to CIRP under Section 9(5) of the IBC, 2016.

18. CA. Sri. Kathiresan Nachimuthu has been proposed as the Interim Resolution Professional by the Petitioner under Part-III of the Petition. He has given consent in Form-2. We hereby appoint **CA. Sri. Kathiresan Nachimuthu** with **Registration Number [IBBI/IPA-001/IP-P-01733/2019-2020/12795** (AFA valid till 23.12.2023), **E-mail ID: kathir.fca@outlook.com** as the "Interim Resolution Professional". The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the Code before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

19. As a consequence of the Petition 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:

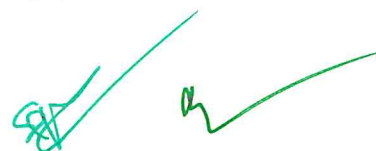
- a. The institution of suits or continuation of pending suits or proceedings against the respondent including the execution of any judgment, decree or order in any

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 subsection, 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;

20. 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 the 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 manage 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 arrangements 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.

21. 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 the 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.

22. 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 with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. Based on the above terms, IBA/266/2022 stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come into 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 is

also furnished with a 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-

SAMEER KAKAR
MEMBER (TECHNICAL)

Suguna

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)