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

IBA/89/2020

*(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 **ETA Engineering Private Limited**

Trane Technologies India Pvt. Ltd.

8th Floor, Tower D,
IBC Knowledge Park, No. 4/1,
Bannerghatta Main Road,
Bangalore-560029

...Operational Creditor

-Vs-

ETA Engineering Private Limited

No.20/21, Razak Garden Main Road,
1st Floor Arumbakkam,
Chennai-600106.

...Corporate Debtor

Order pronounced on 02/11/2021

CORAM:

**R.SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Operational Creditor: Rohan Rajasekaran, Advocate

For Corporate Debtor : M. Narendran, Advocate

ORDER

Per : SAMEER KAKAR, MEMBER (TECHNICAL)

1. This is an Application filed by Trane Technologies India Pvt. Ltd. (hereinafter referred to as "**Operational Creditor**") under

Section 9 of the Insolvency and Bankruptcy Code, 2016 against **ETA Engineering Private Limited** (*hereinafter referred to as the "Corporate Debtor"*) seeking thereof to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. From Part I of this Application, it is seen that the Operational Creditor is a Private Limited Company under the provisions of the Companies Act. From Part II, it is seen that the Corporate Debtor is a Public Limited Company incorporated on 31.10.1994 bearing CIN: U28920TN1994PTC029091 and the Registered Office address of the Corporate Debtor as per the Application is stated to be situated at No.20/21, Razak Garden Main Road, 1st Floor Arumbakkam, Chennai-600106. From Part III of the Application, it is seen that the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the same.

3. Part IV of the Application states that a sum of Rs.26,80,642.03/- is due and payable by the Corporate Debtor. Part V of the Application discloses the list of the documents which had been filed by the Operational Creditor in order to prove its Operational Debt and the list of documents which are filed along with the Application are as follows;

- a) Purchase Orders
- b) Invoices
- c) Demand Notice dated 17/08/2019

4. The Learned Counsel for the Petitioner/ Operational Creditor submitted that the Operational Creditor is a Company which is engaged in the business of manufacturing heat and chemical treated wooden pallet and allied products. The Learned Counsel for the Petitioner further submitted that the Corporate Debtor placed purchase orders for various wooden pallets and wood rubber treatment materials. The details of purchase orders are placed below:

DATE OF PURCHASE ORDERS	PURCHASE ORDER NO.	VALUE
18.12.2014	BP55/9 & BP54/10	Rs.1,695,322.41
18.12.2014	CO00/27	Rs.365,170.00
21.08.2015	ETA/CIAL/GPS/03	Rs.18,09,846.00
26.09.2014	ETA/IITGN/LOI/CHILLER/2	
03.09.2015	CS54/21	1,311,155.00
25.08.2015	CS54/3	956,486.22
27.11.2015	SER/AC/PO-956/15-16	25,000.00

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor supplied the materials and raised the following invoices in relation to the same. The details of the invoices that remained unpaid are as follows:

DATE OF INVOICE	INVOICE NO	AMOUNT OUTSTANDING	AMOUNT PAID
28.08.2015	127025 (10% Retention)	51,671.50	50,000.00

	amount of invoice)		
12.01.2018	1718100169	1,73,342.00	1,41,010.00
12.01.2018	1718100170	2,05,320.00	2,03,990.00
10.04.2018	18191003	5,06,919.74	2,50,000.00
26.04.2016	184904	2,64,659.95	NIL
16.02.2016	184046	1,78,313.47	NIL
27.08.2015	127004	28,625.00	NIL
29.06.2017	193050	1,72,500.00	1,31,052.00
29.06.2017	193051	1,72,500.00	56,052.00
09.02.2015	128429	73,457.00	NIL
21.12.2015	128624	3,11,436.89	NIL
28.12.2015	128704	11,16,375.00	NIL
15.02.2016	23871	2,29,000.00	NIL
21.12.2015	128620	28,625.00	NIL
Balance Amount payable with 18% interest from 10.04.2018		26,80,642.00	

6. It was further submitted by the Learned Counsel for the Operational Creditor that on various occasions the Operational Creditor called upon the Corporate Debtor to make the payment of the pending outstanding, but the Corporate Debtor did not come forward to pay the same and therefore, it was submitted that a sum of Rs.26,80,642.03/- is due and payable towards various invoices and interest..

7. Under such circumstances, it was submitted that the Operational Creditor has issued a notice of Demand as stipulated under Section 8 of the IBC, 2016 to the Corporate Debtor on 17.08.2019, which was received by the Corporate Debtor on 31.08.2019. From the Affidavit filed under Section 9(3)(b) of IBC, 2016 it is evident that the Corporate Debtor has not raised any

dispute in respect of the outstanding amount which is due and payable to the Operational Creditor nor paid the 'operational debt' within 10 days from the date of receipt of the Demand notice. Hence, the present Application has been filed by the Operational Creditor before this Tribunal on 16.12.2019 for initiation of CIRP as against the Corporate Debtor.

8. It was further submitted by the Operational Creditor that the Corporate Debtor had not replied to the Demand Notice dated 17.8.2019.

9. In relation to the Corporate Debtor, it is seen from the record that the Corporate Debtor had disputed the Operational debt by stating that the various purchase orders and invoices are independent contract, certain payments were not acknowledged by the Operational Creditor and that the interest charged is arbitrary.

10. The Ld. Advocate for the Operational Creditor submits that it was a running account of the Corporate Debtor and since part payments were made, he has a right of appropriation of payments received on FIFO basis. As regards interest calculated @ 18%, it was submitted that under the terms and conditions as contained invoices raised by the Operational Creditor it was mentioned that

interest @ 18% p.a. will be charged if the payment is not made within the due date as mentioned in the invoice.

11. During the arguments before this bench, the Corporate Debtor admitted that nearly Rs. 4.40 Lakh is undisputed liability of the CD towards the Operational Creditor.

12. Thus, the default, on the part of the Corporate Debtor is proved from the documents filed and the submissions made by the Learned Counsel by the Operational Creditor. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

13. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of the Notification issued under Section 4 of the IBC, 2016, as regards the present Application, it is seen that the present Application has been filed on 16.12.2019, which is well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. Under the said

circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

14. 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 July to December 2021, appoints **Mr. Varun Agarwal** with Reg. No. *IBBI/IPA-001/IP-P02179/2020-2021/13340* (email id:- augustvarun@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. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 30 days 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.

15. 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;

16. 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 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 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.

17. 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.

18. The Operational Creditor is directed to pay a sum of **Rs.1,50,000/-** *-(Rupees One Lakh Fifty Thousand 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.

19. Based on the above terms, the Application 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 the IBBI for its records. Further, the Interim Resolution Professional above named

who is figuring in the list of Resolution Professionals forwarded by the IBBI be 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)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)