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

**IBA/992/2019**

*(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 **IOTA Automation Private Limited***

**FOMRA ELECTRICALS**

New No: 250, Govindappa Street,  
Chennai- 600 001,  
Tamil Nadu, India

*... Applicant/Operational Creditor*

-Vs-

**IOTA AUTOMATION PRIVATE LIMITED**

New No 34, Old No 26, Rathna Nagar,  
Virukambakkam, Chennai- 600 017  
Tamil Nadu, India

*...Respondent/Corporate Debtor*

*Order Pronounced on **25<sup>th</sup> March 2022***

CORAM :

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

*For Operational Creditor : Alpa Jain,PCS*

*For Corporate Debtor :K.G.Balasubramaniam, Advocate*

**ORDER**

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

Under Adjudication is IBA/992/2019 filed by **FOMRA  
ELECTRICALS** (hereinafter referred to as '**Operational Creditor**')  
under Section 9 of the Insolvency & Bankruptcy Code 2016 (in  
short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 against **IOTA AUTOMATION PRIVATE LIMITED** (hereinafter referred to as '**Corporate Debtor**'). The Application is filed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor. This Application has been verified by 'K. Gaurav Kumar' as the authorized representative of the Operational Creditor and the same is placed in page No 1 and 2 of the Application typeset.

2. The Authorized Representative for the Operational Creditor submitted that Rs.9,62,370.52/- (inclusive of 24% interest p.a.) is due and payable by the Corporate Debtor for the supply of Electrical products and the payment is due from Invoice No: HOGSTLS171808067 dated 28.02.2018. Further, the Cheque's given by the Corporate Debtor was returned owing to the reasons that the "Funds are Insufficient". The said invoices are attached as 'Annexure- I' of the Application typeset.

3. The Form-III Statutory Demand Notice was issued by the Operational Creditor to the Corporate Debtor on 10.07.2019 claiming Rs.9,62,370.52/- as Operational debt for the supply of electrical goods for which the Corporate Debtor had not replied.

4. However the Corporate Debtor had filed a counter statement in this said matter, in which the Corporate Debtor had averred

that, the delay in supply of goods by the Operational resulted in non-completion of the projects on time by the Corporate Debtor, which resulted in the delayed payments and various order cancellations etc. However the same defence does not hold any water before this Tribunal.

5. The Operational Creditor had further filed a rejoinder to the counter mentioned *Supra* in which the Operational Creditor had categorically denied all the allegations of the Corporate Debtor and further stated that the supply of materials were done 'immediately' based on the purchase orders, however the Corporate Debtor had failed to make the payment based on the terms and conditions as enumerated in the purchase order.

6. The Authorized Representative for the Operational Creditor submitted that the Corporate Insolvency Resolution Process of the Corporate Debtor was admitted by this Tribunal vide order dated 23.12.2020 in IBA/905/2019 and this tribunal in the proceedings dated 11.01.2021 'Closed' this present Application with liberty to revive this Application if in any circumstances the order dated 23.12.2020 (*Supra*) is set aside. Subsequently, the Applicant filed IA/1321/CHE/2021 to revive this present Application and which was '**allowed**' by this Tribunal vide order dated 17.02.2022. Hence, this IBA/992/2019 was revived and taken on record.



7. The Ld counsel for the Corporate Debtor in this said matter had filed a memo before this Tribunal dated 23.03.2022 in which the Corporate Debtor had acknowledged the liability to a tune of Rs.6,40,000/- due and payable to the Operational Creditor. Further, it was stated in the memo that the Corporate Debtor undertakes to pay the amount due and payable in 'Six months'.

8. Heard the submissions made by both the parties and perused the records including the pleadings placed on record. This Tribunal after comprehensively hearing the said matter, takes the memo dated 23.03.2022 filed by the Corporate Debtor on record, from which it can be clearly deduced that the liability had been 'admitted' by the Corporate Debtor. This proves that there is an existence of an 'Operational debt' that is due and payable by the Corporate Debtor.

9. Further, the Operational Creditor had claimed Rs.9,62,370.52/-(inclusive of interest) as operational debt, which is due and payable by the Corporate Debtor and this Tribunal has the jurisdiction to adjudicate this present Application as this Application was filed on 02.08.2019 i.e., before the increase of the pecuniary limit to Rs. 1,00,00,000 (One Crore) by the central government vide Notification S.O 1205(E) dated 24.3.2020 issued by the Ministry of Corporate Affairs, Government of India.



10. 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.

11. 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, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

12. 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;

13. 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.

14. 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.

15. 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 Jan 2022 – June 2022 appoints Mr. **Senthilkumar M** having Registration number *IBBI/IPA-001/IP-P-02398/2021-2022/13776* (email id: [senthil@sacas.in](mailto:senthil@sacas.in)) 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.

16. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. 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 IBC, 2016 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.

18. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and



cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

19. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-**(Rupees One Lakh 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.

21. 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.

22. The IRP is directed to file the 1<sup>st</sup> Progress Report before this Tribunal on or before the 45<sup>th</sup> day of initiation of CIRP by this Adjudicating Authority.

23. Post this IBA/992/2019 for hearing on **26.05.2022**.

-Sd-  
**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-  
**R. SUCHARITHA**  
MEMBER (JUDICIAL)

*Vinita Varshini. K*