

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI

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ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 29-01-2020

PRESENT: SHRI R.VARADHARAJAN, MEMBER-JUDICIAL
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP/1327/IB/2018
NAME OF THE PETITIONER(S) : ANCHOR ELECTRICALS PVT LTD
NAME OF THE RESPONDENT(S) : ENECTRIC PROJECTS & SOLUTIONS INDIA PVT LTD
UNDER SECTION : SEC 9 RULE 6 OF IBC

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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REPRESENTATION BY WHOM

1.	S RAM PRASAD CNSL. for Resp.	Counsel for Resp.	
2.	AR. RAMANATHAN M.SRINIVASAN	counsel for petitioner / OC	M. Srinivasan

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

CP/1327/IB/2018 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. Enetric Projects and Solutions India
Private Limited***

M/s. Anchor Electricals Private Limited,
3rd Floor, B Wing,
I-Think Techno Campus,
Pokhran Road No.2, Thane (West),
Maharashtra – 400 607

... Operational Creditor

-Vs-

M/s. Enetric Projects and Solutions India Private Limited,
No.CP-24, Razaack Garden Main Road,
MMDA Colony, Arumbakkam,
Chennai – 600 106

...Corporate Debtor

CORAM :

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

For Operational Creditor : AR. Ramanathan, Advocate

For Corporate Debtor : S. Ramprasad, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

Heard and dictated in open Court on 29.01.2020

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1. This is the Petition filed by the Petitioner in the capacity of the Operational Creditor as against the Corporate Debtor who it is claimed owes a sum of Rs.47,80,294.75 as the operational debt pursuant to the transactions as transacted between the Operational Creditor and the Corporate Debtor. The Ld. Counsel for the Petitioner points out that the goods were supplied based on the Purchase Orders as placed by the Corporate Debtor upon the Operational Creditor at page No.10 of the typed set filed with the Petition which are as follows: -

Sr. No.	PO No. & date	Particulars	Place of Delivery	Amount of PO (in INR)
a	EPSIPL/17-18/POC 2022/SOLAR/PO/00115 dated 16.02.2018	Supply of 124 Nos. of Panasonic Solar Panel Polycrystalline 72 Cells 325 Wp Modules System Voltage 1000V (Product Code: AE7P325VB5B)	Madrasa Baitul Uloom Bandal (School), Sunna Education & Charitable Trust, Cross NH218, Bijapur Road, (7km from Sindgi City) Sindgi - 586 128, Bijapur Dist, Karnataka	10,62,106/-
b	EPSIPL/17-18/POC 2018/SOLAR/PO/00116 dated 16.02.2018	Supply of 462 Nos. of Panasonic Solar Panel Polycrystalline 72 Cells 325 Wp Modules System Voltage 1000V (Product Code: AE7P325VB5B)	Duddupudi Institute of Learning, PWD Camp, Sindhaour - 584128, Raichur District, Karnataka	39,57,203/-

2. Pursuant to placing of the Purchase Orders for supply of goods upon the Operational Creditor, the Operational Creditor has duly supplied the goods and raised invoices in relation to the same the details of which are mentioned in page No. 11 of the typed set of the Petition as follows: -

Sr.No.	GST Invoice No.	Invoice date	Date of default	Qty (in Nos)	Amount of Invoice (in INR)	Advance Payment in (INR)	Amount claimed to be in default (in INR)
1	7011700072939	17.03.2018	16.04.2018	124	10,62,106.50	50,577/-	10,11,529.50
2	7011700072938	17.03.2018	16.04.2018	250	21,41,343.75	1,88,438/-	37,68,765.25
3	7011700072941	17.03.2018	16.04.2018	212	18,15,859.50		
						Total	47,80,924.75

3. Despite repeated e-mails sent to the Corporate Debtor by the Operational Creditor reminding the payments which are required to be made in relation to the goods supplied under the above said invoices and since the Corporate Debtor was not forthcoming, the Operational Creditor was constrained to issue a notice under the provisions of Section 8 of the Insolvency & Bankruptcy Code, 2016 (I&B Code, 2016) being a notice of demand which was also duly served upon the Corporate Debtor as evidenced from the tracking report as filed along with the typed set of the petition.
4. In the circumstance, this Petition was filed before this Tribunal as the Corporate Debtor has failed to pay the amounts in default in relation to the invoices raised by the Operational Creditor nor any reply received to the said demand notice dated 09.08.2018.
5. Now turning to the Application filed in Form-5 prescribed 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, Part-I of the Petition

discloses the details of the Operational Creditor and it is evident that the Petitioner Company was incorporated under the provisions of the Companies Act, having CIN: U31200MH1981FTC128292. Part-II of the Petition discloses the details of the Corporate Debtor and it is evident that the Corporate Debtor was incorporated on 12.12.2013 under the provisions of the Companies Act, having CIN: U52300TN2013PTC094128. The authorized share capital and the paid-up share capital of the Corporate Debtor are Rs. 50 lakhs each. The Registered Office of the Corporate Debtor also correlates with the address disclosed in the purchase Order enclosed along with the Petition. Part-III of the Petition discloses the fact that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the IRP. Part-IV of the Petition discloses the details of the operational debt. Part-V of the Petition relates to sustain the claim as made against the Corporate Debtor.

6. It is seen from the record, the Corporate Debtor has filed a reply in the form of Counter Affidavit and has taken a plea that the quantity and quality of goods supplied were not in accordance with the contract as agreed between the parties, in the circumstance, the Corporate Debtor has not chosen to



make payment to the Petitioner in view of the dispute in existence as between the parties. It is stated in the Counter Affidavit by the Corporate Debtor that the Application is liable to be dismissed and a mention also been made that the delivery of goods has not been made at the sites as required to be done by the Operational Creditor.

7. Further, it is seen from the records of this Tribunal that the matter was pending even though the Counter Affidavit has already been filed by the Corporate Debtor, however, has chosen to file a schedule of payment in acceptance of the claim as made by the Petitioner/Operational Creditor in the Petition. As per the payment schedule as filed by the Corporate Debtor, it is seen that the Corporate Debtor has agreed to pay the same in installments which is to the following effect.

S.No	Amount in Rs	Due date
1	10 lakhs	15 th June 2019
2	10 lakhs	15 th July 2019
3	10 lakhs	14 th August 2019
4	13 lakhs	14 th September 2019

8. Even though the payment schedule has been exchanged as between the parties the same is not available on record and only the photocopy of the same is made available by the Ld. Counsel for the Petitioner and which is not in dispute by the Ld. Counsel for the Corporate Debtor.



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9. In the circumstance, we find from the plea of the Corporate Debtor in relation to the quality and quantity of the goods has been delivered cannot be sustained as even at the time of filing the payment schedule specifically admitting the liability. The reason given by the Ld. Counsel for the Corporate Debtor during the hearing on 06.01.2020 and based on the said representation it is seen that this Tribunal has passed the following Order, namely -

*"Ld. Counsel for the parties are present. A last and final indulgence is sought by the Ld. Counsel for the Corporate Debtor for settling the amount of Rs.28 lakh by the Corporate Debtor to the Petitioner within one week from today. Taking into consideration the said representation last and final opportunity is granted to the Corporate Debtor to settle the amount and in view of the default being admitted is a sum of Rs.5 lakh has been paid, failing which we will be constrained to initiate the CIRP in relation to the Corporate Debtor. Post this matter on **29.01.2020.**"*

10. Since the debt arises out of the transaction as between the Operational Creditor and the Corporate Debtor by way of delivery of goods and the claim is raised in view of the default in the payment by the Corporate Debtor of an Operational Debt and as raised in the invoices by the Operational Creditor and the dispute which has been raised in the Counter as already mentioned seems to be only sham and illusory and



the operational debt is also in excess of Rs.1,00,000/- and also taking into consideration the above and the Order passed by the Hon'ble Supreme Court of India, the grounds taken by the Corporate Debtor in the Counter Affidavit are required to be **rejected**.

11. 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 the Insolvency and Bankruptcy Board of India appoints **Mr. Devadoss Duraiswami Reddy**, Reg.No. *IBBI/IPA-002/IP-N00440/2017-2018/11195*, E-mail ID: *devadossd@gmail.com* as the "Interim Resolution Professional" (IRP) 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.

12. However, during the pendency of the moratorium period in terms of Section 14(2) 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.



(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

13. 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.

14. 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.

15. 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.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

MS/Raymond

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)