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

CP/1172/IB/CB/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 **TRK Textile India Private Limited**

Indoflex Windpower Pvt. Ltd.

No. 8, Pudhu Thottam,
5th Street, Sheriff Colony,
Tirupur-641 604.

...Operational Creditor

-Vs-

TRK Textile (India) Pvt. Ltd.

No.11, CBC Building, M.R. Nagar,
KNP colony Post,
Dharpuram Road,
Tirupur-641 608

...Corporate Debtor

Order pronounced on 26th November 2021

CORAM:

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

*For Operational Creditor : R. Vidhya Shankar, Advocate
For Corporate Debtor : Naveen Kumar Murthi, Advocate*

ORDER

Per : SAMEER KAKAR, MEMBER (JUDICIAL)

1. This is an Application filed by Indoflex Windpower Pvt. Ltd.
(hereinafter referred to as "**Operational Creditor**") under Section

9 of the Insolvency and Bankruptcy Code, 2016 against TRK Textile (India) Pvt. Limited (*hereinafter referred as the "Corporate Debtor"*) seeking thereof to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor. It is noted that the Application was filed before this Tribunal on 24/08/2018.

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 Private Limited Company incorporated on 9.8.2005 bearing CIN: U17111TZ2005PTC012048 and the Registered Office address of the Corporate Debtor as per the Application is stated to be situated at No.11, CBC Building, M.R. Nagar, KNP colony Post, Dharpuram Road, Tirupur-641608. 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.1,27,21,981/- 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) Bank Certificate issued by the Chief Manager, State Bank of India, SME Branch, Tirupur – 641 601
- b) Copy of the invoices for the periods 2012 – 13 and 2016 – 17;
- c) Ledger Extract 2012 – 2013 to 2016 – 2017;
- d) Copies of Bank Statements for the period 01.04.2012 to 10.07.2018;
- e) Copy of Wind Energy Wheeling Agreement with TANGEDCO;
- f) Copies of the Board Resolution to draw power generated;
- g) Copy of Share Transfer Form;
- h) Copy of Share Certificate issued;
- i) Copy of Shareholder list as on 19.06.2012;
- j) Copy of Annual Return for the units consumed for the years 2013 – 14 and 2014 -15;
- k) Copy of the ledger statement;
- l) Copy of the letter sent to Mr. Saravanan, MD of M/s. TRK Textiles (I) Pvt. Ltd. informing termination of captive consumption agreement;
- m) Copies of e-mail correspondents requesting payments from M/s. TRK Textiles (I) Pvt. Ltd.;
- n) Copy of Form – 3 Demand Notice along with Certificate from Postal Department for effecting service on M/s. TRK Textiles (I) Pvt. Ltd.;
- o) Reply letter received from M/s. TRK Textiles (I) Pvt. Ltd. without commitment of settlement of dues;
- p) Copy of Registered Letters addressed to M/s. TRK Textiles (I) Pvt. Ltd., requesting to settle the outstanding dues; and

q) Original Bank Certificate for non receipt of payment after 30.10.2015.

4. The Learned Counsel for the Petitioner/ Operational Creditor submitted that the Operational Creditor is a Company which is engaged in the business Wind Power Generation. The Learned Counsel for the Petitioner further submitted that the Corporate Debtor (CD) opted to purchase such power in captive mode and wheeled through The Tamil Nadu Generation and Distribution Corporation (TANGEDCO). Agreement dated 09.7.2012 was placed on record vide page 169 to 166 of the Petition type set. Page 160 records the captive power user to be the CD. The agreement also permits banking of surplus energy with TANGEDCO and subsequent consumption. The wind generated and supplied is checked through metering arrangement with TANGEDCO which is placed on pages 160-164. The Board Resolution of OC opting in the CD as captive power consumer is at page 167. The documents evidencing CD becoming a captive power consumer are at pages 170 to 196. The invoices for supply are from pages 11 to 102 and ledger extract at page 103 to 109. Supplies were made during the year 2012 to 2017 and account was running account.

5. The Learned Counsel for the Operational Creditor submitted that the CD had defaulted in payment of the same. Repeated reminders were placed before us and since no response was received the Captive Power arrangement was since terminated. It



was submitted that a sum of Rs.1,27,21,981/-is due and payable towards various invoices and interest.

6. It was further submitted by the Learned Counsel for the Operational Creditor that Form – 3 dated 2.4.2018 was issued which was replied on 12.4.2018. No dispute was raised by the CD, however it was mentioned that payment will be released subject to verification of accounts.

7. Ld. Advocate for the Applicant further states that a certificate from TANGEDCO confirming the consumption of 456226 banked units by the CD has been filed before this Tribunal on 11.3.2020.

8. Ld. Advocate for the OC submits before the Tribunal that the CD repeatedly admitted to the amount due and prayed time for submitting schedule of payment and also kept making part payments all of which is duly recorded in the interim orders of this Tribunal passed from time to time.

9. Ld. Advocate for the Applicant conceded during the hearing that there is no clause in the agreement for payment of interest @ 12% as claimed in the petition, however it was submitted that without even taking into consideration the interest as claimed, the amount of default is above the pecuniary limit.

10. During the arguments before this bench, the Corporate Debtor did not bring out any pre-existing dispute. It was submitted that the claim is premature, unsubstantiated, spurious and inflated.

11. On various occasions at the indulgence of the Tribunal, the CD had paid certain amounts to the OC which aggregates to nearly Rs.60 lakh.

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 a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the present Application has been filed on 24.8.2019, 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. 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 applicable for the period between July to December 2021, appoints **Mr. Varun Agarwal** having registration number **IBBI/IPA-001/IP-P-02179/2020-2021/13340** (email id:- ipvarunagarwal@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 him 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)