

NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH - I  
CHENNAI

(14)

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI  
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 08.11.2015

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

APPLICATION NUMBER :

PETITION NUMBER :

IBA/408/2019

NAME OF THE PETITIONER(S)

: MOD FORGE PVT LTD

NAME OF THE RESPONDENT(S)

: DHANYASREE PRECISION PVT LTD

UNDER SECTION

: SEC 9 RULE 6 OF IBC

S.No. NAME (IN CAPITAL)

DESIGNATION

SIGNATURE

REPRESENTATION BY WHOM

ANANT MERATHIA }

RISHA SRINIVAS }

(99405 20500)

counsel for  
Operation creditor

Anant  


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

**IBA/408/2019** 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 **M/s. Dhanyasree Precision Pvt. Ltd.**

**M/s. MOD FORGE PRIVATE LIMITED**

Reg. Office at 103/104, AIEMA Tower,  
1, Main Road, Ambattur Industrial Estate,  
Chennai, Tamil Nadu 600 058

*... Operational Creditor*

-Vs-

**M/s. DHANYASREE PRECISION PRIVATE LIMITED,**

No.C-10, SIDCO Industrial Estate Phase – I,  
SIPCOT, HOSUR – 635 126, Tamil Nadu.

*... Corporate Debtor*

Order delivered on 8<sup>th</sup> November, 2019

CORAM :

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

*For Operational Creditor : Mr. Anant Merathia and  
Mr. Rish Srinivas, Counsel*

**ORDER**

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

**Heard and dictated in open Court on 08.11.2019**

1. This Application has been moved by the Petitioner in the capacity of an Operational Creditor, in view of the default which



had arisen on the part of the Respondent / Corporate Debtor in a sum of Rs.19,41,108/-, comprising a principal sum of Rs.16,28,071/- along with the interest of Rs.3,13,037/- and the claim is said to have arisen in relation to the supply of round bright bars under 17 invoices to the Corporate Debtor commencing from 14.08.2017 and ending on 06.01.2018.

2. In relation to the 1<sup>st</sup> of the Invoice dated 14.08.2017, it is disclosed that payment has been received in part. In relation to the balance invoices, the entire amount remains unpaid on the part of the Corporate Debtor even though the supplies have been duly effected to the Corporate Debtor, as reflected in the invoices.

3. A perusal of Part I of the Application shows that the Petitioner is a Limited Company. In relation to the Corporate Debtor, the particulars of the Corporate Debtor is given in Part - II from which it is seen that the date of incorporation of the Corporate Debtor is given as 16<sup>th</sup> February 2005 and the authorized share capital and paid-up share capital are stated to be Rs.1 Crore and Rs.80 lakhs respectively. The registered office of the Corporate Debtor is situated at No.C-10, SIDCO Industrial Estate Phase - I, SIPCOT Hosur, Tamil Nadu - 635 126.



4. In relation to Part III, no Interim Resolution Professional (IRP) has been named by the Operational Creditor. Part IV details the transaction between the Operational Creditor and the Corporate Debtor leading to the debt and default and the amount which is being claimed, as stated in the paragraph – 1 supra.

5. Part V in the prescribed Application discloses the documents based on which the claim is sought to be substantiated by the Operational Creditor as against the Corporate Debtor including the invoices which have been raised and the supplies which have been made and the amount remaining unpaid thereby given to raise the claim.

6. From the record of the proceedings as available before this Tribunal, it is seen that the Corporate Debtor has chosen to appear before this Tribunal on and off which has made this Tribunal to observe in the order dated 22.08.2019, wherein this Tribunal was constrained to proceed with the Corporate Debtor by passing an **ex parte** order and matter was posted for final submissions.



7. However, it is observed by this Tribunal from the order passed on 18.09.2019 that the Corporate Debtor had expressed its willingness to settle the matter. It was also brought to the notice of this Tribunal by the Corporate Debtor that an Application will be filed seeking to set aside the **ex parte** order passed by this Tribunal on 22.08.2019 and the matter was posted today. While so, when the matter was called today, there was no representation on the part of the Corporate Debtor and in the circumstances taking into consideration the representation of Learned Counsel for the Operational Creditor that no Application has been filed seeking to set aside the **ex parte** order, as represented before this Tribunal on 18.09.2019 and upon confirmation that there is no Application which has been filed to set aside the **ex parte** order, if any, filed by the Corporate Debtor and answer by the Bench Officer being 'negative' about filing of the Application to set aside the **ex parte** order, we permitted the Counsel for the Petitioner to make final submissions. The submission of the Petitioner's Counsel was heard.

8. During the course of submissions, Counsel for the Petitioner, in addition to the documents, which have already been referred to in the earlier portion of the order, also apprised



this Tribunal that notice as required to be issued to the Corporate Debtor under Section '8' of I&B Code, 2016 have been duly issued prior to filing of the Petition seeking for initiation of the Corporate Insolvency Resolution Process as against the Corporate Debtor. In this connection he has pointed out the Demand Notice issued as enclosed as Annexure - I. It has also been pointed out by Counsel for the Petitioner that despatch proof in relation to the said demand notice as well as proof of service of the same by way of tracking delivery report has also been annexed along with the Annexure - I. The Demand Notice dated 22.01.2019 and the tracking delivery report disclose that the same have been duly delivered on the Corporate Debtor on 28.01.2019. On the aspect of despatch of Demand notice, it is seen that the same has been despatched to the office of the Corporate Debtor, which is also evidenced from the despatch receipt, as affixed with the Demand notice. The affidavit of service under Section 9 (3) (b) of I&B Code, 2016 has also been filed by the Petitioner disclosing that despite the service of the demand notice, payment has not been received nor notice of dispute of the claim made.

9. The Affidavit has been annexed as Annexure II along with the typed set along with the Application. During the course of



submissions, in addition to the above, it has also been pointed out by Counsel for the Petitioner that the cheques, which have been issued by the Corporate Debtor as per Annexure II (C) from time to time in relation to the payments due to the Petitioner under the invoices have also been returned either with the endorsement 'funds insufficient' or 'account closed'.

10. It has also been brought to the notice of this Tribunal in relation to the settlement claimed by the Operational Creditor, the acknowledgment has also been issued on the part of the Corporate Debtor which have been annexed as Annexure II (E) dated 22.08.2018, wherein it is seen that the claim, as made by the Petitioner has not been denied and the Corporate Debtor had stated that certain payments are awaited by the Corporate Debtor for settlement and hence the Corporate Debtor is not in a position to make the payment.

11. Counsel for the Petitioner has also brought to the notice of this Tribunal regarding proceeding before this Tribunal dated 18.09.2019, wherein it is pointed out that a sum of Rs.2 lakhs in relation to claim has been paid by the Corporate Debtor.



12. Taking into consideration the submissions made in the Application as well as the documents filed along with the typed set of the Application thereby substantiating the claim as made in the Application and also since no reply has been filed by the Corporate Debtor to the demand notice, as issued by the Petitioner, despite service and already as against the Corporate Debtor an **ex parte** order has been passed by this Tribunal and the said order having not been set aside by this Tribunal, as of today, there is no hesitation in initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor. The Petition hence stands **admitted**.

13. Taking into account these salient points this Tribunal is of the opinion, that there exists an undisputed debt owed by the Corporate Debtor, M/s. Dhanyasree Precision Pvt. Ltd. to the Operational Creditor M/s. Mod Forge Pvt. Ltd. and consequent upon the failure to clear the Operational debt by the Corporate Debtor the Insolvency Resolution Process is triggered as the Operational debt exceeds the threshold limit of Rs.1,00,000/- and the payment of which is in default.

14. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Authority is



satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, Application is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

15. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints **Mr. Swaminathan Venkatraman** with Registration Number *IBBI/IPA-001/IP-P00444/2017-18/10787* (Email id:- *vs@pssca.in*, Mobile No: +91 9380246125) 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. 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.

16. 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.

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 ₹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.

19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B 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, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

20. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

*ghk / Raymond*