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

**IBA/1235/2019**

*(filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read  
with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules 2016)*

In the matter of **M/s. Divya Spinning Mill (P) Limited**

**OPG Power Generation Private Limited**

Reg. Off:-

No.6, Sardar Patel Road,  
Guindy,  
Chennai – 600 032

... Operational Creditor

-Vs-

**M/s Divya Spinning Mills (P) Ltd.**

Rep. By its General Manager,  
Mr.A.Ravi,  
No.145,Santhipalayam  
Gobi, Erode District.

... Corporate Debtor

*Order Pronounced on 1<sup>st</sup> November 2021*

CORAM :

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

*For Operational Creditor : Aparjitha Viswanath, Advocate  
For Corporate Debtor : Kolandasamy, Advocate*

**ORDER**

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

The IBA/1235/2019 has been filed by the **M/s. OPG Power  
Generation Private Limited** (hereinafter referred to as

"Operational Creditor") against **Divya spinning mills (P) Ltd.** (hereinafter referred to as "*Corporate Debtor*") under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. A perusal of Part I of the Application shows that the Petitioner is a Private Limited Company. In relation to the Corporate Debtor, the particulars of the Corporate Debtor are given in Part - II from which it is seen that the date of incorporation of the Corporate Debtor is given as 28.05.1997 and the Authorised Share Capital of the Company is Rs.20,00,000 /- and Paid-up Capital is Rs.5,00,000 /-. The Registered office of the Corporate Debtor as per the Application is stated to be situated at No.61, Fifty feet Road, Lakshmi Nagar, Tirupur-641 602.

3. In relation to Part III of the Application it discloses that the Operational Creditor has not proposed any "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the IRP. 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 is Rs.

71,70,818/- out of which Rs.66,02,868/- towards principal and Rs.5,67,949 /- towards interest at the rate of 36% p.a.

4. 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 and the Operational Creditor has attached the following documents;

- a. Power Supply Agreement between Operational Creditor and the Corporate Debtor dated 18.04.2018 for the Supply of Power.
- b. Operational Creditor's invoices dated 18.04.2018, 04.05.2019, 31.05.2019.
- d. Demand Notice issued by the Operational Creditor 07.08.2019.
- e. Reply to the Demand Notice issued by the Corporate Debtor on 22.08.2019.

5. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor approached the Operational Creditor and offered to purchase power from the Operational Creditor and in pursuance of the same, both the parties entered into a Power Supply Agreement (hereinafter referred to as "Agreement") dated 18.04.2018. Thereafter, it is submitted that the Operational Creditor has raised various invoices periodically and the Corporate Debtor was paying the dues according to the invoices; but with inordinate delay. It was submitted that as per the Agreement, the

Corporate Debtor is liable to settle the dues before the due date i.e. 7 days from the date of Invoice and in case of any delay in settlement of dues, as per clause 4.2 and 4.3 of Agreement, the Operational Creditor is liable to charge interest at the rate of 3% per month.

6. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor was unable to collect the legitimate dues pending to them from the Corporate Debtor since the Corporate Debtor was paying the dues in the prescribed date and even after repeated reminders there is still an outstanding debt of Rs. 71,70,818/- and hence a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was issued by the Operational Creditor to the Corporate Debtor on 07.08.2019, to which, the Corporate Debtor has not sent any reply. It was also submitted that the Corporate Debtor has not paid the outstanding amount as per the invoices and no reply to these invoices were made by the Corporate Debtor. Under these circumstances, the Operational Creditor submitted that the Corporate Debtor has committed a default in the payment of the debt amount which is due and payable to the Operational Creditor and hence prayed for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.



7. In relation to the Corporate Debtor it is seen that the Corporate Debtor has filed a counter and it is averred in para 3 of the counter that the Corporate Debtor will settle the outstanding amount of Rs.61,02,868/- and that there is no objection as to the outstanding amount which is due and payable, however has prayed to waive off the interest amount. Further, it is stated in the counter that the Corporate Debtor is in acute financial crisis and sought for extension of time to pay the outstanding dues.

8. Further, it is also seen from the reply to the Demand Notice, the Corporate Debtor has stated that they will make the payment to the Operational Creditor by the third week of September 2019, however the Corporate Debtor has failed to fulfil its obligation.

9. Under such circumstances, since the Corporate Debtor has admitted its liability in respect to the outstanding dues which is payable to the Corporate Debtor, the 'default' on the part of the Corporate Debtor in repayment of the 'operational debt' to the Operational Creditor is proved and hence we are constrained to initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor. 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 cannot seek shelter also under Section 10A of IBC, 2016.

10. 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 01.10.2019, 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.

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 Insolvency and Bankruptcy Board of India applicable for the period between July – December 2021 appoints **Mr. Vijaya Ragahvan Krishnan** with Reg. No. **IBBI/IPA-001/IP-P01872/2019-2020/12961 (email id:- vshsai@yahoo.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 20 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.

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. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two 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.

16. 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.

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

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

*Raymond*