

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

IBA/789/2019 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. J.R. Furnace and Ovens Private Limited***

M/s. Motovario Gear Solutions Pvt. Ltd.

Reg. Office at No.93/1, CS 512
Motiza – Hanspukuria, Diamond Harbour Road,
Thakurpukur, Joka, Kolkata,
West Bengal – 700 104

... Operational Creditor

-Vs-

M/s. J.R. Furnace and Ovens Private Limited,

No.L-4, SIDCO Industrial Estate
Villivakkam, Chennai – 600 049

...Corporate Debtor

Order Pronounced on 26th November, 2019

CORAM :

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

For Operational Creditor : G. Saibaba, Counsel

For Corporate Debtor : None appeared

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is an Application that has been filed by ***M/s. Motovario Gear Solutions Pvt. Ltd.*** (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 **M/s. J.R. Furnace and Ovens Private Limited** (hereinafter referred to as '**Corporate Debtor**').

2. Part – I of the Application being Form 5 discloses the particulars of the Operational Creditor as being represented by the Authorized Representative Mr. Suresh Chinnasamy, and the Operational Creditor has passed a board Resolution to this effect, which is annexed at page 2 of the typed set.

3. Part – II of the Application discloses the details of the Corporate Debtor and it is evident that the Corporate Debtor was incorporated on 12.06.2008 and the Authorized Share Capital is Rs.1,00,000/- and the Paid-up-capital is Rs.1,00,000/-. The Registered Office of the Corporate Debtor is situated as No. L – 4, SIDCO Industrial Estate, Villivakkam, Chennai – 600 049 which co-relates with the address as disclosed in the Master Data.

4. Part – III of the Application 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.



5. Part – IV of the Application gives the details of the operational debt as well as the circumstances which led to the default of the operational debt by the Operational Creditor. A perusal of the same posits the fact that the Operational Creditor was engaged by the Corporate Debtor for supply of Geared Motors and in this regard the Corporate Debtor has placed three purchase orders. Thereafter, the Operational Creditor has agreed to extend credit limit facility for 45 days from the date of Invoice for payment and in case of delay in payment, it was agreed that 18% p.a. interest will be charged for Invoice amount and based on that the Operational Creditor has duly supplied the materials and raised four tax invoices as follows;

Sl. No.	Date of Invoice	Invoice No.	Invoice Amount
1	01.01.2019	M2846	₹ 1,88,446/-
2	01.01.2019	M2850	₹ 85,163/-
3	22.01.2019	M3097	₹ 3,06,776/-
4	25.01.2019	M3143	₹ 78,777/-
		TOTAL	₹6,59,162/-

6. The Operational Creditor has claimed a sum of **₹6,59,162/-** towards principal and interest at the rate of 18% p.a. until the date of repayment, as outstanding due from the Corporate Debtor.



7. It is averred that, upon repeated demand made by the Operational Creditor, the Corporate Debtor has issued a cheque dated 15.02.2019 for a sum of Rs.2,72,777/- and upon presentation of the same, it was returned with an endorsement "*Exceeds Arrangement*". Thereafter, the Operational Creditor has issued a legal notice to the Corporate Debtor on 06.04.2019 to which the Corporate Debtor has preferred not to send any reply.

8. Thereafter, the Operational Creditor has issued Demand Notice as mandated under Sec. 8 of the I&B Code, 2016 to the Corporate Debtor on 07.05.2019, demanding the Corporate Debtor to repay a sum of ₹6,59,162/- and ₹22,411/- as interest calculated at 18% p.a., within 10 days from the receipt of the notice, which was received by the Corporate Debtor on 20.05.2019. However, after receipt of the notice, the Corporate Debtor has chosen not to reply to the Demand Notice issued by the Operational Creditor.

9. In relation to the Corporate Debtor, it is brought to the notice of this Tribunal from the record of proceedings that when the matter came up for hearing for the first time on 09.08.2019, none appeared on behalf of the Corporate Debtor. Thereafter, when the matter came up for hearing on



25.09.2019, it was observed by this Tribunal that only a microscopic amount is involved in this matter and the Corporate Debtor was directed to make payment and the matter subsequently adjourned to 08.11.2019. On 08.11.2019 none appeared for the Corporate Debtor and it was represented by the Counsel for the Operational Creditor that the Corporate Debtor has agreed to make the payment within a weeks' time and requested for the matter to be adjourned and based on that the matter was adjourned with a direction that the parties shall proceed with the matter if the Corporate Debtor fails to make any payment. Subsequently, when the matter came up for hearing on 19.11.2019, none appeared for the Corporate Debtor and the Counsel for the Operational Creditor has also stated that no payments were received from the Corporate Debtor. Hence we are constrained to proceed with the matter in the absence of the Corporate Debtor.

10. From the list of invoices provided, it is evident that all the invoices are within the period of limitation of 3 years and are not barred by limitation. The claim amount as made in the petition is also in excess of Rs.1,00,000/- being the statutory minimum amount fixed under Section 4 of the IBC, 2016 for



approaching this Tribunal by the creditors, in the instant case by an Operational Creditor.

11. The Operational Creditor has also filed Affidavit by complying with Section 9 (3) (b) of the I&B Code, 2016, along with the typed set of document wherein under Para 4, it has been deposed that the Operational Creditor has not received any payment or notice of dispute with regard to the unpaid operational debt.

12. By taking into consideration the facts mentioned supra, we are inclined to admit the Application as has been filed by the Operational Creditor and consequently Corporate Insolvency Resolution Process is initiated. 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 **Ms. M. Jayasree** with *Registration No. IBBI/IPA-001/IP-P00733/2017-2018/11236 (Mob No:- +91 - 9487701589) (Email id:- jayashree_muralidharan@yahoo.co.uk)* 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.

13. 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.

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 **₹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.

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.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)