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

IBA/1186/2019

(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. Ram Battery India Pvt. Ltd.***

M/s. Luminous Power Technologies Private Limited
C-56, Mayapuri Industrial Area, Phase II,
Mayapuri, New Delhi – 110 064

... *Operational Creditor*

-Vs-

M/s. Ram Battery India Private Limited
406, Perundurai Road,
Erode,
Tamil Nadu – 638 009

...*Corporate Debtor*

Order Pronounced on 28th January 2021

CORAM :

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

For Operational Creditor : Ranjana G, Advocate
For Corporate Debtor : None present

ORDER

***Per:* ANIL KUMAR B, MEMBER (TECHNICAL)**

1. Under Adjudication is an Application that has been filed on 28.09.2019 by **M/s. Luminous Power Technologies Private Limited** (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. Ram Battery India Private Limited** (hereinafter referred to as *'Corporate Debtor'*). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the details of the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U51505TZ2013PTC019467 was incorporated on 08.05.2013 and that its Nominal Share capital and paid up capital is Rs.60,00,000/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 406, Perundurai Road, Erode, Tamil Nadu – 638 009. Part-III of the Application shows 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 same.

3. From Part-IV of the Application, it is seen that a sum of Rs.18,46,197/- is being claimed by the Operational Creditor as Operational Debt, which includes the Principal sum of Rs.14,66,710/- and interest amount of Rs.3,79,487/-.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is engaged in the manufacturing, marketing, distribution and sale of various electrical and ancillary equipments like UPS, Fans, Modular switches and wires etc. It was submitted that in respect of the goods dispatched to the Corporate Debtor, the Operational Creditor has issued various invoices from 29.07.2013 to 10.06.2019. The copies of the invoices are placed at pages 69 to 80 of the typed set filed along with the Application.

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is maintaining a running current account of the Corporate Debtor, against which a Statement of Account / Ledger is maintained by the Operational Creditor and as per the said Statement of Accounts, there is an outstanding amount of Rs.14,66,710/- which is still due and payable by the Corporate Debtor. The copy of the statement of account / ledger maintained by the Operational Creditor is placed at pages 81 to 103 A of the

typed set filed along with the Application. It was submitted that the Operational Creditor has on various occasions requested the Corporate Debtor to clear the pending due amounts, however all such request have fallen on deaf ears and the Corporate Debtor has wilfully neglected to pay the dues of the Operational Creditor. The details of the outstanding amount due under respective invoices are set out hereunder;

S. No.	DATE OF INVOICE	INVOICE NO.	AMOUNT (₹)
1	16.06.2018	102200003439	2,49,806
2	16.06.2018	102200003442	64,428
3	16.06.2018	102200003444	3,12,320
4	16.06.2018	102200003441	1,742
5	16.06.2018	102200003443	5,244
6	16.06.2018	102200003438	2,56,431
7	19.06.2018	102200003549	72,288
8	19.06.2018	102200003550	69,207
9	19.06.2018	102200003551	2,63,808
10	25.06.2018	102200003855	43,719
11	27.06.2018	102200004108	72,216
12	09.07.2018	102200004789	55,501
TOTAL PRINCIPAL OUTSTANDING			**14,66,710**

6. Under such circumstances, it is submitted by the Learned Counsel for the Operational Creditor that they have sent a Demand Notice in Form 3 as stipulated under Section 8 of IBC, 2016 to the Corporate Debtor on 30.07.2019, to which the Corporate Debtor has replied on 10.08.2019. The copy of the Demand Notice and the Reply sent by the Corporate Debtor is placed at pages 12 to 62 of the typed set filed along

with the Application. It was submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor has miserably failed to clear its dues in favour of the Operational Creditor and hence, the instant Application is preferred by the Operational Creditor under Section 9 of IBC, 2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

7. The Corporate Debtor has filed its reply, however from the record of proceedings it is seen that the Counsel for the Corporate Debtor has failed to cause appearance before this Tribunal on 18.09.2020, 05.11.2020, 08.12.2020 and also on 05.01.2021 and in the circumstances, taking into consideration the reply filed by the Corporate Debtor, this matter was taken up for adjudication. It is stated in the reply filed by the Corporate Debtor that the Operational Creditor has raised invoices Nos. 102200006728 to 102200006730 in the name of the Corporate Debtor for the goods supplied to one M/s. Murari Traders at Chennai and the said Murari Traders has sent a DD for Rs.20,00,000/- as against the said invoices. It is alleged in the reply that even after receiving the entire sum as against the said Invoices, the Operational Creditor, in order to make unlawful gain has claimed the said sum from the Corporate Debtor.

8. It is further stated in the reply that the amount claimed by the Operational Creditor for the sum of Rs.14,66,710/- pertains only to above three invoices mentioned by the Corporate Debtor and the goods in respect of the above three invoices were not supplied to the Corporate Debtor, however was supplied to one M/s. Murari Traders. It is further stated in the reply that according to the Corporate Debtor there is no sum remaining to be paid to the Operational Creditor. Hence, it is stated in the reply that the present Application is required to be dismissed.

9. The Operational Creditor has filed rejoinder and it is stated in the rejoinder that the alleged three invoices as stated by the Corporate Debtor being Invoices Nos. 102200006728 to 102200006730 do not form part of the Application. It is further stated in the rejoinder that if any monies are being paid by the Corporate Debtor to the Operational Creditor in the course of this transaction, the same is adjusted towards the outstanding invoices payable by the Corporate Debtor in a chronological manner and as such only the 12 Invoices as extracted *supra* in this order are the outstanding invoices payable by the Corporate Debtor. It is also stated in the rejoinder that the Operational Creditor in

their email dated 25.07.2018 has categorically stated that they have not taken any orders from M/s. Murari Traders and the Corporate Debtor has sent a mail to the Operational Creditor to dispatch the materials to M/s. Murari Traders and at that point of time, there was no communication regarding the invoice amounts being cleared by M/s. Murari Traders and the Corporate Debtor only as an afterthought has sought to put the liability of these invoices on M/s. Murari Traders even when nothing of this sort was communicated to the Operational Creditor during the delivery of goods. Thus, the Learned Counsel for the Operational Creditor sought to rebut the averments made in the counter filed by the Corporate Debtor.

10. Heard the submission made by the Learned Counsel for the Operational Creditor and perused the records including the pleadings placed on file. From averments made in Part – IV of the Application, it is clear that the claim of the Operational Creditor pertains to the 12 Invoices as set out in the para *supra*. The Corporate Debtor sought to rebut the debt and default by raising a contention that there exists certain dispute in relation to Invoices Nos. 102200006728 to 102200006730. It is to be noted here that the said Invoices as stated by the Corporate Debtor do not form part of the Invoices as

claimed by the Operational Creditor. Further, the Corporate Debtor has also failed to place on record the Ledger Statement maintained by the Corporate Debtor in relation to the goods supplied by the Operational Creditor in order to substantiate its stand that no dues are payable. Further, the dispute which the Corporate Debtor sought to project before this Tribunal pertains to Invoices Nos. 102200006728 to 102200006730 in respect of which the goods were delivered to one M/s. Murari Traders. In this context, in the email exchanged between the parties, which is filed by the Operational Creditor along with the Rejoinder, it is seen that the Corporate Debtor by their email dated 18.12.2017 has requested the Operational Creditor to deliver the materials to M/s. Murari Traders and now the Corporate Debtor in order to defeat the claim of the Operational Creditor, cannot state that the goods were not delivered to the Corporate Debtor. Thus, the contentions as raised by the Corporate Debtor in their reply are required to be brushed aside.

11. In view of the same, the Operational Creditor has proved before this Tribunal the debt and default on the part of the Corporate Debtor. The default, it is also seen from the pleadings and documents filed on the part of the Financial Creditor are much prior to the advent of the Covid-19

pandemic. 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. From the list of invoices filed, it is evident that the claim as raised by the Operational Creditor is within the prescribed period of limitation of 3 years. The registered office of the Corporate Debtor is situated within the State of Tamilnadu, amenable to its territorial jurisdiction and this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor

12. 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 Date of Default has arisen 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 the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.

13. Thus, this Tribunal is perforce to initiate CIRP in relation to the Corporate Debtor by admitting this Petition under the provisions of Insolvency and Bankruptcy Code, 2016 read with Application to Adjudicating Authority Rules, 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 for the period from January – June, 2021 appoints **Mr. Balasubramanium Govindarajan** Reg. No. *IBBI/IPA-003/IP-N000136/2017-2018/11500* (email id:- *bgrajan@rediffmail.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. 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.

14. 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 mange 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

15. 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.

16. 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.

17. 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.

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

Raymond