

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA

CP (IB) No.993/KB/2019

In the matter of:

Switching AVO Electro Power Limited, 230, SN Roy Road, Kolkata, West Bengal-700038.

... Operational Creditor

Versus

In the matter of:

M/s Ambient Computronics Private Limited, 38, AN Path North, SK Puri Boring Road,
Patna, Bihar- 800013.

.....Corporate Debtor

Date of hearing : 12/11/2020

Order Pronounced on : 10.12.2020

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

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| 1. Mr. Anil Kumar Dubey, PCS | } For the Operational Creditor |
| 1. Mr. Arijit Basu, Advocate | } For the Corporate Debtor |
| 1. Mr. Akhilesh Kumar Srivastava, Adv. | } For Mr. Sudhir Kumar, one of the |
| 2. Mr. Akash Sharma, Advocate | } Directors of the Corporate Debtor |

ORDER

Per: Harish Chander Suri, Member (T)

1. The court convened by video conference on 12/11/2020.
2. It is submitted that Hon'ble National Company Law Appellate Tribunal, New Delhi vide order dated 15th October 2020 passed in Company Appeal (AT) (Ins) No. 525 of 2020, this matter (being CP (IB) No. 993/KB/2019) has been remitted back to this Adjudicating Authority while allowing the appeal of the appellant i.e. Operational Creditor in the present C.P.
3. This CP (IB) No. 993/KB/ 2019 had been heard and while dismissing the petition, this Adjudicating Authority had observed as under:-

"10. According to the Ld. Counsel for the Corporate Debtor, they have no occasion to purchase these Tubeler Battery as shown in the Annexure-A-9. The Corporate Debtor satisfactorily established by producing proof that they have entered into a contract with Exide India Limited. Annexure-9, annexed with the reply affidavit, proves that the Operational Creditor has entered into an agreement with Exide India Limited for supply of Battery and the Corporate Debtor is an authorized Dealer of Exide India Limited. In the absence of supporting evidence to prove that the Corporate Debtor has placed orders for purchasing the goods, referred to in the invoices, annexed with the demand notice, it is impossible to hold that the corporate debtor is liable for the amount as demanded by the operational creditor. Delivery of goods for the debt allegedly due is not established in the instant case. It has come out in evidence that the internal management dispute between the director who was managing the affairs of the branch at Varanasi is known to the operational creditor. Therefore, the contention on the side of the corporate debtor that operational Creditor has devised a plan in collusion with Mr. Sudhir Kumar in order to create monopoly in the market by getting rid of the Corporate Debtor Company from the market cannot be ruled out from the peculiar circumstances of the case in hand.

11. In view of the above said, this Application is not fit for admission and accordingly, liable to be dismissed. However, no order as to costs.

12. In the result, the Application is dismissed. No order as to costs."

4. The matter was taken up in appeal filed by the Operational Creditor/Appellant and while disposing of the appeal, the Hon'ble Appellate Tribunal observed that the Adjudicating Authority in Paragraph 8 of the impugned order had gone on to analyze the documents filed by the Appellant/ Operational Creditor and observed that the invoice relied on, did not show the delivery address of the Corporate Debtor which was the registered address of the Company and was at Patna in Bihar. The Hon'ble Appellate Tribunal further referred to the observations of the Adjudicating Authority part of Para 8 at page 7 , which is as under:-

“ It is significant to note that the said invoice refers to delivery of goods at Varanasi whereas the registered office of the corporate debtor is at Patna. Moreover, the registered branch office at Varanasi was shifted to Lucknow as per the registration certificate dated 14.12.2017. (Copy of registration certificate is at page 90 of the reply). So also, it is evident that a complaint was lodged to the ROC Bihar alleging financial inaccuracy and revenue collection etc. as to the affairs of the corporate debtor company. (Notice of ROC dated 31.1.2018.) In the said circumstances, it cannot be held that there is delivery of goods to the corporate debtor as alleged. Non production of proof of delivery of goods for which claim is made in this application and invoices, is fatal in the nature of this case.

No explanation is forthcoming from the side of the Operational Creditor as to non-production of the invoices proving the delivery of goods to the corporate debtor to its registered address. The Operational Creditor has got the burden to prove that the amount claimed is due to the Operational Creditor upon delivery of goods as alleged in the Application.”

5. The Hon'ble Appellate Tribunal after hearing Ld. Counsel for the parties observed that the defence taken by the Corporate Debtor showed that the Corporate Debtor had some disputes with one of the Directors and had made allegations against the said Directors. The Appellant/ Operational Creditor had filed copy of the Bank Statements, various entries whereof showed payments from the Corporate Debtor. The replies sent by the Corporate Debtor on record in response to section 8, notice mentioned was also referred to in the order by

the Hon'ble Appellate Tribunal and while concluding the order, the Hon'ble Appellate Tribunal observed that the stand taken by the Corporate Debtor showed that the branch office of the Corporate Debtor had not communicated with the Head office and they wanted to verify and confirm the transactions. It is further observed that the internal disputes of the Directors would not be relevant for throwing out the Application under Section 9 of I & B Code, 2016. In any case, that was not a dispute which was raised or communicated to the Operational Creditor any time before notice under Section 8 was sent. The Hon'ble Appellate Tribunal further directed that in the facts of the matter "we find that the Adjudicating Authority erred in approaching the Application under Section 9 and the form submitted in a manner as if a plaint was being examined or it was some suit. Considering the format and particulars required to be given in the format if the Application is complete, it is required to be admitted unless the Corporate Debtor shows Pre-existing dispute. The Hon'ble Appellate Tribunal further held that the dispute raised in this case was that there was no dealing between the Corporate Debtor and the Operational Creditor, that there was no agreement. It was however, mentioned in the reply that there was a dispute with the branch office and that they wanted to verify the transaction. The Bank Statement of the Operational Creditor was also seen and it was found that various payments of more than Rs.3 Crores were stated to have been made from the outstanding dues and for a small amount of Rs. 21,07,916/- , the Operational Creditor was required to move to the Adjudicating Authority. The Appellate Authority further directed that invoice dated 21st October, 2017 had stamp and signature of receipt by Varanasi office of the Corporate Debtor and that the E-way bill can have address where goods are required to be delivered and it would not matter till the invoice is acknowledged. While disposing of the appeal, the Hon'ble Appellate Tribunal set aside the impugned order dated 18.11.2019 passed by Kolkata Bench and remitted this matter back to this Adjudicating Authority directing that the application under section 9 of IBC be

admitted unless the Corporate Debtor settles the matter with the Operational Creditor.

6. Pursuant to the orders passed by the Hon'ble Appellate Tribunal, the Ld. Counsel for the Operational Creditor appeared on 9th November, 2020 when the matter was taken up after the virtual hearing started in this Bench. The matter was taken up on 9th November, 2020 and thereafter was listed for admission on 12th November, 2020 and it was directed that if there was no settlement by the CD, the petition would be admitted.
7. In view of the observations and directions passed in the order of Hon'ble Appellate Tribunal, we hereby admit the petition and pass the following Orders:-

O R D E R S

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s Ambient Computronics Pvt.Ltd.** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor 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 Corporate Debtor 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 Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The supply essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) 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 the 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.

- ix) **Mr. Subodh Kumar Agrawal**, [Reg. No. **IBBI /IPA-001/IP-P00087/2017-18/10183**] registered with Insolvency and Bankruptcy Board of India, having Registration No. , E-mail ID: **subodhka@gmail.com.**, Mobile No. **9830022848** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Operational Creditor/Applicant is directed to deposit **Rs. 2,00,000/- (Rs. Two Lacs only)** in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional . IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC .
- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 29.01.2021 for the filing of the progress report.

xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

Pj.