

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

**CP/1271/IB//2018**

*Under Section 9 r/w Rule 6 of the IBC, 2016*

**In the Matter of M/s. Sri Ayyan Textiles Private Limited**

**M/s. TCP Limited**

...Operational Creditor

**V/s**

**M/s. Sri Ayyan Textiles Private Limited**

...Corporate Debtor

**Order delivered on: 05.03.2019**

**Coram:**

**B.S.V. PRAKASH KUMRAR, MEMBER (JUDICIAL)**

**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Petitioner/OC: *Shri R. Parthasarathy, Advocate*  
*Shri Rahul Balaji, Advocate*  
*Shri Madhan Babu, Advocate*  
*Shri Vishnu Mohan, Advocate*

For the Respondent/CD: *Shri S. Mahesh Kumar, Advocate*

**ORDER**

**Per : S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

Matter under consideration is a Company Petition filed by M/s.TCP Limited (in short, “Operational Creditor”) against M/s. Sri Ayyan Textiles Private Limited (in short, “Corporate Debtor”) Under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short, **IB Code, 2016**) read with Rule 6 of the Insolvency and

Bankruptcy (Application of Adjudicating Authority) Rules, 2016 (for brevity, **IB Rules 2016**).

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this Petition.
3. The Operational Creditor, a public company incorporated under the Companies Act 1956, with its registered office at TCP Sapthagiri Bhavan, Old No.10, New No.4 Karpagambal Nagar, Mylapore, Chennai – 600004. The Corporate Debtor, a private company incorporated under the Companies Act 1956 with its registered office at No.414, Mettupalayam Road, NSN Palayam (PO), Coimbatore-641 031.
4. The learned counsel for Operational Creditor stated that this petition has been filed for claiming a total debt of ₹20,39,376 (Principal ₹14,15,786 and interest @ 24% per annum) towards supply of power in terms of the Letter of Intent dated 22.12.2015 and Power Purchase Agreement on 29.12.2015. Several invoices have been raised by the Operational Creditor for the sale of electricity from August 2016 to February 2017. The default had occurred on 07.03.2017. Subsequently, e-mails were also sent on

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21.08.2017, 20.11.2017, 08.12.2017 and 13.06.2018 demanding payment of unpaid operational debt of ₹11,15,768 as on date.

5. On 11.07.2018, the Operational Creditor sent Demand Notice (under Section 8 Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) to the Corporate Debtor for the total unpaid operational debt amounting to ₹20,39,376 (Principal due ₹14,15,768 and interest @ 24% per annum ₹6,23,608 from 07.03.2017) and filed proof of service. Despite a Notice of Demand served on the Corporate Debtor for payment of the outstanding debt, the Operational Creditor has neither received the payment nor the notice of dispute under Section 8(2) of the Insolvency and Bankruptcy Code, 2016 even after ten days from the date of delivery of the Notice of Demand for payment. As per the resolution passed at the Fifth meeting of the Board of Directors held on 31.08.2018, the Operational Creditor filed this petition.

6. On 19.12.2018, the learned counsel appearing on behalf of Corporate Debtor reported to the Bench that settlement talks are in progress and prayed for time. But, when the matter came up for hearing on 25.01.2019 and 19.02.2019 the Corporate Debtor was not present.

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7. In this case, the Operational Creditor (Power Producer) and the Corporate Debtor (User Member) had entered into a Letter of Intent on 22.12.2015 to enable preservation of capacity for the power generated and has also executed Power Purchase Agreement on 29.12.2015. According to the payment procedure mentioned in para 12.2.1 of the PPA (page 21 of the typed set filed along with the application), the User Member shall make payment against the invoice raised by Power Producer within 7 business days from the date of the invoice. In terms of para 12.5.1 related to Payment Delay or Default, it is mentioned that "*late payments, after due date of payment shall carry, for the period of delay, interest at 2% per month calculated for the period of delay expressed in number of days on the unpaid amount of the invoice till the recovery of all dues including interest on delayed payment and any payment received shall first be appropriated towards interest on overdue payment*". As per para 13.2.5, failure on the part of User Member (Corporate Debtor) to make payment of undisputed amount of monthly invoice by the due date of payment has been mentioned as an event which will be considered as "**Force Majeure**" event. In the invoices raised by the Operational Creditor also a reference has been made to para 12.5.1 of the Power Purchase Agreement related to late payments.

8. In this case, the Operational Creditor has placed copies of the Letter of Intent (LOI), Power Purchase Agreement (PPA), invoices (from page 30 to 36 of the typed set) and Demand Notice under Section 8 of the IBC, 2016. The Corporate Debtor has not given any reply to the said Demand Notice. However, on the date of hearing of the petition on 19.12.2018, the learned counsel appearing on behalf of the Corporate Debtor reported to the Bench that settlement talks were in progress and the Corporate Debtor intended to settle the outstanding amount. But during the two subsequent hearings on 25.01.2019 and 19.02.2019, the Corporate Debtor was not present / represented. No written statement has also been filed by the Corporate Debtor to dispute the claim made by the Operational Creditor. The interest, as calculated by the Operational Creditor is also as per the terms of the Power Purchase Agreement which has been referred in all the invoices raised by the Operational Creditor against the Corporate Debtor.

9. In view of the above observations, this Tribunal is of the opinion that the case of the Operational Creditor has been clearly established. Hence, **the Company Petition 1271/IB/2018 is admitted** and this Bench orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall

ordinarily get completed within 180 days, reckoning from the date this order is passed.

10. Since the Operational Creditor having not provided the name and consent of the Interim Resolution Professional, this Tribunal has selected from the panel provided by IBBI for appointing an IRP. This bench appoint Shri. M. Ramji as Interim Resolution Professional (IRP). There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website.

11. The Registry is directed to communicate this order and intimate Shri. M. Ramji regarding his appointment as IRP to obtain his consent in Form 2 at the earliest.

12. This Bench declare the moratorium which shall have effect from the date of this order till the completion of CIRP for the purpose referred to under section 14 of the I&B Code, 2016. This Bench order to prohibit all of the following namely,

- i) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or order in any court of law, Tribunal, Arbitration panel or other authority;
- ii) transferring, encumbering, alienating or disposing of by the Corporate Debtors any of its assets or any legal right or beneficial interest therein;

- iii) 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 Securitization and Reconstruction or Financial Assets and Enforcement of Security Interest Act 2002 (54 of 2002);
- iv) the recovery of any property by a owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;

13. The supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period. The provisions of sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government;

14. the IRP so appointed shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under section 19 and for discharging his functions under section 20 of the I&B Code;

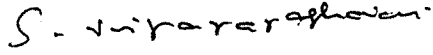
15. the Operational Creditor as well as the Registry is directed to send the copy of this order to IRP on his appointment so that he could take charge of the Corporate Debtor's assets etc. and make


compliance with this order as per the provisions of the I&B Code, 2016; and

16. the Registry is also directed to communicate this order to the Operational Creditor and the Corporate Debtor;

17. The address details of the IRP are as follows: -

Shri. Ramji  
Reg. No: IBBI/IPA-001/IP-P01507/2018-2019/12258  
E-Mail: [yahooramji@gmail.com](mailto:yahooramji@gmail.com)  
Mobile No: 9962496298

  
**(S. VIJAYARAGHAVAN)**  
**MEMBER (Technical)**

  
**(B.S.V. PRAKASH KUMAR)**  
**MEMBER (Judicial)**

TJS/KNP/