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

IBA/765/2019

(filed under Section 9 Rule 6 of the Insolvency and Bankruptcy
(Application to adjudicating Authority) Rules, 2016)

In the matter of ***Eastern Common Effluent Treatment Company
Pvt Ltd.***

ENKEM ENGINEERS PRIVATE LIMITED

Represented by its Director

Mr.P.Subramani,

Registered Office at

"Twins Chambers",

3rd Floor, Old No.824,

New No.282,

Poonamallee High Road,

Kilpauk, Chennai- 600 010

...Applicant/Operational Creditor

- Vs -

EASTERN COMMON EFFLUENT TREATMENT COMPANY PRIVATE LIMITED

Registered Office at

SF No. 3/1 and 4/2,

KasipalayamVijayapuram Post,

Nallur, Tirupur,

Coimbatore – 641 606

...Respondent/Corporate Debtor

Order pronounced on **25th March 2022**

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Petitioner : Mr.SaaiSudharsan, Advocate

For Respondent : Ex-Parte

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under consideration this Petition is filed by Enkem Engineers Private Limited registered under Companies Act, 1956 bearing CIN No.U34200TN1985PTC012009 represented by Mr. P.Subramani, authorized representative backed by Board Resolution dated 20.05.2019, enclosed at Page No.43 of the Application. This Application is filed by Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) for initiation of Corporate Insolvency Resolution Process (CIRP) against Eastern Common Effluent Treatment Company Pvt Ltd.

2. The Corporate Debtor herein bearing CIN No.U09000TZ2004PTC011169 registered under Companies Act, 1956 having its registered office at SF No. 3/1 and 4/2, KasipalayamVijayapuram Post, Nallur, Tirupur, Coimbatore – 641 606.

3. From, Part- III of the Application it can be seen that the Operational Creditor had not proposed the name of the IRP and had left it to the discretion of this Tribunal. Further From Part IV of the Application it can be seen that, the Operational Creditor had claimed Rs. 46,04,000/- (Rupees Forty Six Lakhs and Four

Thousand only) to be the total debt amount claimed. The date of default as mentioned in Part IV of the application is 07.04.2018.

4. From, Part- V of the Application it can be seen that the Applicant has placed the following list of documents:

- a) Demand Notice Dated 26.04.2019, sent on 26.04.2019 along with its postal Receipt
- b) Operation and Maintenance Order/Agreement dated 14.06.2012 between Eastern Common Effluent Treatment Company Private Limited and Enkem Engineers Private Limited
- c) Project Management Agency Agreement dated 27.11.2012 between Eastern Common Effluent Treatment Company Private Limited and Enkem Engineers Private Limited
- d) Letter of Commitment dated 31.01.2018 from Eastern Common Effluent Treatment Company Private Limited to Enkem Engineers Private Limited acknowledging the balance due of Rs.56,04,000/- as on 31.01.2018
- e) Certificate of Project Management Agency dated 29.01.2018
- f) Certificate of Operation and Maintenance of CETP
- g) Letter dated 02.04.2019 from Dr.M.Karunakaran I.A.S., Director of Handlooms and Textiles to the Chairman/Managing Director, Eastern Common Effluent requesting the latter to settle the balance due of Rs.46,04,000/- to Enkem.
- h) i) Customer Ledger for ECETP (O&M) in the books of Enkem from 01.08.2017 to 31.01.2018
ii) Customer Ledger for ECETP (PMA) in the books of Enkem from 01.04.2013 to 16.01.2018
- i)
 1. Invoice No. O&M 05/17-18 dated 04.08.2017
 2. Invoice No. O&M 06/17-18 dated 04.09.2017
 3. Invoice No. O&M 07/17-18 dated 04.10.2017
 4. Invoice No. O&M 08/17-18 dated 01.11.2017
 5. Invoice No. O&M 09/17-18 dated 01.12.2017
 6. Invoice No. O&M 10/17-18 dated 02.01.2018
 7. Invoice No. O&M 11/17-18 dated 31.01.2018
 8. Invoice No. Project Management Fee dated 03.06.2013
 9. Invoice No. Project Management Fee dated 01.12.2013
 10. Invoice No.PMA 01/15-16 dated 02.05.2015
 11. Invoice No.PMA 02/15-16 dated 02.07.2015
 12. Invoice No.PMA 10/17-18dated 15.06.2017
- j) Reconciliation Statement i.e. Table Clarifying the actual amounts received
- k) Copy of the earlier Form 3 dated 26.03.2019
- l) Statement of Bank Account of the Operational Creditor (Enkem) for the period between 01.01.2018 and 20.04.2019.

5. Learned Counsel for the Petitioner states that IBA/765/2019 was filed on 24.05.2019 for a sum of Rs. 46,04,000/- due and payable by the Corporate Debtor. He further states that this amount is arrived at several invoices were raised for various operational debts and the Corporate Debtor has failed to honour the payment. The said invoices are enclosed from Page Nos.62 to 73 of the typed set of the application.

6. It was submitted by the Learned Counsel for the Operational Creditor that since no payment was forthcoming from the Corporate Debtor, the Operational Creditor has issued a Demand Notice under Section 8 of IBC, 2016 to the Corporate Debtor on 26.04.2019, which was delivered to the Corporate Debtor on 30.04.2019. Further, the Operational Creditor has also filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016 stating that the Corporate Debtor after the receipt of the Demand Notice has failed to pay the unpaid 'operational debt' nor raised any dispute in relation to the same. Under such circumstances, the Operational Creditor has filed the present Application before this Tribunal on 24.05.2019 seeking initiation of CIRP as against the Corporate Debtor.

7. In relation to the Corporate Debtor, it is seen from the records that there was no appearance on the part of the Corporate

Debtor and this Tribunal passed ex-parte order dated 21.08.2019 against the Corporate Debtor.

8. Heard the submissions made by the Learned Counsel for the Operational Creditor. From the records it is seen that this Tribunal Vide order dated 07.01.2020 wherein the Operational Creditor filed a Memo of Withdrawal by stating that the Corporate Debtor had paid part payments of Rs.20,00,000/- as against the claim of Rs.46,04,000/- and the Corporate Debtor had agreed to pay the remaining amount according to the Schedule as agreed between the Operational Creditor and the Corporate Debtor. It was further represented by the Learned Counsel for the Operational Creditor that in case of failure on the part of the Corporate Debtor to pay the remaining amount, the Petitioner to be at liberty to file a fresh case against the Corporate Debtor and to approach this Tribunal.

9. Upon considering the submissions made by the Learned Counsel for the Operational Creditor as well as the memo filed on behalf of the Operational Creditor, Tribunal held that this petition i.e. IBA/765/2019 stands dismissed as withdrawn.

10. Since the Corporate Debtor has failed to honour the remaining payment of Rs.26,04,000/- as per the memo stated above and IBA/765/2019 was dismissed as withdrawn, the Learned

Counsel for the Operational Creditor is left with no other option to file a revival application bearing IA/2/CHE/2022 for reviving the IBA/765/2019. Thereafter, this Tribunal vide order dated 04.03.2022 allowed the revival application. Hence the present application IBA/765/2019 is taken on record.

11. Thus from the records, it is categorically clear that there is no pre-existing dispute between the parties and the Corporate Debtor failed to pay the remaining outstanding amount of Rs.26,04,000/- (Twenty Six Lakhs Four Thousand Only) which is due and payable to the Operational Creditor. This Tribunal is of the considered view that there is a debt and default on the part of the Corporate Debtor.

12. 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 also cannot seek shelter under Section 10A of IBC, 2016. 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.

13. Thus we are constrained to **admit** this Application and initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 9 of the IBC, 2016. 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;



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 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.

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. 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 applicable for the period between Jan 2022 – June 2022 appoints **Mr. Vanangamudi J** having Registration Number IBBI/IPA-002/IP-N00903/2019-2020/12891(email Id :vanangamudij@gmail.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.

17. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as

prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. 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 IBC, 2016 and file his report within 30 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.

19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

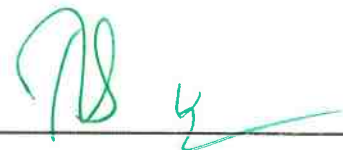
20. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



21. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-**(Rupees One 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.

22. 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.

23. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.



24. Post this IBA/765/2019 for hearing on **26.05.2022.**

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

SriramAnanth.V