

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

IBA/1428/2019

*(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. Balsara Engineering Products Limited**

M/s. Rasi Electrodes Limited,

A-14, Rams Apartments, 3rd Floor,
No.21, Raja Annamalai Road,
Purasawalkam, Chennai – 600 084.

... Operational Creditor

-Vs-

M/s. Balsara Engineering Products Limited,

SF-273, Kavaraipettai-Sathyavedu Road,
Thanipoondi Post,
Gummidipoondi Taluk,
Tiruvallur – 601 202.

... Corporate Debtor

Order pronounced on 24th February, 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : S. Shrenik Raj, Advocate

For Corporate Debtor : None present

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under consideration is an Application filed by **M/s. Rasi Electrodes Limited** (hereinafter referred to as "Operational Creditor") against **M/s. Balsara Engineering Products Limited** (hereinafter referred to as "Corporate Debtor") under



Section 9 of the Insolvency & Bankruptcy Code, 2016, seeking thereof to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Operational Creditor is a Limited Company incorporated under the Companies Act, 1956. Part-II of the Application, discloses the fact that the Corporate Debtor is a Limited Company incorporated on 30.03.1995 bearing CIN: U93090TN1995PLC030736. The Registered office address of the Corporate Debtor as per the Application is stated to be situated at SF-273, Kavaraipettai-Sathyavedu Road, Thanpoondi Post, Gummidipoondi Taluk, Tiruvallur -- 601 202.

3. From Part-III of the Application, it is seen that the Operational Creditor has not disclosed the name of the IRP and left it to the discretion of this Tribunal to appoint the IRP. Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of Rs.3,97,307/- which is due and payable by the Corporate Debtor. The present Application has been filed by the Operational Creditor before this Tribunal on 04.10.2019.



4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor had supplied materials to the Corporate Debtor and raised the invoices which are as follows: -

S. No.	DATE OF INVOICE	INVOICE No.	RUPEES (₹)
1	20.01.2018	02248	44,250/-
2	31.01.2018	02371	1,03,250/-
3	13.02.2018	02543	42,480/-
4	21.02.2018	02638	42,480/-
5	06.03.2018	02801	77,880/-
6	23.03.2018	03019	46,020/-
7	30.03.2018	03093	46,020/-
TOTAL			4,02,380/-

5. It is submitted that the total sum of the aforesaid seven invoices aggregates to a sum of Rs.4,02,380/- and as against the said sum, the Corporate Debtor has made some part payment and after adjusting the said amount being paid by the Corporate Debtor, a sum of Rs.3,95,537/- is still due and payable by the Corporate Debtor towards the goods sold and delivered by the Operational Creditor.

6. It was further submitted by the Learned Counsel for the Operational Creditor that in discharge of its liability the Corporate Debtor has issued the following five cheques to the Operational Creditor, the details of which are as follows:-



S. No.	CHEQUE DATE	BANK NAME	RUPEES (₹)
1	31.03.2018	Axis Bank, Corporate Banking, Chennai	1,03,250/-
2	14.04.2018	Axis Bank, Corporate Banking, Chennai	42,480/-
3	20.04.2018	Axis Bank, Corporate Banking, Chennai	42,480/-
4	06.05.2018	Axis Bank, Corporate Banking, Chennai	77,880/-
5	30.05.2018	Axis Bank, Corporate Banking, Chennai	46,020/-

7. It was submitted by the Learned Counsel for the Operational Creditor that upon presentation of the aforesaid five cheques before the banker of the Operational Creditor, the same were returned with an endorsement "*funds insufficient*".

8. Under the said circumstances, it was submitted by the Learned Counsel for the Operational Creditor that the Operational Creditor has caused a Demand Notice as stipulated under Section 8 of the Insolvency & Bankruptcy Code, 2016 to the Corporate Debtor on 21.06.2018 which was received by the Corporate Debtor and the proof of acknowledgement has also been enclosed along with the typed set. The Operational Creditor has also filed an Affidavit under



Section 9(3)(b) of the Insolvency & Bankruptcy Code, 2016 wherein it has been stated that even after the expiry of 10 days period from the date of delivery of the Demand Notice, the Corporate Debtor has not brought to the notice of the Operational Creditor any existence of dispute nor paid the said sum to the Operational Creditor. The Learned Counsel for the Operational Creditor submitted that as per the invoices, the Operational Creditor is liable to interest at the rate of 24% per annum from the due date of the invoices till the date of realization. Under the said circumstances, the Learned Counsel for the Operational Creditor submitted that the debt and default on the part of the Corporate Debtor is proved and hence prayed for initiation of the CIRP as against the Corporate Debtor.

9. In relation to the Corporate Debtor, it is seen from the record of proceedings that this Tribunal vide Order dated 20.10.2020 has directed the Operational Creditor to cause a private notice to the Corporate Debtor. Further, on 02.12.2020 this Tribunal has again directed the Operational Creditor to take a fresh notice to the Corporate Debtor. The Operational Creditor has filed an Affidavit of Service vide Diary No. 4003 dated 23.12.2020, from which it is seen that the notice has been duly served upon the Corporate Debtor on

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17.12.2020 and inspite of notice being served on the Corporate Debtor there was no representation on behalf of the Corporate Debtor. Under the said circumstances, this Tribunal was constrained to proceed with the matter in the absence of the Corporate Debtor.

10. Heard the submissions made by the Learned Counsel for the Operational Creditor and perused the records including the pleading placed on file. From the invoices filed by the Operational Creditor, it is seen that the same have been raised for the period from 20.01.2018 till 30.03.2018 and that the present Application has been filed before this Tribunal on 04.10.2019 and as such it falls well within the period of limitation. Further it is to be seen that the default arising in the present Application is much prior to the advent of Covid-19 pandemic and hence the Corporate Debtor cannot also seek shelter under Section 10A of the Insolvency & Bankruptcy Code, 2016. Also 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 Notification issued under Section 4 of Insolvency & Bankruptcy Code, 2016, as regards the present Application, it is seen that the default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 crore and



the endorsement made by the Registry of this Tribunal discloses the date of filing of this Petition on 04.10.2019 and as such this Tribunal has got the pecuniary jurisdiction to entertain this Petition as filed by the Operational Creditor.

11. Under the circumstances, in the absence of any opposition to the present Application by the Corporate Debtor and also in view of the fact that the debt and default on the part of the Corporate Debtor is being proved by the Operational Creditor, this Tribunal is left with no other option than to proceed with the present case and initiate the CIRP in relation to the Corporate Debtor.

12. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 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 of January to June 2021, this Tribunal appoints **Mr. C Prabakaran** Registration No. IBBI/IPA-001/IP-P01596/2018-2019/12444 (email id:- gkecpn@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. 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;

13. 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

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(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.

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 **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.

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, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)


-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond