

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

IBA/1359//2019 filed under section 9 of
the Insolvency and Bankruptcy Code,
2016 read with Rule 6 of the Insolvency
and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016.

In the matter of M/s. Real Link Engineering Private Limited

M/s. Marikko Industrial Chemicals

Door No.s. 161/452, Mariamman Kovil Street,
Papanaickenpalayam,
Coimbatore-641402.

...Operational Creditor

Vs.

M/s. Real Link Engineering India Private Limited

F. No. 402/2A, 2B, 2C, 2D & 412
Appanaickenpattai Village,
Sulur Taluk, Coimbatore-641402

---Corporate Debtor

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R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For Operational Creditor : *Mr.B. Harikrishnan, Advocate*
Mr.P.K.Balasubramanian, Advocate
Mr.Arikarasudan, Advocate

For Corporate Debtor : *Mr.A.E. Ravichandran, Advocate*
Mr. Siddharth Govind, Advocate
Mr. Saitanya Kesan, Advocate

Per : R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on: 21.04.2021



IBA/1359//2019

In the matter of M/s. Real Link Engineering Private Limited

Under consideration is an application filed pursuant to Section 9 of the I & B Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**) by M/s. Marikko Industrial Chemicals ("**Operational Creditor**") for initiation of Corporate Insolvency Resolution Process (in short "**CIRP**") against M/s. Real Link Engineering Private Limited (hereinafter referred to as "**Corporate Debtor**"), on the ground that Corporate Debtor defaulted in payment of operational debt of an amount Rs.25,34,352/-. This Application was filed on 04.11.2019.

2. Learned Counsel for the Operational Creditor averred that on the orders placed by Corporate Debtor, the Operational Creditor has supplied raw materials between 07.08.2018 and 30.01.2019 for which invoices were raised and the materials were duly received, acknowledged and accepted by the Corporate Debtor and not disputed till date. The total outstanding operational debt of Rs.25,34,352/- has fallen due and not paid so far.



3. It is submitted that the Operational Creditor had sent legal notice on 07.08.2019 and Form-3 notice dated 20.09.2012, which the Corporate Debtor has admitted through their letter dated 03.09.2019 for Rs.24,34,252/-.

4. It is further submitted that the Operational Creditor has filed additional documents on 01.04.2019 furnishing ledger account from 01.04.2018 to 17.07.2019 maintained in respect of Corporate Debtor showing details of payments received and outstanding debt, Corporate Debtor's letter dated 16.05.2019 to the Applicant and Reply by the Corporate Debtor dated 03.09.2019.

5. In its *counter* filed by the Corporate Debtor on 12.03.2020, it is averred that during the year 2019, it was found that the prices for the materials that were supplied by the Operational Creditor were on the higher side and hence the Corporate Debtor stopped procurement from the Financial Creditor but continued to make payments against the outstanding balances. Through negotiations, it was agreed that the amount of Rs.25,50,854/- be divided into

monthly instalments for which 16 cheques were issued for the purpose of security.

6. It is further averred that the Operational Creditor has deposited all the cheques at once which were bounced and in this regard initiated a complaint under Section 138 of the Negotiable Instruments Act in CC No.1201 of 2019 on the file of Fast Track Court Judicial Magistrate No.2, Coimbatore. The above complaint was not disclosed in demand notice which is a direct violation of provisions of Section 8(2) IBC. Even after stopping the material purchase from the Operational Creditor, the Respondent has paid a sum of Rs.1,45,258/- on 11.04.2019 through RTGS but the Applicant has not accounted for this payment. The Respondent is not admitting the claim amount of Rs.25,98,944/-.

7. Heard both the parties and perused documents placed before this Adjudicating Authority. The Operational Creditor has proved existence of debt and default. Moreover, this application was filed on 04.11.2019. The pecuniary jurisdiction of this Adjudicating



Authority, at the time of filing this application was debt due one lakh and above. Hence, this Adjudicating Authority has jurisdiction to adjudicate this petition. The registered office of the Corporate Debtor is also within the State of Tamilnadu, hence this Adjudication has jurisdiction. The alleged debt due is between the period from 01.04.2018 to 17.07.2019. Hence, it is well within the period of limitation.

8. By taking into consideration the facts mentioned supra, this Adjudicating Authority is inclined to **admit** the Application as has been filed by the Operational Creditor and consequently Corporate Insolvency Resolution Process is initiated. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal, based on the list furnished by Insolvency and Bankruptcy Board of India appoints *Mr. Lakshmanan Krishnan, Registration No.IBBI/IPA-002/IP-N00783/2019-2020/12511* as “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.

9. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(i) 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.

(ii) 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.

10. 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:

(iv) 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.

11. 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 him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

12. 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.

13. Accordingly, this application **IBA/1359/2019** stands **allowed**.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

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(R. SUCHARITHA)
MEMBER (JUDICIAL)

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