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

CP/IB/229/CHE/2021

*(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 **Balicon Engineering & Technologies Private
Limited***

Xylem Water Solutions India Pvt. Ltd.

Plot No. 731, Manjusar GIDC,
Savli Road, Vadodara-391770

... Operational Creditor

-Vs-

Balicon Engineering & Technologies Private Limited

New No. 341, Old No. 250,
Regency House, Opp. Congress Ground,
Anna Salai,
Chennai-600006

... Corporate Debtor

*Order pronounced on **21st March 2022***

CORAM :

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

*For Operational Creditor : Santhanalakshmi, Advocate
For Corporate Debtor : Ex-Parte*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under adjudication is an Application filed by **Xylem Water Solutions India Pvt. Ltd.**, a Company Registered under the Companies Act, having its Registered office at Plot No. 731, Manjusar GIDC, Savli Road, Vadodara-391770 (hereinafter referred to as "**Operational Creditor**") under Section 9 of Insolvency and

Bankruptcy Code, 2016 (in short, 'I&B Code, 2016) r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Balicon Engineering & Technologies Private Limited (hereinafter referred to as "**Corporate Debtor**") to initiate 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 Company under the Companies Act. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 18.04.2013 bearing CIN: U93000TN2013PTC090657, under the Companies Act, 2013 and the Registered Office Address of the Corporate Debtor as per the Application is stated to be situated at New No. 341, Old No. 250, Regency House, Opp. Congress Ground, Anna Salai, Chennai-600006. As per MCA records, the Registered office address of the Company is situated at the same address. From Part-III of the Application, it is seen that the Operational Creditor has not proposed the name of the IRP and left it to discretion of this Tribunal to appoint the IRP.

3. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a Total sum of Rs.1,35,87,340/ together with Principal amount of Rs. 96,96,145/- and interest amount of

Rs.38,91,195/- which is due and payable by the Corporate Debtor. Part-V of the Application discloses the details of the documents filed by the Operational Creditor, in order to prove its 'operational debt' and the list of documents which filed along with the Application are as follows;

- a) Distributor Agreement dated 3.4.2014-Pages 25 to 42
- b) Invoices from 29.12.2017 to 28.5.2018 – Pages 43 to 57.
- c) Notice issued by the Operational Creditor dated 1.10.2018 - Pages 58 to 59.
- d) Reply to notice by the Corporate Debtor Pages 60 to 61.
- e) Ledger Statement Pages 62 to 65.
- f) Form 3 Notice pages 66 to 104.
- g) Proof of Despatch of notice 105-106.

4. Learned Counsel for the Operational Creditor submitted that the Operational Creditor is engaged in the business as a wholesaler/ Distributor/Supplier/Manufacturer of water processing products.

5. Learned Counsel for the Operational Creditor further submitted that the Operational Creditor had entered into a Distributor Agreement with the Corporate Debtor in year 2014 and in pursuance of the said Distributor Agreement, Operational Creditor had appointed the Corporate Debtor as its Distributor.

6. In furtherance of the said Distributor Agreement, the Operational Creditor has supplied goods to the Corporate Debtor. Thereafter, it was submitted that neither the Corporate Debtor

raised any grievances regarding the quality of the Products supplied, nor given any reason for withholding the payments.

7. Learned Counsel for the Operational Creditor further submitted that the Corporate Debtor has not paid the Operational Creditor, in pursuance to which Operational Creditor has written letter dated 01.10.2018 (page 58 and 59). The Corporate Debtor responded on 10.10.2018 (Page 60 and 61) by which the Corporate Debtor admitted the liability and agreed to pay a sum of Rs. 5 Lakh per month to the Operational Creditor. However, no payment was received. It is seen that the last payment, as per the Operational Creditor was received on 26.05.2018.

8. Subsequently, upon default by the Corporate Debtor on their promise, the Operational Creditor had issued a Demand Notice dated 1.10.2020. It is submitted that no reply was received from Corporate Debtor of the said demand notice.

9. It was further averred in the application that the interest due on non-payment of the outstanding invoice amount to the Operational Creditor is calculated at the rate of 18% is Rs. 38,91,195/- (Total Interest Debt), therefore, the total debt payable by the Corporate Debtor and the amount fell due stands at :





PARTICULARS	AMOUNT
Total Operational Debt due	Rs. 96,96,145/-
Total Interest Due	Rs. 38,91,195/-
TOTAL AMOUNT DUE	Rs. 1,35,87,340/-

10. It is also seen from the records that the Operational Creditor has issued a Demand Notice dated 01.10.2020 as stipulated under section 8 of IBC 2016 to the Corporate Debtor and the same has been delivered to the Corporate Debtor. Further, perusal of the Affidavit filed under Section 9(3)(b) of IBC, 2016 would show that, neither the Corporate Debtor paid the amount which is outstanding to the Operational Creditor within the period of ten days from the date of receipt of the Demand Notice, nor the Corporate Debtor has brought to the notice of the Operational Creditor any dispute regarding the amount / goods. Under the said circumstances, the Learned Counsel for the Operational Creditor prayed for the initiation of CIRP against the Corporate Debtor.

11. Despite notice none appeared for the Corporate Debtor. It is also seen that vide order dated 16.12.2021 passed by this Tribunal, the Corporate Debtor was set *ex-parte*.

12. Heard submissions made by Learned Counsel for the Operational Creditor and perused the file including the pleadings placed on record. The contention of the Learned Counsel for the Operational Creditor is that the Corporate Debtor has committed

default in the payment of the sum which is due and payable by the Corporate Debtor to the Operational Creditor. Upon perusal of the records, the Corporate Debtor has not raised any disputes prior to the issuance of Notice and admitted the amount to be paid vide letter dated 10.10.2018. It is also seen that as per the clause 13 of the Distributor Agreement of 2014, interest @ 18% is payable in case of delayed payments.

13. Thus, from the records it is manifestly made clear that the debt amount of Rs. 1,35,87,340/- is due as on the pendency of the Application. This application was filed on 27.07.2021, which is well within the limitation period.

14. 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, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

15. 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;

16. 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.

17. 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.



18. 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 applicable for the period between Jan 2022 – June 2022 appoints **Mr. T Charan Kumar Reddy** having registration number *IBBI/IPA-001/IP-P-02596/2021-2022/13956* (email id:- *charan@mcacas.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.

19. 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.

20. 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.

21. 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.

22. 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.

23. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-**-(Rupees Two 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

24. 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.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond