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**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.101/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

M/s. SMC Corporation (India) Pvt. Ltd.
(Earlier M/s. SMC Pneumatics (India) Pvt. Ltd.)
Regd. Off: B-94, Ashoka Enclave,
Peeragarhi, Rohtak Road,
New Delhi – 110 087. - Petitioner/Operational Creditor

Versus

M/s. S.P.M. (India) Limited
Regd. Off: # 132/52, GD House,
Bendre Nagar, Subramanyapura
Main Road, Subhashchandra Bose
Road, BSK 2nd Stage,
Bangalore – 560 070. - Respondent/Corporate Debtor

Date of Order: 05th November, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Aradhana Lakhtakia
For the Respondent : None

ORDER

Per: Shri Ashutosh Chandra, Member (Technical)

1. C.P. (IB) No.101/BB/2019 is filed by M/s. SMC Corporation (India) Private Limited (hereinafter referred to as 'Petitioner/Operational Creditor') under Section 9 of the IBC, 2016 R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016 by, inter alia, seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. SPM (India) Limited (hereinafter referred to as 'Respondent/Corporate Debtor') on the ground that it has



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committed default for a total outstanding amount of Rs.62,37,652/- (Rupees Sixty Two Lakhs Thirty Seven Thousand Six Hundred and Fifty Two Only) which includes Rs.37,62,752/- (Rupees Thirty Seven Lakhs Sixty Two Thousand Seven Hundred and Fifty Two Only) being the Principal amount and Rs.24,74,900/- (Rupees Twenty Four Lakhs Seventy Four Thousand Nine Hundred Only) towards interest @ 24% p.a. from the date each invoice fell due calculated up to 31.12.2018.

2. Brief facts of the case, as mentioned in the Company Petition and Summary dated 18.10.2019, are as follows:

(1) M/s. SMC Corporation (India) Private Limited (*earlier M/s.SMC Pneumatics (India) Private Limited*) (hereinafter referred to as 'Petitioner/Operational Creditor') is a Private Limited Company incorporated on 17.01.1995 with CIN: U74899DL1995PTC064419 and having its registered office at B-94, Ashoka Enclave, Peeragarhi, Rohtak Road, New Delhi – 110 087. The Authorised Share Capital of the Company is Rs.220,00,00,000/- (Rupees Two Hundred and Twenty Crores Only) and the Paid-up Share Capital of the Company is Rs.218,12,11,900/- (Rupees Two Hundred and Eighteen Crores Twelve Lakhs Eleven Thousand Nine Hundred Only). The Company is engaged in the business of manufacturing and selling of pneumatics and hydraulics components of industrial use.

(2) M/s. S.P.M. India Limited (hereinafter referred to as 'Respondent/Corporate Debtor') is a Limited Company incorporated on 01.04.1997 under the Companies Act, 1956 with CIN:U85110KA1997PLC022059 and having its registered office at # 132/52, GD House, Bendre Nagar, Subramanyapura Main Road, Subhash Chandra Bose Road, BSK 2nd Stage, Bangalore-560070. The Authorised Share Capital of the Company is Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) and Paid-up Share Capital of the Company is Rs.66,20,000/- (Rupees Sixty Six Lakhs Twenty Thousand Only). The Corporate Debtor is an Engineering Company engaged in manufacture of Special Purpose



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Machines, Leak Testing Machines, Assembly Lines, Hydraulics Presses, etc. The Corporate Debtor has two factory units near Bengaluru.

- (3) It is stated that the Petitioner and Corporate Debtor have been in business since 2010, wherein the Petitioner has been supplying components for engineering and industrial use to the Corporate Debtor from time to time, on the basis of purchase orders placed by the Corporate Debtor, and the Petitioner has been raising invoices upon the Corporate Debtor.
- (4) During the period between August 2015 and February 2016, the Corporate Debtor placed a total of 30 purchase orders on the Petitioners, for its 2 factory units. The Petitioner duly supplied the required materials and issued a total of 48 invoices against the deliveries, for a total sum of Rs.39,62,752/- (Rupees Thirty-Nine Lakhs Sixty-Two Thousand Seven Hundred and Fifty-Two Only), which became the operational debt.
- (5) The materials were accepted by the Corporate Debtor and no dispute was ever raised about the delivery or quality or quantity of the materials supplied. The invoices were required to be paid within 45 days. However, the payment was not made. Hence, there was a default in respect of the operational debt payable by the Corporate Debtor to the Petitioner herein.
- (6) It is stated that on 24.01.2017, the Corporate Debtor issued a letter to the Petitioner, acknowledging that a debt of Rs.19,89,540/- was due and payable to the Petitioner since 29.09.2015, and the same could not be cleared due to internal reasons and it would be cleared by mid of April 2017. The Corporate Debtor also acknowledged that interest would be payable on the said sum.
- (7) It is stated that on 27.07.2017 payment of Rs.2,00,000/- (Rupees Two Lakhs Only) was made by the Corporate Debtor in partial payment of the operational debt. After the said payment in respect of partial payment of 9 invoices, the operational debt due (principal only)



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reduced from Rs.39,62,752/- to Rs.37,62,752/- (Rupees Thirty Seven Lakhs Sixty Two Thousand Seven Hundred and Fifty Two Only).

- (8) It is further stated that on 06.06.2017 and 11.07.2017, the Corporate Debtor issued a total of 16 cheques (10 for Unit I and 6 for Unit II) to the Petitioner, drawn on State Bank of India, SMC Branch, Jayanagar, amounting to a total of Rs.23,19,502/- for Unit I and Rs.19,65,077/- for Unit II, in part payment of the operational debt. However, upon presentation, the cheques were returned with the endorsement 'Refer to Drawer' on 08.06.2017 and 13.07.2017.
- (9) Subsequently, the Petitioner issued legal notice dated 29.06.2017 (for Unit II) to the Corporate Debtor, calling upon it to make payment of Rs.19,65,077/- being the value of the cheques for Unit II, within 15 days from receipt of the notice and also issued legal notice dated 08.08.2017 (for Unit I) to the Corporate Debtor, calling upon it to make payment of Rs.23,19,502/- being the value of the cheques for Unit I, within 15 days from receipt of the notice.
- (10) It is stated that on 21.08.2017 the Corporate Debtor issued a reply to the legal notice dated 08.08.2017, admitting the debt due to the Petitioner and expressing that operations of the Company had slowed down due to force majeure reasons and seeking support for repayment of the debt, which constitutes a clear admission and acknowledgement in writing from the Respondent.
- (11) It is also stated that the Operational Creditor issued a Demand Notice dated 23.08.2018 under Rule 5 of the I&B (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor demanding payment of Rs.37,62,752/- along with interest. However, no response was received to the said Demand Notice.
- (12) It is also stated that in pursuant to this Adjudicating Authority order dated 03.04.2019, the Corporate Debtor entered appearance in the present Petition. However, no statement of objections has been filed and hence, the debt has not been disputed.



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(13) It is stated that the Corporate Debtor has defaulted in respect of its financial liabilities as well and more than one proceeding by Operational Creditor is pending before this Adjudicating Authority in respect of unpaid dues. Further, the Petitioner has learnt from the financial statements of the Corporate Debtor that it has defaulted in repayment of loans to financial institutions such as SBI, and SBI too has issued notice on 06.12.2018 to the Corporate Debtor u/s 13(4) of SARFAESI Act in respect of a debt of Rs.18,85,06,151/- besides other statutory dues payable for Excise Duty, GST and TDS.

(14) It is further stated that Unit II of the Corporate Debtor is completely shut down and company has not maintained proper books of account and thus seeking for initiation of CIRP against the Corporate Debtor.

3. Ms. Aradhana Lakhtakia, learned Counsel for the Petitioner while reiterating various averments made in the Company Petition and also in the Synopsis has further submitted that the instant Company Petition is filed in accordance with law where the debt and default is admittedly not in dispute and a qualified Insolvency Professional namely Ms. Sumana Rao is suggested to be appointed as the Interim Resolution Professional. Hence, she urged the Adjudicating Authority to admit the case by initiating CIRP in respect of the Corporate Debtor.
4. Heard Ms. Aradhana Lakhtakia, learned Counsel for the Petitioner. We have carefully perused the pleadings of the parties and extant provisions of the Code and the Law on the issue. As far as the provisions of the Code are concerned, as per section 5(21) an "operational debt" means, inter alia, a claim in respect of the provision of goods or services, and as per section 5(20) an "operational creditor" means a person to whom an operational debt is owed. In the instant case, the facts clearly indicate that the claims made by the Petitioner/Operational Creditor were in relation to the goods supplied by it to the Respondent/Corporate Debtor, namely components for engineering and industrial use. This constituted an operational debt, and the



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supplier an Operational Creditor, within the meaning of the above provisions of the Code.

5. As regards the factual matrix and the alleged default, the facts mentioned by the Petitioner before us establish that the debt and default in question are proven and not in dispute. The Petitioner has admittedly issued the Demand Notice dated 23.08.2018 in Form 3 under Rule 5 of the I&B (Application to Adjudicating Authority) Rules, 2016 by demanding the Respondent to pay the outstanding amount of Rs.37,62,752/- (Rupees Thirty Seven Lakhs Sixty Two Thousand Seven Hundred and Fifty Two Only), as remaining after the payment of Rs 2,00,000/- made on 27.07.2017. The debt was admitted, as evident from the issue of cheques amounting to Rs.23,19,502/- and Rs.19,65,077/- respectively, for the 2 units, in June and July 2017, and further by the reply dated 21.08.2017 to the legal notice issued by the Petitioner/ Operational Creditor, assigning therein the reasons for the non-payment.
6. The case was listed for admission on various dates viz. 12.03.2019, 26.03.2019, 03.04.2019, 25.04.2019, 03.06.2019, 18.06.2019, 21.06.2019, 04.07.2019, 19.07.2019, 01.08.2019, 22.08.2019, 12.09.2019, 23.09.2019, 30.09.2019, 21.10.2019 and 28.10.2019. The case stood adjourned on those dates on one ground or the other at the request of parties for completion of the pleadings, etc. Though the respondent/corporate debtor entered appearance on 03.04.2019, no objections were filed.
7. The facts narrated above are clearly sufficient to trigger a Corporate Insolvency Resolution Process in respect of the Respondent/Corporate Debtor, and we are of the view that this is a fit case for admission, as also for appointing Ms. Sumana Rao, having Regn.No.IBBI/IPA-002/IP-N00059/2017-18/10111 as the IRP for that purpose. She has given her Consent in Form 2 dated 20.08.2019, by inter alia certifying that there are no disciplinary proceedings pending against her with the Board or ICSI Insolvency Professionals Agency, and that she is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor.



Sumana Rao

8. In view of the above, in exercise of the powers conferred on this Adjudicating Authority under Section 9(5)(i) and other extant provisions of the Code, Company Petition bearing C.P. (IB) No.101/BB/2019 is hereby admitted by initiating CIRP in respect of the Corporate Debtor with following consequential orders/directions:

(1) We hereby appoint **Ms.Sumana Rao with Regn.No.IBBI/IPA-002/IP-N00059/2017-18/10111** as the Interim Resolution Professional (IRP) to conduct Corporate Insolvency Resolution Process in respect of the Corporate Debtor namely **M/s. S.P.M. (India) Limited** and to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

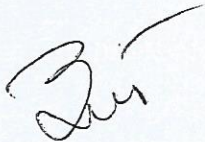
(2) The following moratorium is declared prohibiting all of the following, namely:

- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation 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 corporate debtor.
- e. 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.

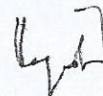


Sumana Rao

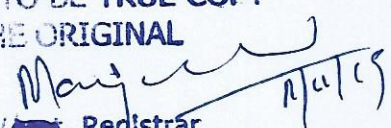
- f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
- g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out her functions as such, under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file her progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on **06th December, 2019**.



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL
CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**


Deputy/Asst. Registrar
National Company Law Tribunal
Bengaluru Bench

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