

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

IBA/1121/2019 filed under Section 9 read with Sub Rule (1) of Rule 6 and other applicable Provisions 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. Chowel India Private Limited***

M/S. AIRPACK GASES

A Registered Partnership Firm
Survey No. 173, Plot No.338 – 34,
Vadakkal B Village, Mathur post,
Sriperumbudur Taluk,
Kancheepuram District – 602 105

... Operational Creditor

-Vs-

M/S. CHOWEL INDIA PRIVATE LIMITED

No.129, Mannur Village,
Valarpuram Post,
Sriperumbudur – 602 105

... Corporate Debtor

Order Pronounced on 05.05.2020

CORAM:

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : Shaman Mithru, Advocate
For Corporate Debtor : Vignesh Adithya, Advocate



ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. This Application has been filed invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code-2016") in the format as prescribed under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "AAA Rules") by the Applicant viz., **Airpack Gases** (hereinafter referred to as "*Operational Creditor*") against **M/s. Chowel India Private Limited** (hereinafter referred to as "*Corporate Debtor*"). The Operational Creditor seeks to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Registered Partnership Firm bearing Registration No.115/2015. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U28910TN2001PTC047092 which was incorporated on 09.05.2001 and that its Authorized share capital and paid up capital is Rs.12,50,00,000/- and Rs.12,25,47,240/- respectively. The Registered Office of the



Corporate Debtor as per the Application is stated to be situated at No.129, Mannur Village, Valarpuram Post, Sriperumbudur – 602 105.

3. Part-III of the Application shows that the Operational Creditor has not proposed the name of Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the same. From Part-IV of the Application, it is seen that a sum of Rs.34,67,698/- is being claimed by the Operational Creditor as the unpaid debt due and payable by the Corporate Debtor. The Operational Creditor in support of his claim has attached a list of 120 invoices aggregating to the principal sum of ₹34,67,698/-.

4. However, before proceeding on to the submission made by the Learned Counsel for both the parties, it may be noted that when the matter came up for final enquiry on 11.03.2020, this Tribunal has passed the following order;

Learned Counsel for the parties are present. In relation to the Corporate Debtor, Learned Counsel for the Corporate Debtor represents that the Corporate Debtor does not agree with the claim as made by the Petitioner in the Petition. In the circumstances, since the claim stands admitted by this Tribunal and no reply has been filed despite several opportunities given to the Corporate Debtor. Based on the representation made by Counsel for the Corporate Debtor and taking into consideration the directions has not been complied by the Corporate Debtor, this Tribunal is constrained to admit this Petition. The IRP will be appointed, if required, in due course at the time of **passing detailed order of admission.**



Thus, after hearing the parties, this Tribunal has admitted the application of the Operational Creditor, however, the detail order as to why this Tribunal has admitted this application is being dealt with hereunder;

5. According to the Learned Counsel for the Operational Creditor, the Applicant is a gas manufacturing company and they manufacture gases like oxygen, carbon-di-oxide, Nitrogen, Argon gasses and supply the same in specialized cylinders to industries for cutting and welding purposes across Tamil Nadu. It is submitted that during the course of business, the Corporate Debtor engaged the Operational Creditor to supply the gases which are required for their manufacturing purpose and also placed the Purchase Orders with the Operational Creditor.

6. The Learned Counsel for the Operational Creditor submitted that based upon the Purchase order placed by the Corporate Debtor, the Operational Creditor supplied the gases to the Corporate Debtor's factory and had promptly delivered such gases as required by the Corporate Debtor. Further, immediately after the delivery of the materials booked by the Corporate Debtor, the Operational Creditor raised invoices for the said transactions and served the same upon the Corporate Debtor. It was stated that



the parties have mutually agreed that the credit period for making the payments were fixed at 60 days and the payment of every invoice falls due immediately after the completion of the credit period from the date of invoice. However, the Corporate Debtor has not made any payments for around 120 invoices for the total value of Rs.34,67,698/-, even after the completion of the credit period.

7. The Learned Counsel for the Operational Creditor submitted that they demanded the Corporate Debtor to pay the debt over the phone and also by sending various e-mails and the Corporate Debtor agreed to pay the said sum of Rs.34,67,698/- and the Corporate Debtor have admitted their dues and the same is evident even as per the ledger maintained by them, however the Corporate Debtor has failed to pay the said admitted dues and only sought for time to make the payment.

8. The Operational Creditor has sent a Demand Notice in Form-3 as mandated under Section 8 of the IBC, 2016 on 03.07.2019 to the Corporate Debtor and the same was returned with an endorsement "Company Closed". However, the Operational Creditor has stated in the Affidavit filed under Section 9(3)(b) of IBC, Code, 2016 that the Managing Director and the



General Manager are foreign National and they got arrested for evasion of GST Payments. At this juncture, it may be seen that Corporate Debtor, after filing of this application by the Operational Creditor under Section 9 of the IBC, 2016 has entered appearance through his Counsel and the said Counsel has filed his vakalath before this Tribunal on 08.01.2020 vide Diary No. 160.

9. Further, it may also be seen upon entering appearance by the Corporate Debtor and after hearing the submissions made by the Learned Counsel for the Corporate Debtor, this Tribunal has made the following order on 08.01.2020;

Ld. Counsel for the Petitioner represents that the order dated 03.12.2019 has been duly complied. It is represented by Learned Counsel for the Corporate Debtor that the Corporate Debtor is accepting the claim as made in the Petition and the said claim is not disputed. In the circumstances, we direct the Corporate Debtor to file an affidavit along with a duly passed resolution to the said effect by the Board accepting the claim. For this purpose, 10 days time is granted. In addition, we also direct the Corporate Debtor to file the Provisional Financial Statement of the Corporate Debtor as on 31.12.2019. Post the matter on 05.02.2020

10. Also, when the matter came up for hearing on 10.02.2020, this Tribunal has made the following order;

Ld. Counsel for the parties are present. Counsel for the Corporate Debtor represents that the Directors are in special custody of police. If some time is granted, upon their release, machinery of the Corporate Debtor will be sold and amounts will be paid to the Creditors. In the circumstances, Counsel



for the Corporate Debtor seeks time to report settlement. Taking into consideration the said representation, matter stands adjourned by two weeks on 03.03.2020.

11. Again when the matter came up for hearing on 03.03.2020, this Tribunal has made the following order;

Ld. Counsel for the Petitioner is present. In relation to the compliance with the directions issued by this Tribunal on 10.02.2020, Learned Counsel for the Corporate Debtor seeks for further three days time to comply with the said order. Taking into consideration the said representation, further three days time is given to the Corporate Debtor from today for duly complying with the said order. Post this matter on 11.03.2020.

12. It may be seen that the Corporate Debtor has sought for more time on the pretext that settlement talks were going on between the parties, which dissuade the Corporate Debtor from filing any reply and also from the submission made by the Learned Counsel for the Corporate Debtor, it shows that the Corporate Debtor has admitted their liability of payment due to the Operational Creditor. Thus, the Operational Creditor has proved that there is an existence of 'Operational Debt' and the default of such operational debt which is payable by the Corporate Debtor to the Operational Creditor.

13. From the list of invoices filed and the Purchase Order annexed, it is evident that the claim as raised by the Operational



Creditor is within the prescribed period of limitation of 3 years. The claim amount as made in the petition is also in excess of Rs.1,00,000/- being the statutory minimum amount fixed under Section 4 of the IBC, 2016 for approaching this Tribunal by the creditors, in the instant case by Operational Creditor and further in relation to the Corporate Debtor the registered office of which is situated within the State of Tamilnadu, amenable to its territorial jurisdiction, this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

14. 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 appoints **Mr. Nithiyantham Ramachandran (Reg. No. IBBI/IPA-003/IP-N000124/2017-2018/11390), (email id:- arnit_m@yahoo.co.in)** 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.



15. 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

16. 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.

17. 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.

18. 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-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond

Order pronounced by concord in terms of NCLT circular dated 14/04/2020 through video conferencing platform. Member (J) present in person at Chennai and Member (T) through video conference from Kochi and the respective parties intimated to be present through video conferencing and after duly signing listing and uploading the cause list dated 05/05/2020 for Chennai Bench - I.


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