

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.03/ALD/2020

(An application under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S. ETA ENGINEERING PRIVATE LIMITED

HAVING ITS REGISTERED OFFICE AT:

20/21, Razak Garden Main Road,
1st Floor, Arumbakkam,
Chennai- 600106

...OPERATIONAL CREDITOR

Versus

M/S. EBULLIENT CABLES PRIVATE LIMITED

HAVING ITS REGISTERED OFFICE AT:

1A-103, GC Grand Vaibhav Khand
Indirapuram, Ghaziabad
U.P.- 201014

...CORPORATE DEBTOR

Order pronounced on 14th February, 2024

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

PRESENT-

Sh. Zia Ul Islam, Adv. : *For the Operational Creditor*

Corporate Debtor : *Ex-parte v.o.d. 27.09.2021*

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ORDER

1. The instant application was filed on 19.12.2019 by ETA Engineering Private Limited. (hereinafter referred as 'Operational Creditor') (ID No. U28920TN1994PTC029091) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "I & B Code, 2016") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as "the Rules"). The prayer made therein is to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') in respect of Ebullient Cables Private Limited (hereinafter referred as 'Corporate Debtor') (ID No. U74120UP2016PTC076933) due to default in payment of total outstanding amount of Rs.22,26,588/- (Rupees Twenty Two Lacs Twenty Six thousand Five Hundred and Eighty Eight) with the date of default mentioned in the application as 21.06.2017.
2. Briefly stated facts of the present case as averred by the Operational Creditor in its application filed in Form-5 containing part I, II, III, IV & V are that: -

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- i. The Operational Creditor raised a Purchase Order (P.O.) bearing No. N700/161 dated 30.03.2017 upon the "Corporate Debtor" seeking supply and laying of cables in the Project undertaken by the Operational Creditor, namely "Rural Electrification Work at "Paschimanchal Vidyut Vitran Nigam Limited" [hereinafter referred to as PVVNL] Bijnor (RGGVY) 4259 N700'. This project was awarded to the Operational Creditor by PVVNL.
- ii. Pursuant to the aforementioned Purchase Order raised by the Operational Creditor, the Operational Creditor made advance payments for a total sum of Rs. 21,76,588/ to the Corporate Debtor vide cheque nos.517235 and 517233 both dated 29.04.2017 for Rs. 11,05,865/- and Rs. 10,70,723/- respectively, which were subsequently encashed by the Corporate Debtor.
- iii. The Operational Debtor received an inspection call vide letter dated 06.06.2017 from Corporate Debtor whereby the former was called upon to inspect the

ordered material before dispatch, at its Works office at Ghaziabad, Uttar Pradesh.

- iv. The Operational Creditor in turn informed PVVNL, vide communication dated 06.06.2017 to inspect the aforementioned material at the Works Office of the Corporate Debtor, as requested by it.
- v. On scheduled inspection vide letter dated 06.06.2017, the PVVNL after inspection observed that the desired material was not ready for inspection and as such inspection could not be carried out. PVVNL, in turn debited the account of the Operational Creditor by a sum of Rs.50,000/- for the expenses incurred on the journey undertaken by its officers to the Works office of the Corporate Debtor, on 21.06.2017. The inspection call letter dated 06.06.2017 by Corporate Debtor to Operational Creditor has been annexed as Annexure B with the Application.
- vi. The Corporate Debtor neither provided the requisite material nor returned the advance amount paid by the Operational Creditor. The Corporate Debtor

represented that the requisite supplies would be made immediately upon receipt of the advance payment, being 50% of the total Purchase Order Value. Having received the said amount, the Corporate Debtor has failed/avoided to make the said supplies to the Operational Creditor.

- vii. The Operational Creditor states that they have continuously been following up with the Corporate Debtor since 21.06.2017, to return the advance payments made to them along with a sum of Rs.50,000/- deducted by PVVNL from the account of the Operational Creditor as “futile journey charges”. However, the Corporate Debtor has failed/avoided to comply with the same.
- viii. Demand Notice dated 07.10.2019 u/s 8 of I & B Code, 2016, has been issued by the Operational Creditor to the Corporate Debtor calling upon to pay total outstanding amount of Rs.22,26,588/-, which was duly served to the Corporate Debtor on 18.10.2019 as per the Speed Post tracking report filed with the

Application. However, the Corporate Debtor neither made the payment for the outstanding amount nor filed any reply to the said demand notice. Therefore, the Operational Creditor filed the present application u/s 9 of I & B Code for initiation of CIRP.

3. On the above Application, in the hearing held on 06.02.2020, notice to the Corporate Debtor was issued for filing of Reply/Counter Affidavit. Affidavit of service by the Applicant/Operational Creditor could not be filed for a considerable long time. However, it was filed on 16.03.2021. Later, neither anybody appeared on behalf of the Corporate Debtor nor any Reply/Counter Affidavit was filed. Therefore, the Corporate Debtor was set ex-parte vide order dated 27.09.2021 and the matter was finally heard. The Written Submission has also been filed.
4. In the Written Submission, the Operational Creditor stated all those facts, which have already been stated by it in its Application u/s 9. For maintainability of the present application in view of the notification dated 24.03.2020 of the Central Government, enhancing the minimum amount

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of default i.e. threshold limit for admissibility of CIRP application, from Rs.1 lakh to Rs.1 crore, the Operational Creditor relied upon the decision of Hon'ble National Company Law Appellate Tribunal in the matter of ***M/s Madhusudan Tantia vs. Amit Choraria & Anr [Company Appeal (AT) (Insolvency) No.557 of 2020] dated 12.10.2020 holding that "the notification dated 24.03.2020 of the Ministry of Corporate Affairs, Government of India, is prospective in nature and it is not retrospective or retroactive in nature. Further, the said notification will not apply to the pending applications filed before the concerned 'Adjudicating Authority' (Authorities), under IBC (waiting for admission)."***

5. In the written submission, the Operational Creditor has also mentioned that after filing of the present application, the Corporate Debtor agreed to settle the matter with the Operational Creditor and was ready to pay the amount of Rs.22,26,588/- and for that purpose, it entered into a deed of settlement also on 12.04.2021. As per this deed of settlement, the first installment of Rs.3,00,000/- was to be

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paid within 15 days from the date of signing of the deed of settlement and balance amount of Rs.19,26,588/- was to be paid in 5 equal installments of Rs.3,85,318/-. The copy of this deed of settlement dated 12.04.2021 has also been enclosed with the written submission as **Annexure A**. In pursuance to this deed of settlement, the Corporate Debtor issued installment cheques which on being presented to the bank was returned unpaid with the remark “funds insufficient”. Proceeding under Section 138 of Negotiable Instrument Act is also pending against the Corporate Debtor before competent court of law. It has also been mentioned in the written submission that the Corporate Debtor at present is active company and as per records available on portal of Ministry of Corporate Affairs, the last balance sheet was filed for the period pertaining to the year 2021-22 and the same has been enclosed as **Annexure C** with the written submission.

FINDINGS AND ORDER

6. We have considered the details of the case as submitted before us in the application as well as in the written

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submission filed by the Operational Creditor and also the arguments advanced by the Ld. Counsel for the Operational Creditor.

7. Neither any appearance has been made on behalf of the Corporate Debtor nor any Reply/Counter Affidavit has been filed to defend the case by the Corporate Debtor and to explain as to why the outstanding amount is still unpaid, which at present comes to Rs. 22,26,588/- being the principal amount of the invoices raised as per the details provided in the application as well as in the written submission. Even no reply to Demand notice u/s 8 issued by the Operational Creditor, has been filed.
8. We find that the debt against the goods supplied with respect to the purchase order raised by the Operational Creditor falls within the definition of Operational Debt u/s 5(21) of the I & B Code, 2016. The Operational debt is defined u/s 5(21) of the Code to mean “a claim in respect of provision of goods or services including employment or a debt in respect of the repayment of dues arising under any

law for the time being in force and payable to the Central Government, any State Government or any local authority”.

9. The invoices against which the debt is outstanding are raised for purchase of supply and laying of cables which will come under the category of providing goods, hence would qualify for the operational debt. Thus, we find that there exists an operational debt duly established by the records produced during the hearing of the case.
10. The amount of the outstanding debt has also been found more than Rs. 1 lakh which was the threshold limit under section 4 of the I&B Code, 2016 for filing of application u/s 9 at that time as per the date of default being 07.01.2017, which continued till 04.12.2018 due to part payments made within the limitation period of 3 years acknowledging the debt as per Section 18 of the Limitation Act, 1963. Therefore, this application has been found to be filed within the limitation period.
11. No payment of the outstanding debt has been made by the Corporate Debtor subsequent to the date of 21.06.2017 and nothing has been presented before us by the Corporate

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Debtor explaining if there was any dispute for not paying the outstanding amount and the Operational Creditor in an affidavit filed along with the application, has confirmed that no suit or arbitration proceedings are initiated by the Corporate Debtor against the Operational Creditor or of any dispute which were in existence prior to the receipt of the demand notice under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, it is amply established that there is default due to non-payment of the outstanding debt of Rs. 22,26,588/- on the part of the Corporate Debtor. As submitted by the Operational Creditor in written submission and deed of settlement dated 12.04.2021 enclosed with the written submission, it is clear that the outstanding debt of Rs.22,26,588/- is an admitted liability of the Corporate Debtor.

12. Taking into account the provisions of Section 9 of the I & B Code, 2016, we find that the application made under sub-section (1) of Section 9 along with documents and fees as mentioned in its sub-section (2) is complete. The payment of

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the outstanding operational debt has not been made which is well above the threshold limit of Rs.1 Lakh. The petition under Section 9 was filed on 19.12.2019, while the default occurred on 21.06.2017; hence, petition is well within the limitation period.

13. In terms of section 9(3) of I & B Code 2016, the Operational Creditor has provided copy of invoices demanding payment and demand notice u/s 8 issued to the corporate debtor for payment of outstanding dues for goods and services provided and affidavit u/s 9(3)(b) and the application has been found to be complete. Therefore, after finding that all the conditions for admission of application under Section 9(5)(i) of the I & B Code 2016 against the Corporate Debtor, has been fulfilled and the Ld. Counsel of the Corporate Debtor has failed to appear and demonstrate before us anything about there being any pre-existing dispute as regards the payment of the operational debt, we find this application fit for admission under Section 9(5) of the I & B Code, 2016 for starting CIRP against the Corporate Debtor Ebullient Cables Pvt. Ltd.

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14. The Operational Creditor has not proposed the name of the Interim Resolution Professional (hereinafter referred as “IRP”) in the present application. Hence, this Adjudicating Authority appoints Mr. Satyendra Sharma as the IRP in the present case, having Registration No. IBBI/IPA-002/IP-N00737/2018 -2019/12260, R/o M-3, BLOCK NO 51, ANUPAM PLAZA-II, FIRST FLOOR, ABOVE AXIS BANK, SANJAY PLACE, Agra, Uttar Pradesh- 282002, Email: satyendrasirp@gmail.com. The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Sarim Husain, and it is found that there is no proceeding pending against the proposed IRP. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 15.10.24.
15. Accordingly, this application is admitted u/s 9(5)(i) of I & B Code, 2016 under the following terms and conditions.
- i. The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. **Ebullient Cables Pvt. Ltd.**

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- ii. We hereby declare a moratorium u/s 14 and public announcement in accordance with Sections 13 and 15 of the Insolvency & Bankruptcy Code, 2016.
- iii. This Adjudicating Authority hereby appoints Mr. Satyendra Sharma as IRP as discussed in para 11 above.
16. The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
17. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -
- 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;

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- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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
18. The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
19. The provisions of sub-section (1) of Section 14 of the Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
20. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the

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constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee.

21. The Committee of the Creditors shall appoint a Resolution Professional (hereinafter referred as “**RP**”) as per section 22 of I & B Code, 2016. A monthly progress report shall be filed by the Resolution Professional providing the details of work done in respect of completing the CIRP within the time line as prescribed under the provision of section 12 of the Code, 2016.
22. The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution process.
23. However, at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to

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have effect from the date of such approval or liquidation order, as the case may be.

24. The personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP/RP to provide necessary details and documents as may be required by him in managing the affairs of the Corporate Debtor in accordance with the provision of the I & B, Code, 2016.
25. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant in accordance with the Code, 2016 read with the relevant rules & regulation framed thereunder.
26. The Operational Creditor/Applicant is directed to deposit Rs.1,00,000/- with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to approval by the CoC and after the constitution of the CoC.

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27. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.
28. List the matter on 20.03.2024 for filing of the first monthly progress report.
29. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.
30. Ordered accordingly

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

14th February, 2024