

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 55/MB-IV/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

**TMEIC Industrial Systems Private
Limited**

[CIN: U74120TG2010PTC069753]

...Operational Creditor/Applicant

V/s

Eko Air Filtration India Private Limited

[CIN: U29305MH2018FTC313375]

...Corporate Debtor/Respondent

Order Dated: 19.04.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Sudesh Poojary, Advocate.

For the Respondent(s) : Mr. Sajid Shailh, Advocate.

ORDER

Per: Prabhat Kumar (Member Technical)

1. This is an Application being C.P. (IB) No. 55/MB/C-IV/2022 filed on 19.01.2021 by Mr. Uday Pathak, Company Secretary and Legal Counsel of TMEIC Industrial Systems Private Limited, the

Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Eko Air Filtration India Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Operational Creditor has filed Board Resolution dated 21.12.2020 in support of authorization in favour of signatory of this Application authorising him to file the present company application on behalf of the Operational Creditor.
3. The total amount claimed by the Operational Creditor in the Part 4 of the Company Petition is Rs. 2,82,13,945/-, inclusive of interest; and the Operational Creditor has attached the working of the computation of the outstanding debt in default as Annexure M to the Company Petition.
 - 3.1 The first date of default as per Part 4 of the Company Petition is shown to be 26.08.2019, i.e. the date on which first invoice fell due.
 - 3.2 The Operational Creditor had provided certain items - Medium Voltage Varied Frequency Drive (MV Drives), Isolator Panels, involving design, engineering, manufacturing, test, inspection and transportation of such items and raised a Purchase Order [Doc. No. 7 REV.3 dated 19.06.2019 for Project Number C.032.18 MT/IN] (hereinafter referred to as 'PO dated 19.06.2019'), to the Corporate Debtor. The said goods and Services were accepted by the Corporate Debtor without any demur as to the price or quality thereof. Subsequently, pursuant to the said materials and services, various invoices were raised by the Operational Creditor in respect thereof, amounting to a

total of Rs. 2,65,50,000/- (Rupees Two Crores Sixty-Five Lakhs Fifty Thousand Only).

- 3.3 The Corporate Debtor after several Email Communications and correspondences exchanged with the Operational Creditor, admitted its liability of payment of principle outstanding invoice amount of Rs. 2,65,50,000/- (Rupees Two Crores Sixty-Five Lakhs Fifty Thousand Only) and proposed a payment schedule for the same in three instalments. Pursuant to the above said P.O. dated 19.06.2019, the Operational Debtor made part payment of Rs. 10,00,000/- (Rupees Ten Lakhs only) vide Transaction Details UTR No. AXISP00083238574 on 19.11.2019, leaving a balance outstanding invoice amount of Rs. 2,55,50,000/- (Rupees Two Crores Fifty-Five Lakhs Fifty Thousand Only). The Bank Statement of the Operational Creditor showing the part-payment of the invoice amounts i.e. Rs. 10,00,000/- (Rupees Ten Lakhs only) made by the Corporate Debtor on 19.11.2019, as acknowledged in email enclosed with the petition.
- 3.4 The Operational Creditor submits that the Corporate Debtor has failed to pay the Operational Creditor the admitted sums for supplies/services provided under the said Purchase Order dated 19.06.2019, for Project Number C.032.18 MT/IN.
- 3.5 The Operational Creditor sent a Demand Notice dated 05.08.2020 and thereafter, a legal notice dated 10.09.2020 upon the Corporate Debtor. The legal notice was sent to the registered office of the corporate debtor vide registered post and registered email address. However, the said notice was returned with the acknowledgement 'addressee left return to sender'

amounting to due and sufficient service, more so when the notice was issued to the registered address of the corporate debtor. The corporate debtor has failed to reply to the legal notice or raise any dispute or make full payment. However, the Corporate Debtor has admitted liability and has made part-payment admitting to its liability.

4. The Corporate Debtor in its reply to the present petition dated 06.02.2023 has denied all allegations of the Operational Creditor.

4.1 The present Director of the Corporate Debtor has raised an objection that the said Purchase order was executed and signed by the old management and former directors of the company and that he had raised concerns about the financial outlook of the company before accepting the directorship to which the earlier management responded by giving assurance of infusing funds into the company as the Corporate Debtor had undertaken a project from JSW Steel Limited and was supposed to acquire the said dues. He says that it is under that impression that he had accepted the role of the director in the Corporate Debtor. The assurance was also given by the overseas management of the Corporate Debtor that the funds shall be infused from Italy, i.e. the parent company, to clear out the financial irregularities of the Corporate Debtor.

4.2 The Corporate Debtor was unable to realise payment due to it by JSW Steel Limited because of which the repayment of the said outstanding amount to the Operational Creditor kept prolonging. The present director of the Corporate Debtor has in its reply clearly admitted that the said dues are payable by it to

the Operational Creditor and the same is reflected in the balance sheet of the Corporate Debtor.

5. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.
6. We find that the Corporate Debtor was liable to pay the outstanding amount as per the Purchase order raised upon it by the Operational Creditor dated 19.06.2019. The Corporate Debtor has made a part payment of Rs. 10 lakhs from the total outstanding amount and subsequently sent a payment schedule to the Operational Creditor through which it agreed to pay the outstanding amount. The Corporate Debtor therefore admitted its liability vide the said email and thereafter failed to fulfil the commitment made by it to the Operational Creditor.
7. On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant and there is default by the Corporate Debtor in payment of debt amount. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 9(5)(i) of the Insolvency And Bankruptcy Code, 2016.
8. The Applicant has not proposed the name of any Registered Insolvency Resolution Professional u/s 9 (4) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016 and has filed a memo u/s 16(3)(a) of the Code to this effect.

ORDER

This Application being C.P. (IB) No. 55/NCLT/MB/C-IV/2022 filed under Section 9 of I&B Code, 2016, filed by TMEIC Industrial Systems Private Limited, Operational Creditor/ Applicant against Eko Air Filtration India Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 Securitization and Reconstruction of Operational 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 possession of the corporate debtor.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench hereby appoints Mr. Satya Narayan Baheti, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-01759/2019-2020/12670], Email Id.- sn.baheti@rediffmail.com and Mobile No.- 9821429817; as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Operational Creditor shall deposit a sum of Rs. 5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing Public Notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
/LRA Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)