

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

CP (IB) No.758/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Saite Power Source (HK) Co. Ltd

[IN: CR No. 2469035]

...Financial Creditor/Applicant

V/s

**Global Powersource (India) Private
Limited**

[CIN: U74140MH2006PTC163562]

...Corporate Debtor/Respondent

Order Dated: 17.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Tasneem Khatau i/b Probus
Legal, Advocates.

For the Respondent(s) : Mr. Apoorv Khator a/w
Mr. Amar Parab i/b/ Mr. Kalpesh
Joshi, Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 758/MB/C-IV/2021 filed by Saite Power Source (HK) Co. Ltd, the Financial

Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Global Powersource (India) Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Sahil Bhatia, Authorised Representative of Operational Creditor, duly Authorised vide Power of Attorney dated 15.12.2020, claiming total default of USD 1,551,621.59 (United States Dollar one million five hundred fifty-one thousand six hundred twenty-one and fifty-nine cents only) (1 USD = 72.9805 as on 02.02.2021) i.e. Rs.11,32,38,119.44/- (Rupees eleven crore thirty-two lakh thirty-eight thousand one hundred nineteen and forty-four paise only).
3. The first default as per the Invoices occurred on 16.01.2020 and lastly on 31.03.2020. Petition is filed on 10.02.2021.
4. The case of the Operational Creditor is that the Operational Creditor has supplied industrial SMF VRLA batteries for UP application brand name: rocket. Pursuant to the said supply the Operational Creditor issued 48 (forty-eight) sales contract and invoices upon the Corporate Debtor.
5. The Operational Creditor submitted that out of total 48 invoices, 13 invoices come under the purview of Section 10A of the Code and hence in view of the Notification of Ministry of Finance and the second amendment thereto dated 23.09.2020, the Operational Creditor has claimed for the remaining invoices which are out of the purview of Section 10A of the Code.

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6. The Operational Creditor submitted that the Operational Creditor as per the agreed terms and conditions duly sold, supplied and delivered the said goods to the Corporate Debtor to which the Corporate Debtor have never raised any dispute or demur.
 7. The Operational Creditor has issued Demand Notice dated 18.01.2021 in Form 3 claiming total outstanding amount of USD 1,551,621.59 (United States Dollar one million five hundred fifty-one thousand six hundred twenty-one and fifty-nine cents only) i.e. Rs.11,32,38,119.44/- (Rupees eleven crore thirty-two lakh thirty-eight thousand one hundred nineteen and forty-four paise only). The Corporate Debtor has not replied to the said Demand Notice.
 8. The Corporate Debtor has filed its Affidavit-in-reply 23.02.2022 stating that there is dispute as to quality of goods supplied and pre-existing disputed between the parties.
 9. *Findings:*
 10. We have heard the arguments of the Learned Counsel for Operational Creditor.
 11. Vide E-mail dated 25.08.2020, the Corporate Debtor had informed the Operational Creditor that rejection issue is 13% based on sample. Further, vide E-mail 26.08.2020, the Corporate Debtor again asked why new batteries failed during test. Vide E-mail dated 22.09.2020, the Corporate Debtor intimated the Operational Creditor that terminal leakage is manufacturing defect only and very serious quality concern. There are several E-mail correspondences i.e. E-mails dated

17.02.2020, 21.02.2020, 25.06.2020, 26.08.2020 and 19.09.2020 whereby the Corporate Debtor kept on following up on his concerns.

12. The Operational Creditor has filed its Affidavit-in-Rejoinder dated 03.05.2022 wherein the Operational Creditor has determined the proportion of quality claim to due outstanding debt to be 0.18%. The Operational Creditor has enclosed extracts of the WeChat with one Mr. Deepak Gandhi of the Corporate Debtor which shows that the Corporate Debtor submitted revised payment plan and requested the Operational Creditor to trust. Mr. Gandhi has also accepted for delay payments. However, the dates on such chats are not readable and clear, hence, it could not be concluded whether these chats pertain to debt in dispute. However, the Corporate Debtor has drawn our attention to E-mail dated 05.05.2020 and 24.09.2020, reminding the Corporate Debtor for outstanding dues, and has submitted that the Operational Creditor has never claimed that the default in payment was due to quality issued in the battery supplied.
13. In view of the above finding, we noticed that the issue of quality raised by the Corporate Debtor appears to be a moonshine defence to us in view of the fact that (a) the Operational Creditor was liable to compensate for the warranty claims arising out of Quality issue and has not denied its liability on this account; and (b) the proportion of claim to the total debt due is miniscule.
14. After perusal of the material on record, this Bench is of considered view that there is no reason to deny the Petition under section 9 filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.

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15. On perusal of the documents submitted by the Applicant, it is clear that financial 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. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Operational Creditor is liable to be admitted.
 16. The application is complete and has been filed under the proper form and default of the Corporate Debtor has been established.
 17. The Operational Creditor has not proposed the name of Insolvency Resolution Professional in the matter.

ORDER

18. It is, accordingly, hereby ordered as follows: -
19. The petition bearing CP (IB) 758/MB-IV/2021 filed by Saite Power Source (HK) Co. Ltd, the Financial Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Global Powersource (India) Private Limited, Corporate Debtor, is **admitted**.
 - (a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (b) Notwithstanding the above, during the period of moratorium,-
- (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or

passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) That this Bench appoints Mr. Yatinkumar Sumatilal Shah, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-01785/2019-2020/12764], Contact: 9820135632, E-mail: yatinshah01@yahoo.co.in 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.
- (f) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (g) 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.

- (h) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (i) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
Prabhat Kumar
Member (Technical)
17.02.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)