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

IBA/964/2019

(filed under Section 9 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. ***Maxtherm Technologies Private Limited***

K. Selvam
Clarion Enterprises
SP – 92, First Floor, Ambattur Industrial Estate,
Ambattur
Chennai – 600 058

... Operational Creditor

-Vs-

M/s. Maxtherm Technologies Private Limited,
New No.28/1, Old No. 38/1,
Ganpathraj Nagar,
Virugambakkam,
Chennai – 600 092

... Corporate Debtor

Order pronounced on 23rd March 2021

CORAM :

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

For Operational Creditor	:	*Ashok Seshadri, PCA*
For Corporate Debtor	:	*None present*

ORDER

Per: **R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. This is an Application filed under Section 9 of Insolvency and Bankruptcy Code, 2016 *(hereinafter referred to as "IBC,2016")* by **K. Selvam,** sole proprietor of Clarion Enterprises *(hereinafter*

referred as Operational Creditor) seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s. Maxtherm Technologies Private Limited** *(hereinafter called as Corporate Debtor)*.

2. From Part I of the Application, it is seen that this Application has been filed by the Applicant in the capacity as an Individual / Operational Creditor. From Part II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 15.02.2002 having Corporate Identification Number CIN : U29198TN2002PTC048465 and as per the Application the Registered Office address of the Corporate Debtor is stated to be situated at New No.28/1, Old No.38/1, Ganpathraj Nagar, Virugambakkam, Chennai – 600 092.

3. Part III of the Application discloses the fact that Applicant has proposed the name of one Mr. P. Ulaganathan with Registration No. *IBBI/IPA-001/IP00970/2017-2018/11600* as the Interim Resolution Professional (IRP) in relation to the Corporate Debtor. From Part IV of the Application it is seen that the Operational Creditor has claimed a sum of Rs.7,72,970/- as due and payable by the Corporate Debtor.

4. Part V of the Application discloses the list of Purchase Order issued and Invoices raised by both the parties respectively and also the Statement of Accounts and the Audit Confirmations issued by the Corporate Debtor.

5. The Learned PCA for the Operational Creditor submitted that as per the Purchase Order raised by the Corporate Debtor, the Operational Creditor supplied various Electrodes to the Corporate Debtor and accordingly raised a total of 6 Invoices which are as follows;

INVOICE NO.	INVOICE DATE	AMOUNT RECEIVABLES FROM THE CORPORATE DEBTOR (₹)
CLR/EXINV/004/1617	02.04.2016	55,075
CLR/EXINV/028/1617	23.04.2016	76,545
CLR/EXINV/032/1617	25.04.2016	82,341
CLR/EXINV/033/1617	25.04.2016	76,545
CLR/EXINV/036/1617	27.04.2016	66,213
CLR/EXINV/121/1617	08.06.2016	1,53,090
TOTAL		**5,09,809**

It was submitted by the Learned PCA that as against the said Invoices raised, the Corporate Debtor is required to pay interest at the rate of 15% p.a. in case of delay which would come to the tune of Rs.2,69,682/- and hence it was submitted that the Corporate Debtor is required to pay the Operational Creditor a sum of Rs.7,72,970/- which they have failed to pay.

6. The Learned PCA submitted that the Operational Creditor has issued a Demand Notice to the Corporate Debtor on 07.01.2020 under Section 8 of IBC, 2016 and the Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 which is placed at page No. 151 of the typed set filed along with the Application. It was submitted by the Learned PCA, that inspite of serving the Demand Notice, the Corporate Debtor has not paid the balance outstanding nor raised any dispute in relation to the amounts being paid to the Operational Creditor. In the circumstances, Learned PCA for the Operational Creditor has submitted that debt and default on the part of the Corporate Debtor are proved and as such prayed for initiation of the CIRP against the Corporate Debtor.

7. In relation to the Corporate Debtor it is seen from the records that the matter first came up for hearing on 09.10.2019 before this Tribunal. Thereafter, it is seen that this Tribunal had ordered notice to be issued to the Corporate Debtor and accordingly, the Operational Creditor issued notice to the Corporate Debtor and filed Affidavit of Service to this effect. A perusal of the said Affidavit of Service manifests the fact that the notice has been served to the Corporate Debtor to their Registered Office address. In spite of notice being served, it is seen that the Corporate Debtor has not preferred to appear before this Tribunal and is deliberately

avoiding to cause appearance before this Tribunal for the reasons best known to it.

8. From the submission made by Learned PCA for the Operational Creditor and from the documents placed in support of the claim being made in Part IV of the Application, it is seen that the claim as made by the Operational Creditor is not disputed and the Corporate Debtor is liable to pay the said sum to the Operational Creditor and has committed a default in payment of the same.

9. Further, the said debt fell due on the first date of invoice being 04.02.2016 and the present Application is being filed before this Tribunal on 12.02.2020. In this regard, it is seen that the Operational Creditor has placed on record the audit confirmation of balance dated 23.05.2017, wherein the Corporate Debtor has confirmed the balance outstanding amount which is due and payable by them as on 31.03.2017. The said balance confirmation would amount to acknowledgment of debt as per Section 18 and 19 of the Limitation Act, 1963 and as such, the period of limitation stands extended from 23.05.2017 for a further period of 3 years. If we take into account the same, the present Application which is filed on 12.02.2020, is well within the period of limitation. The Audit Balance confirmation which was raised by the Operational

Creditor and subsequently acknowledged and signed by the Corporate Debtor is captured hereinbelow;

CLARION ENTERPRISES
P : 044 4203 9108 / 95000 86985

DISTRIBUTORS, DEALERS AND STOCKISTS FOR
D&H sécheron | ador WELDING
WELDING EQUIPMENT, ELECTRODES & WIRES

Date :23.05.2017

To

The Managing Director,
MAXITHERM TECHNOLOGIES PVT LTD
NO.35 SIDCO INDUSTRIAL ESTAT
BHEL ANCILARRY
RANIPET – 632405

Dear Sir,

Sub: Balance confirmation as on 31st March 2017

With reference to the above subject, our books of account show a Debit balance in our account of Rs. 503288.00 as on 31ST March 2017. Please sign the confirmation slip below and forward this original copy to us.

In case you need any further assistance including statement of account to reconcile the difference, if any, please do write to us. We would be grateful if you would give this request your earliest attention.

If we do not receive your confirmation within 15 days, we would treat the above balance as correct.

Yours faithfully,
For CLARION ENTERPRISES

M.RAMAKRISHNAN
Accountant.

Cc : Chennai Office

Mr. Mahendra Raja - FM

Confirmation

We confirm the balance as mentioned above as per our books of accounts as on 31.3.17

Place : Chennai
Date : 26/05/17
Designation: Mgr. Accts.

Signature with Rubber Stamp
Name of Authorised Person.

CHENNAI 600092

26/05/2017

10. Further, the Hon'ble NCLAT in the matter of **Yogeshkumar Jashwantlal Thakkar –Vs- Indian Overseas Bank & Anr.** in *Company Appeal (AT) (Insolvency) No. 236 of 2020* has held as follows;

> 36. The Present case centres around mixed question of 'Facts' and 'Law'. The 1st Respondent/Bank, as per the format, as mentioned at para 20 of this judgement, had given the date of 'Default' / 'NPA' as 01.01.2016 and that the Section 7 of the application of 'I&B' Code was filed before the Adjudicating Authority 01.04.2019, by the 1st Respondent / Bank. Prima facie, the Appeal needs to be allowed, if this is the single ground. However, in the instant case, the 1st Respondent/Bank had obtained balance confirmations certificate, the last one being 31.03.2017 as mentioned elaborately in Para 21 of this judgement. Although, this Appellate Tribunal had largely held in 'Rajendra Kumar Tekriwal' Vs. 'Bank of Baroda' in Company Appeal (AT) (Ins) No. 225 of 2020 and in Jagdish Prasad Sarada Vs. Allahabad Bank in Company Appeal (AT) (Ins) No. 183 of 2020, (both being three Members Bench) had taken a stand that the Limitation Act, 1963 will be applicable to all NPA cases provided, they meet the criteria of Article 137 of the Schedule to the Limitation Act, 1963, the extension of the period can be made by way of Application under Section 5 of the Limitation Act, 1963 for condonation of delay; however, the peculiar attendant facts and circumstances of the present case which float on the surface are quite different where the 1st Respondent / Bank had obtained Confirmations/Acknowledgments in writing in accordance with Section 18 of the Limitation Act periodically. As a matter of fact, Section 18 of the Limitation Act, 1963 is applicable both for 'Suit' and 'Application' involving 'Acknowledgment of Liability', creating a fresh period of limitation, which shall be computed from the date when the 'Acknowledgment' was so signed.
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> 37. ....
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> 38. At this stage, this Tribunal, had perused the various confirmation letters as stated supra which are legally valid and binding documents between the inter se parties and the same

cannot be repudiated on one pretext or other. Therefore, this Tribunal comes to an inevitable, inescapable and irresistible conclusion that the date of default i.e 01.01.2016 gets extended by the debit confirmation letters secured by the 1st Respondent/Bank from the Corporate Debtor (for making a new period run from the date of debit confirmation letters) towards the outstanding debt in 'Loan Account'. Indeed, the application under Section 7 of the I&B Code, 2016 was filed by the 1st Respondent/Bank on 01.04.2019 before the 'Adjudicating Authority' within the period of Limitation. Furthermore, in view of the fact, that ingredients of Section 18 of the Limitation Act, 1963 are quite applicable both for 'Suit' and 'Application' and the debit confirmation letters in the instant case were duly acknowledged in accordance with Law laid down on the subject, the instant Appeal deserves to be dismissed and accordingly the same is dismissed, since there being no legal infirmities found in the impugned order passed by Adjudicating Authority in admitting CP No. (IB) 257/7/NCLT/AHM/2019 and declaring moratorium etc. Resultantly, all connected Interlocutory Applications are closed. There shall be no order as to costs.

11. Thus, the Hon'ble NCLAT has also held that the Balance Confirmation made by the Corporate Debtor would amounts to acknowledgment of debt as contemplated under Section 18 and 19 of the Limitation Act, 1963 and by virtue of the same the period of limitation stands extended. Hence, by taking into consideration the same, the said balance confirmation dated 23.05.2017 extends the period of limitation for a further period of 3 years and as such the present Application which is filed on 12.02.2020 falls well within the period of limitation.

12. The Operational Creditor has proved the existence of an 'Operational debt' and its 'default' on the part of the Corporate

Debtor which is in excess of Rs.1,00,000/- being the threshold limit prevalent prior to 24.03.2020 taking into consideration the amount in aggregate is a sum of Rs.5,09,809/- is payable as no evidence has been produced in relation to sustain the interest charged at the rate of 15% p.a. and in the absence of any objection being raised by the Corporate Debtor, we are of the considered view that the Corporate Debtor has committed 'default' in the repayment of the 'Operational debt' to the Operational Creditor and in the said circumstances we are constrained to initiate the CIRP in relation to the Corporate Debtor.

13. Further in relation to the pecuniary jurisdiction enhanced from Rs.1 lakh to Rs. 1 crore on and from 24.03.2020, it is seen the present Application was filed before this Tribunal on 12.02.2020 and as such this Tribunal has got pecuniary jurisdiction to entertain the present Application.

14. The Operational Creditor has originally proposed the name of one Mr. P. Ulaganathan as the IRP in relation to the Corporate Debtor, however subsequently a memo has been filed by the said Counsel that he has been affected with Covid-19 and requested to relieve from the responsibility. The Operational Creditor in the said memo has proposed the name of another IRP viz. Mr. Shriraam

Shekher, to act as IRP in relation to the Corporate Debtor, who has also filed his written consent in Form 2.

15. 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. The Operational Creditor has proposed the name of **Mr. Shriraam Shekher** with Reg. No. *(IBBI/IPA-003/IP-N000144/2017-2018/11598) (email id:- shekhershriraam@gmail.com) (Mob. No.:- +91 - 9884019085)* and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

16. 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

17. 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 mange 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

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

18. 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:
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> 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.

19. 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