

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.41/BB/2021

U/s 9 of IBC, 2016

R/w Rule 6 of I&B (AAA) Rules, 2016

Between:

M/s. SV Solar Solutions

Plot No.13, H.No.1-4-213/13/A,
Sadhana Vihar Colony, Near
Netaji Nagar, KAPRA, ECIL,
Hyderabad – 500 062

... Petitioner/Operational Creditor

And

M/s. Microsun Solar Tech Private Limited

Plot No. 55, KIADB Road,
No.34, 1st Stage,
KIADB Industrial Area,
Sompura Hobli, Nelamangala
Taluk, Dabaspeth,
Bangalore Rural – 562 111

... Respondent/ Corporate Debtor

Pronouncement of Order: 6th April, 2021

- Coram:**
1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
 2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Mr. K.Chethan Kumar

For the Respondent : Mr. Hari Babu Thota

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P (IB)No.41/BB/2021 is filed by M/s. SV Solar Solutions U/s 9 of the IBC, 2016, R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Microsun Solar Tech Private Limited on the ground, that it has



committed default for total amount of Rs.1,23,12,720/- (Rupees One Crore Twenty Three Lakhs Twelve Thousand Seven Hundred and Twenty Only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s. SV Solar Solutions (hereinafter referred as Petitioner/Operational Creditor) is a company having its registered office situated at Plot No. 13, H.No.1-4-213/13/A Sadhan Vihar Colony, Near Nethaji Nagar, KAPRA, ECIL, Hyderabad- 500062.

(2) M/s. Microsun Solar Tech Private Limited (hereinafter referred to as Respondent/ Corporate Debtor) was incorporated on 14.08.2007 having CIN: U40106KA2007PTC043606, having its registered Office situated at Plot No. 55, KIABD Road No.34, 1st Stage, KIABD Industrial Area, Sompura Hobli, Nelamangala Taluk Dabaspeth Bangalore Rural - 562111. Its Authorised Share Capital is Rs.10,00,00,000/- divided into 1,00,00,000 Equity Shares of Rs.10/- each and Issued, Subscribed and Paid-up Share Capital is Rs.8,00,00,000/- (Rupees Fifteen Lakhs Only) divided into 80,00,000 Equity Shares of Rs.10/- each.

(3) The Operational Creditor was supplying solar cells to the Corporate Debtor and was raising the running bills as and when the supply was made. The Operational Creditor has raised various invoices and the outstanding is pertaining to the invoices raised from 19.01.2019 to 29.03.2019. The Corporate Debtor defaulted in making payment towards 16 invoices which were raised during 19.01.2019 to 29.03.2019 towards the supply of solar cells amounting to Rs.1,23,12,720/-. The Corporate Debtor has accepted and confirmed the outstanding amount on the ledger statement of



the Operational Creditor as on 01.04.2019 and also the Corporate Debtor acknowledged the outstanding amount on the letter issued by the Operational Creditor dated 13.03.2019. However, the Corporate Debtor defaulted in making payment to the Operational Creditor even after numerous follow up. Hence the Petition.

3. Heard Shri K. Chethan Kumar, learned Counsel for the Petitioner, and Shri Hari Babu Thota, learned PCS for the Respondent. We have carefully perused the pleadings of the Parties and the extant provisions of the Code, the Rules made there under, and the law on the issue.
4. Shri K. Chethan Kumar, learned Counsel for the Petitioner, while reiterating various averments made with regard to debt and default in question, as briefly stated supra, has further submitted that debt and default in question is admittedly are not in dispute, the Petition is filed in accordance with law, and also suggested a qualified Insolvency Professional namely Shri Venkata Subbarao Kalva, with Registration No. IBBI/IPA-002/IP-N00179/2017-18/10655, who has filed his written Consent in Form 2 on 18.03.2021 by inter alia declaring that there are no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency. Therefore, he has urged the AA to admit the case as prayed for.
5. Mr. Hari Babu Thota, after arguing the case, has filed Written Submissions on behalf of the Respondent dated 01.04.2021 by *inter-alia* contending as follows:
 - (1) The Corporate Debtor is not in a position to honour its financial commitments. The assets of the Corporate Debtor are not sufficient to pay off its liabilities. Further, as per the provisional financial statements the Corporate Debtor is due



to Canara Bank for an Overdraft facility amounting to Rs.2,03,35,873/- and a term loan of Rs.7,45,84,567.94/-.

- (2) Further, the assets are more than the existing liabilities; there are no liquid assets to pay off the debts of the Company. Due to the absence of the liquid assets, the Corporate Debtor will not be able to honour any payments with respect to the existing debts in the near future. The Corporate Debtor also is not in a position to ascertain the credit worthiness of the trade/account receivables and how the same can be converted into liquid assets for re-payment of debts. The Corporate Debtor fails the test of Cash Flow and is facing insolvent conditions owing to its cash flows. The Corporate Debtor is now facing cash-flow insolvency.
- (3) The Corporate Debtor is not in dispute with the claim of Rs.1,23,12,720/- due to the Applicant as stated in the Application filed in Form-5. The Corporate Debtor is indeed due to the Applicant and the same is outstanding in the books of the Corporate Debtor. The Corporate Debtor had availed supply of solar cells from the Applicant and does not deny dues by the Corporate Debtor to the Applicant. The Corporate Debtor in the present scenario is not in a position to repay the amount to the Applicant and also the Corporate Debtor is not in a position to extinguish any of the liabilities, by way of repayment. The Corporate Debtor hereby signifies its willingness to admit the instant application and directions to initiate CIRP process of the Company as the Company has been facing many difficulties due to financial stress it is under
- (4) It is stated that the Corporate Debtor also requests the Hon'ble Tribunal to approve and admit an Application preferred U/s 7 of I&B Code, 2016 to initiate CIRP against M/s. Maharaja Techno Chromes Private Limited against



which it claimed for an amount of Rs.2,35,45,628/- that had been claimed for acquisition of the land and buildings, a company under the same management. Further, for the dues outstanding to the Canara Bank by the Corporate Debtor, M/s. Maharaja Techno Chromes Private Limited has given its assets as security, in view of the same resolution of the Corporate Debtor alone shall not be feasible without resolution of the M/s. Maharaja Techno Chromes Private Limited.

6. As stated supra, the Debt and Default in question are not disputed by the Respondent. The instant Petition is filed strictly in accordance with the extant provisions of the Code, and also suggested a qualified Insolvency Professional namely Shri Venkata Subbarao Kalva, with Registration No. IBBI/IPA-002/IP-N00179/2017-18/10655, who has filed his written Consent in Form-2 on 18.03.2021 by inter alia declaring that no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency. Therefore he is provisionally eligible to be appointed as IRP. Hence, the Instant Company Petition is fit case to admit by initiating CIRP by appointing IRP, and declaring moratorium etc., in respect of the Corporate Debtor.
7. M/s. Microsun Solar Tech Pvt. Ltd. has filed C.P. (IB) No.39/BB/2021, U/s 7 of IBC, 2016 by seeking to initiate CIRP against Maharaja Techno Chromes Private Ltd. Therefore, there is an interlink between the two case. Since, initiation of common proceedings against two different entities are not permissible under the Provisions Code, and winding up of a Company is possible only in two ways viz., by way of Voluntary Liquidation or invoking provisions of Code to initiate CIRP to get Resolution Plan or to Liquidate, two separate proceedings maintainable against two distinct Companies. And section 11 of Code is not bar for the same.



In both the cases, IRP is suggested is common, and thus he can coordinate in both the Proceedings.

8. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, under provisions of Section 9 of the Code, and other extant provisions of the IBC, 2016, we hereby admitted **C.P.(IB)No.41/BB/2021** by initiating Corporate Insolvency Resolution Process (CIRP) in respect **M/s. Microsun Solar Tech Private Limited**, the Respondent/Corporate Debtor, with the following consequential directions:

- 1) Shri Venkata Subbarao Kalva, with Registration No. IBBI/IPA-002/IP-N00179/2017-18/10655, e-mail: subbaraocs@gmail.com, who is qualified Insolvency Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor namely M/s. Microsun Solar Tech Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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 *Securitisation 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 Corporate Debtor;
 - e) 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;
 - f) 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;
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016, as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
 - 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
 - 5) The Registry is directed to forward a copy of this order immediately to both the Parties and IRP.
 - 6) Post the case for report of IRP on **05th May, 2021**.

Sd/-

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

Br



Sd/-

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

for Deputy Registrar
National Company Law Tribunal
Bengaluru Bench
06/04/2021
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