

sl No. 724

NCLT, BENGALURU BENCH

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C.P. (IB)No.192/BB/2020

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB)No.192/BB/2020

U/s.9 of the IBC, 2016

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

Between :

M/s. Gangamma Industries,
55/A, Sampigehalli Main Road,
Agrahara Village, Jakkur Post,
Yelahanka,
Bengaluru – 560 064.

- Petitioner/Operational Creditor

And

M/s. Aethon Energy LLP
No.365, 5th Cross 1st Block,
R.T. Nagar, Bengaluru,
Bangalore – 560 032.

- Respondent/Corporate Debtor

Order Pronounced on: 9th November, 2020

Coram: 1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through video conference)

For the Petitioner : Mr. Sudarshan Kesthur, Adv.
For the Respondent : Ms. Himadri Nandi

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P.(IB)No.192/BB/2020 is filed by M/s. Gangamma Industries ('the Petitioner/Operational Creditor') U/s.9 of the IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution



Process (CIRP) in respect of M/s. Aethon Energy LLP ('the Respondent/Corporate Debtor') on the ground that it has committed default for amount of Rs.18,11,162/- (Rupees Eighteen Lakh Eleven Thousand One Hundred and Sixty Two only).

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

1) The Operational Creditor is a Sole Proprietary concern of Natesh A B and is engaged in the business of fabrication of iron, steel, aluminum and materials having its office at 55/A, Sampigehalli, Main Road, Agrahara Village, Jakkur Post, Yelahanka, Bengaluru- 560064 and the Corporate Debtor is a Limited Liability Partnership established in 12th November 2014 and having its Registered office at No.365, 5th Cross, 1st Block, R.T. Nagar, Bengaluru - 560032 and is engaged in the business of solar energy production equipment, LED lights etc. The Designated Partners of the Respondent Corporate Debtor are Himadri Nandi, Suma Nandi and Shyamali Nandi.

2) It is stated that the Petitioner is a vendor of the Respondent Corporate Debtor and has supplied various materials to them on 01.04.2017 and 05.07.2019 under several invoices. The receipt of the materials supplied has not been disputed by the Respondent. The total value of the material supplied to the Respondent is Rs. 1,44,60,340/- where as the Petitioner has received a sum of Rs.1,26,49,678/- leaving a sum of Rs. 18,11,162/-.

3) The Petitioner called upon the Respondent to pay the outstanding sum of Rs 18,11,162/- by his notice dated 26.12.2019. The Respondent despite receiving the notice and the documents has chosen not to pay the outstanding amount as demanded. The Petitioner with no other alternative has approached this Tribunal seeking resolution as provided under the I&B Code.

3. The Statement of Reply dated 07.09.2020 is filed by the Respondent inter alia contending as follows:

1) It is contended that around 2017, the industry in the country slipped into a deep financial crisis. The financial crisis was an industry wide phenomenon



and resulted in the shutting down and closure of several leading companies and caused losses running into several crores of rupees. The crisis was a result of deep imbalances and structural problems in the several sectors of the industry, including but not limited to issues in the demand and supply markets. The unfavorable global market and negative investor sentiment also contributed to the deep crisis in the small solar EPC Companies.

- 2) Further, the Respondent LLP made several attempts to improve its financial situation. However, all these efforts failed to improve the health of the LLP. The Respondent LLP approached financial institutions seeking funds in order to discharge some of its liabilities. However, these efforts too proved unsuccessful.
 - 3) In so far as the dues of the Petitioner is concerned, the Petitioner has previously sought to reconcile the exact amounts due, owing to issues relating to the quality of the supply. However, unfortunately, the Respondent LLP is not in a position to repay any amounts whatsoever to the Petitioner, much less the amounts claimed by the Petitioner.
 - 4) Given its insolvent financial condition, the Respondent for bona fide reasons is unable to discharge its liabilities towards various entities including the Operational Creditor herein. Therefore, the Respondent LLP is able to willing to abide by the orders of this Tribunal under the provisions of the I&B Code, 2016.
4. Heard Mr. Sudarshan Kesthur, learned Counsel for the Petitioner and Ms. Himdari Nandi, party in person for the Respondent **through video conference**. We have carefully perused the pleadings of the Parties and the extant provisions of the Code and Rules made thereunder.
1. Mr. Sudarshan Kesthur, learned Counsel for the Petitioner, has inter alia submitted that Debt and Default in question admittedly is not in dispute as the Respondent has also admitted the same it in reply dated 07.09.2020. The instant Petition is filed in accordance with law and also suggested a qualified Resolution Professional namely Mr. Vasudevan Navneeth, with Registration No.IBBI/IPA-001/IP-P01048/2017-2018/11731, who has also filed his Written Communication



- in Form-2 dated 06th January, 2020 and necessary declaration. Therefore, he has urged the Adjudicating Authority to admit the case by initiating CIRP in respect of Corporate Debtor appointing IRP, imposing moratorium etc.
2. Ms. Himadri Nandi., party in person for the Respondent has also no objection to initiate CIRP as the Company is unable to discharge its liabilities towards various entities including the Operational Creditor. The Corporate Debtor has stated that in 2017, the industry slipped into a deep financial crisis that resulted in the shutting down and closure of several leading companies, and its attempts to improve its financial situation failed. There is no scope for reviving the Company even under CIRP. The IRP can assess the situation and file an application for liquidation of the Company, in accordance with provisions of the Code.
 3. Hence, it is seen that the Debt and Default are admittedly not in dispute and the Respondent also agrees that they had committed default of the dues payable to the Petitioner. The Operational Creditor has substantiated its claim by submitting substantial evidence in support of the claim. The Respondent admits that given its insolvent financial condition, for bona fide reasons it is unable to discharge its liabilities towards various entities including the Operational Creditor herein. The Respondent is ready to accept initiation of CIRP, or even voluntary liquidation/dissolution for which it stated that a separate Petition would be filed. The instant Petition is filed in accordance with the extant provisions of the Code and the Rules made thereunder. The Petitioner has also suggested a qualified Resolution Professional namely Mr. Vasudevan Navneeth, with Registration No.IBBI/IPA-001/IP-P01048/2017-2018/11731, who has also filed Written Communication in Form-2 dated 6th January, 2020 and necessary declaration. Therefore, we are of the view that the said IRP is eligible to be appointed as IRP in this case.
 4. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, U/s 9(5)(i) and other extant provisions of the IBC, 2016, we hereby admit C.P.(IB)No.192/BB/2020 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Respondent/Corporate Debtor with the following consequential directions:



- 1) Mr. Vasudevan Navneeth, bearing Registration No.IBBI/IPA-001/IP-P01048/2017-2018/11731, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor namely M/s.Aethon Energy LLP 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 and all extant rules including fees rules 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) Post the case for report of IRP on 09.12.2020.

[Handwritten Signature]

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

[Handwritten Signature]

ASHOK KUMAR BORAH
MEMBER, JUDICIAL

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CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

[Handwritten Signature]
for Deputy Registrar
National Company Law Tribunal
Bengaluru Bench
Rajeshwari.M