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

IBA/1353/2019

(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. Techno Power Combines Private Limited***

M/s. Elektronika Sales Private Limited,
Plot No.31-A, Industrial Estate Ambit Park Road,
Ambattur, Chennai – 600 058.

... Operational Creditor

-Vs-

M/s. Techno Power Combines Private Limited,
1/5, Trustpakkam South Street,
Mandaveli, Chennai – 600 028.

... Corporate Debtor

Order pronounced on 2nd September 2021

CORAM :

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

For Operational Creditor : K. Gaurav Kumar, PCS

For Corporate Debtor : None present

ORDER

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

This is an Application filed by **M/s. Elektronika Sales Private Limited** (hereinafter referred to as **"the Operational Creditor"**) against **M/s. Techno Power Combines Private Limited** (hereinafter referred to as **"the Corporate Debtor"**) under

Section 9 of the Insolvency & Bankruptcy Code, 2016, seeking thereof to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Operational Creditor is a Private Limited Company. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 25.08.1995 bearing CIN: U29303TN1995PTC032703. The registered office address of the Corporate Debtor as per the Application is stated to be situated at 1/5, Trustpakkam South Street, Mandaveli, Chennai – 600 028. From Part-III of the Application, it is seen that the Operational Creditor has not disclosed the name of the IRP and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of Rs.11,98,454.72/- which is due and payable by the Corporate Debtor and the date of default is mentioned as 15.05.2017.

4. The Learned Authorized Representative for the Operational Creditor submitted that the Operational Creditor had supplied electronic products to the Corporate Debtor and raised three invoices which are as follows : -

Sl.No.	Date	Invoice No
1	12.05.2017	148409
2	15.05.2017	148465
3	17.05.2017	148558

5. It was submitted that a sum of Rs.8,52,992.68/- is due and outstanding to be paid by the Corporate Debtor and interest @ 18% per annum which comes to the tune of Rs.3,45,462.04/- is outstanding and yet to be paid by the Corporate Debtor.

6. It is seen from the records that the Operational Creditor has served a Demand Notice under Section 8 of the IBC, 2016 to the Corporate Debtor on 31.08.2019. However, the same was not delivered to the Corporate Debtor and was returned with an endorsement "Door Locked". However, it is seen from the records that the Operational Creditor managed to serve the Demand Notice upon the Directors of the Corporate Debtor and the same was delivered on 03.09.2019 and proof of the same is also filed along with the typed set filed by the Operational Creditor. The Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 wherein it has been stated that the Demand Notice has been served. However, neither the Corporate Debtor nor any of the Directors of the Corporate Debtor has raised any dispute nor have they paid the outstanding 'operational debt' to the Operational Creditor. Under such circumstances, the Operational Creditor has prayed before this Tribunal to initiate the

Corporate Insolvency Resolution Process against the Corporate Debtor.

7. In relation to the Corporate Debtor, it is seen from the records that in spite of notice having been served to the Respondent, none appears on behalf of the Corporate Debtor. However, on 11.12.2020 an Advocate represented on behalf of the Corporate Debtor and sought time to file counter. Thereafter, when the matter came up for hearing there was no appearance on behalf of the Corporate Debtor. In the said circumstances, we are constrained to proceed with the matter in the absence of the Corporate Debtor.

8. Thus, the default, on the part of the Corporate Debtor is proved from the documents filed and the submissions made by the Learned Counsel by the Operational Creditor. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

9. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the

present Application has been filed on 05.11.2019, which is well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

10. 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. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between July – December 2021 appoints **MR. NARAYANASWAMY NAGESWARAN,** *Reg. No. IBBI/IPA-001/IP-P-01491/2018 - 2019/12284 (email id:- swamynageswaran@gmail.com)* as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the

date of this order. 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

11. 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;

12. 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.

13. 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:

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.

14. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-***(Rupees One Lakh Only)* to the Interim Resolution

Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

15. 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. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond