

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

IBA/1274/2019

*(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. Arempee Compressors Pvt. Ltd.**

Viraj Conductors Private Limited

Reg. off:-
13-B, Industrial Area, Ujjai Road,
Dewas (MP) 455 001

... Operational Creditor

-Vs-

M/s. Arempee Compressors Private Limited

Reg. Off:-
549/1-A and 1-B, Thadagam Road,
Somaiyampalayam Post, Kanuvai,
Coimbatore – 641108

...Corporate Debtor

Order Pronounced on 23rd December 2020

CORAM :

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

For Operational Creditor : Anusha Peri, Advocate

For Corporate Debtor : Arul Raj, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is an Application that has been filed by **M/s. Viraj Conductors Private Limited** (hereinafter referred to as '*Operational Creditor*') under Section 9 of the

Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Arempee Compressors Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U31103TZZ2002PTC010099 was incorporated on 14.03.2002 and that its Authorized Share capital and Issued, Subscribed & Fully paid up capital is Rs.1,50,00,000/- and Rs.1,43,75,000/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 549/1-A and 1-B, Thadagam Road, Somaiyampalayam Post, Kanuvai, Coimbatore – 641108. Part-III of the Application shows that the Operational Creditor has not proposed any "Interim



Resolution Professional" (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 a sum of Rs.18,83,070/- is being claimed by the Operational Creditor as Operational Debt, including interest. The date of default as per Part – IV of the Application is stated to be 21.01.2019.

4. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has placed order for the supply of Copper and to this effect had placed Purchase Order dated 23.01.2019 and in pursuance of the same, the Operational Creditor has raised a total of 7 invoices from 07.12.2018 to 23.02.2019 aggregating to a sum of Rs.33,28,591/-. It was submitted that the out of the total outstanding, a sum of Rs.15,25,081/- was paid by the Corporate Debtor on various dates and as such a sum of Rs.18,03,510/- still remains unpaid by the Corporate Debtor.

5. It was submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor has issued a total of 10 cheques on various dates, however the same was returned with an endorsement that "*Payment stopped by the drawer*". Further, it was submitted that the Corporate Debtor



vide their letter dated 19.03.2019 have admitted their liability and despite the same, has failed to make the payment to the Operational Creditor. Consequently, the Operational Creditor issued Demand Notice under Section 8 of IBC, 2016 to the Corporate Debtor on 07.08.2019 and the same was delivered to the Corporate Debtor on 09.08.2019 and the Operational Creditor has filed an Affidavit under Section 9(3)(b) of IBC, 2016 to this effect. Under such circumstances, the Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has committed default in the payment of the dues to the Operational Creditor and hence prayed for the initiation of the CIRP in relation to the Corporate Debtor.

6. The Corporate Debtor has filed counter and the Learned Counsel for the Corporate Debtor submitted that the Corporate Debtor was unable to honour the cheque on due date because there is a huge sum due to the Corporate Debtor from one of their Operational Creditor's. Further in para 8 of their counter, the Corporate Debtor has admitted its liability for a sum of Rs.18,83,070/-, however expressed its inability to pay the same. Further, in para 9 of the counter it is stated that due to Covid – 19 pandemic, they were unable to carry on any transactions from January 2019 and consequentially the Corporate Debtor has landed in huge financial crisis. Thus,



after admitting its liability, the Corporate Debtor has sought for more time to pay the dues to the Operational Creditor.

7. Heard the submissions made by the Learned Counsel for the parties and perused the file including the pleadings placed on record. It is seen from averments made in the counter that the Corporate Debtor itself has admitted its liability and as such the debt and default on the part of the Corporate Debtor is proved. The default, it is also seen from the pleadings and documents filed on the part of the Operational Creditors and which are not refuted by the Corporate Debtor are much prior to the advent of the Covid-19 pandemic and hence the reason of Covid-19 pandemic as sought to be portrayed as a reason for not honouring the cheques cannot be countenanced as a reason. Under the said circumstances, this Tribunal is left with no other option that to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

8. 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 Date of Default is stated to be 21.01.2019.



Since the default has arisen 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 the claim made in the Petition exceeds a sum of Rs.1 lakh, this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.

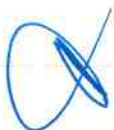
9. In relation to the 'Question of Limitation' is concerned, it is evident from the perusal of the Invoices as filed by the Petitioner / Operational Creditor in relation to the Corporate Debtor which discloses that the invoices have been raised commencing from 07.12.2018 to 23.02.2019 and the present Application under Section 9 of IBC, 2016 has been filed by the Operational Creditor before this Tribunal on 09.10.2019 and as such it falls well within the period of limitation.

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 26th November 2020



till 31st December 2020 appoints **Mr. Ayyampalayam Venkatesan Arun**, with Registration Number **IBBI/IPA-001/IP-P01079/2017-18/11792** (email id:- **avarun77@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. 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.

11. 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 manage 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

12. 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.

13. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs 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.

14. 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