

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P. (IB) No.28/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s. SWAN Analytische Instrumente AG
Studbachstrasse 13,
Postfach 398, CH-8340 Hinwil,
Switzerland. - Petitioner/Operational Creditor

[Rep. by its Authorised Representative
Shri Tobias Goetsch, SWAN Group, CFO]

Versus

M/s. Flowline Instrumentation Pvt. Ltd.
Regd. Off: No.A-291, 2nd Stage,
Peenya Industrial Estate,
Bangalore - 560 058. - Respondent/Corporate Debtor

Date of Order: 23rdOctober, 2019

Coram: 1.Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties/Counsels Present:

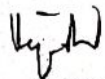
For the Petitioner : Shri A. Murali along with
Ms. Jyothi Anumolu & Shri Amogh CA
For the Respondent : Shri Pradeep B.V.

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P. (IB) No.28/BB/2019 is filed by M/s.SWAN Analytische Instrumente AG (hereinafter referred to as 'Petitioner/Operational Creditor') under Section 9 of the IBC, 2016 read with Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s.Flowline Instrumentation Private Limited




Page 1 of 19

(hereinafter referred to as 'Respondent/Corporate Debtor') on the ground that it has committed default for total outstanding amount of USD 375,320.06/- (United States Dollars Three Hundred and Seventy-Five Thousand Three Hundred and Twenty and Six Cents Only) equivalent to Rs.2,57,35,696.51/- (Rupees Two Crores Fifty Seven Lakhs Thirty Five Thousand Six Hundred and Ninety Six and Fifty One Paise Only) including interest.

2. Brief facts of the case, as mentioned in the Application as well as in the Summary/Written Submissions dated 23.10.2019, are as follows:

- (1) M/s. SWAN Analytische Instrumente AG (hereinafter referred to as 'Petitioner/Operational Creditor') is a Company having its registered office at Studbachstrasse 13, Postfach 398, CH-8340 Hinwil, Switzerland with Identification No.CHE-107.851.376.
- (2) M/s. Flowline Instrumentation Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor') is a Private Limited Company incorporated on 23.05.2002 under the Companies Act, 1956 with CIN: U30007KA2002PTC030541 having its registered office at No.A-291, 2nd Stage, Peenya Industrial Estate, Bangalore-560058. The Authorised Share Capital of the Company is Rs.1,00,000/- and Paid-up Share Capital of the Company is Rs.1,00,000/- (Rupees One Lakh Only).
- (3) It is stated that the Operational Creditor had supplied water sanitation equipment to the Corporate Debtor wherein the Corporate Debtor placed purchase orders on the Operational Creditor and the Operational Creditors raised corresponding invoices, with payment terms contained therein. The Corporate Debtor was required to honour the payments on



each of the invoices within 60 (sixty) days from the date of invoice. The Corporate Debtor has not honoured the payment terms in the invoices, and therefore has committed a default of payments. Despite repeated extensions and reminders for payments by the Operational Creditor and even after the Corporate Debtor having unconditionally acknowledged the payments due against invoices to the Operational Creditor, the Corporate Debtor defaulted in making payment of the operational debt owed to the Operational Creditor. There is no master agreement between the Operational Creditor and Corporate Debtor.

- (4) It is stated that on 19.08.2016, the Operational Creditor addressed an e-mail to the Corporate Debtor setting out the details of the invoices against which payments were pending from the Corporate Debtor. The total amount due and payable by the Corporate Debtor as of 18.08.2016 was US \$307,655.50/-(United States Dollars Three Hundred and Seven Thousand Six Hundred and Fifty-Five Only). The Corporate Debtor by its e-mail on 19.08.2016 admitted that such payments were due to the Operational Creditor and stated that the payments would be made shortly. Despite acknowledgement of its debt, the Corporate Debtor defaulted in making payments against the invoices raised by the Operational Creditor, but continued to place further orders on the Operational Creditor.
- (5) The details of invoices against which supplies were made are given below:

<i>Details of Invoice</i>		
<i>Number</i>	<i>Dated</i>	<i>Amount (USD)</i>
RE-J15-0510	March 31, 2015	99,430
RE-J15-1405	Sep. 11, 2015	2,050



RE-J15-1433	Sep. 17, 2015	5,820
RE-J15-1828	Nov. 19, 2015	3,248
RE-J15-2020	Dec. 23, 2015	46,056
RE-J16-0178	Feb. 01, 2016	410.50
RE-J16-0237	Feb. 10, 2016	1,420
RE-J16-0277	Feb. 17, 2016	13,950
RE-J16-0445	March 15, 2016	43,032
RE-J16-0447	March 15, 2016	115,430
RE-J16-0467	March 16, 2016	15,509
RE-J16-0716	April 22, 2016	1,300

It is stated that each invoice is accompanied by the corresponding Purchase Order and Airway Bill.

- (6) It is stated that the e-mail correspondences between the Corporate Debtor and the Operational Creditor, wherein the Corporate Debtor acknowledged the amount owed to the Operational Creditor is given below:

<i>E-mail dated</i>	<i>Particulars of E-mail</i>
August 19, 2016 at 10.10. hrs	Operational Creditor informed the Corporate Debtor that the outstanding amount due was over 300,000 USD and asked for a tentative date for receipt of amount due.
August 19, 2016 at 10:56 hrs	Corporate Debtor replied to the aforesaid mail of the Operational Creditor and acknowledged the debt owed by them.
Nov. 01, 2016 at 18.35 hrs	Operational Creditor sent to the Corporate Debtor an attachment of the statement of account showing the outstanding amount due to them.
Nov. 03, 2016 at 12.01 hrs	Corporate Debtor acknowledged the debt owed to the Operational Creditor.



Dec. 05, 2016 at 08.21 hrs	Corporate Debtor acknowledged the debt owed to the Operational Creditor.
Dec. 26, 2016 at 05.18 PM	Operational Creditor stated that they are considering legal options to be initiated against the Corporate Debtor.

The above mentioned emails were also produced along with the Form 3 statutory demand notice.

(7) Since the Corporate Debtor failed to make good the operational debt due to the Operational Creditor, a statutory Demand Notice under Form 3 of the I&B (Application to Adjudicating Authority) Rules, 2016 was issued to the Corporate Debtor on 16.02.2017. In addition to the same, the Advocates for the Operational Creditor also issued a demand notice dated 03.03.2017 to the Corporate Debtor. However, there was no response from the Corporate Debtor and as on date of filing the instant application, and the Corporate Debtor continues to be liable to make payments amounting to USD 375,320.06/- (United States Dollars Three Hundred and Seventy Five Thousand Three Hundred and Twenty and Twenty Six Cents Only) equivalent to Rs.2,57,35,696.51/- (Rupees Two Crores Fifty Seven Lakhs Thirty Five Thousand Six Hundred and Ninety Six and Fifty One Paisa Only) as on 30.06.2018 against the invoices raised by the Operational Creditor.

(8) It is stated that the Corporate Debtor raised the following grounds in their statement of objections:

- i. That the Demand Notice issued by the Operational Creditor was not served to the appropriate address and that there is no postal acknowledgement of the Demand Notice been served to the Corporate Debtor;



ii. Since the Operational Creditor failed to supply the materials and failed to provide sales and service support, the Corporate Debtor was unable to supply the water sensor and other materials to BHEL Power Plant Projects as per the terms and conditions entered into between the Corporate Debtor and BHEL, which caused a huge loss to the Corporate Debtor.

(9) In pursuance to the statement of objections filed by the Corporate Debtor, it is stated that the Corporate Debtor has not denied the supply of the materials by stating at para 2 of the Statement of Objections has s saying that *it is true that the Operational Creditor has supplied the water sensor to the Corporate Debtor. The Corporate Debtor did not raise a dispute against the Operational Creditor under the provisions of the Code prior to filing of this Application.*

(10) The Operational Creditor has also filed a rejoinder dated 23.08.2019 by inter alia contending as follows:

i. Regarding the allegation that the demand notice was not served to the appropriate address, the Operational Creditor has produced a copy of the Form INC 22 (which is a statutory record) uploaded by the Corporate Debtor on the official website of the Ministry of Corporate Affairs. The Operational Creditor has attached the Form INC 22 of the Corporate Debtor showing the registered office address of the Corporate Debtor. The said Form indicates that as on 03.03.2017 when the Form 3 statutory demand notice was issued, the address of the Corporate Debtor was at "No.46, Nandagokula Layout, Kariobanahalli, TG Palya Main Road, Near Peenya 14th Cross, Bangalore." Only on 21.0.2017, was the address of the Corporate Debtor changed. The proof of delivery of



- the Form 3 statutory Demand Notice has been placed on record.
- ii. In the case of *Alloysmin Industries v. Raman Casting Private Limited* [2019 (152) SCL 278] and *Optiemus Infracom Ltd. v. Indus Mobile Distribution (P) Ltd.*, wherein the Hon'ble NCLAT and the NCLT, Chennai Bench have respectively held that demand notice under Section 8(1) is served on the Corporate Debtor either on its registered office or corporate office through courier service should be treated to be valid service of notice under Section 8.
 - iii. The Corporate Debtor has never disputed the supply of water sanitation equipment by the Operational Creditor and has categorically admitted the receipt of the water sanitation equipment from the Operational Creditor in the statement of objections.
 - iv. The purported terms and conditions between BHEL and the Corporate Debtor are independent of the present Application and have no relevance or bearing to the instant factual matrix. The payment terms of the supplies made by the Operational Creditor to the Corporate Debtor have to be adhered to. There is no tripartite agreement among BHEL, the Operational Creditor and Corporate Debtor. Further, nothing to the contrary has been produced or stated by the Corporate Debtor in its statement of objections. The purchase order pertaining to the invoices in dispute are not linked to BHEL.
 - v. With regard to the alleged breach of contract on part of the Operational Creditor, it is stated that the Corporate Debtor has not disputed its liability to make payments to the Operational Creditor, prior to filing of the statement



of objections. This particular ground raised by the Corporate Debtor is only a moonshine defense submitted before the Adjudicating Authority.

- vi. It is further stated that none of the amounts claimed by the Operational Creditor are time barred and it has asserted its right as an Operational Creditor from the last date of acknowledgement of debt by the Corporate Debtor by issuing a Demand Notice under the provisions of the Code. Hence, the present Application is well within the period of limitation.
- vii. The Petitioner has relied upon the following judgments:
- a) *Sudarshan Cargo Pvt. Ltd. v. M/s.Techvac Engineering Pvt. Ltd. (2013 SCC Online Kar 5063)*
 - b) *PushpaShah & Ors. v. IL&FS Financial Services Ltd. and Ors., NCLAT, (MANU/NL/0019/2019);*
 - c) *Shankar Varadharajan v. Dewachand Ramsaran Corporation Pvt. Ltd. & Ors., NCLAT, (MANU/NL/0311/2018);*
 - d) *Ferro Alloys Corporation Limited v. Rural Electrification Limited, (NCLAT, Company Appeal (AT) (Insolvency) No.92 of 2017);*
 - e) *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd. (2018 2 SCC 674);*
 - f) *V.R. Hemantraj v. Stanbic Bank Ghana Ltd. & Deepa V. Ramani (NCLAT, Company Appeal (AT) (Insolvency) No.213/2018).*

(11) Another case is filed by M/s. Spirare Energy Private Limited against the same Corporate Debtor herein in C.P. (IB) No.282/BB/2019 under Section 9 of the Code. Thus, there are other creditors who are also facing similar issues with the Corporate Debtor.



3. The Respondent has filed the Statement of Objections dated 17.06.2019, by inter alia contending as follows:

- (1) It is contended that it is true that the Operational Creditor has supplied the water sensor to the Corporate Debtor and further Operational Creditor has appointed Corporate Debtor as Authorised Channel Partner and System Integrator for Power Plant Projects to India and further the Operational Creditor undertake to the Corporate Debtor that they will provide complete sales and service support. Further, in case of change of Indian Representation, they will undertake to provide sales, service, spare and reagent supply to the Corporate Debtor.
- (2) It is contended that on the above terms and conditions Operational Creditor has supplied the materials to the Corporate Debtor. However, on 19.08.2016 onwards the Operational Creditor has failed to supply the materials and they failed to provide sales support, services support because of this the Corporate Debtor unable to supply the water sensor and other materials to the BHEL Power Plant Projects as per the terms and conditions which was entered into between Corporate Debtor and BHEL. Further, as the Operational Creditor has failed to provide the material which force the Corporate Debtor to purchase the same from Mettler Toledo, Hack, Thermo Orion companies on higher cost.
- (3) It is further contended that because of the breach of contract on the part of the Operational Creditor, the Corporate Debtor has failed to supply the water sensor to the BHEL and which cause huge loss to the Corporate Debtor and because of the breach, the obligation to pay the amount on the part of the Corporate Debtor does not arise. The Corporate Debtor has



disputed the liability as alleged by the Operational Creditor. Further, few of the invoice amount as claimed by the Operational Creditor were barred by limitation and the Operational Creditor is trying to recover the time-barred debt. It is false to say that the amount claimed by the Operational Creditor is need to pay within sixty days from the date of invoice, there is no agreement contrary to as such as claimed by the Operational Creditor.

(4) It is also contended that the Demand Notice issued by Operational Creditor u/s 8(1) of the Code to a wrong address and further the Corporate Debtor has not carrying out its business in the Address shown in the demand notice dated 03.03.2017 and further there is no postal acknowledgement of demand notice having served to the Corporate Debtor. In the absence of demand notice, the proceedings u/s 9 of the Code will not be maintainable. Further, on the date of issuance of the Demand Notice dated 03.03.2017, the Corporate Debtor was operated in the cause title address shown in the Petition and it is well known to the Operational Creditor. Further, the Corporate Debtor is carrying its business at No.A-291, 2nd Stage, Peenya Industrial Estate, Bangalore.

4. Heard Shri A. Murali, learned Counsel for the Petitioner and Shri Pradeep B.V., and learned Counsel for the Respondent. I have carefully perused the pleadings of both the parties and extant provisions of the Code and the Law on the issue.
5. Shri A. Murali, learned Counsel for the Petitioner, while pointing out various averments made in the instant Company Petition as well as in written submissions, as briefly stated supra, has further submitted that there is no dispute with regard to the amount



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claimed and the contentions raised by the Respondent is not with regard to the amount claimed and they have requested services subsequently outstanding amount. Therefore, he submits that the instant Application is filed in accordance with law and admittedly the debt and default are not in dispute and they have issued the Demand Notice to the Respondent and their defence is purely on technical and untenable grounds. A qualified Insolvency Professional namely Shri Hari Babu Thota is suggested to appoint as the Interim Resolution Professional. Therefore, he urged the Tribunal to initiate CIRP in respect of the Corporate Debtor herein.

6. Shri Pradeep B.V., learned Counsel for the Respondent, on the other hand, has strongly opposed the admission of the case and also pointed out that the Corporate Debtor is not liable to pay unless the Corporate Debtor receive its due from M/s. Bharat Heavy Electricals Limited (BHEL). The claim is also barred by laches and limitation and demand notice too was not served. In support of his contentions, he has relied upon the letter dated 16.01.2014 addressed by the Petitioner to BHEL wherein the Petitioner has inter alia intimated that they have appointed the Corporate Debtor as Authorised Channel Partner and System Integrator for Power Plants Projects in India.
7. The case was listed for admission and hearing on various dates viz. 17.01.2019, 29.03.2019, 29.04.2019, 31.05.2019, 17.06.2019, 08.07.2019, 10.07.2019, 24.07.2019, 23.08.2019, 17.09.2019, 11.10.2019 and 23.10.2019 in order to give opportunities to the parties to explore the possibility of settling the issue. However, the Respondent has failed to avail the opportunity given by the Adjudicating Authority, and it has relied upon pure technical issues like of service of demand notice on wrong address; some



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invoices are time barred etc. Therefore, the Adjudicating Authority has no other alternative except to consider the case as per merits.

8. Further, the Corporate Debtor is facing another case vide C.P. (IB) No.282/BB/2019 filed by M/s. Spirare Energy Private Limited before this Adjudicating Authority, on the ground that the Corporate Debtor has committed default for total outstanding amount of Rs.99,45,324/- (Rupees Ninety Nine Lakhs Forty Five Thousand Three Hundred and Twenty Four Only).
9. It is relevant to refer few of e-mails exchanged between the parties in respect of the dues in question.

a) Email dated August 19, 2016 reads as under:

**From: Lukas Staub, Swan Analytische Instrumente AG
Sent: Freitag, 19 August 2016 10:10
To: mrao@flowline.in, Cc: Sales SWAN Instrumente
Subject: Flowline statement of account.*

<i>Tracking:</i>	<i>Recipient</i>	<i>Delivery</i>
	<i>mrao@flowline.in</i>	<i>Delivered: 19.08.2016 10:10</i>
	<i>Sales SWAN Instrumente</i>	

Hello Mohan,

I hope you are doing well.

It's been a while since our last communication and I need to point your attention to the open balance that Flowline has with us. As per the attached statement of account the outstanding amount is now standing at over 300'000 USD, some of the invoices dating back to 2015!

The attached order is in the works but I have stopped delivery until your account is settled. Please advise when we can expect payment for the overdue invoices.

Also the pricing at which you are ordering spares and consumables is still standing at 50% with additional discounts on Transmitters and Sensors. So in addition to financing your business we also have very favourable pricing which we cannot continue in the same way.

I will keep the pricing as we had it for your projects on Analysers, Transmitters and Sensors and have extended a general 40% discount on



everything else. Your payment terms are 60 days net with a credit line of 100'000 USD, so please make sure these conditions are met from hereon.
Kind regards, Lukas Staub, Swan Analytische Instrumente AG."

In response to the above e-mail, the Corporate Debtor responded by e-mail dated 19th August, 2016, which reads as under:

"From: Mohan Rao, Flowline Instrumentation Pvt. Ltd., <mrao@flowline.in>
Sent: Freitag, 19 August 2016 10:56
To: Lukas Staub, Cc: Sales SWAN Instrumente
Subject: Flowline: BHEL Contract Closure and Statement of Account

Dear Lukas,

1. Yes we will clear the previous dues shortly. However please see if you can ship the sensors that are needed for commissioning the analyzers. Without the sensors BHEL will not pay us our dues. We can pay in advance for the sensors from our side.
2. We have been busy closing contracts at all the sites. We are commissioning 5 sites at the same time! The summary is as follows. All your patience, credit support and our work on the ground will definitely reap rewards. We are closing all these and payments due from BHEL is USD 480K (including SHS) as on date.

Warm regards,
Mohan."

b) Another e-mail dated 3rd November, 2016 was sent to Petitioner, which reads as under:

"Von: Mohan Rao, Flowline Instrumentation Pvt. Ltd. <mrao@flowline.in>
Gesendet: Donnerstag, 3 November 2016 12:01
An: Tobi Goetsch <tobi.goetsch@swan.ch>
Cc: Lukas Staub <Lukas.staub@swan.ch>
Betreff: RE: Unpaid invoices

Dear Mr. Goetsch

Yes it is frustrating for us as well.

We have a meeting with BHEL officials on contract closure this week and we will get firm payment commitments and contract closure.

If required we will divert funds from other sources to your account.



I shall update you on the same on Monday.

We are also arranging USD 50k transfer to allow sensors and other commissioning items to be shipped from Switzerland for contract closure of previous supplies as discussed with Lukas.

List of balance items (sensors for all previously supplied transmitters) that need to be shipped for contract closure from Switzerland is also being prepared and will be sent on Monday.

We appreciate the patience that M/s. Swan has shown to develop the Indian market and the faith in Flowline.

Warm Regards

Mohan."

- c) Another e-mail dated 5th December, 2016 was sent to Petitioner, which reads as under:

**From: Mohan Rao, Flowline Instrumentation Pvt. Ltd. <mrao@flowline.in>*

Sent: Monday, December 5, 2016 12:51 PM

To: Lukas Staub

Subject: Flowline Update

Dear Lukas,

I know you must be anxious for the payments. We are processing the same.

Flowline is in the process of merging and acquiring Leonardo Automation India and we are constrained from making significant payments till the bank releases the new limits of the combined entity. We haven't shared this information publicly and I am sharing this with you because your outstanding is high.

You have been very patient with us already but please wait for a few more days.

Warm Regards

Mohan."

10. As the Corporate Debtor failed to comply with its promises, as per the e-mails as mentioned supra, the Petitioner issued Demand Notice dated 16th February, 2017 U/R 5 of I&B (Application to



Adjudicating Authority) Rules, 2016 by demanding to pay the outstanding amount of Rs.2,30,12,407.29/- within 10 days from the receipt of the notice, followed by legal notice dated 3rd March, 2017. Mr.Tobias Goetsch, the Chief Financial Officer of M/s.SWAN Analytische Instrumente AG has also filed Affidavit dated 12.11.2018 by inter alia affirming that the Petitioner Company is having its registered office at Studbachstrasse 13, Postfach 398, CH-8340 Hinwil, Switzerland and he is duly authorised to institute the instant insolvency resolution process application u/s 9 of the I&B Code on behalf of the Applicant. They have issued a statutory demand notice dated 16.02.2017 along with the list and copies of invoices to the Respondent/Corporate Debtor addressed to the registered office of the Respondent through courier. The said demand notice was duly received by the Corporate Debtor on 03.03.2017. He further states that the legal Counsel of the Applicant had also issued a separate legal notice to the Respondent on 03.03.2017 through RPAD and courier, which was also addressed to the registered office of the Respondent. However, the due amount has remained unpaid by the Respondent till date despite the lapse of 10 days from the receipt of the statutory notice sent by the Applicant to the Respondent. Till date, the Respondent has not replied to the Applicant's demand notice or the legal notice issued on behalf of the Applicant. The Respondent has not given a notice of dispute relating to the unpaid operational debt.

11. The facts as narrated supra, clearly established that the Debt and default in question are not in dispute. And it is admitted facts that the goods in question were received by the Corporate Debtor and further transacted its business with its clients. The Corporate Debtor did not raise any dispute with regard to the goods and service rendered by the Petitioner. BHEL, admittedly, is a customer of Corporate Debtor and there is no tripartite agreement between



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the Petitioner and Respondent and BHEL. The letter dated 16.01.2014, as relied upon by the learned counsel for the Respondent, would not have much bearing on the issue in question. The letter inter alia intimate that they have appointed M/s.Flowline Instrumentation Pvt. Ltd. as Authorized Channel Partner and System Integrator for Power Plants Projects, India. The said letter reads as under:

"To
M/s.Bharat Heavy Electricals Ltd., Bangalore.

Dear Sirs,

SWAN has been a global leading provider of on-line analytical systems in the water industry. The current product portfolio ranges from ultrapure water (like pharmaceutical and semiconductor applications), feedwater, steam and condensate monitoring as well as potable water and industrial water treatment and sanitary water applications.

We are pleased to appoint M/s.Flowline Instrumentation Pvt. Ltd., B235, 6th Cross, 1st Stage, Peenya Industrial Area, Bangalore-560058, India, as "Authorized Channel Partner and System Integrators for Power Plant Projects - India".

1. They are authorized to quote for our Analyzers and provide Sales & Service support to you.
2. We undertake that we will provide complete sales and service support to M/s.Flowline Instrumentation Pvt. Ltd. for your Analyzer requirements.
3. We also undertake that in case of change in Indian representation in future we will continue to support you in sales, service, spare parts and reagent supply.
4. Their personnel are authorised to service our analyzers in India.
5. Critical components and spares will be maintained by them in India for servicing the analyzers.
6. This authorization is valid for 24 Months from date of issue.

We are now servicing your region through the above mentioned channel partners and encourage you to contact us.

Yours sincerely,

Lukas Staub, Sales Director, SWAN Analytical Instrumente AG"



12. The allegation made by the Corporate Debtor that due to the failure on the part of the Petitioner to provide sales and services support forced the Corporate Debtor to purchase the same goods from Mettler Toledo, Hack, Thermo Orion companies etc. on higher cost is also not relevant to the instant issue. Admittedly, the Petitioner has supplied goods and service in question and there is no dispute raised by the Corporate Debtor. Moreover, it is not the case of the Corporate Debtor they have taken any legal proceedings to sue the alleged breach of contract on the Petitioner. The other contention that they not received the demand notice in question is not at all tenable and the Corporate Debtor is also given ample opportunities by the Adjudicating Authority to come forward with its defense. So far as question of limitation is concerned, the Corporate Debtor has only contended that few of invoices in question are barred by laches and limitation. Therefore, it is not the case of the Corporate Debtor that the entire claim in question is barred by laches and limitation.
13. The instant petition is filed in accordance with law and the debt and default in question are in dispute and the defence raised by the Respondent is not tenable and baseless. Therefore, I am of the considered opinion that it is a fit case to admit the case by appointing Shri Hari Babu Thota having Regn.No.IBBI/IPA-002/IP-N00084/2017-2018/10225 as the IRP in respect of the Corporate Debtor herein, who also has given his Consent in Form 2 dated 17.12.2018 along with Affidavit dated 19.12.2018, by inter alia certifying that there are no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency, and he is eligible to be appointed as an IRP etc.
14. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, under



Section 9(5)(i) and other extant provisions of the Code, Company Petition bearing C.P. (IB) No.28/BB/2019 is hereby admitted by initiating CIRP in respect of the Corporate Debtor with following consequential directions:

(1) I hereby appointed **Shri Hari Babu Thota with Regn. No.IBBI/IPA-002/IP-N00084/2017-2018/10225** as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor namely **M/s. Flowline Instrumentation Private Limited** and to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the 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 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 transaction as may be notified by the Central Government in consultation with any financial 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 the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the 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 the IBBI.
- (5) The IRP is directed to file his progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on **26th November, 2019**.

Krishna



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Deputy Registrar
National Company Law Tribunal
Bengaluru Bench

Swarna C