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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.01.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 1137/2020 in CP (IB) No. 341/9/HDB/2020
NAME OF THE COMPANY	Emcor Packaging Pvt Ltd
NAME OF THE PETITIONER(S)	Sri Laxmi Tulasi Agro Ltd
NAME OF THE RESPONDENT(S)	Emcor Packaging Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	S

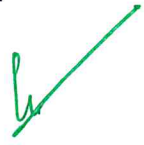
Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

IA No.1137 of 2020 and the main Company Petition are allowed vide separate order.


MEMBER (TECHNICAL)


MEMBER (JUDICIAL)

Karim

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**CP(IB) No. 341/9/HDB/2020
U/s. 9 of Insolvency & Bankruptcy Code, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016**

In the matter of:

Sri Luxmi Tulasi Agro Paper Private Limited
Regd. Office at: 25-2-20, Jayakrishnapuram
Rajahmundry, Andhra Pradesh – 533 105

.... Operational Creditor

Vs.

M/s. Emtor Packaging Private Limited
Survey No. 9/2 & 10
Damaragidda Village, Chevalla Mandal
Telangana – 501 503

... Corporate Debtor

Date of Order: 06.01.2021

Coram:

**Hon'ble Shri K. Anantha Padmanabha Swamy, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)**

Parties / Counsels Present:

For the Petitioner : Mr. Duvva Pavan Kumar, Ms. Shraddha Gupta,
Mr. Preetham Kunapareddy, Advocates

For Respondent : --

Per: Veera Brahma Rao Arekapudi, Member (Technical)

Heard on: 14.10.2020, 10.11.2020, 19.11.2020, 08.12.2020, 14.12.2020



ORDER

1. The instant Petition is filed by **M/s. Sri Luxmi Tulasi Agro Paper Private Limited/Operational Creditor** alleging that **M/s. Emcor Packaging Private Limited/Corporate Debtor** had defaulted an amount of **Rs.3,34,97,615.37 (Rupees Three Crores Thirty Four Lakhs Ninety Seven Thousand Six Hundred Fifteen and paise thirty seven only)** which includes Principal amount of Rs.2,70,14,205.94 alongwith interest @ 24% p.a. of Rs.64,83,409.43 till 18.09.2020 against the invoices raised for the period from 13.01.2019 to 09.01.2020. **A copy of the statement showing outstanding amount including interest is shown at page nos.77 to 78 of the application.**

Hence, this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.


2. The averments of the petition filed by the Petitioner/Operational Creditor in brief are described hereunder:
 - i. M/s. Sri Luxmi Tulasi Agro Paper Pvt. Ltd. /Operational Creditor is engaged in the business of manufacturing Kraft Paper and selling the same to corrugators for the purpose of making corrugated boxes. M/s. Emcor Packaging Pvt. Ltd./Corporate Debtor is engaged in the business of manufacturing corrugated packing boxes.
 - ii. It is averred the Corporate Debtor approached the Operational Creditor and requested for a steady supply of Kraft Paper. The Operational Creditor was engaged by the Corporate Debtor as their supplier of Kraft Paper since 2008.



iii. It is averred as per the request of the Corporate Debtor, the Operational Creditor supplied the material in accordance with the specifications of the Corporate Debtor and subsequent to every dispatch a corresponding invoice was raised by the Operational Creditor with the following terms and conditions:

- Payments shall be made within 75 days from the date of invoice.
- If payments are not made within the aforesaid time period, then interest @ 24% p.a. shall be charged for the late payments.

- i. It is averred since 13.01.2019, the Corporate Debtor had not made payments on any of the invoices raised by the Operational Creditor despite acknowledging the same and the very clear obligation on their part to make payments in a timely manner. However, the Operational Creditor continued supplying the material based on the assurances given by the Corporate Debtor for payment of the same.
- ii. It is averred as per the terms and conditions of the invoices raised by the Operational Creditor, the Corporate Debtor is required to make payments within 75 days from the date of invoice, failing which, interest @ 24% shall be charged for the late payments.
- iii. It is averred 53 invoices were raised from 13.01.2019 to 09.01.2020 but the Corporate Debtor failed to make the payments. It is also averred the payments due were at any point of time not disputed and were acknowledged by the Respondent.
- iv. It is averred as the Corporate Debtor failed to make the amounts due, a Demand Notice was issued on 06.03.2020 for payment of Rs.3,12,53,086.02/- inclusive of interest @ 24% p.a. till 07.02.2020, which was received by the Corporate Debtor on 09.03.2020. Even after issuing the demand notice, the Respondent failed to clear the outstanding dues.





- v. It is averred that the outstanding amount due to the Operational Creditor have never been disputed by the Corporate Debtor in any manner whatsoever.
- vi. It is averred that the Petitioner left with no further option, filed the petition under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on 01.10.2020, which was listed on 14.10.2020. A copy of the petition was served by the Petitioner through e-mail on 01.10.2020 (**Annexure-A1**) and also informed the hearing date by email on 13.10.2020 (**Annexure-A2**). Despite receipt of the above notice, the Respondent did not appear before the Hon'ble Tribunal on 14.10.2020.
- vii. It is averred as per the directions of the Hon'ble Tribunal on 14.10.2020, the Petitioner again served the notice by email on 09.11.2020 (**Annexure-A3**) stating that the matter was listed on 10.11.2020 and proof of service was also filed with the Hon'ble Tribunal (**Annexure-A4**).
- viii. It is averred inspite of receipt of the notices, Respondent once again did not appear before the Hon'ble Tribunal on 10.11.2020 and the matter was again posted to 19.11.2020 and issued order stating that 'issue another notice to the Respondent and also issue publication in Telugu and English newspapers for appearance and making submissions' (**Annexure-A5**). Copies of the paper advertisements are annexed as **Annexure-A7** of the application. The date of hearing was informed to the Respondent by email on 12.11.2020 (**Annexure-A6**).
- ix. It is averred on 19.11.2020, the Respondent appeared and prayed time for filing the counter and matter was again posted to 8.12.2020. But on 8.12.2020, again no representation for



Respondent and treated as ex-parte. For hearing submissions, matter was posted 14.12.2020 and again on that day also no representation for Respondent.

3. We have heard the learned counsel for the Operational creditor. In this case, on 19.11.2020, Ms. Manjusha, Advocate appeared on behalf of the Corporate Debtor and prayed time for filing vakalat and counter. However, later, she has not filed vakalat/counter on behalf of the Corporate debtor. There is no contest of the case of the Operational Creditor by the Corporate Debtor. The Operational Creditor has filed Demand Notice dated 06.03.2020, which was received by the Corporate Debtor on 09.03.2020 and there was no reply to the Demand Notice. The Operational Creditor has further relied on the invoices shown at page nos.18 to 70 of the application. The case of the Operational Creditor is that the Corporate Debtor committed default of the operational debt to the tune of Rs.2,70,14,205.94/-, apart from the interest at the rate of 24% per annum. The total amount of default is Rs.3,34,97,615.37/- including interest @ 24% p.a. till 18.09.2020.
4. Instead of sending notices, the Respondent have not appeared either in person or through counsel in the matter. We have thoroughly perused the records and heard the submissions made by the Counsel for Petitioner. The petition is in order. The petition deserves to be admitted. Accordingly, the petition is admitted.
5. The Operational Creditor failed to name anyone as Interim Resolution Professional and has requested the Tribunal to appoint one for the Corporate Insolvency Resolution Process. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period from 1st January, 2021 to 30th June, 2021 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr.Dommeti Surya Rama Krishna Saibaba having Registration No. IBBI/IPA-003/IP-N000165/2018-2019/12106, Mobile No. 9676888533 e-mail id: dsrk39@yahoo.com as Interim Resolution Professional. The aforesaid interim resolution



professional has no disciplinary proceedings pending against him. He shall file his written communication and all relevant paper immediately before Registrar of this Tribunal but not later than two days.

6. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions:-
- i. The Bench hereby prohibits 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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
 - ii. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - iii. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - iv. That the order of moratorium shall have effect from 06.01.2021 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.



- v. The Petitioner is directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.
- vi. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- vii. Accordingly, this Petition is admitted.
- viii. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.
7. With the admission of this Petition, IA No.1137/2020 becomes infructuous and stands disposed of.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)

Syamala