

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

**TP No. 115/CTB/2019
Connected With
[Earlier (CP No. 187/MB/2018)]**

In the matter of:

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Kasa Anlagen India Private Limited, a company incorporated under the Companies Act, 1956 having its registered office at 18, SIDCO Industrial Estate, Thirumudivakkam, Chennai – 600132;

... Operational Creditor

-And-

In the matter of:

Mcchem-Anlage Energies & Infratech Private Limited, having registered office at 16/22, Uttar Gangotri Commercial Complex, Supela, Bhilai, C.G- 490023.

... Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For Petitioner (s) : Mr. Ajit Anekar, Adv.
Mr. Saswat K. Acharya, Adv.
Mr. Urvi Vaidya, Adv.

For Respondent (s) : Mr. Abhinav Kardekar, Adv.

ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. This Petition was initially filed for winding up under Section 433 of Companies Act, 1956 before the Hon'ble High Court of Chhattisgarh.

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Subsequently, after constitution of NCLT, matter was transferred to NCLT Mumbai Bench. Thereafter, on [constitution of this Bench, the matter has been transferred from Mumbai Bench and re-numbered as TP No. 115/CTB/2019 and filed in IBC format for initiation of Corporate Insolvency Resolution Process (CIRP) against the above-named Corporate Debtor.

2. It is stated in the petition that the Operational Creditor has supplied Electrical and VFD Panels based on several purchase orders and provided credit towards various payments made by the Operational Creditor, leaving an amount of Rs. 1,22,73,066/- due as on September 18, 2013 plus interest at the Rate of 15% p.a. from April, 2013 till date of actual payment.
3. The Operational Creditor has set out the details of the operational debt in the Demand Notice dated August 05, 2019 (Annexure – 13 to the Petition at Pg. No. 110) filed before this Tribunal, u/S. 9 of the Insolvency & Bankruptcy Code, 2016 (“IBC”).
4. Petitioner has submitted that the Corporate Debtor never raised any dispute about quality and/or quantity of the goods supplied to it and has not raised the same even in its reply to the present Petition. There was no email or any other communication raising any dispute about quality and/or quantity of the goods.
5. Petitioner submits that there are admittedly outstanding dues of Rs. 1,22,73,066/- owed to the Operational Creditor which amount is well above the threshold required to initiate insolvency proceedings under the IBC. Further, that this amount is clearly recorded in the Balance Sheets of the Corporate Debtor up to the year 2017-18 as well as in the ledger accounts, which is duly signed by Mr. Sudhir Jha, one of the Directors of the Corporate Debtor.

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6. The Petitioner submits that as per the applicable threshold at the time of filing of the above Petition, in case of default by the Corporate Debtor for an amount exceeding Rs. 1 Lakh, the operational Creditor is entitled to seek recourse under the IBC and upon the Demand Notice being issued and the debt remaining due, the IBC gets triggered.
7. Further, that the Corporate Debtor has failed to show any dispute in relation to the said amount claimed by the Operational Creditor. Corporate Debtor has never denied the outstanding amounts owned by it to the Operational Creditor.
8. The Operational Creditor is a minority shareholder of the Corporate Debtor holding 27% shares; whereas Mr. Sudhir Jha and his wife hold 73% shares as is evident from para 8 of the Corporate Debtor's reply. However, this Tribunal notes that the said fact has no bearing on the present Petition as the same is filed by the Operational Creditor in its capacity as a supplier/creditor of the Corporate Debtor.
9. The Respondent has stated that the petition is not maintainable as there is a pre-existing dispute. However, they have not provided any details in regard to any dispute with regard to purchase orders and supply of items thereof by the Applicants. The dispute referred in the petition is primarily between the shareholders of the Company. The Petitioner submits that in any case, any *inter se* dispute between the Operational Creditor and the shareholders of the Corporate Debtor has no bearing on the monetary claim of the Operational Creditor against the Corporate Debtor as the same is entirely independent of the proceedings under IBC. The Corporate Debtor, as a Company, has no role in any purported dispute between the Operational Creditor in its capacity as a shareholder with the other shareholders of the Corporate

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Debtor and, therefore, any such dispute does not fall within the purview of pre-existing dispute as required by Section 5 (6) (a) of the IBC. The Tribunal notes the same.

10. The respondent has also disputed that the Applicant has not complied with Section 8 of the IBC, 2016 as far as issuance of demand notice is concerned. However, the Applicant has at Annexure 13 of the Petition provided the details of the demand notice issued. It is further noted that the arbitration notice that the Corporate Debtor is seeking to rely upon as invocation of arbitration relates to a Memorandum of Understanding ("MOU") dated December 07, 2019 (*Annexure R/1 to the Corporate Debtor's Reply*) to which the Corporate Debtor is not a party and was only issued in response to the Operational Creditor's demand notice. In any event, the Corporate Debtor could never have issued any notice of invocation of arbitration under the MOU to which it is not a party. Furthermore, upon the receipt of the Operational Creditor's reply. (*Annexure C to the Operational Creditor's Rejoinder Pg. No. 53*) to the said invocation notice, specifically stating that the Corporate Debtor was not a party to the MOU and, therefore, could not have invoked arbitration thereunder, the Corporate Debtor did not pursue the matter any further and, therefore, such invocation arbitration pales into insignificance and cannot be of any help to the Corporate Debtor.
11. The Balance Sheets and the authenticated ledger accounts of the Corporate Debtor clearly reflect uncleared debt of more than Rs. 1.00 lakh, the then threshold limit for initiation of CIRP under IBC, 2016. In result, going by the facts and circumstances of the case and the material on record, we are inclined to ADMIT this petition.
12. The Operational Creditor has not suggested the name of any Interim Resolution Professional. Therefore, this Tribunal appoints **Mr. Anil**

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Kumar Agarwal (Registration No. **IBBI/IPA-001/IP-P02461/2021-2022/13779**) residence at 31/884, Old Pipe Factory Road, New Shanti Nagar, Near Tondon Diary, Raipur, Chhattisgarh, 492001 and **E-mail id. anilrgopal1968@gmail.com** for Interim Resolution Professional, Liquidator, Resolution Professionals and Bankruptcy Trustee for Cuttack Zone, issued by the Insolvency and Bankruptcy Board of India. There is nothing on record to say that any disciplinary proceedings against the proposed Interim Resolution Professional is pending.

13. Accordingly, the following Orders are passed: -

ORDER

- (a) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **Mcchem-Anlagen Energies & Infratech Pvt. Ltd.**
- (b) Moratorium Order is passed for a public announcement as stated in Section 13 of the IBC, 2016. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-Section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (c) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including

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- execution of any judgment, decree or order in any Court of law, Tribunal, Arbitration Panel or other authority;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (d) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
 - (e) 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.
 - (f) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
 - (g) 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.

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- (h) Necessary public announcement as per Section 15 of the IBC, 2016 may be made by the Resolution Professional upon receipt of the copy of this order.
- (i) **Mr. Anil Kumar Agarwal** having **Registration No. IBBI/IPA-001/IP-P02461/2021-2022/13779** and **E-mail Id.:** anilrgopal1968@gmail.com residence of 31/884, Old Pipe Factory Road, New Shanti Nagar, Near Tondon Diary, Raipur, Chhattisgarh, 492001 is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency, as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this Order. He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
- (j) We direct the Operational Creditor to deposit a sum of ₹2.00 lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.
- (k) Directions are also issued to the suspended management to provide all documents in their possession and furnish every information in

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the knowledge within a period of one week from the date of admission of the petition to the IRP, otherwise coercive steps to follow.

- (l) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
- (m) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.
- (n) List the main CP for reporting progress on 06.05.2022.
- (o) Let the certified copy of the order be issued upon compliance with requisite formalities.

Sd

Satya Ranjan Prasad
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this the 6th day of April, 2022.

Nilesh (Steno)

सत्य प्रति प्रमाणित होना
CERTIFIED TO BE TRUE COPY

April 2022



उप दुरासचिव
Deputy Registrar
राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
कटक बेंच
Cuttack Bench