

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 193/I&BP/2019

Under section 8 &9 of the IBC, 2016

In the matter of

Easun-MR Tap Changers Private Limited

Temple Tower, 6th Floor, 672, Anna
Salainandanam, Madras – 600 035, TN

.... Petitioner

v/s.

Aditya Vidyut Appliances Limited

Survey No. 168, Hissa No. 10, Sonale
Village, Bhiwandi Bypass Road, NH-3,
Bhiwandi, Maharashtra – 421 302

.... Corporate Debtor

Order delivered on: 11.09.2019

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner : Ms. Naina Agrawal, Advocate i/b Vaish Associates.

For the Corporate Debtor : None Present.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This company Petition is filed by Easun-MR Tap Changers Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Aditya Vidyut Appliances Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default on 26.01.2017 in making payment to the extent of Rs. 4,32,70,548/- including interest @ 24% p.a., by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petitioner is an Indo-German Joint venture and is engaged in manufacturing of 'On Load Tap Changers', its accessories and 'Nitrogen Injection Fire Prevention System'. The Corporate Debtor, from time to time, placed several purchase orders for supply of goods with the Petitioner and the Petitioner has supplied goods to the Corporate Debtor and raised various invoices.

3. The Counsel for the Petitioner submits that, the Corporate Debtor accepted the goods supplied by the Petitioner and also invoices issued by the Petitioner. As per the agreed terms between the parties, the Corporate Debtor had to make payment immediately on expiry of 90 days from the date of invoice and in case of failure on the part of the Corporate Debtor, an interest at @24% p.a. would be charged on the outstanding amount of such invoices.

4. After issue of repeated requests and reminders to the Corporate Debtor, on account of non-payment of the dues, the Petitioner on 27.06.2018 issued demand notice demanding a sum of Rs. 3,11,46,249.78/- under Section 8 of the Code.

5. On 04.09.2018 after the issuance of the demand notice, the Corporate Debtor placed a new purchase order bearing no. 6000023241 on the Petitioner for Rs. 7,08,000/-. The Petitioner agreed to supply materials listed in this new purchase order on the condition that the Corporate Debtor pays off past outstanding dues of the Petitioner.

6. While assuring that all outstanding dues of the Petitioner shall be cleared, the Corporate Debtor made part payment of Rs. 12,00,000/- out of which Rs. 7,08,000/- was to be appropriated towards the dues under the new purchase order and the balance amount of Rs. 4,92,000/- was to be taken towards past dues.

7. In view of the payment of Rs 12,00,000/ by the Corporate debtor towards complete realization of Rs 7,08,000/ and balance of Rs 4,92,000/ towards old dues an amount of Rs. 3,06,54,249.78/- still remains payable. The Petitioner, from time to time, requested the Corporate Debtor to release the outstanding amount due to the Petitioner. The Corporate Debtor through email correspondence dated 28.03.2018, acknowledged the debt due to the Petitioner and assured release of payment.

8. Despite all the assurances given by the Corporate Debtor, the Corporate Debtor did not release any further payment to the Petitioner after receiving the 1st demand notice. Accordingly, the Petitioner on 12.12.2018 issued 2nd demand notice under section 8 of the Code demanding a sum of Rs. 3,06,54,256/- along with interest @24% p.a. on the delayed payments to the extent of Rs. 1,22,33,325.79/-, thus aggregating to Rs. 4,28,87,581.79/-.

9. There was no reply from the Corporate Debtor for the Demand Notice and the Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no notice of dispute given by the Corporate Debtor.

10. The counsel for the Petitioner submitted that the petition was served on the Corporate Debtor on 26.04.2019 and proof of service was filed to that effect. Subsequently, the counsel for the Petitioner intimated the date of hearing to the

Corporate Debtor but there was no representation from the Corporate Debtor's side on 27/05/2019, the matter was adjourned to 27/06/2019 for admission. The matter was eventually posted on 16.08.2018 and the Corporate Debtor failed to appear and hence the matter was heard and reserved for orders. In view of the admission of debt on 28.03.2018 vide an email by the Corporate Debtor, it can be held that there is default of non-payment of monies after receiving the goods and hence the petition is admitted.

11. One Mr. Kshitiz Gupta, office at Flat No. C/104, Lotus CHSL, Gundecha Valley of Flowers, Thakur Village, Kandivali (east), Mumbai – 400 101; having Registration No. IBBI/IPA-002/IP-N00721/2018-19/12140 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

12. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code, admits this application declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) 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.
- (c) 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.
- (d) that the order of moratorium shall have effect from 11.09.2019 till the completion of the CIRP 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, as the case may be.

(e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby appoints Mr. Kshitiz Gupta, office at Flat No. C/104, Lotus CHSL, Gundecha Valley of Flowers, Thakur Village, Kandivali (east), Mumbai - 400 101; having Registration No. IBBI/IPA-002/IP-N00721/2018-19/12140 as Interim Resolution Professional to carry the functions as mentioned under the Code.

13. Accordingly, this Petition is admitted.

14. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)