

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.372/MB-IV/2023

Under Section 9 of the IBC, 2016

In the matter of

M/s. ARM WELDERS PRIVATE
LIMITED.

[CIN: U29299PN1998PTC012581]

...Operational Creditor

v/s.

M/s. GENIX AUTOMATION PRIVATE
LIMITED

[CIN: U29299PN2006FTC129121]

...Corporate Debtor

Order Delivered on: 16.05.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Mr. Shyam Kapadia a/w Mr. Anuj
Desai, Mr. Umesh Tiwari and Mr.
Preet Mahesh Vora, Ld. Counsel.

For the Corporate Debtor:

None present.

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s. Arm Welders Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Genix Automation Private Limited., the Corporate Debtor.

1.1. The Company Petition is filed on 19.05.2023 claiming that an amount of Rs. 1,76,35,847/- together with interest at the rate of 36% p.a which aggregates to Rs.7,45,18,927/- from the date of delivery of goods till date is due and payable by the Corporate Debtor. The date of default in Part IV of the petition is as per default of individual invoices from December 2013 to July 2014

2. **Submissions of the Operational Creditor :**

2.1. The Operational Creditor is a leading manufacturer, exporter and supplier of superior quality spot welding guns, machines, fixtures and accessories & spare parts fabricated using premium quality raw material and advanced technology, these are designed in compliance with international standards.

2.2. The Corporate Debtor approached the Operational creditor and placed various purchase orders for purchase of various fixtures, amchineries, accessories, spare parts etc. As per Order and Instruction of the Corporate Debtor, the operational Creditor from time to time under various invoices supplied goods from December 2013 to July 2014.

- 2.3. The Corporate Debtor through an letter dated 15.06.2017 being statement of Account, confirmed that the aforesaid outstanding dues are payable by Corporate Debtor to Operational Creditor.
- 2.4. Furthermore, the Ld. Counsel for the Operational Creditor submits that, the Corporate Debtor through it's whole time Director Mr. Uday Nikam sent an email dated 15.09.2022 to the to the representative as well as Director of the Operational Creditor , thereby re- confirming the aforesaid statement of account dated 15.06.2017.
- 2.5. The Operational Creditor Submits that they served the Demand Notice upon the Corporate Debtor and on it's whole time director Mr. Uday Nikam on his email address by an email dated 15.09.2022. The said Statutory Demand Notice was also sent by Speed Post on the registered Email Address of the Corporate Debtor on 08.10.2022. However, the said Notice was returned with a remark "*Addressee left without Instructions*"(as per the endorsement of the tracking report).
- 2.6. The Petitioner had filed affidavit under section 9(3)(b) of IBC dated 18.03.2023 affirming that that no notice of dispute to the unpaid operational debt has been given by the Corporate Debtor.
- 2.7. The Operational Creditor states that, Corporate Debtor have inspite of several promises failed and neglected to pay the said outstanding and/or any part thereof. Accordingly, Corporate Debtors conduct of not making the said payment towards outstanding dues, though admittedly due and confirmed, establishes the fact that Corporate Debtor do not intend to pay Operational Creditor legitimate dues. Hence, this present petition.

Findings

3. The bench has heard the arguments of Learned Counsel for Operational Creditor.

3.1. None has appeared for the Corporate Debtor despite the fact that a notice dated 05.07.2023 was issued to the Corporate Debtor to cause appearance in this case. Further, the matter was listed on 10.08.2023, 17.08.2023 and 18.09.2023. This bench observed that vide order dated 25.10.2023 last opportunity was granted to Corporate Debtor to file its reply and the matter was listed on 04.12.2023. At time of hearing none appeared on behalf of the Corporate Debtor. Therefore, Corporate Debtor was set *ex-parte* by this bench vide order dated 04.12.2023. In the aforesaid peculiar circumstances, we proceed to decide the matter as per the basis material available on record..

4. During the course of arguments, Counsel for the Petitioner has argued that the Operational Creditor supplied goods to the Corporate Debtor on the basis of the purchase orders various invoices were issued . As per the invoices, payment of each invoice was to be made within 30 days. Counsel for the Petitioner has further pointed out that no payment was made by the Corporate Debtor despite the fact that a demand notice was also issued .

4.1. As per material on record, this bench observed that, neither in the purchase order nor in the invoices there is no any interest clause stipulated. Hence, the claim amount with regards to interest is not being considered, only the default amount with regards to principal amount is considered which is in excess of minimum amount stipulated under section 4(1) of the IBC, at relevant time.

- 4.2. The learned counsel drew our attention to the acknowledgement of the debt by the corporate debtor through an statement of Account dated 15.09.2017, confirming that the aforesaid outstanding dues are payable by Corporate Debtor to Operational Creditor. Seondly, the Corporate Debtor through Director Mr. Uday Nikam sent an email dated 15.09.2022 to the Operational Creditor , re- confirming the aforesaid statement of account dated 15.06.2017. Subsequently, a fresh period of limitation will be computed same. Considering the aforesaid the limitation period stands extended. The captioned petition is therefore fit for admission.
- 4.3. On the perusal of documents placed on record i.e. the purchase order and also the invoices along with the acknowledgement of debt on the part of the respondent, we are left with no other option but to grant admission of the respondent/corporate debtor to Corporate Insolvency Resolution Process (“CIRP”).
5. We are of the considered opinion that the petitioner on the strength of the submissions made and the documents placed on record has been able to prove the amount of operational debt due which is payable to him and also default on the part of the respondent/corporate debtor and pursuance to the documents placed on record by the petitioner, there does not seems to be any existing dispute between the parties. In the absence of the respondent we are left with no other option but to accept the contention by the petitioner. Thus, in our opinion the all essential ingredients required for admission under Section 9 of the IBC, i.e., the existence of “*debt*” and “*default*” in this case are proved. We deem it appropriate to admit the corporate Debtor to CIRP.

6. The petition bearing CP (IB) No.372/MB-IV/2023 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s. Arm Welders Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Genix Automation Private Limited., the Corporate Debtor is **Admitted**.

7. The bench hereby appoints **Mr. Purusottam Behera**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-002/IP-N00940/2019-2020/12993** Email: **purusosbj@yahoo.com**. Is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
 - I. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - 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 Securitization and Reconstruction of

Operational 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 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 the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information

in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- VII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- IX. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
16.05.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)