

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

CP (IB) No.800/MB-IV/2023

Under Section 9 of the IBC, 2016

In the matter of

Pasad Impex Private Limited

[CIN: U51420MH2004PTC146383]

...Operational Creditor

v/s.

ETC- Energy Therapy Company Private
Limited

[CIN: U40300MH2010PTC201185]

...Corporate Debtor

Order Delivered on: 12.07.2024

Coram:

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

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Mr. Yahya Batatawala, Ld. Counsel
Present.

For the Corporate Debtor:

Mr. Prakhar Tandon, Ld. Counsel
Present.

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Pasad Impex Private Limited ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of ETC- Energy Therapy Company Private Limited, the Corporate Debtor.

2. The Corporate Debtor is a private company limited by shares incorporated on 23.03.2010 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is 12-B, Ganga Vihar, Raheja Township, Malad (East), Mumbai, Maharashtra-400097, India. Therefore, this Bench has jurisdiction to deal with this petition.
3. The Company Petition is filed on 08/07/2023 claiming an amount towards Principal of Rs. 1,12,32,660/- (One Crore Twelve Lakhs Thirty-Two Thousand Six Hundred and Sixty Rupees Only) and Interest @ 21 % p.a is Rs. 13,70,440/- (Thirteen Lakhs Seventy Thousand Four Hundred and Forty Only) aggregating to Rs. 1,26,03,100/- (One Crore Twenty-Six Lakh Three Thousand and Hundred Rupees Only) is due and payable by the Corporate Debtor. The date of default as specified in Part IV of the Petition is on 11.11.2022 and that the Petition is filed within the limitation period.

Submissions advanced by the Operational Creditor are as follows:

4. The Operational Creditor submits that the OC (Operational Creditor) is a firm engaged in the business of wholesale, manufacturing, import & export of Steel and Iron products since 2004. The Corporate Debtor was looking to buy steel and iron product. The Corporate Debtor after negotiations requested to the Operational Creditor to send Proforma Invoice. Accordingly, the Operational Creditor issued two letters of Proforma Invoice / Quotation no. Q/011/22-23 dated 08.04.2022 for an amount of Rs. 48,48,489/- and Q/021/22-23 dated 22.06.2022 for an amount of Rs. 63,84,170/-
5. The Operational Creditor submits that the Corporate Debtor approved the proforma invoices and terms of payment and issued purchase orders no. 0015/2022-23 dated 11.04.2022 and 0047/2022-23 dated 25.06.2022 in the name of the Applicant and gave its consent to deliver the material. The material was delivered successfully as per purchase order 0015/2022-23 dated 11.04.2022 against the following tax invoices:

DATE	INVOICE NO.	AMOUNT
20.05.2022	MAY/016/22-23	24,12,569/-
11.06.2022	JUN/038/22-23	10,07,868/-
25.07.2022	JUL/053/22-23	14,28,053/-

6. The Operational Creditor submits that the Operational Creditor reminded the Corporate Debtor for payment of two bill's total amount Rs. 34,20,437/- through reminder letter dated 12.07.2022. The Corporate Debtor in response requested for time to clear the payment of due bills. The request was agreed by the Corporate Debtor and accordingly the Operational Creditor successfully delivered all the materials against purchase order no. 0047/2022-23 dated 25.06.2022 and raised the following tax invoices:

DATE	INVOICE NO.	AMOUNT
05.08.2022	AUG/065/22-23	17,32,051/-
16.09.2022	SEP/074/22-23	24,80,537/-
12.10.2022	JUL/082/22-23	21,71,582/-

7. The Operational Creditor submits that after delivery of all the material against all order, the Corporate Debtor did not clear the outstanding. After several verbal reminders and follow-ups, the Operational Creditor sent several reminder letters to which the Corporate Debtor responded via email dated 10.01.2023 that *“we are not in position to pay the due amount of Rs. 1,12,32,660/- . Due to financial crunch our business operations are also affected”*.
8. The Operational Creditor served a demand notice to Corporate Debtor dated 12th April, 2023 for the amount payable demanding the entire amount within a period of 10 (Ten) days from the date of issuance of the letter. The Corporate Debtor did not respond to the said demand notice.

Submissions advanced by the Corporate Debtor are as follows:

9. The Corporate Debtor submits that the present Petition has been filed on 07th July 2023 and it is well settled law that it must comply with all requirements stipulated in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("AA Rules").
10. The Corporate Debtor submits that the Operational Creditor is using this Tribunal as Recovery Forum and that the Corporate Debtor submits that the Operational Creditor has relied on multiple date of defaults. Hence, it is important to note that there cannot be multiple date of defaults, or in this case more than one dates of default.

Findings

11. Heard the Counsel and perused the record.
12. This Bench notes that amount of Rs. 1,26,03,100/- (One Crore Twenty-Six Lakh Three Thousand and Hundred Rupees Only) was due on account of goods supplied to the Corporate Debtor. That the Corporate Debtor vide email dated 10.01.2023 had informed that they are not in a position to pay as due to financial crunch. The email of the Corporate Debtor amounts to admission of liability by the Corporate Debtor.
13. We note that multiple date of default i.e. 19.06.2022, 11.07.2022, 24.08.2022, 04.09.2022, 04.09.2022, 16.10.2022 & 11.11.2022 was mentioned in Part IV of the Company Petition which corresponds to each invoice and its default therein. It was submitted that subsequently an Additional Affidavit dated 25.01.2024 was filed by the Petitioner stating the specific date of default was 11.11.2022 which is based on last Invoice raised and default therein.
14. The Bench takes notes that the Corporate Debtor has raised the issue that the Petitioner has not complied with all requirements stipulated in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("AA Rules"). However, as per the record available, the Bench finds that all the requirement have been complied by the Petitioner.

15. In view of the admission by the Corporate Debtor of the liability, the bench observes that Operational Debt amounting to more than Rs. 1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought out by the Corporate Debtor, it is a fit case for admission under section 9 of Insolvency and Bankruptcy Code, 2016.

16. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing CP (IB) 800/MB/2023 filed by Pasad Impex Private Limited [CIN: U51420MH2004PTC146383], the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against ETC-Energy Therapy Company Private Limited, the Corporate Debtor, is Admitted. We are hereby directing the Suspended Board of Director to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding with providing necessary documents/information as required by the RP/IRP.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) 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;
- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 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.
- (c) Notwithstanding the above, during the period of moratorium: -
- (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Hirachand Nemichand Bafna, having Registration No: IBBI/IPA-001/IP-P01207/2018-2019/11922, having address at 21A Soni Bhavan, 1st floor, Opp. Godiji Temple, Kalbadevi, Mumbai, Maharashtra ,400002, email- hnb1502@rediffmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) 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.

- (h) The Operational Creditor shall deposit a sum of Rs. 2,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) 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.
- (j) IRP is directed to send a copy of this Order 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)

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)