

**In the National Company Law Tribunal
Single Bench, Chennai**

TCP/528/(IB)/CB/2017

Under Section 9 of the IBC, 2016

In the matter of

BASF India Limited

V/s

MosMetro India Private Limited

Order delivered on: 01.09.2017

For the Petitioner/OC: Shri S. Satish, Advocate

For the Respondent/CD: Shri Rahul Jain, Advocate

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under Consideration is a Company Petition filed by BASF India Limited (in short, '**Petitioner/Operational Creditor**') against MosMetro India Private Limited (in short, '**Respondent/Corporate Debtor**') under section 433 (e) and (f), 434 (i) (a) and 439 (i) (b) of the Companies Act, 1956 before the Hon'ble Madras High Court which has been transferred to this tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016. Now, pursuant to the Central Government notification number GSR 119(E) dated 07.12.2017, this petition needs determination as per the provisions of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**').

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. Shri S. Satish, the learned counsel appearing on behalf of the petitioner/OC submitted that the Petitioner is carrying on the business of manufacture and sale of chemicals and other products whereas the Respondent/CD is engaged in the business of developing, maintaining and operating road, metro rail system mass rapid transit system etc. It is submitted that, during the course of his business, the petitioner had supplied its products and the respondent company also acknowledged the receipt of goods. It is also submitted that the respondent made few payments against certain products supplied to it and after taking into the total value of the products supplied by the petitioner and the total of the amounts paid by the Respondent to Petitioner against the products supplied till date, the Respondent is still liable to pay the balance sum of Rs. 1,98,75,342/-.
4. It is further submitted that the petitioner, after making several requests to settle his dues and having waited for a long period of time for his legitimate dues, issued a statutory notice dated 09.09.2015 under section 434 of the Companies Act, 1956,

demanding the payment of Rs. 1,98,75,342/- and thus now claimed to be an Operational Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.

5. Rahul Jain, the learned counsel for the Respondent/CD caused appearance and filed a counter affidavit of Mr. U Vijay Mehta, Power of attorney holder of the respondent company. It is submitted that the respondent company was performing works only for projects UAA-02 and UAA-03 metro sites and the only source of income was CMRL. During the execution of the underground project, the respondent encountered severe issues related to the changed sub-soil conditions and also suffered heavy expenses to a tune of more than a 100 crore on behalf of CMRL in order to complete the project. The additional amount spent by the respondent was recoverable by from CMRL but, for the reason best known to CMRL, the additional expenses were not released by CMRL to the Respondent and this non-release of payments by CMRL led to a financial crunch situation to the respondent company. In consequence of this financial deadlock, the vendors and sub-contractors of the respondent company were unable to receive

their amounts on time and started mounting pressure and resorted to intimidating tactics against the respondent company.

6. It is further submitted that all the vendors of the respondent formed a united association in the name of *Chennai Vendors Association* and filed several writ petitions against the respondent. The parties in W.P No. 16063 of 2015 and all other vendors in the connected cases agreed to settle the disputes and filed a memo of consent regarding the terms of settlement between the *Chennai Vendors Association* and the respondent. In furtherance of the settlement, the parties agreed to sell/dispose all the items belonging to the respondent from the site area to the third parties and realise their monetary dues which in-turn would be used to re-pay the outstanding dues of the vendors. It is also submitted that as on 30.04.2015, the total amount payable to the vendors was around Rs. 30 crores and as per the memorandum of Understanding & the subsequent order of the Hon'ble High court, payments of almost 50% of the dues amounting to Rs. 13,10,11,823/- have been paid to the members of the *Chennai Vendors Association* to their bank account from the sale of respondent's equipments and materials till date.

7. The learned counsel for the respondent company further submitted that the present insolvency petition is not maintainable as the liability as well as amount in question is disputed. It is further submitted that a winding up petition cannot be admitted if debt is disputed and in present case, where the amount of liability itself is in dispute, the petitioner cannot file a petition to liquidate the respondent's company until the amount of liability is settled. He further submitted that it is well-settled that a winding up petition is not a legitimate means of seeking to enforce payment of the debt which is bona fide disputed by the company.
8. As per the submission of the counsel for the petitioner, the Petitioner has complied with all the requirements as stipulated under the provisions of the IB Code, 2016 as well as MCA Notification dated 29.06.2017.
9. After hearing submissions of the counsel for the petitioner & respondent and having perused the record, this Adjudicating authority is satisfied that the petitioner has made out his case by establishing that this Corporate Debtor has defaulted the payment dues on various occasion to this petitioner/OC and there is no dispute between the parties in relation to the present claim. Moreover, the petitioner was not a member of the

Chennai Vendors Association, therefore, it cannot be said that the instant petition is disputed. In the circumstances, I am inclined to admit the instant application.

10. Therefore, the instant petition is admitted and I order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

11. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit all of the following, namely :

- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

12. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

13. It is pertinent to mention herein that the Petitioner has not proposed the name of an IRP and prayed before the Adjudicating Authority to make a reference to the Insolvency and Bankruptcy Board of India (IBBI) for recommending the name of an IRP. Therefore, the Registry is directed to make a reference to IBBI for recommending the name of an IRP.

14. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.



K. ANANTHA PADMANABHA SWAMY
Member (J)

RLS