

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)**

Company Petition No. IB- 177/ND/2019

(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)

IN THE MATTER OF:

M/s INTEGRATED BATTERIES INDIA PRIVATE LIMITED

...Applicant/Operational Creditor

VERSUS

M/s MAINFRAME ENERGY SOLUTIONS PRIVATE LIMITED

...Respondent/ Respondent

Pronounced on: 11.10.2019

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant: Mr. Sumit Kumar, Adv.
Ms. Harshita Sinha, Adv.

For the Respondent: Mr. Manish Kumar, Adv.
Ms. Anju Kumari, Adv.

MEMO OF PARTIES

M/s INTEGRATED BATTERIES INDIA PVT. LTD.

Having its registered office at:

C-10, Gurunanakpura Lakshmi Nagar,

Delhi-110092

...Applicant/ Operational Creditor

VERSUS

M/s MAINFRAME ENERGY SOLUTIONS PVT. LTD

Having its registered office at:

47, 2nd Floor, Rani Jhansi Road,

Jhandewala, Delhi-110055

...Respondent/ Corporate Debtor

ORDER

DR. DEEPTI MUKESH, MEMBER (J)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules')

by M/s Integrated Batteries India Pvt. Ltd. (for brevity 'Applicant') through its director Mr. Suresh Kumar Mahajan authorizing him to file present application vide Board resolution dated 31.10.2018, with a prayer to initiate the Corporate Insolvency process against M/s Mainframe Energy Solutions Private Limited (for brevity 'Respondent').

2. The Applicant, the Operational Creditor namely M/s Integrated Batteries India Private Limited is a company incorporated under the provisions of Companies Act, 1956 with CIN No. U74999DL2003PTC123402, having its registered office at C-10, Gurunanakpura Lakshmi Nagar, Delhi-110092.
3. The Respondent, the Corporate Debtor namely M/s Mainframe Energy Solutions Private Limited is a company incorporated on 08.01.2014 under the provisions of Companies Act, 1956 with CIN No. U51101DL2014PTC263233, having its registered office at 47, 2nd Floor, Rani Jhansi Road, Jhandewala, Delhi-110055. The Authorised Share Capital of the respondent company is Rs. 1,00,00,000/- and Paid Up Share Capital of the company is Rs. 62,10,500/- as per Master Data of the company.

4. It is the stated that Applicant had supplied RE- Solar Panels to the Respondent namely M/s Mainframe Energy Solutions Private Limited, through various consignment notes and invoices were raised against the said supply. The Applicant also issued debit notes toward freight charges.
5. In total 10 tax invoices and one debit note, for a total of Rs. 30,22,039/- (Rupees Thirty Lakhs Twenty- Two Thousand and Thirty- Nine only) were raised against the said supplies and which were duly acknowledged by the Respondent and the part payments were made by the Respondent. Default occurred in respect of the two invoices dated 19.01.2018 and 21.02.2018 amounting to Rs. 1,10,752/- and Rs. 6,33,675/- respectively.
6. Subsequently the Respondent had issued two cheques bearing nos. 736385 and no. 736386 dated 31.03.2018 for a total amount of Rs.7,00,000/- towards discharging their liability however, the said cheques were not encashed and returned with endorsement "Stop Payments". The Applicant has already filed a complaint against the Respondent under Section 138 of NI Act bearing CC no. 2605/18 which is pending before Sh. V.K. Jha, MM Court, Karkardooma Courts, Delhi.

7. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 12.11.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the payment of Rs. 7,44,427/- (Rupees Seven Lakhs Forty- Four Thousand Four Hundred and Twenty- Seven only) along with interest @ 18% p.a., failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.
8. The Respondent has replied to the Section 8 notice vide its letter dated 24.11.2018 wherein the Respondent has admitted its liability for Rs. 2,75,428/- out of total claim of Rs. 7,44,427/-.
9. The applicant has stated that total debt due and payable is Rs. 7,44,427/- (Rupees Thirty- Three Lakhs Fifty- Four Thousand One Hundred and Thirty- Five only) along with interest @18% p.a. from 19.01.2018 to 10.01.2019. Hence, the application under Section 9 is filed by the applicant.
10. Respondent has filed its reply and raised objections that there are several infirmities with regard to ledger account which is maintained by the Applicant. It is further stated that

Respondent has admitted its liability to the tune of Rs.2,75,428/- and rest of the claim is disputed by the Respondent stating that the same is created on the basis of forged ledger accounts, invoices, forged freight of Rs. 1,00,000/-. Despite repeated requests by the respondent, Applicant has failed to provide a copy of true ledger account and filed bogus claim.

11. It is further submitted by Corporate debtor that the applicant has misused the security cheques given by the respondent. It is further argued that the Applicant has included the amount of Rs. 1,00,000/- as freight recovery. It is pertinent to mention that applicant's factory is located in Noida and respondent's factory is situated in Delhi, and applicant raise the forged freight of Rs. 1,00,000/-. Hence, the freight charges are not applicable.

12. It is further argued by Corporate debtor that documents which are filed by the applicant bears alleged stamps of the respondent. There is no receiving at any invoices from respondent which establish that all those documents are forged and fabricated. The respondent has not filed any GST return

either GST 2 A or 3B after December 2018. Respondent had never claimed GST about invoices are alleged by the applicant. The respondent only filed GST 3B. The respondent has disputed the invoices and asked for true ledger account via emails and therefore there exist dispute prior to issuance of the demand notice. The copy of the email dated 24.04.2018 is already filed with the present reply.

13. In rejoinder, the submissions made in the application are reiterated and controverting the assertions in the reply. It is further submitted that Respondent has disputed only three invoices out of ten invoices and these disputed three invoices bearing nos. 375,453 and 454 had already been paid by the Respondent long back. Moreover, the Respondent has admitted its liability vide email dated 27.03.2018 wherein they have stated that company is not in good shape and would make the payment by 31.03.2018. Further in reply to the Section 8 demand notice, the Respondent has admitted liability of Rs. 2,75,428/- and while replying to the legal notice under Section 138 of NI Act, the Respondent has admitted liability of Rs.

3,25,428/- which clearly supports the case of applicant for admission of present application.

14. It is pertinent to note that the applicant has placed on record all the tax invoices, stating that the respondent itself had acknowledged the said invoices. There is no documentary evidence on record to show that any complaint was ever made or any proceedings were initiated by the respondent with respect to issuing fake/ bogus invoices. Once the debt shown as due, it is for respondent to prove that there are no outstanding dues to be paid to the applicant. There has been much cloud in the submission of the respondent. Therefore, without any specific details, material particulars and evidence the fact of existence of a dispute cannot be sustained.
15. In ***“Innoventive Industries Ltd.(Supra)”***, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.

16. Further the concept of pre-existing dispute was discussed in **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited– 2017 SCC On Line SC 1154”**, Hon’ble Supreme Court held:

“40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

In the present case, there cannot be inferred any dispute which is pre-existing, albeit a hypothetical or illusory dispute has been raised by the 'Corporate Debtor' and the same is a moonshine defense, over and above the admission of debt payable which is more than Rs. 1 Lakh.

17. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
18. The applicant has attached the copy of bank certificate issued by Axis Bank, Swasth Vihar, Delhi in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
19. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain this application.
20. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench

appoints Mr. Deepak Gupta having registration no. IBBI/IPA-001/IP-P01340/2018-2019/12235 and email address is deepakca1@gmail.com and contact number is 9899779425, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

21. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in vogue.
22. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.
23. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-

(SH. HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

Sd/--

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)