

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) NO. 1339 (MB) OF 2022

[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:

ESDEC INDIA SOLAR PRIVATE LIMITED

[CIN: U29200DL2020FTC365601]

101, Plot No. 6, LSC, Rajdhani Plaza

New Rajdhani Enclave,

Delhi- 11092, Delhi.

...Operational Creditor

VERSUS

SWIKRITI RENEWABLES PRIVATE LIMITED (OPC)

[CIN: U74900MH2014OPC257285]

C-7/1:3, Sector-10, Airoli

Thane- 400708, Maharashtra.

...Corporate Debtor

Pronounced: 13.06.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: - Hybrid

Operational Creditor: Sr. Adv. Ashish Kamat a/w Adv. Tanvi Sinha, Adv. Navankur Pathak, Adv. Niyati Fatehpuria i/b Sai Krishna & Associates.

Corporate Debtor: Adv.Amit Tungare a/w. Adv. Prathamesh Nirkhe.

ORDER***[Per: SANJIV DUTT, MEMBER (TECHNICAL)]*****1. BACKGROUND**

1.1 This Application bearing C.P.(IB) No. 1339/MB/2022 was filed by Esdec India Solar Private Limited, the Operational Creditor, on 07.12.2022, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules"). The Application has been filed through Mr. Nikhil Sahni, Director of the Operational Creditor, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Swikriti Renewables Private Limited, the Corporate Debtor.

1.2 The Operational Creditor is engaged in the business of wholesale trading of professional mounting systems for solar panels and related products in India. The Operational Creditor entered into a Services Agreement dated 01.03.2022 with the Corporate Debtor under which the latter agreed to help the former in developing its operations in India by providing various support services, including inventory management, administration and supply chain management.

1.3 As per the agreed Invoice Process, the Operational Creditor was to issue invoices to the Corporate Debtor towards supply and delivery of raw materials. The Operational Creditor accordingly raised Invoice Nos. MH2021-22/0002 dated 24.02.2022 for an amount of Rs.61,89,138.96/- (Sixty-One Lakh Eighty-Nine Thousand One Hundred and Thirty-Eight Rupees Nine Six Paisa)

(exclusive of 18% GST) and MH2021-22/0003 dated 31.03.2022 for an amount of Rs.1,15,69,367.42/- (One Crore Fifteen Lakh Sixty-Nine Thousand Three Hundred and Sixty-Seven Rupees Fourty Two Paisa) (inclusive of 18% GST). As per Schedule 2 of the Services Agreement, each invoice fell due for payment within 180 days from the date of invoice. However, the Corporate Debtor failed to make any payments in respect of the aforementioned invoices.

- 1.4 A Demand Notice under Section 8(1) of the Code was issued on 28.10.2022 demanding payment of the unpaid operational debt of Rs.1,88,72,551.42/- (inclusive of GST) and was served on the email address of the Corporate Debtor. However, the Corporate Debtor neither responded to the Demand Notice nor made any payments. Consequently, the Operational Creditor has approached this Tribunal seeking initiation of CIRP against the Corporate Debtor.

2. AVERMENTS OF OPERATIONAL CREDITOR

- 2.1 The Corporate Debtor was engaged by the Operational Creditor under a Services Agreement dated 01.03.2022 to provide business support services, including inventory management, administration and supply chain management. As part of this arrangement, the Operational Creditor supplied raw materials to the Corporate Debtor on various occasions. Clauses 1.1 and 2.2 of the Services Agreement specifically state that the services to be provided by the Corporate Debtor would be in accordance with Schedules 1 and 2 to the Services Agreement.
- 2.2 Schedule 2 of the Services Agreement specifically sets out the “invoice process” for procurement of raw material. As stated in Schedule 2, the raw material supplier was to issue invoice to the Operational Creditor with payment against

Letter of Credit (LC). The Operational Creditor was thereafter to issue invoice to the Corporate Debtor towards supply and delivery of raw materials and receive payments from the Corporate Debtor within 180 days from the date of invoice.

2.3 The Operational Creditor issued the following invoices in terms of Schedule 2 of the Services Agreement which remained unpaid by the Corporate Debtor:

- i. Invoice No. MH2021-22/0002 dated 24.02.2022 for an amount of Rs.61,89,138.96/- (exclusive of 18% GST) towards sale of raw material with date of default as 23.08.2022 (in terms of the 180 days payment term provided under Schedule 2 of Service agreement).
- ii. Invoice No. MH2021-22/0003 dated 31.03.2022 for an amount of Rs.1,15,59,357.42/- (exclusive of 18% GST) towards sale of raw material with date of default as 27.09.2022 (in terms of the 180 days payment term specified under Schedule 2 of Service agreement).

2.4 The invoices were never disputed by the Corporate Debtor till date. The Corporate Debtor had admitted to its liability to make payment towards the invoices through email dated 08.09.2022. The issuance of Operational Creditor's invoices itself amounts to admission by the Corporate Debtor towards its liability to pay the same. As a part of the services to be provided by the Corporate Debtor under the Services Agreement, the Corporate Debtor was responsible for book-keeping, maintenance of all financial records and management and administration of Operational Creditor's operations in India including providing services towards issuance of invoices by the Operational Creditor to its customers/service providers.

- 2.5 Accordingly, the Corporate Debtor had physically handed over the delivery of raw materials and finalised and issued the invoices for and behalf of the Operational Creditor as per terms of the procedure prescribed under Schedule 2 of the Services Agreement.
- 2.6 Further, the Operational Creditor issued Demand Notice on 28.10.2022 for payment of the unpaid operational debt which was duly served upon the Corporate Debtor by email and had not bounced back. The Corporate Debtor failed/neglected to reply to the Demand Notice. In its Affidavit in support of the Application, the Operational Creditor has submitted that it had not received any payment from the Corporate Debtor after expiry of 10 days from the date of receipt of Demand Notice. Nor had it received any notice of dispute from the Corporate Debtor relating to the unpaid operational debt. This led the Operational Creditor to file the present Application for initiating CIRP against the Corporate Debtor under Section 9 of the Code.

3. CONTENTIONS OF CORPORATE DEBTOR

- 3.1 The Corporate Debtor in its Affidavit-in-Reply dated 19.01.2023 contended that the present Application filed by the Operational Creditor is not maintainable and is a malicious attempt to drag the Corporate Debtor into frivolous litigation. The Operational Creditor had made baseless allegations and suppressed material facts to mislead the Tribunal. The Application lacked bona fide grounds and is an abuse of the legal process, warranting its dismissal with exemplary costs.
- 3.2 The Applicant is a subsidiary of a Dutch Company by the name of "Esdec Asia B.V." and its ultimate holding company is "Esdec International B.V". In February, 2020, Esdec International B.V. had addressed a Letter of Intent to the Corporate

Debtor expressing its intention to partner with the Corporate Debtor for doing business in India. Pursuant to this, the Operational Creditor and the Corporate Debtor entered into a Distributor Agreement dated 15.03.2020, a Service Provider Agreement dated 07.04.2020 and a Warehouse Rent Agreement dated 28.01.2021. These agreements were interlinked, forming the basis of all transactions. Upon the incorporation of the Operational Creditor in March 2022, new Distribution Agreement and Services Agreement were executed on 01.03.2022 in continuation of the previous arrangements. Despite this, the Operational Creditor had deliberately withheld the existence and relevance of these agreements from this Tribunal.

3.3 The Corporate Debtor maintained that the transactions between the parties were complex and involved account settlements across multiple agreements. It was a standard practice for both parties to settle their accounts at the end of each financial year by raising invoices for settlement purposes. The invoices relied upon by the Operational Creditor and raised at the end of financial year were not indicative of an operational debt but were merely a part of the process of reconciliation or settlement of accounts. Further, the Corporate Debtor had disputed the validity of these invoices and had asserted that no actual goods had been received under them. The absence of supporting documents like purchase orders or delivery challans further substantiated this claim.

3.4 A significant pre-existing dispute had existed between the parties, evidenced by a Commercial Suit No.15 of 2022 filed by the Operational Creditor against the Corporate Debtor before the Civil Court, Senior Division, Thane. The suit pertained to the same goods and invoices forming the basis of the present

Application. However, Ld. Civil Court had declined to grant any interim reliefs to the Operational Creditor. Additionally, the Corporate Debtor had responded to the Operational Creditor's Demand Notice, raising specific concerns regarding defective goods. The plea of defective goods is not mere moonshine defence, but, in fact, the Corporate Debtor had received complaints from third parties to whom the Corporate Debtor had sold goods received from the Operational Creditor. Copy of one such email dated 25.04.2022 is placed on record. This response had been suppressed by the Operational Creditor in the present proceedings, further indicating mala fide intent.

- 3.5 The Operational Creditor was, in fact, liable to pay a sum of approximately €582,027 and Rs.68,28,658/- (equivalent to Rs.5,63,00,953/-) to the Corporate Debtor as part of the settlement of accounts. This liability had been communicated to the Operational Creditor by an email dated 17.10.2022, along with relevant invoices. The Operational Creditor's failure to disclose this material fact further undermined the credibility of its claim.
- 3.6 Moreover, the Corporate Debtor had highlighted the evident conflict of interest involving the law firm representing the Operational Creditor. One of the partners of the said law firm, Mr. Nikhil Sahni, had also been a sole Indian executive director of the Operational Creditor. This dual role had resulted in violation of the Bar Council of India Rules. Bar Council of Delhi Rule Nos.104 and 105 state that no advocate shall be engaged in any other full-time employment while Mr. Nikhul Sahni in the present Application is the director of the Operational Creditor. Rule 9 of 'Duty towards the Client' of the Bar Council of India Rules explicitly prohibits advocates from representing an establishment in which they are a member of

the management. The presence of this conflict had rendered the conduct of the Operational Creditor and its legal representation unethical and warranted dismissal of the Application.

3.7 The Corporate Debtor has filed additional affidavits in reply dated 19.07.2024 and 29.08.2024, alleging that the Operational Creditor filed two separate Company Petitions based on different invoices and agreements and served the same petition twice on 06.12.2022 and 15.12.2023. These additional affidavits were filed to clarify the position regarding Invoice Nos. MH2021-2022/0002 and MH2021-2022/0003, as well as the Services Agreement dated 01.03.2022. The Corporate Debtor contends that the said invoices were raised for internal account settlements between the parties. Further, the Operational Creditor has not produced any documentary evidence such as purchase orders, delivery challans, or other material to establish actual movement of raw materials from the Operational Creditor to the Corporate Debtor. Further, in the affidavit dated 29.08.2024, the Corporate Debtor has placed on record certain email communications to substantiate the existence of a quality dispute regarding the claimed invoices.

3.8 In light of these submissions, the Corporate Debtor contended that the Operational Creditor had failed to meet the essential requirements under Section 9 of the Code. The Application is devoid of merit and the Tribunal is urged to dismiss it with exemplary costs.

4. REJOINDER OF OPERATIONAL CREDITOR

4.1 In its Affidavit-in-Rejoinder dated **01.11.2023**, the Operational Creditor has reiterated that in the year 2020, the Corporate Debtor was engaged by a group

company of the Operational Creditor, namely, Esdec Asia B.V. under the Services Agreement dated 07.04.2020 ('Esdec Asia Agreement') on terms thereof to, *inter alia*, provide assistance in business operations in India. In the meantime, in July 2020, the Operational Creditor was incorporated as a subsidiary of Esdec Asia B.V. to carry out its business operations in India.

4.2 The Esdec Asia Agreement expired by efflux of time on 04.01.2022. Thereafter, the Corporate Debtor was engaged by the Operational Creditor for the purposes of conducting its business operations in India including storage and management of Operational Creditor's product inventory, administration and accounting assistance in its business operations etc. For the purposes of conducting its business operations in India, including storage of Operational Creditor's products therein, the Operational Creditor sub-leased a warehouse *vide* the Leave and License Agreement dated 28.01.2021 from one Shree Polar Chem Industries Private Limited. Mr. Nitin Bhosale who is the sole Director and 100% shareholder of the Corporate Debtor is also the Director of Shree Polar Chem Industries Private Limited.

4.3 Under Schedule 2 of the Services Agreement, it was agreed between the parties that after procuring raw materials from a third-party vendor, the Operational Creditor would sell the same to the Corporate Debtor. It was the obligation of the Corporate Debtor under the Services Agreement to prepare the invoice on behalf of the Operational Creditor and issue the same upon itself towards purchase of the raw materials.

4.4 The Corporate Debtor had raised contention that the invoices do not pertain to activity carried out under the Services Agreement since they relate to settling of

accounts between Esdec Asia B.V., Operational Creditor and the Corporate Debtor. The same is misconceived as the discussion regarding the settling of accounts between the parties commenced only in the month of July, 2022, i.e., 4 to 5 months after the invoices were issued. Since the operation of Esdec Warehouse and the Accounting Software were in the control of the Corporate Debtor, it was one of the obligations of the Corporate Debtor to raise invoices on itself on behalf of the Operational Creditor.

4.5 The Operational Creditor has placed on record emails dated 02.03.2022 and 04.03.2022 addressed by the accounts team of the Corporate Debtor requesting the Operational Creditor to file/pay the GST for the month of February, 2022. The documents attached in the emails were: (i) details of the supply made in the month of February, 2022, which is recorded in the invoice dated 24.02.2022; (ii) Form GSTR-3B; and (iii) E-way bill dated 24.02.2022, which show that the invoice dated 24.02.2022 was validly raised towards supply of raw materials and the same was also admitted by the Corporate Debtor. Similarly, the Corporate Debtor also issued emails dated 09.04.2022 and 11.04.2022 to the Operational Creditor enclosing (i) invoice dated 31.03.2022; (ii) details of the products supplied in the month of March, 2022 and (iii) Form GSTR-3B clearly admitting supply of Raw Materials and the validity of the invoice dated 31.03.2022.

4.6 There is sufficient material on record such as Services Agreement, the Invoices, the emails dated 02.03.2022; 04.03.2022; 09.04.2022 and 11.04.2022, and the E-way Bill dated 24.02.2022, raised towards raw materials supplied under the Services Agreement, to establish that the invoices were raised in furtherance of actual transactions. Further, the Corporate Debtor has still not provided

complete access and control of the books of account and business records to the Operational Creditor. It is pertinent to state that one of the reliefs sought in the Commercial Suit No. 15 of 2022 filed by the Operational Creditor is access/handover of the same. In these circumstances, it is stated that other documents, if any, relevant to the instant case are available with the Corporate Debtor and not with the Operational Creditor.

- 4.7 The Invoices were never disputed by the Corporate Debtor until filing of the present Application. The Corporate Debtor not only admitted their validity and its liability towards the Invoices as aforesaid but only disputed the invoices for the first time in its reply dated 29.10.2022 to the Demand Notice dated 28.10.2022. The reply dated 29.10.2022 was only received by the Operational Creditor post filing of the present Application and the Operational Creditor verily believes that the reply was issued in a back-dated manner. This is evident from the fact that while filing the reply, the Corporate Debtor had failed to provide any evidence that the reply was served on the Operational Creditor within the statutory time period of 10 days.
- 4.8 The Corporate Debtor has wrongfully relied upon the Suit proceedings to allege that the reliefs sought by the Operational Creditor in the Suit are the same as that of the present Application. In the Suit, the Operational Creditor had, *inter alia*, sought hand over of Unsold Raw Material which it owns and which is currently in the possession of the Corporate Debtor.
- 4.9 Further, upon perusal of Exhibit C of the Suit at Page 583 of the Reply, Volume 3 and Annexure C of the Application, it can be noted that although the raw materials mentioned are same, the quantity of the raw materials and the total

cost of the raw materials are different. Therefore, the Corporate Debtor's claim that the Operational Creditor had taken contradictory stand is not only bogus but is also raised with a mala fide intent to mislead this Tribunal.

5. ANALYSIS AND FINDINGS

- 5.1 Upon due consideration of the pleadings along with Written Submissions and hearing both the Ld. Counsel for the parties, our findings in the matter are as under:-
- 5.2 From a perusal of Part-IV of the Application, it is observed that the Operational Creditor has claimed a total amount of Rs.1,88,72,551/- (rounded off), inclusive of tax, based on two invoices (subject invoices); viz; Invoice No. MH2021-2022/0002 dated 24.02.2022 of Rs.73,03,184/- and Invoice No. MH2021-2022/0003 dated 31.03.2022 of Rs.1,15,69,367.42/-, raised under the Service Agreement dated 01.03.2022 for supply of raw materials/goods. The execution of the said Agreement is not disputed by the Corporate Debtor. However, the Corporate Debtor argues that no purchase orders or delivery challans were placed on record to prove the supply of goods. Thus, the primary issue which arises is whether the goods were, in fact, delivered to the Corporate Debtor and whether operational debt exceeding the threshold under Section 4 of the Code exists and is in default in relation to the said invoices.
- 5.3 Under Section 5(20) and 5(21) of the Code, an Operational Creditor is a person to whom an operational debt is owed and operational debt means a claim in respect of the provision of goods or services. In the present case, the relationship between the parties is governed by the Services Agreement dated 01.03.2022. Under this agreement, the Corporate Debtor was engaged by Operational

Creditor to support the Operational Creditor in managing and conducting business operations in India including by way of sourcing, procurement, inventory, invoicing and book-keeping related to the Operational Creditor's products at Esdec's Warehouse. On perusal of said Agreement, it is observed that Clause B(2) of Schedule 1 read with Schedule 2 mandates the Corporate Debtor to render the aforesaid services in accordance with the Indian Supply Chain model. Schedule 2 stipulates the Invoice Process under which raw material was to be procured by the Operational Creditor from third-party vendors and thereafter invoiced to the Corporate Debtor. It is noticed that the Operational Creditor raised the subject invoices in accordance with the agreed terms after procuring and supplying raw material to the Corporate Debtor. Thus, we find that the Applicant qualifies as an Operational Creditor and the subject invoices issued by the Operational Creditor towards supply of raw-materials/goods constitute 'operational debt' within the meaning of Section 5(21) of the Code. The subject invoices are valid and legitimate and goods were, in fact, supplied to the Corporate Debtor thereunder by the Operational Creditor.

- 5.4 As regards the Corporate Debtor's contention that the subject invoices relate to settling of accounts between the Operational Creditor and the Corporate Debtor and not to any supply of goods under the Services Agreement, it is noticed that the aforesaid contention is not supported by any credible documentary evidence. On the contrary, we find that the Operational Creditor has been able to establish that the subject invoices were raised on the Corporate Debtor on account of actual supply of goods/raw-materials rather than any *inter se* settlement of accounts between the parties. The 1st Invoice dated 24.02.2022, though

preceding the formal execution of the Services Agreement, was raised by the Corporate Debtor itself on behalf of the Operational Creditor (as a part of service under the agreement), evidencing actual delivery of raw materials.

- 5.5 We find that supporting documents such as the e-Way Bill dated 24.02.2022 confirm dispatch and receipt of goods. Further, email communications dated 02.03.2022 and 04.03.2022 between the Corporate Debtor's management and the Operational Creditor show that the Corporate Debtor had called upon the Operational Creditor to file GST returns for February, 2022. The GSTR-3B filed for the same period reflects an outward supply consistent with Invoice No. MH2021-2022/0002 and it also shows that tax was paid through Input Tax Credit (ITC). Thus, these records confirm the fact that the 1st invoice was genuine and duly acted upon, thereby establishing the authenticity of the said invoice. Similarly, with regard to 2nd Invoice dated 31.03.2022, emails dated 09.04.2022 and 11.04.2022 reveal that the Corporate Debtor had engaged with the Operational Creditor regarding finalisation of GSTR-1 for March, 2022 and had enclosed copies of the invoices, including the one dated 31.03.2022. The GSTR-3B filed for March, 2022 reflects total outward supply of Rs.1,15,69,367/-, which includes the said invoice and once again, tax was duly paid thereon through ITC.
- 5.6 Moreover, it is noticed from the record that in its reply dated 29.10.2022 to the Demand Notice dated 28.10.2022, the Corporate Debtor admitted receipt of materials under both invoices, although alleging certain defects. This contradictory stance of the Corporate Debtor denying receipt of material while simultaneously alleging defects in quality undermines the credibility of the Corporate Debtor's objections and reinforces that the goods were indeed

received under the invoices in default. As per the terms of payment specified in Schedule 2 of the Services Agreement, invoices raised by the Operational Creditor on 24.02.2022 and 31.03.2022 fell due for payment on expiry of 180 days from the date of each invoice. As both the invoices have remained unpaid till date, the date of default reckoned from the date of 2nd invoice i.e., 31.03.2022 will be ascertained at 27.09.2022 and hence, the present Application filed on 07.12.2022 is well within limitation. Thus, we find that the Operational Creditor has been able to substantiate its claim that goods/raw materials were supplied to the Corporate Debtor under the Services Agreement and that the latter committed default in payment of the operational debt exceeding the pecuniary threshold of Rs.1 crore laid down under Section 4 of the Code.

- 5.7 As regards the issue of existence of alleged dispute between the parties, it is observed that the Corporate Debtor in its Second Additional Reply dated 29.08.2024 has contended that the goods supplied by the Operational Creditor were defective and that concerns regarding the same were raised from time to time with the Corporate Debtor's customers, supported by certain email correspondences. It is further noted that in its Reply dated 29.10.2022 to the Demand Notice issued on 28.10.2022, the Corporate Debtor also raised a similar contention regarding the alleged defective nature of the goods supplied under subject invoices. However, a perusal of the said reply and supporting documents reveals that although the Corporate Debtor claims defects in the goods, it has failed to produce any contemporaneous or cogent documentary evidence to show that any quality-related dispute in regard to the goods supplied under the subject invoices was ever communicated to the Operational Creditor prior to the

issuance of the Demand Notice. Mere bald assertions, without corresponding evidentiary support cannot establish the existence of a genuine pre-existing dispute. Further, the emails and documents relied upon by the Corporate Debtor in its additional affidavit do not support the claim of a pre-existing dispute in respect of the subject invoices. The email dated 08.11.2022 appears to be an internal communication of Corporate Debtor with 'Blackstone' concerning outstanding payments and warranty claims but fails to demonstrate any specific dispute raised with the Operational Creditor at the relevant time. The email dated 07.04.2022 sent by the Operational Creditor to the Corporate Debtor also does not refer to any dispute regarding the quality of goods supplied *vide* subject invoices. Similarly, the email dated 13.08.2022 between the Corporate Debtor and 'Winman Software' (a customer) pertains to materials supplied in December, 2021 and is unrelated to the subject invoices raised in February and March, 2022. Therefore, it is evident that no communication regarding the alleged dispute was made to the Operational Creditor prior to the issuance of the Demand Notice. The Corporate Debtor's conduct suggests that the so-called dispute has been raised only after the initiation of the present proceedings and is, thus, not bona fide.

- 5.8 The Corporate Debtor has also contended that the Operational Creditor suppressed the fact that a civil suit had been filed before the Civil Court, Senior Division, Thane in respect of the same goods and invoices forming the subject matter of the present Application. However, upon perusal of said suit, it is noted that the reliefs claimed in the said suit and the present Section 9 Application are totally different and distinct. The civil suit seeks return of unsold raw material

owned by the Operational Creditor lying in the possession/ warehouse of the Corporate Debtor. In any case, the suit was filed subsequent to the issuance of the Demand Notice and, thus, cannot be relied upon to establish a pre-existing dispute. The Operational Creditor has also filed a general affidavit as required under Section 9(3)(b) of the Code, affirming that no notice of dispute was received from the Corporate Debtor with respect to the unpaid operational debt. In light of the above, the defence of a pre-existing dispute raised by the Corporate Debtor is found to be unsubstantiated and baseless. Accordingly, the objection raised by the Corporate Debtor on this count is rejected.

5.9 Last but not the least, we do not find merit in the Corporate Debtor's contention that the law firm representing the Operational Creditor has a personal interest in the outcome of the present Application, because Mr. Nikhil Sahni, the sole Indian executive director of the Operational Creditor is also a partner of the said law firm. It does not lie within the domain of the Adjudicating Authority to enquire whether Mr. Nikhil Sahni by acting in his dual capacity has committed any violation of the Bar Council of India Rules. For the purpose of present adjudication, it is sufficient so long as the Application has been filed by Mr. Nikhil Sahni as Director of the Operational Creditor who was authorised in this behalf. Merely because he was associated with the law firm representing the Applicant cannot be a ground for rejection of the present Application.

5.10 In view of the above discussions, we are satisfied that there is an operational debt exceeding the threshold limit of Rs.1 crore as prescribed under Section 4 of the Code owed by the Corporate Debtor to the Operational Creditor; that the Corporate Debtor has committed a default in payment of the said operational

debt; that the statutory Demand Notice has been delivered by the Operational Creditor to the Corporate Debtor; that despite such notice, there has been no payment of the unpaid operational debt; that the Corporate Debtor has failed to demonstrate the existence of any bona fide pre-existing dispute between the parties; and that the application is complete in terms of the statutory requirements. Accordingly, the present Application under Section 9 of the Code is fit for admission.

5.11 On perusal of Part-III of the Application, it is noted that the Operational Creditor has not proposed the name of any Resolution Professional to act as Interim Resolution Professional. In view of the same, this Bench hereby appoints an IRP from the panel approved by the Insolvency and Bankruptcy Board of India (IBBI).

ORDER

This Application bearing C.P.(IB) No.1339/MB/2022 filed under Section 9 of the Code by Esdec India Solar Private Limited, the Operational Creditor, for initiating CIRP in respect of Swikriti Renewables Private Limited, the Corporate Debtor is **admitted**.

We further declare moratorium under Section 14 of Code with consequential directions as follows:

1. We prohibit-
 - 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 SARFAESI 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.
2. 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. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.
3. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
4. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
5. That this Bench hereby appoints **Mr. Girish Arvind Satav, registered Insolvency Professional** having **Registration Number IBBI/IPA-001/IP-P-02882/2024-**

2025/14420 and **e-mail address** satav.girish@gmail.com having valid Authorisation for Assignment up to **30.06.2026** as the IRP to carry out the functions under the Code.

6. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/Directions as may be issued by the IBBI.
7. That 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 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor is directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. 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/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.
8. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
9. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Operational Creditor is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

10. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
11. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
12. The Registry is directed to immediately communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
13. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

Sd/-

**K. R. SAJI KUMAR
MEMBER(JUDICIAL)**