

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- COURT III**

C.P. No. (IB) 257/MB/C-III/2022

Under Section 9 of the Insolvency and Bankruptcy Code,
2016 read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudication Authority) Rule 2016

In the matter of

Accurex Technologies (Pte) Ltd,

Having its registered office at: 18, Boonlay Way, #06-108,
Tradeub 211, Singapore- 6099666

.....Petitioner/ Operational Creditor

V/s.

Artemis Electricals and Projects Limited,

(CIN: L51505MH2009PLC196683)

Having its registered office at: Artemis Complex, Gala No.
105 & 108, National Express Highway, Vasai (East),
Thane- 401208, Maharashtra

.....Respondent/ Corporate Debtor

Order Pronounced on: 16.02.2024

Coram: Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri. Charanjeet Singh Gulati, Member (Technical)

For the Petitioner: Adv. Rohan P Munj

For the Respondent: Adv. Sandeep Bajaj a/w. Adv. Anuj Jhaveri, Adv.
Aashish Darne i/b. PSL Advocates & Solicitors

Per: Shri. Charanjeet Singh Gulati, Member (Technical)

1. This Company petition is filed by Accurex Technologies (Pte) Ltd (**"Petitioner/Operational Creditor"**) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Artemis Electricals and Projects Limited. (**"Respondent/Corporate Debtor"**) by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for an amount of Rs. 1,04,83,931.32/- (Principal amount of Rs. 92,98,386.52 and interest of Rs. 11,85,543.50/-)

Submissions of the Petitioner, in brief:

2. The Petitioner is a company incorporated under the Laws of Singapore and is engaged in the Smart Lighting / Smart Automation Solution Business. It is engaged in selling range of LED lighting components like LED drivers, surge protection devices and lenses.
3. The Respondent was initially incorporated in the name of 'Artemis Electricals Limited' and subsequently changed its name to Artemis Electricals and Projects Limited'. It is original equipment manufacturer of LED Lighting and allied products.
4. The Respondent was engaged by Bajaj Electricals Limited for supplying & installing electronic products for the Nasik Smart City Project and was desirous of purchasing LED Drivers for the said Nasik Smart City Project. Accordingly, the Corporate Debtor approached the Operational Creditor sometime in October November, 2019 for procuring LED Drivers from the Operational Creditor.

5. Pursuant to the discussions and negotiations, the Respondent issued a Purchase Order bearing No. PO/1920/00629 dated 07/11/2019 upon the Operational Creditor and placed an order for supplying '817 units of Driver- LED Drivers (P/N: EUK-200S105DV) and 6330 units of Driver -EUK- 150S105DV (hereinafter referred to as the 'Products'). The said Purchase Order provided the details of Products, Date of Delivery, Rate and payment terms.
6. The Petitioner, in accordance with the terms of Purchase Order and as per the requirement of Corporate Debtor, supplied the ordered Products in three separate shipments, as per following Airway Bills & Bill of lading:
 - a) MAWB No: 176-17266266, HAWB No: SHA-19120100 - Air shipment
 - b) MHAW No: 297-3635 3833, HAWB no: W2000537 - Air shipment
 - c) B/L no: AMIGL190601493A shipment Sea
7. Pursuant to the Supply of Products, the Petitioner raised following 3 invoices upon the Respondent:
 - i. Invoice No. AT 19200067 dt. 06.12.2019 for USD 51,412.68
 - ii. Invoice No. AT 19200086 dt. 26.12.2019 for USD 58,341.60
 - iii. Invoice No. AT 19200090 dt. 07.01.2020 for USD 17,520Total Invoice value being USD 1.27.274.28
8. All the three invoices provided for payment terms of 75 days. However, the Respondent has not paid the sum of USD 127274.28 to the Petitioner.

9. The Respondent has received the Products without any protest and has thus accepted Operational Creditor's Products. Moreover, all the invoices have been raised in accordance with the rates agreed in the Purchase Order and therefore, the Respondent is duty bound to make the payment of all the said invoices.
10. The Petitioner has through repeated phone calls as well as its emails requested Corporate Debtor to clear the outstanding amount under the above referred invoices. It is imperative to state that the Corporate Debtor vide its email dated 16th July, 2020 regretted delay in payment of invoices as a result of delay in the Nasil Smart City Project as well as serious working capital crunch due to Covid-19. Moreover, the Corporate Debtor in the same email assured that it will try to make payment by end of July, 2020 and thus admitted its liability to make the payment of the three outstanding invoices.
11. The Petitioner, therefore, addressed a Letter of Demand dated 15.02.2021 to the Corporate Debtor, requesting it to clear the outstanding invoices of the Petitioner. The said letter was duly received by the Corporate Debtor. However, the Corporate Debtor failed to make any payments to the Petitioner.
12. The Petitioner therefore issued a Demand Notice dated 07.09.2021 in Form 3 under Rule 5 of Insolvency and Bankruptcy Code, 2016 together with copies of invoices, calling upon the Corporate Debtor to clear the outstanding dues. The said Demand Notice was duly received by the Respondent.
13. In spite of receiving the Demand Notice neither did the Operational Creditor receive the outstanding amount, nor any reply to the Demand Notice, within 10 days as mandated by law.

The Petitioner thereafter once again forwarded the same Demand Notice dated 07.09.2021 to the Respondent by email dated 25th September, 2021.

14. However, the Petitioner's advocates after more than 25 days from the Demand Notice, received a belated Reply dated 02.10.2021 by email dated 03.10.2021, wherein the Corporate Debtor acknowledged the receipt of Demand Notice only on 25th September, 2021 and further claimed that annexures of the Demand Notice were not supplied to it. Moreover, the Corporate Debtor for the very first time sought to raise a false claim that it never issued any Purchase Order upon the Petitioner and never engaged into any transaction with the Petitioner.
15. The Petitioner, therefore, through its Advocates once again by letter dated 09.10.2021, forwarded the already issued entire Demand Notice along with the annexures to the Advocates of Corporate Debtor. The same letter was also forwarded by email dated 11.10.2021. Upon receiving the said Letter dated 09.10.2021, the Corporate Debtor through its Advocates issued a Reply dated 25.10.2021 and sought to raise claims of not entering into any transaction with Petitioner, not raising any purchase order and not receiving any invoices. However, the Respondent has not denied having received the Products from Petitioner.
16. The Respondent inspite of receiving the Demand Notice, has neither paid the outstanding amount nor came out with any existing dispute before the receipt of Demand Notice.
17. The Respondent is therefore liable to pay to the Petitioner a total sum of USD 127274.28 including taxes, under the above referred four invoices. Since, the Corporate Debtor failed to make the payment of invoices within due date of each invoice, an

interest @ 9% has been applied to the principal outstanding which runs into USD 16227.46.

Reply of the respondent:

18. Affidavit of Reply has been filed by Mr. Ganesh Prakash Pangale authorised representative of the Respondent Company stating that the present Company Petition is completely misconceived and not maintainable. It is pertinent to note that the alleged claim of the Petitioner is approximately Rs. 92,00,000/- (principal amount).
19. The Government of India vide Notification S.O. 1205 (2) (Notification) dated 24th March 2020 and raised the minimum threshold amount with respect to default under the Code. Pursuant to the said Government Notification, the threshold to initiate corporate insolvency resolution process (CIRP) has been raised to Rs. 1,00,00,000 from the earlier amount of Rs. 1,00,000/-. The amount claimed as default in the present Petition is less than Rs. 1,00,00,000/- and on this ground itself, the present Petition deserves to be dismissed in limine. The Respondent relied upon decision in the case of ***Jumbo Paper Products v. Hansraj Agrofresh Pvt. Ltd. (Company Appeal (AT) (Ins) No. 813 of 2021)*** in this regard.
20. The Respondent Company has never entered into any business relationship with the Petitioner regarding any sale of goods which have been allegedly claimed to have been delivered to the Respondent Company. The Respondent Company were completely shocked to receive a Demand Notice on 25.09.2021, which stated about an alleged transaction transpired between the Petitioner and the Respondent Company.

21. Pursuant to the Demand Notice received by the Respondent Company, the said Notice was replied by the Respondent Company wherein it was clearly stated that the Respondent Company's ERP (Enterprise Resource Planning) crashed in the first week of May 2021 due to password /software mishandling during the pandemic. It was also stated that there has been no information or data available with the Respondent Company in respect to any transaction transpired with the Petitioner Company. It is also stated that the Respondent Company has never heard about the Petitioner Company as the Company is situated in Singapore, while the Respondent Company have never worked with a Company situated out of country.
22. The Respondent Company's present management have made all efforts to put together all the ledgers in respect to the goods received by their suppliers while the entries of the goods supplied by the Petitioner have not been found in the ledgers of the Respondent Company.
23. The Purchase Order No. PO/1920/00629 dated 7th November 2019 alleged to have been issued by the Respondent Company for the purchase of LED drivers from the Petitioner Company is false and bogus document. The Respondent Company raises a preliminary dispute on the contents of the said document as the said Purchase Order is nowhere to be found in the records and was never issued by the Respondent Company. It appears that the said alleged Purchase Order is defective due to the following reasons:
 - (i) In the column of "Prepared by" instead of complete name of the Respondent Company, only "Pankaj" is mentioned.

- (ii) "Approved by" is blank, wherein the Respondent Company always has a particular authorized person to approve such purchase orders.
 - (iii) There is no signature or stamp of the Respondent Company affixed on the said Purchase Order.
 - (iv) There is no mention of any remarks on the said Purchase Orders neither by the Petitioner or the Respondent Company.
 - (v) The information of "Transporter" in the said Purchase Order is also blank.
24. As per the records of the Respondent Company, the alleged invoices attached to the present Petition have neither been received by the Respondent Company nor booked in their account. It is pertinent to note that till date there has been no accounting entries appearing in the name of the Petitioner for the alleged transaction and the Petitioner has not been shown as "Creditor" in the books of the Respondent Company.
25. The Respondent Company has never entered any transaction with the Petitioner Company as the Petitioner Company being an international entity, such transaction is very unlikely to be entered without any "Letter of Credit". The Petitioner Company have not produced any documents which are vital and relevant to show that any Letter of Credit was ever issued for the said transaction. It is a well-known fact that when two companies (one being an international entity) having a transaction of approximately amount of Rs. 90,00,000/- shall always have the same by issuing a "Letter of Credit". It is hard to believe that without there being any past transaction between the two companies, the Petitioner Company have given such a huge credit to the Respondent Company and supplied the alleged goods without taking any advance payment or a bank guarantee

to safeguard their right and amounts which were to be received from the Respondent Company.

26. The Petitioner has annexed to the present Petition certain email correspondences which are completely denied by the Respondent Company. It is also stated that the email correspondences are not between the Petitioner and Respondent Company. It is also stated that the Petitioner Company who have never worked or had any transactions with the Respondent Company has not annexed any email or correspondences prior to the supplying of the said goods, while they have only annexed certain emails which have been addressed only after the alleged transaction was completed.
27. The Respondent Company has employees working within the Company while they have stopped their operations since Covid in April 2020 which is an information known in the public domain. The Petitioner Company have taken advantage of the said fact and claimed an alleged amount of a false and unknown transaction to force the Respondent Company to make payment for a transaction which has never occurred.
28. In view of the above, the present Petition is nothing but an arm-twisting tactic to part with huge amount without there being a transaction between the Petitioner and the Respondent Company.

Written submission by Petitioner:

29. Mr. Rohan P Munj filed written submissions and submits that the Petition is maintainable, as Interest Amount can be clubbed with the Principal Amount/ debt to cross over the threshold limit of Rs.1 crore. He further relied on judgment of The National Company Law Appellate Tribunal in Prashant Agrwal vs Vikash

Parasrampur (Company Appeal (AT) (INS) No. 690 of 2022 and The National Company Law Appellate Tribunal in CBRE South Asia Pvt. Ltd. vs United concepts and solutions Pvt. Ltd. followed the orders passed in the Prashant Agarwal case and allowed interest on delayed payment to be clubbed with the Principal Amount for the purpose of achieving threshold limit.

30. In respect of Corporate Debtor's claim that it never entered into any transaction, emails and domain name shown in correspondence is not that of Corporate Debtor.

Document	Particulars	Reference of Averments in pleadings
Website of Corporate Debtor Exh- A of 2 nd Addl. Affidavit	Corporate Debtor's Website shows -It was formerly known as Artemis Electricals Ltd and it was initially incorporated as Artemis Electricals Pvt. Ltd	Pg. ____ of 2 nd Additional Affidavit of Petitioner
Corp. Debtor's letter 07/12/20 Exh-B to 2 nd Addl. Affidavit	This is Corporate Debtor's letter dated 07/12/2020 to Bombay Stock Exchange with Annual Report. Page. 10 i.e. Letterhead of Corporate Debtor shows that it was using the domain name artemislighting.in does not belong to corporate debtor. The same domain name can be found in PO (pg. 42 of petition) and payment reminders (pg. 49-91 of	Page 10 of Petitioner's 2 nd Additional Affidavit Pg. 42, 56 of Petition

	Petition) and Admission email (pg. 56 of Petition) as used by Corporate Debtor itself.	
Annual Report of Corp. Debtor	The Annual Report of Corporate Debtor as submitted to BSE shows following shareholders of Corporate Debtor (1) Mr. Buddhadev Kar - buddhadev.kar@artemislighting.in (2) Mr. Pankaj Gupta - pankaj.artemis@gmail.com / pankaj@artemislighting.in (3) Mr. Chandrahas Shetty - CNShetty@pkhs.in	Page 97 of Petitioner's 2 nd Additional Affidavit
Draft Red Herring Prospects Exh- C of 2nd Addl. Affidavit.	This document was filed by Corporate Debtor before BSE shows following shareholders of Corporate Debtor (1) Mr. Buddhadev Kar- buddhadev.kar@artemislighting.in (2) Mr. Pankaj Gupta - Pankalartemis@pnail.com / pankaj@artemislighting.in (3) Mr. Chandrahas Shetty-CNShetty@pikhs.in This clearly shows that all the personnel who issued and received correspondence with Operational Creditor were part of Corporate Debtor itself.	

Linkedin profile Exh- D of 2nd Addl. Affidavit	The Linkedin profile of Mr. Pankaj Gupta reveals that he was employee of Corporate Debtor. The same person prepared the PO, received payment reminders and also received Admission email. PO was issued by Mr. Pankaj Gupta from him email id pankaj@artemislighting.in	Page 266 of Petitioner's 2nd Additional Affidavit Page 42 and 56 of Petition Pg. 18 of Petitioner's Additional Affidavit dt. 21/06/2022
	Therefore, Corporate Debtor's claim that they were not using the domain name artemislighting.in is false and frivolous.	
	Corporate Debtor's claim that their ERP system was crashed/malfunctioned and few vendors in connivance with their earlier employees tried to cause loss to Corporate Debtor is also frivolous claim, as the Corporate Debtor has not produced any document to show that their system was in fact crashed. Neither did Corporate Debtor thought fit to file a police complaint Hence, Corporate Debtor's defence is frivolous and nothing but a concocted story.	

Written submission by Respondent:

31. The present Petition deserves to be dismissed on the ground that the alleged default is below the minimum threshold amount of Rs.1,00,00,000/-. It is pertinent to note that vide Notification S.O.1205(2) (Notification) dated 24th March 2020, the threshold to initiate CIRP has been raised to Rs. 1,00,00,000/- (Rupees One Crore) from the earlier amount of Rs. 1,00,000/- (Rupees One Lakh). (Reliance is placed on the Hon'ble NCLAT judgment in ***Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd. (Company Appeal (AT) (Ins.) No. 813 of 2021)***)
32. It is submitted that the Operational Creditor through the present Petition has made a very desperate attempt to cross the threshold by adding interest to the principal amount when there exists no interest clause in the alleged invoices. [Refer Pg Nos.46 to 48 of the present Petition] (Reliance is placed on Hon'ble NCLAT judgment in ***Parashat Agarwal vs. Vikash Parasrampuriah and Ors. CA(AT)(Ins.) No.690 of 2020)***).
33. It is settled position of law that Operational Creditor is required to provide cogent proof supply of goods to establish its demand. It is submitted that no goods have been received by Corporate Debtor and the Operational Creditor has failed to prove the same as there is nothing on record showing that the goods have been received by the Corporate Debtor. The invoices placed on record with the present Petition do not bear any signature or stamp of the Corporate Debtor thus, establishing that the goods were never received by the Respondent nor booked in their account. (Reliance is placed on Hon'ble NCLAT judgment in ***Mahadev Trading Company vs. Supreet Chemical Private Limited CA (AT)(Ins.) No. 149 of 2022)***)

34. It is submitted that apart from only Email dated 05.10.2020 (Refer Page No. 90 of the present Petition), no other email/correspondence has been exchanged between the parties, and until the said email the Corporate Debtor was unaware about the existence of the Operational Creditor as the Corporate Debtor has never heard nor has worked with the Operational Creditor.
35. It is submitted that there were no existing business relations between the Operational Creditor and Corporate Debtor. It is further submitted that the Purchase Order No. PO/1920/00629 dated 07.11.2019 (Refer Page No. 42 of the present Petition) was never issued to the Corporate Debtor as the Corporate Debtor has no records of the same and the said Purchase Order prima facie is forged and fabricated as the details mentioned are incomplete and as such is of no relevance.
36. The following facts would also clearly state that no transaction has taken place between the Operational Creditor and the Corporate Debtor as such transaction is very unlikely to be entered without any Letter of Credit.
37. It is a common knowledge that in ordinary course of business, in the present captioned matter it is allegedly across border transaction; an advance ought to be taken against a Purchase Order when there are no long lasting business relations between the Companies. In the present case, the Petitioner is silent on this concern; the conduct of the Petitioner is mala fide.
38. The business taking place for the first time cannot be without any advance payment and hence, in the present case it is not believable that there would be a supply by the Petitioner

Company without ensuring payment from the Respondent Company. The Petitioner Company has very conveniently attached all the documents as the name appears to be similar and have attempted to compel the Respondent Company to make parts with the vexatious and arbitrary demands of the Petitioner Company.

39. That it is submitted that the Hon'ble Supreme Court of India while upholding the judgment in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*** (2018) 1 SCC 353 in the case of ***Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited*** (2019) 12 SCC 697 has reiterated that the Code is not intended to be a substitute to a Recovery Forum. The Court made the following observation:

“38. [...] In a recent judgment of this Court in Mobilox Innovations Private Limited v. Kirusa Software Private Limited MANU/SC/1196/2017: (2018) 1 SCC 353, this Court has categorically laid down that IBC is not intended to be substitute to a recovery forum. It is also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked....”

40. That the law laid down by the Hon'ble Supreme Court of India is squarely applicable to the facts of the present Petition as the Operational Creditor is trying to use this Hon'ble Tribunal as a recovery court by seeking to recover its alleged dues arising out of multiple causes of actions. Therefore, the present Petition is untenable in the eyes of law and the same is liable to be dismissed.

FINDINGS/OBSERVATIONS

41. Heard the submissions on both side and perused the material available on record.
42. The Petitioner seeks to get CIRP initiated against the Respondent under section 9 of the Code read with rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 for an amount of Rs. 1,04,83,931.32/-. This amount undisputedly consists of Principal amount of Rs. 92,98,386.52/- and interest of Rs. 11,85,543.50/-.
43. It is the submission of the Petitioner that the Respondent is liable to pay an amount of USD 127274.28 equivalent to Rs. 92,98,386.52/- and since the Corporate Debtor has failed to make the payment of invoices within stipulated period of each invoice, an interest of 9% has been applied to the principal outstanding which comes to USD 16227.46 equivalent to Rs. 11,85,543.50/-.
44. It is seen from the pages 46 to 48 which is exhibit H (Colly) of the Petition wherein the Petitioner has enclosed copies of the invoices raised on Artemis Electricals Ltd. In such invoices the terms of payment are mentioned as 75 days from date of invoice/75 days. However, in these three invoice through which the Petitioner has contended to have raised bills towards the supply made to the Respondent, there is **no stipulation regarding charging of interest**. The respondent has contended that in the absence of any term mentioned in the invoice towards charging of interest or in the absence of any agreement in this regard, the interest cannot be computed and conspired for the purpose of the threshold limit given in the section 4(1) of the code. Reliance in this regard has been placed on the decision of

Hon'ble NCLAT in the case of **Prashant Agarwal vs. Vikash Parasrampuriah and Anr. Company Appeal (AT)(Ins) No. 690 of 2020** wherein the Hon'ble NCLAT have held as under:

*"9(vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount as well as **interest on delayed payment which was clearly stipulated in the invoice itself**. It is noted that the total principal debt amount of Rs. 97,87,220/- along with interest the total debt makes total outstanding as Rs. 1,60,87,838/-. Thus, the total debt outstanding of OC is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O I205 (E) dated 24.3.2020 (Supra), and meets the criteria of Rs.1 crore as per Section 4 of IBC and Application is therefore maintainable in present case.*

We concur with the orders of Adjudicating Authority on this issue also."

[Bold for emphasis]

Accordingly, without stipulation of the chargeability of the interest on the invoice or absence of agreement in this regard the contention of the Petitioner towards applying interest at 9% after due date of payment of invoice is not found to be acceptable. Accordingly, the "operational debt" contended by the Petitioner gets restricted to Rs. 92,98,386.52/- only.

45. This petition has been filed on 28.02.2022 and the threshold limit applicable of filing the petition as stipulated in section 4(1) of the Code vide notification dated 24.03.2020 and with effect from same date has been increased to Rs. 1 Crore. Since the "operational debt" in this case is only at Rs. 92,98,386.52/-, the amount is below the threshold limit as notified under sub section

1 of section 4 of the Code and therefore the petition is **not maintainable at the threshold only.**

46. It is seen from the contention and submission of the Petitioner that they have supplied material to the Respondent which has been completely denied by the Respondent. Accordingly, during the course of the hearing on 06.09.2023 specific query was put to the Ld. counsel appearing for the Petitioner about the evidence of the delivery to the material to the Respondent. In this regard, Ld. counsel appearing for the Petitioner sought some time to place it on record by way of an additional affidavit and case was posted for hearing on 13.10.2023. On 13.10.2023, Ld. counsel for the Petitioner submitted that he had acquired some very vital documents and wishes to place on record. However, it was seen that despite asking for time to place on record the evidence of delivery of material to the Respondent, the same was not done. Accordingly, last opportunity was granted to the Ld. counsel to file the same within a week's time by serving an advance copy on the other side and the matter was listed on 24.11.2023. Subsequently the matter was heard on 24.01.2024. However, till then the Ld. counsel for the Petitioner could not submit any evidence towards delivery of material to the Respondent for which the unpaid invoices in question have been raised. Further, thereto there are averments, allegations and counter averments of the Petitioner and the Respondent which put in dispute the very fundamental issue regarding purchase order placed, delivery of material, invoices ever been received, emails ever received by the Respondent prior to the email of section 8 notice. These aspects put the entire gamut of facts into dispute including of not establishing the basic tenet of the dues outstanding against the Respondent. The Petitioner has failed to prove delivery of goods to Respondent and the defence raised by

Respondent is not moonshine. In whatever way we look into the petition, the petition deserves to be dismissed.

47. In the result, the present petition is **dismissed as non-maintainable.**

Sd/-
CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)
---Rajeev Kr.---

Sd/-
LAKSHMI GURUNG
MEMBER (JUDICIAL)