

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-1623/(ND)/2019**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**M/s Emgreen Impex Ltd.**

(Earlier known as M/s Emgreen Impex Pvt. Ltd.)

Through its Authorised Representative

Mr. Gaurav Singhal

Old Address: G-241, Sector-63, Noida,

Gautam Budh Nagar, UP

Regd. Office & Correspondence Address:-

H-1419, DSIDC Narela,

Delhi-110040

...Operational Creditor/Petitioner

**Versus**

**1. M/s ANR International Pvt. Ltd.**

(Through its Director Mr. Anoop Kumar Chhawchharia )

Registered office:

409, 4<sup>th</sup> Floor, Laxmi Deep Building,

District Centre, Laxmi Nagar, New Delhi

**2. Mr. Anoop Kumar Chhawchharia, Director of**

M/s ANR International Pvt. Ltd.

Registered office:

409, 4<sup>th</sup> Floor, Laxmi Deep Building,

District Centre, Laxmi Nagar, New Delhi



Also At

B-279, Yojna Vihar,  
Delhi-110092

**3. Mr. Utsav Chhawchharia, Director of**

M/s ANR International Pvt. Ltd.

Registered office:

409, 4<sup>th</sup> Floor, Laxmi Deep Building,  
District Centre, Laxmi Nagar, New Delhi

Also At

B-279, Yojna Vihar,  
Delhi-110092

**4. Ms. Rita Chhawchharia, Director of**

M/s ANR International Pvt. Ltd.

Registered office:

409, 4<sup>th</sup> Floor, Laxmi Deep Building,  
District Centre, Laxmi Nagar, New Delhi

Also At

B-279, Yojna Vihar,  
Delhi-110092

...Corporate Debtor/Respondents

**Coram:**

**Shri P.S.N. PRASAD**

**Hon'ble Member (Judicial)**

**DR. V.K. SUBBURAJ**

**Hon'ble Member (Technical)**

For Operational Creditor:



For Corporate Debtor :

Order Delivered on: . .2021

**ORDER**

**PER DR. V.K.SUBBURAJ, MEMBER (T)**

1. This is a petition filed by the Petitioner/Operational Creditor M/s Emgreen Impex Limited seeking to initiate CIRP against M/s ANR International Pvt. Ltd. the Respondent/Corporate Debtor for the alleged default on the part of the Corporate Debtor in settling an amount of Rs. 1,12,99,101/- alongwith interest of Rs. 33,76,950/- as on the date of default towards the goods supplied by the Operational Creditor. The details of the transactions as averred by the petitioner are as follows:-

- i. That officials of the company had various meeting with Petitioner and its authorized representative/officer pursuant to buying the good from Petitioner and after consultation with each other regarding price of goods, quality of goods and



quantity of goods had purchased the goods from its place of business at H-1419, DSIDC, Narela, Delhi-110040 and G241, Sector 63, Noida, Gautam Budh Nagar, UP from time to time.

- ii. Pursuance to orders placed by Respondent, Petitioner had sold the material directly from their Business premises as stated above to them against respective invoices as ex-godwon delivery. The transaction of sales and part payments received pertains to the Financial Year 2016-17 & 2017-18. Petitioner was having an account with Respondent which is a running account.

As per the Operational Creditor's Books of account duly maintained in normal course of business the amount recoverable from opposite party is duly confirmed by the Corporate Debtor vide statement of confirmation of account and the said confirmation was received on Operational Creditor's official email address from Respondent.

- iii. The Respondent Company through its Official had accepted the receipt of above sales without any defect and till date no



compliant had been received regarding the quality or quantity of price of the goods sold to Respondent and had also released part payments as shown above. The Respondent had also confirm the statement of account vide e-mail.

- iv. That as per Petitioner ledger Accounts in Books of Accounts of Petitioner a sum of Rs. 1,12,99,101/- (Rupees One Crore Twelve Lakhs Ninety Nine Thousand One Hundred One Only) rounded off to nearest rupees is legally recoverable from Respondent plus with interest @18% P.A. which as per calculation sheet of interest comes to Rs. 33,76,950/-. This amount of Rs.1,12,99,101/- (Rupees One Crore Twelve Lakhs Ninety Nine Thousand One Hundred One Only) is long overdue and payable by Respondent alongwith interest @18% P.A. amounting to Rs. 33,76,950/-. Thus this claim amount of Rs.1,12,99,101/- (Rupees One Crore Twelve Lakhs Ninety Nine Thousand One Hundred One Only) alongwith interest due of Rs. 33,76,950/- plus future interest is legally recoverable for which details are annexed.



- v. In spite of various assurances and promises, Respondent had failed to make the demanded payment in spite of demand notice having been served and ten days time given in demand notice had lapsed and Petitioner have to take legal measure.
- vi. The above principal amount is duly reflected in balance sheet of the Petitioner. The Audited balance sheet of Petitioner for the year 2016-17 and 2017-18 are annexed.
- vii. As such Corporate Debtor is liable to pay the principal amount of Rs. 1,12,99,101/- (Rupees One Crore Twelve Lakhs Ninety Nine Thousand One Hundred One Only) plus Interest @ 18% P.A. Rs. 33,76,950/- and a total sum of Rs. 1,46,76,051/- is due to Operational Creditor plus future interest.
- viii. Operational Creditor had made effort and met several times to the Corporate Debtor. However, despite assurances and promises, nothing happened and ultimately a legal notice of demand dated 27.02.2019 dispatched on 28.02.2019 demanding the entire payment with interest was sent by post to Operational Debtor and its directors and authorized person



copies of such notices and the evidence of the Postal Department i.e. track record are annexed alongwith.

The said legal notice served on Operational Debtor as per Postal Track record. The Respondent had replied to said legal notice vide their letter dated 08.03.2019 wherein it had been said that the amount are disputed and objected by them. Further submitting that as per them there is NIL amount payable to Operational Creditor and rather there is outstanding balance recoverable by them for Rs. 85,066/-.

It is further submitted prior to this reply letter dated 08.03.2019 of Respondent nothing was heard by, unfounded and does not reflect a pre-existing real dispute. The reply sent is wrong, hypothetical and without any basis. The said reply of Respondent is even contrary to their own e-mail dt. 13.03.2018 wherein account statement showing amount recoverable by operational creditor is confirmed and after this there has been no purchase or receipt payment by Operational Creditor. As such



the reply submitted is malafide and false and contrary to the confirmation of accounts by them.

2. Consequent to the notice issued by this Tribunal the Corporate Debtor has filed its reply on 22.10.2019 in which the following contentions are raised:

- i. That at the outset, it is denied that the Respondents herein owes any debt to the Applicant, so as to qualify to fall within the meaning of “Corporate Debtor” under the scheme of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the I&B Code”).
- ii. The Applicant has indulged in gross and malicious suppression and concealment of facts to falsely portray the existence of an operational debt. The Applicant has not come with clean hands before this Hon'ble Tribunal and has suppressed material facts, which had it been disclosed would reveal that there is no operational debt.
- iii. It is submitted and clarified that the “operational debt” as



frivolously claimed by the Applicant in the instant Application is non-existent and in fact the Applicant owes an amount to Rs. 85,066 to the Respondent as stressed by the Respondent in its reply to demand notice, issued on 08.03.2019.

- iv. As admitted by the Applicant, the entire business transaction between the parties was in the nature of an open, mutual, running account with reciprocal demands. Each of the parties were sellers and/or purchasers at some point in time and their transactions reflected in the said running account.
- v. The Applicant has concealed that several orders were placed by the Applicant against the Respondent in June 2018 for delivery of goods, and that the Respondent after due delivery of the goods raised invoices to the tune of Rs. 1,13,84,168/- which remain pending and payable, thus there is a net outstanding in favour of the Respondent and against the Applicant to the tune of Rs. 85,066/-.
- vi. Thus, the amount of Rs. 1,12,99,101/- fraudulently claimed as “operational debt” is not due in the running account, as after the date of the invoices claimed as outstanding by the



Applicant, goods have been supplied to it for invoiced amount of Rs. 1,13,84,168/- and on the date of issuance of the Section 8 Demand Notice, an amount of Rs. 85,067/- stands due and payable by the Applicant to the Respondent. The details of the invoices raised by Respondent No. 1 to the Applicant are as follow:

S. No.	Invoice No. and Date	Amount (in Rs.)
1.	Invoice No. 002, dated 14.06.18	18,90,360/-
2.	Invoice No. 003, dated 14.06.18	19,32,368/-
3.	Invoice No. 004, dated 14.06.18	18,90,360/-
4.	Invoice No. 005, dated 14.06.18	18,90,360/-
5.	Invoice No. 006, dated 14.06.18	18,90,360/-
6.	Invoice No. 007, dated 14.06.18	18,90,360/-
<b>Total Amount (in Rs.)</b>		<b>1,13,84,168/-</b>

Furthermore, Respondent No. 1 has also duly filed its GST return with the GST Department duly reflecting the afore-mentioned invoices.

vii. The Applicant has accepted the said good and invoices and



has never raised any dispute in respect of the quality of the goods supplied. The Respondent has demanded release of payment from Applicant several times but the Applicant has always avoided giving any commitment and has promised to make partial payments and set-off the amounts on the next order placed by the Respondent on the Applicant, exploiting the goodwill and existing and continuing business relations between the parties.

- viii. That only due to souring of relations between the parties, the Applicant has fraudulently issued the demand notice dated 27.02.2019. The Respondent has duly raised the above averments and challenged the claim of the Applicant, in the reply dated 08.03.2019.
- ix. Shockingly, none of these facts have been put forth in the application by the Applicant, with intent to score a march over the Respondent and to fraudulently coerce the Respondent into making unwarranted payment by threat of initiation of insolvency proceedings. This amounts to a fraud and abuse of the process of law.

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- x. It is further important to note that the reliance placed by the Applicant upon the “Confirmation of Account” of the Respondent dated 13.03.2018 is misplaced and misleading as the same is not the correct factual position at the time of issuance of Demand Notice under Section 8 and at the time of filing of the instant Application. The Applicant has even claimed interest despite the fact that there was no understanding/agreement between the parties for charging any interest.
- xi. The said confirmation of accounts was issued on 13.03.2018, however thereafter the Respondent has upon the orders placed by the Applicant delivered goods and raised invoices to the tune of Rs. 1,13,84,168/- and therefore upon reconciliation of account, as on 24.06.2019, that is at the date of filing of the instant Application, an amount of Rs. 85,067/- is due and payable by the Applicant to the Respondent. It is submitted that the Applicant has deliberately relied on old documents while trying to mislead this Hon'ble Tribunal.



xii. Most crucially, it must be noted that the Applicant has deliberately not placed on record updated Statement of Account and has conveniently limited the same to 31.10.2016 for Axis Bank and 16.06.2017 for ICICI Bank, so as to hide the transactions of June 2018 from the attention of this Hon'ble Tribunal.

3. The Petitioner/Operational Creditor sought the permission of this Tribunal to file a rejoinder to the reply filed by the Corporate Debtor which was granted by this Tribunal.

4. In the rejoinder the Petitioner/Operational Creditor has countered the arguments of the Corporate Debtor and has submitted as follows:

- i. The goods as alleged to be sold in different invoices were never delivered to Petitioner. Mere raising of invoice without delivery of goods is NO SALE. i.e. copies of Bills No. 2 dated 14.06.2018 alongwith G.R. for Rs. 18,90,360/-; Bill No.3 dated 14.06.2018 for Rs. 19,32,368/-; Bill No.4 dated 14.06.2018 for




Rs. 18,90,360/-; Bill No.5 dated 14.06.2018 for Rs. 18,90,360/-  
; Bill No.6 dated 14.06.2018 for Rs. 18,90,360/-; Bill No.7  
dated 14.06.2018 for Rs. 18,90,360/-. The same are not even as  
per Rule 46(b) of the CGST Rules, 2017 read with Section 31  
of the CGST Act.

- ii. Petitioner name is M/s Emgreen Impex Ltd. for which  
CGST Certificate describes the address of Petitioner  
Office in Delhi address is H- 14 19, DSIIDC, Narela, North  
West Delhi. The sale of goods vide above bills had been  
made in the name of M/s Emgreen Impex Pvt. Ltd. at  
address Plot No. 67, DSIDD, Pockets — D, Sector-3, Bawana  
Delhi- 110039. Neither the same is name of Petitioner nor the  
address as shown in Bills is of Petitioner. Hence name as  
well as address is different.
- iii. The manipulation is further apparent on the face of these  
Bills and GRs. Firstly all the Bills seems not to be of  
regular series of sales of Respondent and it is surprising  
till June, 2018 he had only made sales Bills to only



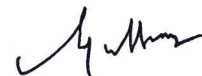
Appellant as for Bill No. 002 to Bill No. 7 are all sales of such huge quantity which are alleged to be made in same day to Petitioner which is against human probabilities and against facts. The series deployed is against Rule 46(b) read with Section 31 of the CGST Act. The Truck employed were not even capable of carrying the weight as alleged in invoice there had been made for carrying less load of goods than alleged to be carried.

- iv. Thirdly no proof of delivery of goods to Petitioner on said sale document appears. Nor the goods had been actually delivered to Petitioner. Mere raising of Invoice without delivery of goods is not sale in terms of CGST Act / DGST Act and rather u/ s 182 of the CGST Act the same is an offence and u/ s 29 of the CGST Act is a ground for cancellation of Registration Certificate under CGST Act.
- v. Fourthly and surprisingly, the vehicle NO. shown to be used for delivering the goods in the Bill NO. 4 dated 14.06.2018 alongwith GR mentioning Truck No. HR-385-



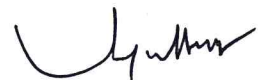
0 133 is not a Truck rather the same is a 'JCB CRANE"  
documentary evidence down loaded from site of  
[www.vahan.nic.in](http://www.vahan.nic.in) {A site belongs to Govt. of India,  
Ministry of Road Transport and Highways) is annexed with  
rejoinder. This act is clearly a fraud on the Tribunal & intend  
to mislead this Tribunal which attracts action against him and  
imposition of heavy cost.

- vi. All the above submissions clearly makes out a case that  
Respondent had played fraud with this Tribunal by deposing  
falsely regarding wiping out the liability through falsely raising  
sales Bills just to show that dispute exists between the parties  
when nothing of this sort was mentioned in the reply to the  
notice of demand sent by Corporate Debtor so that the present  
Petitioner of the Petitioner be not entertained by this Court.
5. We have heard the arguments put forth by both the counsels and  
perused the various records submitted by both the parties. The  
Corporate Debtor has not refuted the fact that the Operational Creditor



has supplied materials as contended in the petition and he has also confirmed the statement of accounts vide e-mail dated 13.03.2018. he has never raised any issues on the quality of the material supplied by the petitioner. However he has replied to the notice sent under Section 8 of IBC 2016 in which he has raised a counter claim over and above the amount claimed by the Operational Creditor. He has not provided any documentary evidence to prove that he has raised a dispute prior to the issue of Section 8 notice by the petitioner.

6. Interestingly in the rejoinder filed by the Petitioner, the Operational Creditor has elaborately explained the faulty procedures followed by the Corporate Debtor in sending the invoices to a different company address, lack of proof for delivery of the materials, sending the materials on a single day which is humanly impossible, using the cranes instead of Trucks and the offences committed by the Corporate Debtor in the CGST Act which amount to committing fraud on the Petitioner/Operational Creditor besides misleading this Tribunal. Prima facie the contentions made by the Operational Creditor in the



rejoinder appear to be correct as he has provided adequate documentary evidence to prove his allegations.

In the above circumstances this Tribunal rejects the contentions made by the Respondent/Corporate Debtor in its reply and is convinced that the Petitioner has adequately proved the existence of debt and default on the part of the Corporate Debtor and initiates CIRP on the Respondent.

7. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”



8. The interim resolution professional (“IRP”), named in the list provided by the IBBI, is Mr. Devendra Umrao, Registration no. IBBI/IPA-003/IP-N00223/2019-2020/12640 email id: dev.umrao@gmail.com being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.
9. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

-Sd-

**(Dr. V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**

-Sd-

**( P.S.N. PRASAD)**  
**MEMBER (JUDICIAL)**