

**THE NATIONAL COMPANY LAW TRIBUNAL  
COURT NO. IV  
AT NEW DELHI**

**Company Petition No. (IB)-2992(ND)/2019**

**In the matter of:**

**NATRAJ PROTEINS LIMITED**

**Operational Creditor/Applicant**

**CLARO ENERGY PRIVATE LIMITED Corporate Debtor/Respondent**

(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

*Judgment delivered on:13.04.2021*

**Coram:**

**DR. DEEPTI MUKESH  
HON'BLE MEMBER (Judicial)  
MS. SUMITA PURKAYASTHA  
HON'BLE MEMBER (Technical)**

## **Memo of Parties**

**NATRAJ PROTEINS LIMITED**

**Registered office at:** Nagpur Kalan Ordinance Factory Road

ITARSI, Hoshangabad, M.P. 461111

**...Operational Creditor/Applicant**

**Versus**

**CLARO ENERGY PRIVATE LIMITED**

**Registered office at:**D-196 Second Floor Saket

New Delhi-110017

**...Corporate Debtor/Respondent**

**For the Applicant:** Adv Mr. Rahul Pandey

**For the Corporate debtor:** Adv. Indranil Ghosh

## ORDER

**Per-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 Natraj Proteins Limited through its Managing Director Mr. Kailash Chand Sharma vide board resolution dated 31.07.2019 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Claro Energy Private Limited (for brevity 'Corporate Debtor').
2. The applicant is a company limited by shares duly registered and incorporated under the provisions of the Companies Act, 1956 on 21.11.1990 having CIN No. 00153MP1990PLC006090. The company is having its registered office at Nagpur Kalan Ordinance Factory Road, ITARSI, Hoshangabad, M.P. 461111.
3. The corporate debtor is a private limited company duly registered and incorporated under the provisions of the Companies Act, 1956 on 15.01.2011, bearing CIN  
U40106DL2011PTC212623. The company is having its registered office at D-196, Second Floor, Saket, New Delhi.
4. The Applicant submits that as per order placed by the corporate debtor, supply of Solar Photovoltaic Pump Sets was started from time to time, wherein for the said supply, various invoices were raised from 06.12.2019 to 17.08.2018, for the total amounts of Rs.10,75,23,923/-. The applicant submits that the Corporate Debtor was irregular in making payment and therefore, the applicant stopped

supplying. The corporate debtor had paid Rs. 10,11,14,426/- on 31.07.2019 and raised debit notes for Rs 76,356/- whereas the remaining amount of Rs 63,32,941/- is still unpaid, along with interest for the delayed period.

5. The applicant submits that despite various assurance and failing in making the payment, Demand Notice dated 12.09.2019 was issued under the provisions of section 8 of I&B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the total outstanding amount of Rs. 63,32,941/-. The said notice was served through speed post at its registered address as reflected in MCA website. The tracking report for the speed post reflecting 'Item Delivered' is annexed.
6. The corporate debtor has replied to the demand notice and has admitted the liability of Rs. Rs. 22,17,175/- and has agreed to make payment but no payment was made till date. It was stated by the corporate debtor that the applicant has incorrectly raised Invoices worth Rs 24,49,910/-. The debit note was raised by the corporate debtor dated 16.04.2019 of value Rs 24,49,910/- and FORM GSTR-3B was filed as well. Secondly, Invoices worth INR 17,65,750/- are not due as per the corporate debtor. It is further stated that as mutually agreed, payments were to be made by the corporate debtor to the applicant only after they were received from the end customer i.e. Madhya Pradesh UrjaVikas Nigam Limited (MPUVN). MPUVNL has withheld a portion of the payment for all parties who participated in the project. The applicant's portion of withheld payment amounts to Rs 17,65,750/-.

7. The Applicant submits that the claim of default by the corporate debtor is filed with the Information Utility NESL has been filed dated 14.10.2019. No dispute was raised by the Corporate Debtor for their liability.
8. Hence, the Applicant filed present Application on 18.10.2019 under section 9 of IBC, 2016 and served the copy of this application through speed post at the address as reflected on MCA website.
9. The Corporate Debtor has filed their reply controverting the averments made in the application and has asserted that a contract was executed for the procurement of selected material of Submersible Solar Pumping Systems. It is however, stated that a formal contract was not signed between the parties but was followed in spirit and acknowledged in writing over e-mails multiple times.
10. The corporate debtor submits that the Applicant sent an email, expressing confusion about the cost-breakup of each component (solar pumping system) for each site covered by the Project.
11. The corporate debtor submits that after the information for default was delivered to the Corporate debtor, it disputed the information of default on the ground that the Applicant had unfairly & illegally raised invoices over and above the rates and terms that were mutually agreed. The dispute regarding over-invoicing by the Applicant was raised & communicated multiple times in the past with no resolution.
12. The applicant has filed written submissions and has strongly denied that a contract was not executed, but stated that the Corporate debtor failed to submit the executed copy of the Agreement.

13. The applicant as stated that the Corporate Debtor was always irregular in payment of the invoices raised .The Applicant has sent email dated 25.02.2018 which was only for seeking "the understanding how many of each component goes into each site. How do we bifurcate into 150 sites and arriving at a costing, so as to help us understand the project better and thereby billing you more efficiently'. Therefore, the applicant do not agree that there was any confusion about the "cost break up" of each component for each site covered by the project. Therefore, it is very clear that the mail was sent for only seeking clarification for bifurcation of the goods to be delivered at various sites for billing purposes only. It is further submitted that the Applicant merely asked to give "break up how the material cost was arrived at in all three batches". However, the Corporate debtor failed to reply the same.
14. The applicant further states that the Corporate Debtor did not even place any other material on record to show reason for raising alleged Debit Note for Rs. 24,49,910/- and the said alleged debit note was received by the Applicant with the letter dated 15<sup>th</sup>October, 2019 and not before that which is much later than issuance of section 8 notice. Further that in the letter, the Corporate debtor has sated the reason for "Over Invoicing Amount of Rs. 14,19,910/-" which are clearly contradictory with the narration of the Debit Note as an afterthought to misguide, as the said Debit Note do not provide any details for showing the particulars of any invoice or material on which the amount was pertaining and debited. Further, it was issued after lapse of substantial time period, even after consumption./ further supply of the material to the end users, which is also against the principle of natural justice.

15. The applicant submits that the Corporate debtor has stated false reasons for disputing the demand at the portal of the Information Utility (NESL) on 23.10.2019 after the issuance of Demand Notice dated 12.09.2019 stating that '*the applicant has unfairly and illegally raised invoices over and above the rates and terms it were mutually agreed..*' It is very clear that the Corporate debtor has raised dispute after receipt of the demand notice, which cannot be considered as the pre-existing dispute under the I & B Code, 2016. Hence, the false and baseless dispute shown and uploaded at the portal of the Information Utility is not valid and acceptable at all.
16. In our view no disputes were raised as covered under section 5(6) of the Code which provides that "the dispute includes a suit or arbitration proceedings relating to—(a) the existence of the amount of debt; (b) the quality of goods or service; or (c) the breach of a representation or warranty". Therefore, there is no pre-existing dispute before issuance of the demand notice to the corporate debtor. Further, there is undisputed amount of Rs. 22,17,175/- which has already been admitted by the Corporate debtor in their reply to the demand notice dated 12.09.2019 also in addition raised dispute to wriggle out of applicant's claim.
17. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to the application. This leaves no doubt that the default has occurred with respect to the payment of the operational debt of the applicant. From the records before us and the reply of the corporate debtor to the present application, it cannot be inferred that dispute of

the corporate debtor is of genuine nature, which merely is a moonshine dispute as laid down in “*Mobilox Innovative Private Limited vs. Kirusa Software Private Limited*”.

*“It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. 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.”*

In view of above observations, the dispute raised by the corporate debtor does not categorized as dispute as reproduced above, and the plea of dispute is nothing but moonshine defense, created by Corporate Debtor against the applicant without any evidence and hence merit, which is clear after thought to defeat the claim of applicant.

18. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

19. The date of default as per Form V occurred on 17.08.2018 and the application is filed on 18.10.2019, hence the debt is not time barred and the application is filed within the period of limitation.
20. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. The present application is admitted, in terms of section 9 (5) of IBC, 2016.
21. The Applicant has named the Insolvency Resolution Professional, to be appointed by the order of Tribunal, as Mr. Rajesh Lohia, with registration number IBBI/IPA-002/IP-N00049/2016-17/10093 (email – rlohiaandcompany@gmail.com) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.
22. We direct the Operational Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Rajesh Lohia to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week

from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

23. 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 Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
24. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

**Sd/-**  
**(MS. SUMITA PURKAYASTHA)**  
**MEMBER (T)**

**Sd/-**  
**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(T), Smt. Sumita Purkayastha is not holding court today.

**(Asim Kumar Pal)**  
**COURT OFFICER**

