NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-223(ND)2020

IN THE MATTER OF:

M/s. D. Light Energy Private Limited
102, Ganga Chamber,
64/1, W.E.A., Karol Bagh,
New Delhi - 110005

...Applicant/Operational Creditor

VERSUS

M/s. Benchmark Supply Chain Solutions Private Limited
B-62 Vishrantika Society,
Sector – 3, Plot No. 5a
Dwarka, New Delhi-110078

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on: 17.05.2022

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Ashish Pandey
For the Respondent : Adv. Rakesh Kumar

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. D. Light Energy Private Limited (for brevity **'Applicant/Operational Creditor'**), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Benchmark Supply Chain Solutions Private Limited (for brevity **'Respondent/Corporate Debtor'**).

2. That the Corporate Debtor namely, M/s. Benchmark Supply Chain Solutions Private Limited is a Company incorporated on 04.04.2013 with CIN U74140DL2013PTC250296 under the provisions of the Companies Act, 2013 having its registered Office at B-62 Vishrantika Society, Sector-3, Plot No. 5A, Dwarka, New Delhi-110078, which falls under jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs.2,00,00,000/- and Paid-up Share Capital is Rs.66,00,000/- as per the Master Data of the Corporate Debtor.

4. That the detailed particulars of the operational debt as averred by the Applicant in the Part IV of the Application are reproduced overleaf:

PART – IV

PARTICULARS OF OPERATIONAL DEBT		
1. A.	TOTAL AMOUNT OF DEBT	The total amount of operational debt along with interest is Rs. 1,29,12,498/- (One Crore Twenty Nine Lacs Twelve Thousand Four Hundred Ninety-Eight Only) computed upto 06.01.2020.
B.	DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE	(i) The Corporate Debtor and Operational Creditor have had business relations having earlier entered into multiple transactions. (ii) In 2018, the Corporate Debtor approached the Operational Creditor to various solar products and solar home appliances ("Products").
		(iii) Thereafter, the Operational Creditor supplied the Corporate Debtor various solar products and solar home appliances ("Products") against invoices raised. (Copies of aforesaid Invoices are attached herewith) (iv) The Corporate Debtor, under the terms contained in the invoices has been placing purchase orders from the Operational Creditor. On account of the supplies made by M/s. D. Light Energy Private Limited, invoices totaling to Rs. 1,10,90,977/- (In words One Crore Ten Lacs Ninety Thousand Nine Hundred Seventy Seven Only) have remained unpaid since 31.03.2019. (v) The Corporate Debtor sent a letter dated 20.03.2019 to the Operational Creditor, wherein the Corporate Debtor admitted in writing the debt amounting to Rs. 1,12,96,630/- (One Crore Twelve Lacs Ninety-Six Thousand Six Hundred Thirty Only) and assurance in writing, was given by Corporate Debtor to the Operational

		Creditor that the Corporate Debtor shall make payment of the entire outstanding debt amount mentioned above by 30th April, 2019. However, inspite of several verbal assurance/commitments provided in writing by the Corporate Debtor to the Operational Creditor, the Corporate Debtor failed to make payment of the outstanding due amount to the Operational Creditor. (Copy of letter dated 20.03.2019 is attached herewith) (vi) Furthermore, the Corporate Debtor is liable to make payment of accrued interest on the pending invoices @ 18% which comes to Rs. 18,28,809/-. As such the total amount payable by the corporate debtor as operational debt owed by it to M/S. D. Light Energy Private Limited comes to Rs. 1,29,12,498/- as on 06.01.2020. As per the terms of payment contained in the invoices raised on behalf of M/s D. Light Energy Private Limited in the name of M/s. Benchmark Supply

		Chain Solutions Private Limited, the payment was to be made within 30 days from the date of invoices. As such the debt for the first time became due under the invoice raised. (vii) The Operational Creditor has requested the Corporate Debtor to make payments against the invoices as stated aforesaid several times. However, no action & effort was taken by the Corporate Debtor to make any payment towards the said invoices. (viii) On not receiving any satisfactory reply from the corporate debtor, the Operational Creditor was left with no alternative but to send a Demand Notice dated 27.11.2019 in accordance with Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to the Corporate Debtor, evincing the fact of the debt due. (Copy of Demand Notice dated

<table>
<tr><td></td><td></td><td>27.11.2019 under Section 8 is annexed herewith)
(ix) The Corporate Debtor did not reply the notice given by the Operational Creditor.</td></tr>
<tr><td>C.</td><td>DATE FROM WHICH SUCH DEBT FELL DUE</td><td>As per the terms of payment contained in the invoices raised on behalf of the Operational Creditor in the name of the Corporate Debtor, the payment was to be made within 30 days from the date of bills raised. As such the debt for the first time became due under the invoice raised on 31.03.2019. The due dates for individual invoices are being provided hereunder:

FINANCIAL YEAR 2018-2019
<table>
<tr><th>Invoice No.</th><th>Issued On</th><th>Amount</th></tr>
<tr><td>DL/1819/W1/00098</td><td>19.03.2019</td><td>1,280,608</td></tr>
<tr><td>DL/1819/W1/00097</td><td>14.03.2019</td><td>457,360</td></tr>
<tr><td>DL/1819/W1/00095</td><td>12.03.2019</td><td>1,240,589</td></tr>
<tr><td>DL/1819/W1/00094</td><td>09.03.2019</td><td>1,757,977</td></tr>
<tr><td>DL/1819/W1/00092</td><td>06.03.2019</td><td>960,456</td></tr>
<tr><td>DL/1819/W1/00091</td><td>06.03.2019</td><td>1,852,307</td></tr>
<tr><td>DL/1819/W1/00090</td><td>05.03.2019</td><td>1,577,891</td></tr>
<tr><td>DL/1819/W1/00088</td><td>01.03.2019</td><td>1,963,789</td></tr>
<tr><td></td><td>Total:</td><td>Rs. 1,10,90,977/- (One Crore Ten Lacs Ninety</td></tr>
</table></td></tr>
</table>

				Thousand Nine Hundred Seventy Seven Only)

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED	The Corporate Debtor is required to make payments to the Operational Creditor in lieu of invoices raised by the Operational Creditor upon making delivery of the products to the satisfaction of the Corporate Debtor. All the invoices have remained unpaid. The details of the same are as under:

Financial Year 2018 - 2019

Invoice No.	Issued On	Amount
DL/1819/W1/00098	19.03.2019	1,280,608
DL/1819/W1/00097	14.03.2019	457,360
DL/1819/W1/00095	12.03.2019	1,240,589
DL/1819/W1/00094	09.03.2019	1,757,977
DL/1819/W1/00092	06.03.2019	960,456
DL/1819/W1/00091	06.03.2019	1,852,307
DL/1819/W1/00090	05.03.2019	1,577,891
DL/1819/W1/00088	01.03.2019	1,963,789
	Total:	Rs. 1,10,90,977/- (One Crore Ten Lacs Ninety Thousand Nine Hundred Seventy Seven Only)

		Furthermore, the Corporate Debtor is liable to make payment of accrued interest on the pending invoices @ 18% which comes to Rs. 18,28,809/-. As such the total amount payable by the Corporate Debtor as operational debt owed by it to the Operational Creditor amounts to Rs 1,29,12,498/- as on 06.01.2020. The date of default of the said amounts due is as aforestated alongwith interest @ 18% per annum. (A tabular chart showing computation of the payment due to the Operational Creditor is attached herewith)

5. That from perusal of the Part IV of the Application, it is observed that the Applicant has supplied various solar products and appliances to the Corporate Debtor against the invoices. That total amount of the unpaid Operational Debt claimed by the Applicant amounts to Rs.1,10,90,977/- excluding interest. That the date of default mentioned by the Applicant in the application is of 06.01.2020.

6. That the Applicant has annexed the Invoices and Ledger Account of the Corporate Debtor with the application to establish the default.

7. It is submitted by the Applicant that the Corporate Debtor had sent a letter dated 20.03.2019 to the Operational Creditor wherein the Corporate Debtor had admitted the debt amounting to Rs.1,12,96,630/- and assured that the payment shall be made by 30th April 2019. However, in spite of several verbal assurances/written commitments, the Corporate Debtor did not make payment of the outstanding dues. Hence, the Operation Creditor was left with no alternative but to send a Demand Notice dated 27.11.2019 under Section 8 of IBC 2016 at the registered office of the Corporate Debtor vide courier which was delivered on 07.12.2019. The Applicant has further averred that no reply to the demand notice was received by him. The Applicant has filed an Affidavit under Section 9(3)(b) of 2016 stating that no notice of dispute has been received by it.

8. That on issuance of the notice, the Corporate Debtor has appeared and filed its reply.

9. However, during the course of final hearing held on 15.03.2022, Ld. Counsel appearing for the Corporate Debtor had admitted the debt claimed in the court and submitted that due to financial crisis, the Corporate Debtor is not in a position to pay the debt. The order dated 15.03.2022 is reproduced below :

> *"Heard the Ld. Counsel appearing for the Operational Creditor as well as the Corporate Debtor. During the Course of the hearing, the Ld. Counsel for the Corporate Debtor appears and submits*

that due to financial crisis, the Corporate Debtor has not been able to pay the debt."

10. In the given facts and circumstances, when the Corporate Debtor has admitted the default in payment of the operational debt, we are inclined to proceed with the matter. The Application filed under Section 9 fulfills all the requirements of law. **Therefore, the Application is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

"(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 Securitisation 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."

11. Since there is no IRP proposed by the Operational Creditor, this Bench appoints Mr. Ajay Goyal (IBBI Registration No. IBBI/IPA-001/IP-P00328/2017-18/10639, Email : ajaygoyalca75 @gmail.com) as an IRP of the Corporate Debtor with immediate effect from the panel of the IPs recommended by IBBI to this Adjudicating Authority and order that:

> *"Mr. Ajay Goyal is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes."*

12. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

13. A copy of this Order shall be communicated immediately to the Operational Creditor, the Corporate Debtor and the IRP named above, by the Registry/Court Officer. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their record.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

Since the Hon'ble Judicial Member Sh. Abni Ranjan Kumar Sinha is on leave, the pronouncement of the Order is made under Rule 151 of the NCLT Rules, 2016 in the open Court today i.e., on 17.05.2022 on behalf of the Bench.

(T.S. Singh)
Court Officer