



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **18.12.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/193(CHE)/2023
NAME OF THE PETITIONER(S) : BR Green Industries Pvt Ltd
NAME OF THE RESPONDENTS : Svaryu Energy Ltd
UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

ORDER

Present: None for the Petitioner.

None for the Respondent.

Vide separate order pronounced in Open Court, the petition is admitted.
Shri. Surinder Babbar is appointed as IRP.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

CP/IB/193(CHE)/2023

(filed under Section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of Svaryu Energy Limited

BR Green Industries Private Limited

J 16, Pocket N, Sector 3, DSIIDC Industries Area,
Bawana, Delhi – 110 039

... Applicant/Operational Creditor

-vs-

Svaryu Energy Limited

11th Floor, Bascon Futura IT park,
10/2, Venkat Narayana Road,
T Nagar, Chennai – 600 017

... Respondent / Corporate Debtor

Order Pronounced on 18th December, 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAN, MEMBER (TECHNICAL)

For Petitioner : *Karan Gandhi, Advocate*

For Respondent : *Kumarpal R Chopra, Advocate*



ORDER
(Hearing conducted through VC)

This application has been filed by the Operational Creditor viz. *BR Green Industries Private Limited* against the Corporate Debtor viz. *Svaryu Energy Limited* under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC', 2016) seeking to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

2. Part – I of the Application provides that the Operational Creditor is a Private Limited Company. Part – II of the Application sets out the details of the Corporate Debtor stating that the Corporate Debtor was incorporated on 16.04.2008 and the Registered office address of the Corporate Debtor is situated at 11th Floor, Bascon Futura IT Park, 10/2, Venkat Narayana Road, T Nagar, Chennai, – 600 017.

3. Part – III of the Application, states that the Operational Creditor has suggested the name of one Mr. Surinder Babbar as the 'Insolvency Resolution Professional'.



4. In Part – IV of the Application the Total amount of debt is stated as Rs.3,77,83,000/-(Rupees Three Crores Seventy Seven Lakhs Eighty Three Thousand Only) comprising of Principal Amount of Rs. 3,37,65,051/-(Rupees Three Crores Thirty Seven Lacs Sixty Five Thousand and fifty one Only) and interest of Rs.40,17,949/- (Rupees Forty Lacs Seventeen Thousand Nine Hundred Forty Nine only) calculated at the rate of 18% per annum calculated up to 19.07.2023 and accrued interest thereafter as applicable. A copy of computation is annexed as *ANNEXURE-II-D* of the application typeset.

5. It is stated that the Corporate Debtor namely Svaryu Energy Limited issued a Purchase Order (PO No. SEL/SJVN-70MW/PO- 32/2022-23) to M/s BR Green Industries Pvt Ltd ("Operational Creditor") for the supply of HDG Column Post-MMS Materials - 629 MT and MS Black- MMS material - 67 MT for Rs. 7,08,49,560 on 26.08.2022. It is stated that on 01.10.2022, the Corporate Debtor revised the Purchase Order dated 26.08.2022 for the order quantity to 351.46 MT. The copy of original Purchase order along with revised order is attached as *ANNEXURE-II-E* of the application typeset.



6. It is stated that the Operational Creditor dispatched 364.885 MT for HDG Column Post/ MS Black MMS material against PO No. SEL/SJVN-70MW/PO- 32/2022-23 dated 26 August 2022 to Corporate Debtor on a 30 days payment term from the date of dispatch.

7. It is stated that the Operational Creditor fulfilled all the obligations of supplying the material to Corporate Debtor and never received a complaint about the material supplied to them. But the Corporate Debtor has failed to make the payment of pending dues. The Invoices raised by the Operational Creditor against the supplies made are annexed along with calculation thereto as ANNEXURE-II-F of the application typeset.

8. It is stated that the Operational Creditor had also sent follow-up emails/visits to the Corporate Debtor requesting to release the outstanding payment, but except an amount of Rs.35,31,976/- received on 01.03.2023, no other payment has been received till date.

9. It is stated that the principal amount of Rs. 3.37 Crore plus interest has duly been acknowledged by the Corporate Debtor vide emails dated



20.03.2023, 02.05.2023 and 31.05.2023. Several post-dated cheques were also issued in favour of the operational creditor, but the corporate debtor never honoured the cheques despite making numerous false pledges to repay the money.

10. It is stated that vide mail dated 31.05.2023, the payment plan was again communicated payable in 2 installments on 15.06.2023 and 30.06.2023. However, till date no payment has been received. The copy of email communications / acknowledgements is annexed as Annexure-II-G of the application typeset.

11. It is stated that the total outstanding debt fell from the eleven outstanding invoices are as follows:



Invoice No.	Invoice Date	Date on which invoice fall due
BR-SKD-2223-862 (Part payment of 35,31,976/- received)	15-10-2022	14/11/2022
BR-SKD-2223-864	15-10-2022	14/11/2022
BR-SKD-2223-866	16-10-2022	15/11/2022
BR-SKD-2223-867	16-10-2022	15/11/2022
BR-SKD-2223-868	16-10-2022	15/11/2022
BR-SKD-2223-871	17-10-2022	16/11/2022
BR-SKD-2223-874	18-10-2022	17/11/2022

BR-SKD-2223-875	18-10-2022	17/11/2022
BR-SKD-2223-888	28-10-2022	27/11/2022
BR-SKD-2223-896	31-10-2022	30/11/2022
BR-SKD-2223-910	04-11-2022	03/12/2022

12. It is stated that the invoice was due after 30 days from the date of invoice as per terms provided under Purchase Order dated 26.08.2022.



Therefore, the date on which the debt fell due is different for every invoice and **the date of default for last invoice is 03.12.2022** keeping in view the nature of the transactions being running in nature. Copy of invoices along with Ledger of Corporate Debtor in the books of Operational Creditor is placed as *Annexure-II-H* of the application typeset.

13. It is stated by the Learned Counsel for the Operational Creditor that since no payment was forthcoming from the Corporate Debtor, the Operational Creditor issued a Demand Notice under Section 8 of IBC, 2016 to the Corporate Debtor on 21.07.2023, which was delivered to the Corporate Debtor on 24.07.2023. The Operational Creditor has also filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016 stating that the Corporate Debtor after the receipt of the Demand Notice neither paid any amount nor gave any reply notice disputing unpaid operational debt to the applicant. Under such circumstances, the Operational Creditor has filed the present Application on **11.09.2023** seeking initiation of CIRP as against the Corporate Debtor.



REPLY FILED BY THE RESPONDENT:

14. The Learned Counsel for the Corporate Debtor has filed a reply vide S.R.No. 4128 dated 14.08.2024.

15. It is stated that the Corporate Debtor is among the leading business conglomerates of India. It has expanded during the past 2 decades of its operation across multiple business verticals Renewables (Solar IPP), Chemicals (refilling of environment friendly refrigerant gases), Medical Technologies (manufacturing Digital X- rays, Flat Panel Detectors, and refurbishing MRI machines), Pharma (API manufacturing pertaining to the Central Nervous System), Green Mobility (offering 4 wheeler EV as a technology backed service), Ash handling (mitigating environmental pollution from the thermal power plants by handling the ash), and Airport operations among other such business verticals. The company's excellent reputation and trust in the industry is due to its commitment to core values such as integrity, diversity, dedication, commitment, and competitiveness.

16. It is stated that the Corporate Debtor acknowledges the principal amount of Rs.3.37 crore. It has made partial payments, including



Rs.35,31,976/- on 01.03.2023. However, the Corporate Debtor never acknowledged any obligation to pay the interest amount as stated by the Applicant. There appears to be a dispute regarding the debt, and a reconciliation needs be conducted to ascertain the exact amounts due.

17. It is stated that on 20.07.2024, the Corporate Debtor initiated a settlement proposal to pay the remaining amount of INR 2,87,65,052/- in equal monthly installments starting from 01.07.2024, to be completed by 31.03.2025. This proposal was made to ensure a structured and feasible repayment plan considering the company's financial commitments and cash flow management.

18. The Operational Creditor's response demanded immediate payment of the entire outstanding amount, including interest and out-of-pocket expenses, is not feasible given the current financial position of the Corporate Debtor. It is stated that the following cheques were issued to the Operational Creditor:

- Cheque No. 11230900 dated 10.06.2023 for Rs. 70,00,000/-
- Cheque No. 12137101 dated 30.06.2023 for Rs. 70,00,000/-
- Cheque No. 12137102 dated 15.07.2023 for Rs. 80,56,443/-



19. It is stated that rather than honoring the cheques and considering the amicable settlement proposals communicated regularly, the Applicant has chosen to file insolvency proceedings as the time to present the cheques for clearing had elapsed.

20. It is stated that the Applicant is attempting to use this Tribunal as a recovery forum, contrary to its purpose. It is stated that the Hon'ble courts have repeatedly clarified that this Tribunal is not a recovery forum, and disputes of this nature should be addressed through civil suits. It is stated that forcing a solvent company into insolvency is unjustified. As a publicly listed company, such actions could cause irreparable damage to the Corporate Debtor's goodwill and severely impact its operations, employees, and stakeholders.

FINDINGS OF THIS TRIBUNAL:

21. Heard the submissions of both the parties and perused the documents placed on record.



22. It is seen from the records that the corporate debtor had not replied to the demand notice. Therefore, there was no pre-existing disputes between the parties.

23. It is manifestly clear from the reply that the Corporate Debtor has admitted the principal amount as averred in para 6 of the reply. Further, in the account ledger, the principal amount of Rs.3.37 crores is reflected.

24. It is seen that no Proceeding has been initiated under Section 138 of the Negotiable instruments Act. In the present case, the Corporate Debtor has acknowledged the principal amount/ debt.

25. The Operational Creditor has also proved that there is an 'operational debt' and 'default' on the part of the Corporate Debtor.

26. Taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the application, as filed by the Operational Creditor, is required to be **admitted** under Section 9(5) of the IBC, 2016. We order accordingly.



27. In the present case, the Operational Creditor has suggested the name of Insolvency Resolution Professional in Part – III of the Application and accordingly this Tribunal appoints **MR. SURINDER BABBAR** with *Registration No: IBBI/IPA-001/IP-P-02534/2021-2022/13878* (email id: ip.surinderbabbar@gmail.com) who is having Authorization for Assignment till **31.12.2025** as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

28. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

29. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:



- (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.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to
 - (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

30. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:



Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

31. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

32. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the



Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

SriramAnanth.V