

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

**C.P. No.1559/IBC/MB/2018**

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*

**PUNJAB RENEWABLE ENERGY SYSTEMS  
PVT. LTD**

Registered office at: MGS Legal, Advocates and  
Solicitors, 26, Wadia Building, First Floor, 9-B  
Cawasji Patel Street, Fort, Mumbai-400001

.....Operational Creditor

**Vs**

**SPARK GREEN ENERGY (AHMEDNAGAR)  
PVT LTD**

(CIN: U40100PN2003PTC139688)

Registered office at: Spark Green Energy  
(Ahmednagar) Pvt Ltd.

Plot No. B/4, Village- Shingwetukai, MIDC  
Newasa, Taluka Newasa, Ahmednagar,  
Maharashtra-414607

.....Corporate Debtor

**Order delivered on: 16.11.2021**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

**For the Applicant:** Mr. Dhishan Kukreja

**For the Respondent:** Mr. Ashish Rao i/b Juristech Legal

***Per: Shri H.V. Subba Rao, Member (Judicial)***

1. The above Company Petition is filed by M/s. Punjab Renewable Energy systems Pvt. Ltd. hereinafter called as “Operational Creditor” seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Spark Green Energy (Ahmednagar) Pvt. Ltd. hereinafter called as “Corporate Debtor” by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called “Code” read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for Resolution of an Operational Debt of Rs. 2,40,02,946/- with interest at the rate of 18% per annum.

**BRIEF SUBMISSIONS OF THE OPERATIONAL CREDITOR**

2. Operational Creditor entered into a Fuel Supply Agreement dated 14<sup>th</sup> October 2015 with Corporate Debtor whereunder Corporate Debtor agreed to purchase biomass fuel from Operational Creditor on terms and conditions more particularly set out in the said Agreement. Article 2.2 of the said Agreement provides for the scope of supply of fuel by Operational Creditor to Corporate Debtor. Article 9.2 of the said Agreement, which pertains to “Billing, Invoicing rate and payment”, inter alia provides that an invoice raised by Operational Creditor should be paid by Corporate Debtor within 7 days of receipt of the invoice, failing which Corporate Debtor shall be liable to pay interest at 18% p.a. from time the date of the invoice. Article 9.2 further provides that Corporate Debtor shall issue fifty undated cheques of Rs.10 lakhs each as security for the biomass fuel supply dues which Operational Creditor shall be free to use in accordance with the payment terms.
3. Pursuant to the said Agreement, Corporate Debtor, under the cover of its letter dated 10<sup>th</sup> November 2015, forwarded to Operational Creditor twenty post dated cheques (of an amount of Rs.20,00,000/- each) drawn by Corporate Debtor in favour of Operational Creditor.
4. However, the post dated cheques drawn and furnished by Operational Creditor were not compliant with the Cheque Truncating System policy and, by reason of which, the same would not be honoured. Operational Creditor informed Corporate Debtor of the same, pursuant to which, Corporate Debtor, under the cover of its letter dated 6<sup>th</sup> February 2016,

forwarded to Operational Creditor ten post dated cheques (of an amount of Rs.20,00,000/- each) drawn by it in favour of Operational Creditor in compliance with the Cheque Truncating System Policy.

5. The Operational Creditor mention that the aggregate amount of the cheques furnished by Corporate Debtor was not in accordance with the Agreement. The aggregate amount of the cheques furnished by Corporate Debtor was only Rs. 2 Crores. In this regard, Corporate Debtor stated that since in the first season of fuel supply, the total value of biomass fuel supply would not exceed Rs. 2 Crores, Corporate Debtor furnished Cheques, the amounts of which only aggregated to Rs. 2 crores and Operational Creditor bona fide believed Corporate Debtor.
6. Meanwhile, Operational Creditor commenced supply of biomass fuel to Corporate Debtor in or around November, 2015. Operational Creditor continued to supply the agreed biomass fuel to Corporate Debtor received delivery of the biomass fuel without any protest and never raised any objection. Operational Creditor raised corresponding invoices upon Corporate Debtor in accordance with the said Agreement.
7. Operational Creditor submits that although certain payments were received by Operational Creditor in respect of certain invoices raised by Operational Creditor (elaborated hereunder), the same were received belatedly and for which Corporate Debtor is liable to pay delayed payment charges to Operational Creditor in accordance with the said Agreement. In addition to the above invoices where Corporate Debtor had made payment to Operational Creditor belatedly, Corporate Debtor had also failed to make payments towards several invoices (elaborated hereunder). The details in respect of the total outstanding dues liable to be paid by Corporate Debtor is set out hereunder.
8. **INVOICES BELATEDLY PAID**
  - a) Operational Creditor submits that in respect of the invoices which are set out hereunder, although Corporate Debtor had paid the invoice amount, the said payments had been made belatedly after 7 days from the receipt of Operational Creditor's invoices. Operational Creditor states that in accordance with the said

Agreement Corporate Debtor is liable to pay interest at the rate of 18% p.a. on account of such belated payment in respect of each invoice. A tabulated statement setting out the amounts Corporate Debtor is liable to pay on account of such belated payment in respect of each invoice, being Rs. 1,01,137/- in total.

**9. INVOICES NOT PAID BY SPARK**

- a) Operational Creditor submits that from 1<sup>st</sup> February 2016 to 7<sup>th</sup> February 2016, Operational Creditor delivered an aggregate of 1840.40 MT of biomass fuel to Corporate Debtor, the price of which amounted to Rs. 44,87,688/-. In respect of the aforesaid delivery of 1840.40 MT of biomass fuel, Corporate Debtor had acknowledged having received the biomass fuel by way of Weigh Bridge Slips issued by it. In respect of the aforesaid delivery, Operational Creditor raised an invoice dated 9<sup>th</sup> February 2016 of an amount of Rs. 44,87,688/- which was sent to Corporate Debtor. The invoice inter alia sets out the date of delivery of the biomass fuel, the number of the Weigh Bridge Slip, the type of biomass fuel delivered, the vehicle number by which the biomass fuel was delivered and the net weigh of the biomass fuel delivered. Operational Creditor states that Corporate Debtor has made part payment of Rs. 28,97,824/- (as elaborated hereunder) and has failed and neglected to make the balance payment in respect of this invoice.
- b) Operational Creditor submits that from 8<sup>th</sup> February 2016 to 14<sup>th</sup> February 2016, Operational Creditor delivered an aggregate of 1528.600 MT of biomass fuel to Corporate Debtor, the price of which amounted to Rs. 37,48,189/-. In respect of the aforesaid delivery of 1528.600 MT of biomass fuel, Corporate Debtor had acknowledged having received the biomass fuel by way of Weigh Bridge Slips issued by it. In respect of the aforesaid delivery of biomass fuel, Operational Creditor raised an invoice dated 17<sup>th</sup> February 2016 of an amount of Rs. 37,48,189/- which was sent to Corporate Debtor.

the invoice inter alia sets out the date of delivery of the biomass fuel, the number of the Weigh Bridge Slip, the type of biomass fuel delivered, the vehicle number by which the biomass fuel was delivered and the net weight of the biomass fuel delivered. Operational Creditor states that Corporate Debtor has failed and neglected to make any payment in respect of this invoice.

- c) Since Corporate Debtor had already defaulted in making payments to Operational Creditor in respect of the above invoices and had also delayed in making payments to Operational Creditor in respect of several other invoices (elaborated hereinabove in paragraph 7), Operational Creditor repeatedly requested Corporate Debtor to clear its dues at the earliest. In response to such repeated requests by Operational Creditor, Corporate Debtor, by a letter dated 18<sup>th</sup> February 2016, informed Operational Creditor that on the account of Corporate Debtor having applied to its lenders for working capital which was taking time to be sanctioned, Corporate Debtor shall honour the delayed payment interest clause of the said Agreement until such time the sanction disbursement formalities were completed. By the said letter, Corporate Debtor unconditionally admitted and acknowledged its liability and assured that it will clear Operational Creditor's dues shortly.
- d) Operational Creditor submits that from 15<sup>th</sup> February 2016 to 21<sup>st</sup> February 2016. Operational Creditor delivered an aggregate of 1861.200 MT of biomass fuel to Corporate Debtor, the price of which amounted to Rs. 45,79,002/-. In respect of the aforesaid delivery of 1861.200 MT of biomass fuel, Corporate Debtor had acknowledged having received the biomass fuel by way of Weigh Bridge Slips issued by it. In respect of the aforesaid delivery of 1861.200 MT of biomass fuel, Operational Creditor raised an invoice dated 25<sup>th</sup> February 2016 of an amount of Rs. 45,79,002/- which was sent to Corporate Debtor. The invoice inter alia sets out the date of delivery of the biomass

- fuel, the number of the Weigh Bridge Slip, the type of biomass fuel delivered, the vehicle number by which the biomass fuel was delivered and the net weight of the biomass fuel delivered.
- e) Operational Creditor submits that from 22<sup>nd</sup> February 2016 to 29<sup>th</sup> February 2016, Operational Creditor delivered an aggregate of 1699.115 MT of biomass fuel to Corporate Debtor. the price of which amounted to Rs. 41,71,654/-. In respect of the aforesaid delivery of 1699.115 MT of biomass fuel, Corporate Debtor had acknowledged having received the biomass fuel by way of Weigh Bridge Slips issued by way of Weigh Bridge Slips issued by it. In respect of the aforesaid delivery of 1699.115 MT of biomass fuel, Operational Creditor raised an invoice dated 3<sup>rd</sup> March, 2016 of an amount of Rs. 41,71,654/- which was sent to Corporate Debtor. The invoice inter alia sets out the date of delivery of the biomass fuel, the number of the Weigh Bridge Slip, the type of biomass fuel delivered, the vehicle number by which the biomass fuel was delivered and the net Weight of the biomass fuel delivered.
- f) Operational Creditor submits that from 1<sup>st</sup> March, 2016 to 8<sup>th</sup> March 2016, Operational Creditor delivered an aggregate of 868.510 MT of biomass fuel to Corporate Debtor, the price of which amounted to Rs. 21,46,120/-. In respect of the aforesaid delivery of 868.510 MT of biomass fuel, Corporate Debtor had acknowledged having received the biomass fuel by way of Weight Bridge Slips issued by it. In respect of the aforesaid delivery of 868.510 MT of biomass fuel, Operational Creditor raised an invoice dated 8<sup>th</sup> March 2016 of an amount of Rs. 21,46,120/- which was sent to Corporate Debtor. The invoice inter alia sets out the date of delivery of the biomass fuel, the number of the Weigh Bridge Slip, the type of biomass fuel delivered, the vehicle number by which the biomass fuel was delivered and the net weight of the biomass fuel delivered.

- g) Operational Creditor submits that from 9<sup>th</sup> March 2016 to 22<sup>nd</sup> March 2016, Operational Creditor delivered an aggregate of 553.015 MT of biomass fuel to Corporate Debtor, the price of which amounted to Rs. 13,80,106/-. In respect of the aforesaid delivery of 553.015 MT of biomass fuel, Corporate Debtor had acknowledged having received the biomass fuel by way of Weigh Bridge Slips issued by way of Weight Bridge Slips issued by Corporate Debtor. In respect of the aforesaid delivery of 553.015 MT of biomass fuel, Operational Creditor raised an invoice dated 23<sup>rd</sup> March 2016 of an amount of Rs. 13,80,106/- which was sent to Corporate Debtor. The invoice inter alia sets out the date of delivery of the biomass fuel, the number of the Weigh Bridge Slip, the type of biomass fuel delivered, the vehicle number by which the biomass fuel was delivered and the net weight of the biomass fuel delivered.
- h) Operational Creditor submits that from 23<sup>rd</sup> March 2016 to 31<sup>st</sup> March 2016, Operational Creditor delivered an aggregate of 64.235 MT of biomass fuel to Corporate Debtor, the price of which amounted to Rs. 1,60,588/-. In respect of the aforesaid delivery of 64.235 MT of biomass fuel, Corporate Debtor had acknowledged having received the biomass fuel by way of Weigh Bridge Slips issued by it. In respect of the aforesaid delivery of 64.235 MT of biomass fuel, Operational Creditor raised an invoice dated 31<sup>st</sup> March 2016 of an amount of Rs. 1,60,588/- which was sent to Corporate Debtor. The invoice inter alia sets out the date of delivery of the biomass fuel, the number of Weigh Bridge Slip, the type of biomass fuel delivered, the vehicle number by which the biomass fuel was delivered and the net weight of the biomass fuel delivered.
- i) Operational Creditor submits that from 9<sup>th</sup> April 2016 to 26<sup>th</sup> April 2016, Operational Creditor delivered an aggregate of 55.095 MT of biomass fuel to Corporate Debtor, the price of which amounted to Rs. 1,37,738/-. In respect of the aforesaid

delivery of 55.095 MT of biomass fuel, Corporate Debtor had acknowledged having received the biomass fuel by way of Weigh Bridge Slips issued by it. In respect of the aforesaid delivery of 55.095 MT of biomass fuel, Operational Creditor raised an invoice dated 30<sup>th</sup> April 2016 of an amount of Rs. 1,37,738/- which was sent to Corporate Debtor. The invoice inter alia sets out the date of delivery of the biomass fuel, the number of Weigh Bridge Slip, the type of biomass fuel delivered, the vehicle number by which the biomass fuel was delivered and the net weight of the biomass fuel delivered.

10. In respect of the amounts liable to be paid by Corporate Debtor towards invoice amounts and delayed payment charges, Corporate Debtor had, by Ledger Confirmation Letters of 1<sup>st</sup> April 2016 and 1<sup>st</sup> May 2016, expressly and unconditionally acknowledged and admitted the outstanding dues to be paid to Operational Creditor.
11. Since Corporate Debtor had failed and neglected in making due payments to Operational Creditor in accordance with the said Agreement, Operational Creditor, from time to time corresponded with Corporate Debtor over telephone, SMS's etc, requesting it to pay Operational Creditor's outstanding dues. During the said correspondence and discussions, Corporate Debtor also requested Operational Creditor not to deposit the cheques furnished by it. However, no payment was ever made by Corporate Debtor.
12. By two emails dated 9<sup>th</sup> April 2016 and 19<sup>th</sup> April 2016, Operational Creditor called upon Corporate Debtor to pay its outstanding dues immediately and stated that failing such payment Corporate Debtor shall be solely responsible for the consequences mentioned therein.
13. Operational Creditor submits that in respect of invoice dated 9<sup>th</sup> February 2016, an amount of Rs. 23,97,824/- was received by Operational Creditor on 20<sup>th</sup> April 2016, and Rs. 5,00,000/- was received on 20<sup>th</sup> September 2016 and as such, the outstanding invoice

amount (i.e. not including delayed payment charges) in respect of the said invoice is Rs. 15,89,864/-.

14. Operational Creditor, by its Notice dated 1<sup>st</sup> August 2016 addressed to Corporate Debtor, reminded Corporate Debtor of Operational Creditor's outstanding dues of Rs. 1,87,88,927/- as on 1<sup>st</sup> August 2016 for the biomass fuel supplied to it for the financial year 2015-16. By the said letter, it was recorded that although Corporate Debtor had acknowledged its liability towards Operational Creditor for the amount of Rs. 1,87,88,927/- and had promised on many occasions to clear the outstanding, but the same was not done till date. Corporate Debtor was called upon to pay the said amount along with interest at 18% p.a. on or before 13<sup>th</sup> August 2016. Corporate Debtor was also informed that in the event the account is not resolved/settled by the specified date, that is, by 13<sup>th</sup> August 2016, Corporate Debtor would be forced to initiate appropriate legal proceedings, criminal as well as civil, against Corporate Debtor at its absolute risk and consequences to recover the debt without further notice to it.
15. Operational Creditor, once again, by its email dated 17<sup>th</sup> August 2016, called Corporate Debtor to make payment of its outstanding dues of Rs. 1, 88, 86, 242/- along with the delayed payment charges thereon and stated that failure to make the payment would compel Operational Creditor to initiate appropriate legal action against Corporate Debtor. Pursuant to the above email being sent to Corporate Debtor, Corporate Debtor's Managing Director Mr. Sanjay Chawla had a telephonic discussion with Operational Creditor's Mr. Madhusoodan Shenoy wherein Corporate Debtor once again agreed to clear the outstanding dues of Operational Creditor in September. Corporate Debtor also addressed an email dated 18<sup>th</sup> August 2016 to Operational Creditor expressly requesting Operational Creditor to wait till September end for payment of Operational Creditor's outstanding dues. By the said email, Corporate Debtor had acknowledged and admitted its liability to Operational Creditor's outstanding dues.

16. Operational Creditor submits that since Corporate Debtor kept requesting Operational Creditor from time to time not to deposit the cheques furnished by Corporate Debtor, Operational Creditor in good faith and in the fond hope that its payments would be made by Corporate Debtor, did not deposit the cheques for collection. As a result of the same, 7 cheques (out of the 10 cheques furnished by Corporate Debtor) ultimately got stale. Operational Creditor deposited the remaining 3 post dated cheques in Bank of Baroda. However, none of the cheques were honoured.
17. Operational Creditor has from time to time sent several reminders/communications to Corporate Debtor in respect of the outstanding dues. Operational Creditor states that despite Corporate Debtor acknowledging its liability towards Operational Creditor and promising to clear the outstanding dues on several occasions by sms/email/letters etc. no action was taken by Corporate Debtor to release the outstanding dues. In view of the above, Operational Creditor stopped supplying fuel to Corporate Debtor. It is pertinent to mention that after delivery of fuel as agreed, at no point in time has Corporate Debtor ever raised any dispute in respect of the fuel supplied by Operational Creditor to Corporate Debtor, in respect of quality or quantity or in any manner whatsoever.
18. Operational Creditor submits that, as on 31.12.2017, a total amount of Rs. 2,40,02,946/- is liable to be paid by Corporate Debtor in accordance with the said agreement towards invoice amounts and delayed payment charges.
19. Operational Creditor, through its advocates, sent Corporate Debtor a Demand Notice dated 23.02.2018 under the Code, 2016 calling upon Corporate Debtor to make payment of Rs. 2,40,02,946/- along with delayed payment charges at the rate of 18% per annum from 01.01.2018 till the date of receipt of the amount, towards Operational Creditor's outstanding dues. By the said Notice, Operational Creditor had enclosed all relevant documents in support of its claim.

20. Operational Creditor submits that despite the several requests made by Operational Creditor for release of their outstanding dues and despite Corporate Debtor admitted its liability to Operational Creditor in respect of the same, Corporate Debtor has failed and neglected to make the payment of the Operational Creditor's dues in accordance with the fuel supply agreement. Operational Creditor craves leave to refer to and rely upon additional documents, if necessary.

**BRIEF SUBMISSIONS OF THE CORPORATE DEBTOR**

21. The Corporate Debtor deny each and every averment and contention of the Petitioner/Applicant and nothing shall be deemed to be admitted by the Respondent unless specifically admitted herein under.

Before the dealing with the Petitioner/Application, I state and submit that the Petition as filed by the Petitioner deserves to be dismissed on the following grounds, which are without prejudice and in addition to each other;

- a) The Petitioner has failed to disclose material facts and documents before this Hon'ble Tribunal which demonstrate a pre-existing dispute between the parties regarding the delivery of goods and services to the Respondent as well as regarding invoices of the Petitioner. The Petitioner is therefore guilty of suppression very and suggestion false. Moreover, the Petitioner has also failed to disclose to this Hon'ble Tribunal.
- b) The Petition is filed on the basis of the alleged Demand Notice (Form 3) dated 23.02.2018. the Respondent submits that the said alleged Demand Notice was never received by the Respondent. It is submitted that even the alleged delivery slip forwarded by email dated 10.04.2018 by the Mumbai GPO does not state whether the alleged Demand Notice was either delivered or rejected by the Respondent. It is therefore submitted that the present Petition being filed on the basis of the alleged demand notice dated 23.02.2018, which was never

received by the Respondent, is not maintainable in law and the provisions of the IB Code. Therefore, in the absence of any valid demand notice as contemplated under the IB Code, the Petition as filed deserves to be dismissed by this Hon'ble Tribunal.

- c) The Petitioner has also not filed along with the Application any Bank Statement or Certificate of any Bank where Deposits are made or Credits received by the Operational Creditor in respect of the alleged Debt of the Respondent. The Petitioner has also not provided any reason whatsoever for not filing the said Bank Statement or certificate. I therefore submit that on this ground alone, the Petition deserves to be dismissed by this Hon'ble Tribunal.

22. The Corporate Debtor submitted that while the Petitioner was supplying the Biomass Fuel to the Respondent under the Agreement, the Respondent vide its emails dated from 15.12.2015 till 22.09.2016 informed the Petitioner that they were supplying the wrong material to the Respondent i.e. the Petitioner was supplying cotton stalk in huge quantities rather than Cane Trash. In the email dated 18.01.2016, it was further stated and confirmed to the Petitioner that the rates for supply of cotton stalk were not fixed and the Petitioner should not supply cotton stalk till the rates are fixed.

23. The Corporate Debtor further submitted that therefore Respondent vide its advocates notices dated 31.01.2017, 30.10.2017 and 06.12.2017 i.e. before the date of the alleged Demand Notice, inter alia informed that Petitioner that they had been supplying cotton stalk instead of Cane Trash to the Respondent in contravention of the agreement and called upon the Petitioner to supply balance 16600 MT of Cane Trash biomass fuel out of the promised 20000 MT under the Agreement. The Respondent further demanded an amount of Rs. 6,00,00,000/- from the Petitioner as compensation for the loss occurred to the Respondent due to non-supply of fuel by the Petitioner. However, the Petitioner falsely and malafidely refused to accept service of the

Respondent's Advocates notices dated 30.10.2017 and 06.12.2017 and were returned to the Respondent as returned unclaimed.

24. The Corporate Debtor further reference to para IV (1) (B) (9), it is denied that the Respondent has by Ledger Confirmation letters dated 1<sup>st</sup> April 2016 and 1<sup>st</sup> May 2016, acknowledged and or admitted any liability towards the Petitioner. Without prejudice to the same I submit that the confirmation of accounts was given under the bonafide mistake that the payments outstanding was for the supply of cane trash and not cotton stalk or any other biomass fuel.
25. In view of the above, Corporate Debtor submit that the Petition filed by the Petitioner is liable to be dismissed with cost and pray accordingly.

### **FINDINGS**

26. The Corporate Debtor has filed Affidavit in reply of Mr. Rajesh Rawal, Director of the Corporate Debtor along with certain annexures viz, two legal notices dated 06.12.2017 and 30.10.2017 got issued by the Corporate Debtor to the Chairman and Managing Director of the Operational Creditor claiming six crore rupees under each of the above notices from the Operational Creditor towards damages, loss of reputation etc. Apart from the above two legal notices the Corporate Debtor also enclosed copy of letters dated 15.12.2015, 18.01.2016, 17.02.2016, 14.03.2016, 11.04.2016 and 22.09.2016 to establish the plea of pre-existing dispute between the parties.
27. In the light of the above pleadings, the following issues that falls for consideration in the above Company Petition;
- I. Whether Demand Notice was duly served on the Corporate Debtor?
  - II. Whether there is any pre-existing dispute between the parties?
28. Let us examine the first issue regarding the service of Demand Notice on the Corporate Debtor. In this connection, it is important to mention here that the Operational Creditor had got issued a Demand Notice under section 8 of the Code to the Corporate Debtor on

23.02.2018 and dispatched the same to the Corporate Debtor by Registered Post AD under consignment bearing no. RM1219583421N dated 23.02.2018. The Operational Creditor attached letter dated 16.03.2018 addressed by MGS legal, Advocate of the Operational Creditor to the post master general requesting the Postal Authorities to intimate the status of delivery of the notice on the Corporate Debtor. The concerned Postal Authorities vide their letter dated 20.03.2018 informed the legal team of Operational Creditor that the said consignment was duly delivered on the Corporate Debtor on 03.03.2018. They have also sent a copy of the delivery sheet along with the above referred letter in which the signature of the Corporate Debtor along with their stamp is clearly reflected. These documents were annexed from page nos. 135 to 168 to the Company Petition.

29. Therefore, it is very clear from the above referred documents that the demand notice was duly served on the Corporate Debtor. Even otherwise as per Section 27 of the General Clauses Act, whenever a Registered Post has been sent by mentioning the correct address, it shall be presumed to have been duly served on the addressee. The burden of non-service is on the opposite party. The Corporate Debtor did not place any evidence before this Bench to disprove the presumption.

30. The next issue is with regard to the pre-existing dispute. As stated above the Corporate Debtor along with their reply filed certain documents viz, two legal notices dated 06.12.2017 and 30.10.2017 got issued by the Corporate Debtor to the Chairman and Managing Director of the Operational Creditor claiming six crore rupees under each of the above notices from the Operational Creditor towards damages, loss of reputation etc. Apart from the above two legal notices the Corporate Debtor also enclosed copy of letters dated 15.12.2015, 18.01.2016, 17.02.2016, 14.03.2016, 11.04.2016 and 22.09.2016 to establish the plea of pre-existing dispute between the parties. In order to decide the above issue of pre-existing dispute, it is important to extract the

following clauses in the fuel supply agreement dated 04.10.2018 entered into between the parties that reads as follows

*Fuel- means biomass as specified in Schedule 3, and in accordance with ARTICLE 4, ARTICLES 6.1, ARTICLES 11.1.*

#### ARTICLE 5, COMMITMENTS OF THE PURCHASER

*5.3. The Purchaser hereby acknowledges the exclusive right of the supplier to supply the Biomass Fuel as specified in Schedule 3. The exclusive right shall not be applicable if any other party offer Biomass Fuel as specified in Schedule 3 from less than Rs. 200 per ton of material offered by PRESPL. The purchaser is not liable to pay any compensation to PRESPL in this case if purchases the said biomass Fuel from any other party for a price difference of Rs. 200 or above. But if the Purchaser violates this exclusive right the amount shall be calculated as per the formula given in Article 14.1.3.*

#### ARTICLE 9, PAYMENT TERMS

##### *9.1. Escalation*

*The rate of biomass will be escalated not less than 10% per annum but depend on all conditions the rate will be mutually agreed by both parties before starting a season. However, if it is envisaged that acquisition rate of biomass has increased substantially by more than 10%, the same will be revised upwards at a mutually accepted rate.*

##### *9.2. Billing, Invoicing rate and payment.*

*All Invoices remitted by the Supplier to the purchaser shall also include all relevant levies, taxes, etc. However, levies taxes etc if any levied by the Government/Local Authority shall be in addition to the price agreed. The supplier shall invoice the Purchaser on weekly basis. The Invoice for the same should be paid by the Purchaser within 7 days of receipt of the Invoices. It is understood by the purchaser that for each invoice cycle the working capital of the supplier is blocked/utilised for 15 days. The*

*payment received after 7 days credit period will be liable to interest @18% p.a. from the date of invoice.*

*The Purchaser shall pay the Supplier's bill which shall comprise of:*

*(Quantity of Biomass x Rate of Biomass + Deduction/Incentive per MT taking Moisture content X Quantity) + Tax if applicable (Inclusive in Agreed price)*

*The Invoice should comprise of:*

- 1. Weekly biomass delivery statement consisting of Date of delivery, gross weight, net weight and moisture percentage,*
- 2. Delivery Challan,*
- 3. Weighbridge slips*

*Within 7 days from the end of each month period, the Supplier will produce a reconciliation statement of the invoices actually submitted in the previous month period and the Actual weekly payment done for the same.*

***The payment mechanism- the payment has to be made within 7 days of submission of Invoice, Further, the Purchaser shall issue 50(fifty) undated Cheques of Rs. 10 lakhs each from ESCROW account as security for the biomass fuel supply dues. The Supplier is free to use these Cheques as per payment terms.***

*The Supplier will provide a credit note/ debit note to the Purchaser for the difference of the reconciliation statement if any.*

*In the event of a dispute relating to any invoice issued by the Supplier, the Purchaser shall pay any undisputed portion within 7 days and shall only be entitled to withhold or reduce payment to the Supplier in respect of the any disputed portion in good faith for which it has issued a notice to the Supplier detailing the nature of and the amount in dispute [within 7 Business Days of the receipt of the invoice and only until such time as the matter is agreed or determined, provided that the Purchaser shall pay the amount agreed or determined to be due and payable within 7*

*Business Days of such agreement or determination with 18% delay payment charges.*

**Delay payment Charges**

*In case of payment of the Invoice being delayed by 7 days, delay payment charges will be levied on to the Purchaser at the rate of 18% p.a. from the date of invoice.*

**Schedule 3**                      List of Biomass with Moisture content

<b>Biomass</b>	<b>Size (mm)</b>	<b>Moisture Content (%)</b>
Cotton Stalk	15-30	20-48
Cane Trash	Bale	15-20
Corn Cob	20-30	15-25
Soya Husk	05-15	10-15
Juliflora	20-40	20-35

31. It is the contention of the Corporate Debtor that the Operational Creditor has supplied Cotton Stalk as alternative fuel in huge quantities rather than Cane Trash contrary to the fuel supply agreement entered into between them. It is also the contention of the Corporate Debtor that they have made certain excess payments to the Operational Creditor in the course of business. It is very clear from the above terms of the agreement that the purchaser has acknowledged the exclusive right of the supplier for supply of biomass fuels specified in Schedule 3. The fuel supply agreement did not specifically mandates supply of cane trash alone and the arguments of the Corporate Debtor that as per the agreement, the Operational Creditor is bound to supply Cane Trash alone is not correct. The Corporate Debtor except filing the copies of the letters addressed by them to the Operational Creditor requesting Operational Creditor to supply Cane Trash, did not place any material

before this Bench to show that they have neither returned the material for deficiency of quality nor did not use the material for their business purpose.

32. It is important to mention here that the Operational Creditor has annexed the ledger extracts of the Operational Creditor sent by the Corporate Debtor from the Books of Accounts of the Corporate Debtor duly annexed at page nos. 120 and 121 to the Company Petition duly confirming the outstanding balance as on 01 April 2016 and 01 May 2016.

33. The Corporate Debtor at para 15 of his reply explained as follows with regard to the above ledger confirmation that reads as here under;

*“...Para-15:- With further reference to para IV (1) (B) (9), it is denied that the Respondent has by Ledger Confirmation letters dated 1<sup>st</sup> April 2016 and 1<sup>st</sup> May 2016, acknowledged and or admitted any liability towards the Petitioner. Without prejudice to the same I submit that the confirmation of accounts was given under the bonafide mistake that the payments outstanding was for the supply of cane trash and not cotton stalk or any other biomass fuel...”*

34. The above explanation given by the Corporate Debtor to the effect that confirmation of the amount was given under bonafide mistake that payment outstanding was for the supply of Cane Trash and not Cotton Stalk or any other biomass fuel cannot be accepted under any stretch of imagination from a big organisation like the Corporate Debtor. The corporate debtor in Para 12 and 13 kept blanks with regard to the excess amounts alleged to have been paid by them to the Operational Creditor which itself shows the height of dishonesty of the Corporate Debtor and also the mechanical approach of the Corporate Debtor in filing the above reply.

35. It is appropriate to mention here that the invoices are for the fuel supply from February 2016 to April 2016. The above acknowledgements of liability upto 01 May 2016 by the Corporate Debtor makes it very clear that the Corporate Debtor made the above admission without any

dispute. As rightly contended by the Operational Creditor the Corporate Debtor vide their letter dated 18.02.2016 agreed to clear the outstanding payments due to the Operational Creditor without raising any dispute and further agreed to pay interest on the delayed payments also. The invoices annexed to the Company Petition from page nos. 94 to 116 clearly shows that the Operational Creditor has supplied both Cane Trash and Cotton Stalk and not cotton stalk alone as falsely contended by the Corporate Debtor. Since the Operational Creditor started exerting pressure on the Corporate Debtor for payment of their outstanding bills subsequent to the admission of liability in May 2016 by the Corporate Debtor, the Corporate Debtor in order to threaten and restrain the Operational Creditor from taking legal action, got issued the above referred legal notices on 30.10.2017 and 06.12.2017 respectively as counterblast as an afterthought which clearly exposes the true colours and the conduct of the Corporate Debtor. It is also appropriate to mention here that the Corporate Debtor also filed another Company Petition bearing CP no 3741 of 2019 subsequent to filing of the present Company Petition by the Operational Creditor as a counterblast.

36. In view of the above observations and findings, this Tribunal has no hesitation in holding that the above plea of pre-existing dispute raised by the Corporate Debtor in this case is only a palpable defence which does not require any further investigation whatsoever to ascertain the existence of any dispute. Under these circumstances this bench is of the considered view that the Operational Creditor has duly discharged his burden of proving the existence of "Operational Debt" and the "default" committed by the Corporate Debtor. In view of the admission of liability made by the Corporate Debtor in the months of April, May 2016 the above Company Petition being filed on 27.04.2018 is well within "limitation" and thus the Company Petition satisfies all the legal requirements for its admission. Accordingly, the above Company Petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) 1559(MB)/2018 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Spark Green Energy (Ahmednagar) Pvt Ltd.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Suyash Rajendra Chhajed** ([suyashchhajed@gmail.com](mailto:suyashchhajed@gmail.com)), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P02271/2020-2021/13490 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**CHANDRA BHAN SINGH  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**