

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB- 1307/ND/2018**

(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)

IN THE MATTER OF:

**M/s RAVI RENEWABLE ENERGY & LIGHTING INDIA PRIVATE
LIMITED**

**...Applicant/Operational Creditor
VERSUS**

M/s MANU ELECTRICALS PVT. LTD.

**...Respondent/ Corporate Debtor
Pronounced on: 19.08.2019**

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. PRADEEP R. SETHI

HON'BLE MEMBER (Technical)

For the Applicant : Mr. Puneet Singh Bindra, Adv.
Mr. Mohan Arya, Adv.

For the Respondent: Mr. S.K. Aggarwal, Adv.
Ms. Shikha Saloni, Adv.
Ms. Amrita Basu, Adv

MEMO OF PARTIES:

M/s RAVI RENEWABLE ENERGY & LIGHTING INDIA PRIVATE LIMITED

Having its Registered Office

Unit No. 107, Best Sky Tower, Netaji Subhash Place

Pitampura, New Delhi-110034

...Applicant/Operational Creditor

VERSUS

M/s MANU ELECTRICALS PVT. LTD.

Having its Registered Office

B-655-656, G.D. Colony

Mayur Vihar, Phase-III

Delhi-110096

.....Respondent/Corporate Debtor

JUDGMENT

SHRI. PRADEEP R. SETHI

1. The instant application is filed by Ravi Renewable Energy & Lighting India Private Limited (**Operational Creditor**) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (**Code**) read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) **Rules**, 2016 (**Rules**) for initiation of corporate insolvency resolution process (CIRP) against M/s Manu Electricals Private Limited (Corporate Debtor).
2. The application is signed by Shri Mohan Arya as representative of the Operational Creditor. His affidavit verifying the contents of the application is at Page 43 of the application. The true copy of the resolution passed at the meeting of the Board of Directors of the Operational Creditor held on 27.08.2018 authorising Shri Mohan Arya to sign/execute and submit all documents for initiation and filing of CIRP against the Corporate Debtor is at Page No. 46 of the application.

3. It is stated in the application that CIN of the Corporate Debtor is U31909DL2005PTC134497 and that the registered office of the Corporate Debtor is 42A, Pocket-BSFS Flab, Mayur Vihar-III, New Delhi-110096. Therefore, the jurisdiction lies with this Bench of the Tribunal.

4. In part IV of the application, it is stated that the total amount of debt is an invoice No. RAVI/LED/DL/185/2017-18 dated 13.03.2018 of Rs. 1,34,26,560/- against the purchase order No. MEPL/2017-18/33/VE and that as on the date of the presentation of the application, the amount claimed as debt is Rs. 81,71,948/- and amount fell due from 22.05.2018 onwards. It is stated that the Operational Creditor had appointed the Corporate Debtor as a non-exclusive distributor on principal basis to promote and distribute the products of the Operational Creditor and as per the arrangement, the Corporate Debtor may issue a purchase order for the product and credit period for the outstanding amount of the Bill was fixed to be a maximum period of 60 days. It is stated that against the invoice value of Rs. 1,34,26,560/-, part payment of Rs. 22,00,000/- dated

13.08.2018 was only received and that the Operational Creditor sent notice for the outstanding amount of Rs. 1,12,26,560/-. The demand notice in Form No. 03 and 04 dated 29.08.2018, is stated to be sent by the Operational Creditor at B-655-656, GD Colony, Mayur Vihar, Phase-II, Delhi-110034. The notice stated to be duly received by the Corporate Debtor on 06.09.2018, but the Corporate Debtor failed to pay any amount much less the defaulted sum within the prescribed period of 10 days. It is stated during the period of issue of demand notice dated 29.08.2018 and service thereof on 06.09.2018 the Corporate Debtor made part payment of Rs. 30,00,000/- dated 31.08.2018 and therefore, the Operational debt of Rs. 81,71,948/- remains pending. In part V of the application, it is stated that security in the name of personal bank guarantee of Rs. 2,00,00,000/- dated 07.03.2018 was held. No Interim Resolution Professional has been proposed in Part III of the application.

5. Vide order dated 03.10.2018, notice was directed to be issued as to why the application for initiation of the CIRP

should not be admitted against the Corporate Debtor. The reply/written statement on behalf of the Corporate Debtor was filed by Diary no. 8668 dated 05.11.2018. It is submitted that the demand notice under Section 8 of the Code for an amount of Rs. 81,71,948/- has not been issued at any time against the respondent. It is stated that there is a dispute with regard to the product warranty/guarantee and invoices, which the Corporate Debtor had on several occasions intimated orally to the Operational Creditor who failed to pay heed and that there is also great doubt regarding the proper execution of the distributor agreement filed as Annexure-1 with the application without any supporting Board Resolution and name of the signatory thereof. It is submitted that it is not mentioned anywhere in the application that the alleged supplies were to be made to IOCL nor the proper receipt of material supplied and acceptance of the same by the IOCL was ever placed on record as per the requirement in the alleged letter of guarantee dated 07.03.2018. Reference has been made to Clause 27 of the alleged distributor agreement dated 15.02.2018 for reference to arbitration under the Arbitration

and Conciliation Act, 1996, it is submitted that the Operational Creditor has in haste moved the Tribunal without exhausting the alternate specific remedy. It is submitted that the transaction is pure and simple agreement of sale and purchase and has not acquired the status of a financial debt at all as many conditions of supplies of alleged material are yet to be clearly supported with relevant documents and that from the statement of account relied by the Operational Creditor, one can see that there have been several transactions and not only the one mentioned in the application.

6. The rejoinder was filed by Diary No. 9238 dated 26.11.2018.

It is stated that on the date of the demand notice dated 29.08.2018, the operational debt due and payable by the Corporate Debtor was Rs. 1,12,26,560/- which was the amount mentioned in the notice. It is submitted that upon receipt of the notice under Section 8, proof of delivery annexed the Corporate Debtor not only failed to disclose existence of any dispute, but also did not deny the amount payable and due towards the Operational Creditor and

moreover, as a gesture of acknowledgement of the due debt, the CD made a payment of Rs. 30,54,612/- on 31.08.2018. It is stated that the execution of the distribution agreement has been duly recognised by the Corporate Debtor in the personal guarantee as Exhibit No. A furnished by the Corporate Debtor along with the said agreement. It is submitted that the Operational Creditor was not obligated to supply the material to IOCL as invoice No. RAVI/LED/DL/185/17-18 dated 21.03.2018 was issued to the Corporate Debtor and hence the claim for warranty of IOCL, if any is not applicable to the Operational Creditor which is not bound or privy to any of the terms of the work order no. 25085341 dated 19.04.2018 issued by IOCL to the Corporate Debtor.

7. It is denied that the Operational Creditor in haste moved and Tribunal without first resorting to statutory requirement of notice and without exhausting alternate specific remedy. It is stated after receipt of the material under the purchase order, the Corporate Debtor has not raised any dispute to the existence of the debt after the

expiry of 60 days, and also at any time before or after the receipt of the demand notice under Section 8 of the Code and as such the Corporate Debtor is liable to be proceeded with under the Code.

8. It is noted in the order dated 07.05.2019 that the learned counsel for the respondent undertook to file detailed correspondence and other documents with IOCL and the Operational Creditor in support of their arguments. The same were filed by diary dated 28.05.2019. It is stated that the Corporate Debtor is a company involved as an electrical contractor being the approved contractor of IOCL for undertaking such works and participated in such tenders through M/s Virex Energy Private Limited (**Virex**) which was the manufacturer of lights and had also taken responsibilities for installation, erection, fixing, testing and commissioning of LED, light fittings of different specifications as per requirements of different divisions of IOCL. A purchase order bearing no. MEPL/DL/2017-18/33 dated 15.02.2018 of Rs. 65,44,195/- is stated to be given to the Operational Creditor for supply at IOCL, Ambala also on behalf of the Corporate Debtor by the manufacturer

company Virex and that for reasons to best known to Virex, they brought in also WM Energy & Lighting Private Limited for installation, fixing, erection and commissioning of LED lights and the Operational Creditor for alleged supply thereby causing all sorts of implications on the Corporate Debtor for no fault on its part and that the Corporate Debtor completely believed Virex particularly its main directors. It is stated that when the Corporate Debtor got threatening letters from IOCL regarding non-rectification of the defects in the lights supplied by Virex to the Operational Creditor and also for black listing, the Corporate Debtor woke up to great revelations and short comings on the part of the Virex, which had brought in other companies like the Operational Creditor for completion of the work order by signing all the documents on behalf of the Corporate Debtor. It is submitted that against the alleged purchase orders of exaggerated amount of Rs. 2.15 crores, the supplies were only to the tune of Rs. 1,21,57,932/-. It is stated that a letter dated 02.05.2019 was written to the Operational Creditor along with categorical threatening letter dated 16.04.2019 received from IOCL Ambala, the liabilities were

avoided by an evasive reply dated 04.05.2019. It is stated that in the absence of the payment from IOCL against various work orders particularly those in which Virex routed the supplies through the Operational Creditor, the Corporate Debtor is contemplating action against both the defaulting companies to fasten the liabilities and responsibilities on to them as per the terms and conditions of the work orders.

9. The response on behalf of the Operational Creditor to the written submissions filed by the Corporate Debtor has been filed by Diary dated 11.06.2019. It is submitted that the principal warranties as laid down by IOCL were placed only upon (i) Corporate Debtor, being the principal contractor and (ii) manufacturer of goods, the principal manufacturer. The Operational Creditor cannot be said to have a vicarious liability towards IOCL of the Corporate Debtor. It is stated the Corporate Debtor has made complete payments with respect to the invoice No. RAVI/LED/174/17-18 dated 21.02.2018 and no part of it has been claimed by the Operational Creditor in the present proceedings. It is stated

that the Corporate Debtor has failed to substantiate averment that the goods to be supplied as per any of the purchased orders issued were not supplied by the Operational Creditor to the Corporate Debtor or that the goods have not been received by IOCL and that there was a pre-existing dispute between the Operational Creditor and the Corporate Debtor before the receipt of statutory demand notice under the Code.

10. During the course of the arguments, the learned counsel for the Operational Creditor has referred to the distribution agreement dated 15.02.2018, purchase order dated 13.03.2018 and invoice dated 21.03.2018 and has pleaded that no dispute was raised by the Corporate Debtor before the issue of the Demand notice dated 10.05.2018 and the demand notice also remained un-responded. The learned counsel for the Corporate Debtor has pleaded that defects in the lights within the first year of commissioning and non-functioning of most of the lights in the Ambala Division of IOCL was received vide IOCL letter dated 16.04.2019 and communicated to the Operational Creditor

by letter dated 02.05.2019. However, no action for the rectification of the defects was taken by the Operational Creditor.

11. We have carefully considered the submissions of the learned counsel for the Operational Creditor and Corporate Debtor and have also perused the record. Along with the application, the Operational Creditor has filed a copy of the distribution agreement dated 15.02.2018, purchase order dated 13.03.2018, invoice dated 21.03.2018 for Rs. 1,34,26,560/- and letter of continuing guarantee executed by Shri Jagvir Singh Solanki, Director of the Corporate Debtor on 07.03.2018. One of the contentions raised by the Corporate Debtor is that against the invoice amount of Rs. 1,34,26,560/-, supplies only to the tune of Rs. 1,21,57,932/- were made with admitted short supplies of material worth Rs. 12,68,328/-. The claim of short supply was only made in the submissions filed by Diary dated 28.05.2019, the short supply, if any, is not shown to have been brought to the notice of the Operational Creditor at any time before the service of the demand notice and even before

the filing of the application. Therefore, the contention cannot be accepted.

12. The distribution agreement dated 15.02.2018 is sought to be assailed on the ground that there was a great doubt regarding the proper execution of the distributor agreement and there was no supporting Board Resolution of the Corporate Debtor and name of the signatory thereof. In the rejoinder, the Operational Creditor has submitted that the Corporate Debtor has not denied the existence of the distribution agreement and the execution of the distribution agreement is duly recognised by the Corporate Debtor as Exhibit A of the personal guarantee. We find that the letter of continuing guarantee dated 07.03.2018 given by Shri Jagvir Singh Solanki, Director of the Corporate Debtor is in respect of the Operational Creditor granting/agree to grant to the Corporate Debtor credit facilities up to a maximum principal amount of Rs. 2 crores. The guarantee inter alia states that the guarantor promises to make all payments to the Operational Creditor in the same manner as if they were the principals of the agreement attached as Exhibit 'A'. In

view of the contents of the letter of continuing guarantee dated 07.03.2018 (supra), the doubt raised by the Corporate Debtor regarding the distribution agreement of 15.02.2018 is not accepted.

13. The Corporate Debtor has submitted that clause 27 of the distribution agreement dated 15.02.2018 provides for reference to arbitration under Arbitration and Conciliation Act, 1996. No such reference is stated to have been made. The remedy of reference to arbitration cannot preclude the Operational Creditor from making an application under Section 9 of the Code.

14. It is pleaded by the learned counsel for the Corporate Debtor that as per the letter of guarantee dated 07.03.2018, the alleged supplies were to be made to IOCL and proper receipt of material supplies and acceptance of the same by the IOCL with regard to the material was to be placed on record. The conditions are a part of the letter of continuing guarantee. Therefore, these are the conditions required to be satisfied before the guarantee can be invoked. Moreover, the conditions do not place any responsibility on the Corporate

Debtor to make the supplies to IOCL and got the acceptance of IOCL, no such conditions in distribution agreement are also brought to notice. The learned counsel for the Operational Creditor has pleaded that the Operational Creditor was not obliged to supply the material to IOCL as invoice No. RAVI/LED/DL/185/17-18 dated 21.03.2018 was issued to the Corporate Debtor and hence the question of delivering material to IOCL and warranty of the material towards IOCL does not arise.

15. The learned counsel for the Corporate Debtor has pleaded that Virex routing the supplies through the Operational Creditor is a well-hatched conspiracy and that the Corporate Debtor is contemplating action against both the companies to fasten the liabilities and responsibilities on them as per the terms and conditions of the work orders. It has been submitted by the learned counsel for the Operational Creditor that the principal warranties as laid out by IOCL were placed only upon the Corporate Debtor being the principal contractor and the manufacturer of goods being the principal manufacturer and therefore, for any non-performance, the Operational Creditor cannot be said to

have a vicarious liability towards IOCL or the Corporate Debtor. The learned counsel for the Corporate Debtor has not brought to our notice any agreement by which the Operational Creditor would be under vicarious liability. The plea raised is not occupied

16. The learned counsel for the Operational Creditor has submitted that after receipt of the material under the purchase order, the Corporate Debtor has not raised any dispute to the existence of the debt after the expiry of 60 days, and also at any time before or after the receipt of the demand notice under Section 8 of the Code. The dispute is sought to be raised by the Corporate Debtor vide letter dated 02.05.2019 and submissions made vide diary dated 28.05.2019 i.e. after the application under Section 9 of the Code was filed on 27.09.2018.

17. In view of the above discussion, the claim of the dispute raised by the Corporate Debtor cannot be accepted

The provisions of Section 9 (5) of the Code are as follows:

The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no repayment payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

*(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility;
and*

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

18. In the present case, the objections raised to the completeness of the application were only that the demand notice under Section 8 of the Code for the amount of **Rs.**

81,71,948/- was not issued. The contention is not accepted since a demand notice under Section 8 of the Code dated 29.08.2018 was issued for the amount of Rs. 1,12,26,560/- due as on that date. It is accepted that the Operational debt to the extent of Rs. 81,71,948/- noted in the application is unpaid. **No objections are** raised that the demand notice dated 29.08.2018 has not been delivered to the Corporate Debtor. The affidavit has been filed by the Authorised Representative of the OC that no notice was given by the Corporate Debtor relating to the dispute of unpaid operational debt. There is no plea raised on behalf of the Corporate Debtor that the demand notice under Section 8 of the Code was replied.

19. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfilment of requirements under section 9(5) of the Code. Hence, the present application is admitted.

20. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

21. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Rakesh Kumar Jain having registration no. IBBI/IPA-001/IP-P01297/2018-2019/12068 and email address is rakeshjainca@rediffmail.com and contact number is 9811455641, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

22. 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 Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in vogue.

23. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.

24. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-

(SH. PRADEEP R. SETHI)
MEMBER (TECHNICAL)

Sd/-

(DR. DEEPTIMUKESH)
MEMBER (JUDICIAL)