

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
Court 2**

(MP) CP(IB) 22 of 2020

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
Mr. VIRENDRA KUMAR GUPTA, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH AT
AHMEDABAD OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.03.2021**

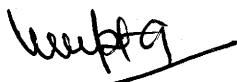
Name of the Company: J.C. Enterprises Pvt Ltd
V/s
Jainam Alternate Energy Pvt Ltd

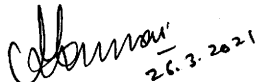
Section 9 IBC, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER
(through video conferencing)

The Order is pronounced in the open court vide separate sheet.


VIRENDRA KUMAR GUPTA
MEMBER TECHNICAL
Dated this the 26th day of March, 2021


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
AT AHMEDABAD**

COURT – 2

MP/CP (IB) No. 22/9/NCLT/AHM/2020

In the matter of:

J.C. Enterprises Private Limited

H 12 & 13 Industrial Area

Kosi Kalan, Mathura

Uttar Pradesh 281 403

:

Petitioner

(Operational Creditor)

Versus

Jainam Alternate Energy Private Limited

(erstwhile known as Pithampur Petro-Pharma Pvt. Ltd.)

Plot No. 505, Sector – III

Industrial Area

Pithampur

MADHYA PRADESH 454 775

Respondent

(Corporate Debtor)

Order delivered on 26th March, 2021.

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Virendra Kumar Gupta, Member (T)**

Appearance:

Mr. Manan Paneri, Advocate for the Petitioner-Operational Creditor.

Ms. Shaili A. Shah, Advocate for the Respondent-Corporate Debtor.

ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

1. The present Company Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ["I&B Code" for short] read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ["Rules" for short], by the Operational Creditor, viz., J.C. Enterprises Private Limited, through its Authorized Signatory, Mr. Sanjay Jain, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Jainam Alternate Energy Private Ltd., (hereinafter referred to as Corporate Debtor).

2. The Petitioner-Operational Creditor is incorporated under the provisions of the Companies Act, 1956 having identification No. U24119UP2004PTC028551 and having registered office at Mathura, Uttar Pradesh.
3. The corporate debtor, i.e. Jainam Alternate Energy Private Ltd. is incorporated under the provisions of the Companies Act, 1956, on 12.12.2000 having identification No. U23209MP2000PTC014487 and having registered office at Pithampur, Madhya Pradesh. Authorized share capital of the corporate debtor is Rs.85,00,00,000/- and paid up share capital is Rs.27,50,820/-.
4. The petitioner-operational creditor has submitted that against the purchase order of corporate debtor dated 6th May, 2019, the petitioner had supplied 110 metric tonnes of fuel oil at the rate of Rs. 31,000/- per metric tonne, had raised e-way bill and invoices, all dated 6th May, 2019, for a total amount of **Rs. 38,95,952/- (Rupees thirty-eight lacs ninety-five thousand nine hundred fifty-two only)**, delivery of the goods was acknowledged by the corporate debtor without raising any dispute thereto.
5. The applicant has further submitted that, despite repeated reminders, till date, the corporate debtor has not made payment and the debt became due on 6th May, 2019, therefore, this petition.
6. The petitioner filed the present petition supported with copies of purchase order dated 6th May, 2019, five invoices all dated 6th May, 2019, copy of demand notice dated 8th July, 2019 along with proof of delivery and reply dated 20.07.2019, copy of authorisation of the person submitting application etc.

7. Mr. Pravin Jain, Director of the respondent/corporate debtor filed affidavit in reply inter alia raising various objections. The first and foremost objection raised by the respondent is that there is pre-existing dispute with regard to specification of the goods supplied by the petitioner, therefore, the petition is not maintainable.
8. It is further submitted by the respondent that while carrying out the quality checks the specification parameters of the product were found different from that of the actual requirement of the corporate debtor as density of the product was 0.950 kg/ltr. which was higher than what was prescribed while placing the purchase order.

Findings:

9. Heard learned counsels appearing for both the sides and perused the documents annexed to the application/reply.
10. On perusal of the record it is found that against order dated 06.05.2019 the applicant had delivered the goods on 06th May, 2019 itself and all the invoices were raised on the same day. It is found that the respondent of its own had carried out analysis of the product on 09.05.2019 (Annexure "D" - page 45 to the reply) and subsequently sent to another laboratory viz. SGS Oil, Gas and Chemicals, Thane for detailed examination. Report of SGS Oil is available at page No. 46 to the reply.
11. On perusal of the record it is found that the demand notice dated 08.07.2019 issued by the petitioner through advocate, delivered to the respondent on 11.07.2019, is replied by the respondent vide email dated 20.07.2019. As per the records available, for the first time, by email dated 20.08.2019 (page 52), the respondent has complained that the goods supplied by the applicant has been rejected and Rs. 500/- per M.T. per month will be charged towards storage charges. The subsequent emails dated 26.08.2019,

31.08.2019, 02.09.2019 (page 51), 06.09.2019, 09.09.2019, 21.09.2019 (page 49), 3.10.2019, 8.10.2019 and 21.10.2019 addressed to the applicant by the respondent show that the respondent kept on asking the applicant to take back the goods supplied on 06.05.2019. It is pertinent to mention here that in email dated 31.08.2019 (page 51) the respondent has turned down request of the applicant to draw the sample of the product supplied by the applicant and lying with the respondent, under the pretext that the applicant has not provided specifications of the product supplied by the applicant. The subsequent email communications also show that request of the applicant to draw sample of the product has not been entertained by the respondent. On one hand the respondent kept on asking the applicant for certificate of analysis, whereas, on the other hand, the respondent has annexed copy of certificate of analysis at page No. 45 & 46 to the affidavit in reply.

12. On perusal of the records it is found that the respondent has claimed (page 33 to the reply) that the at the behest of the petitioner, transportation cost was paid by the respondent, whereas, copy of the purchase order dated 06.05.2019 (page 3 – Annexure II to the application) stipulate as under:

Terms & Conditions

1. GST – As applicable at the time of delivery of material will be extra.
2. Delivery Ex Mumbai
3. Payment: Immediately after receipt of material
4. Specifications: Quality of material supplied should be strictly in accordance with our requirement
5. Certificate of analysis to be sent along with the delivery challan/invoice
6. **Transportation: Manage by us"**

13. From the above it is evident that the respondent has not adhered to the terms and conditions of the order and has

raised the issue of quality/specifications of the product as a moonshine defence for not paying the operational debt. Had there been any serious issue with regard to specification/quality of the product supplied by the applicant, the respondent could have returned the product immediately on receipt of certificate of analysis dated 09.05.2019 and 18.05.2019.

14. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted.
15. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no pre-existing dispute regarding the operational debt from the side of the corporate debtor.
16. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
17. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
18. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ (JP) 2 SC*** that while examining an application under Section 9 of the Act, will have to determine the following: -
 - (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)

- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

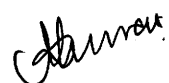
and

- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

19. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. No dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

20. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency



Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

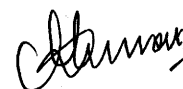
21. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
22. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
- (i) 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;
 - (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (54 of 2002);
 - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
23. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

24. The order of moratorium shall have effect from the date of receipt of authenticated copy 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.
25. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. This adjudicating Authority hereby appoint Mr. Vijay Prakash Usharia, B-17/16 Mahananda Nagar, Ujjain, Madhya Pradesh (Mobile 9962031550 E mail vijay.usharia1317@gmail.com) having Registration No. IBBI/IPA-001/IP-P01344/2018-2019/12015 to act as an interim resolution professional under Section 13(1)(c) of the Code.
26. This Petition is accordingly admitted.
27. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
28. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.



Virendra Kumar Gupta
Adjudicating Authority
Member (Technical)

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Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)