

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

**C.P. (I.B) No.474/NCLT/AHM/2019**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.09.2020**

Name of the Company: Swati Switchgears (India) Pvt Ltd  
V/s  
Sai Applied Technologies Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code,  
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)**

No one shown appearance on behalf of the parties.

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



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 28th day of September, 2020



**MANORAMA KUMARI  
MEMBER JUDICIAL**

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

**CP (IB)No.474/9/NCLT/AHM/2019**

*(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)*

**In the matter of:**

**Swati Switchgears (India) Pvt  
Ltd.**

**Registered Office At:**

36, Shubhlaxmi Indl. Estate,  
Opp. Saket Indl. Estate Sarkhej-  
Bavla Highway, Vill. Moraiya  
Changador Ahmedabad 382210,  
Gujarat, India.

..... Petitioner  
(Operational Creditor)

**Versus**

**Sai Applied Technologies Pvt  
Ltd.**

**Registered Office At:**

Shed No. 230, GIDC Makarpura  
Road Vadodara 390010,  
Gujarat, India.

..... Respondent  
(Corporate Debtor)

Order delivered on 28.09.2020.

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)  
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**


**Appearance:**

Advocate, Mr. Kamlesh Vaidankar appeared for the Petitioner.  
Advocate, Mr. Ishan Shah, appeared for the Respondent.

**ORDER**

**[Per se: Mr. Chockalingam Thirunavukkarasu, Member (T)]**





1. The present Application is filed under Section 9 read with Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Code, 2016 (hereinafter referred to as "I & B Code") by the Operational Creditor, viz., M/s. Swati Switchgears (India) Pvt Ltd, through its authorized representative Mr. Vikram Parmanand Shah, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of M/s. Sai Applied Technologies Pvt. Ltd. (hereinafter referred to as "Corporate Debtor company").
2. The Corporate Debtor Company, M/s. Sai Applied Technologies Pvt. Ltd., registered under the Companies Act, 1956 and having its registered office at Shed No. 230, GIDC Makarpura Road Vadodara 390010, Gujarat, India vide CIN: U72200GJ2014PTC079526, date of incorporation is on 9<sup>th</sup> May, 2014. The corporate debtor company is engaged in the business of Instrumentation Automation and Communication Solutions for water and wastewater industry in India.
3. The Nominal Share Capital of the respondent-corporate debtor company is Rs.4,00,00,000/- (Rupees Four Crore only) and Paid-Up Share Capital is Rs.3,45,24,000/- (Rupees Three Crore Forty-Five Lakhs Twenty-Four Thousand only).





4. Petitioner/Financial Creditor submitted that as per Part IV of the application in Form 5, the total amount of Rs. 19,76,333/- (Rupees Nineteen Lakhs Seventy-Six Thousand Three Hundred Thirty-Three Only) is due from the Respondent/Corporate Debtor (Principle amount 12,83,237/- plus interest of Rs. 6,93,096/- at 18% p.a).
5. The Petitioner submitted that they are an engineering unit and had supplied various electronic items to the Corporate Debtor as per the purchase order. They have enclosed the copy of purchase order and invoice raised on the Corporate Debtor, Lorry way bill, delivery challan etc in support of their claim. It is submitted that they have raised various invoices amounting to Rs. 89,59,566/- against which they have received part payment and the balance outstanding amount is Rs. 12,83,237/- and interest outstanding is Rs. 6,93,096/-.
6. Petitioner submitted that they have sent demand notice on 17.05.20219 and the Corporate Debtor has not shown any interest on making the payment against outstanding amount.
7. The Respondent has further submitted that they have taken a tender issued by Government of Rajasthan for Department of Public Health and the Respondent has to finish the work of "Jawal Plpeling & Cluster Project-II" at village Pali in Rajasthan and for that purpose they have engaged the Petitioner to Supply, Install, Test, Start and Commissioning the main controlling electric penal of water boring system. It is a time bound manner job and if it is not finished within the time frame, it will affect the villagers and the villagers will suffer for water, as no other sources are available.
8. It is submitted by the Corporate Debtor that the Petitioner has raised 4 invoices against which 90% payment has been made,

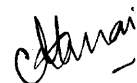
*Shankar Singh*

*Abhinav*

as per the terms of payment of the Purchase Order and, only 10% of invoices is outstanding.

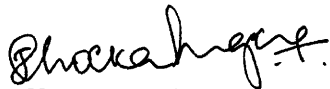
9. It is submitted by the Corporate Debtor that after agreeing for the terms and conditions and taking up the work, the Petitioner has failed to supply the goods on agreed time schedule. Further, the Petitioner has not provided support and not deputed engineers in time for commissioning the projects and to solve the technical issues. Various mails have been exchanged between the Respondent and Petitioner from February 2017 to August 2017, which are enclosed along with the reply.
10. Examined the documents submitted by both sides and heard the arguments of learned lawyers of both sides.
  - 10.1 The demand notice dated 17.05.2019 is signed and issued by legal counsel Mr. Jayesh C Dwivedi. No authorisation papers have been filed in support showing authorisation given by the Petitioner Company to the legal counsel to issue demand notice.
  - 10.2 The purchase order was issued on 08.01.2016 and the last date of invoice was on 25.04.2016. The last date on which the payment was received by the Petitioner from the Corporate Debtor is on 27.05.2016. The petition is filed on 08.07.2019. The petition is filed after the expiry of three years from the date on which the last payment was received. Hence the petition is barred by law of limitation.
  - 10.3 Apart from the above there are various correspondences, mails exchanged between the parties from February 2017 to August, 2017 regarding delay in delivery and for not providing support required for commissioning of the





equipments showing existence of dispute before the issue of demand notice on 17.05.2019.

- 10.4 Further, payment terms as per Clause 10 of the purchase order specified that 10% of the payment will be made after successfully commissioning at site. The petitioner has not submitted any commissioning report. However, Petitioner has contended that the Joint Inspection Reports were signed by both the parties and based on the Joint Inspection Reports, he is eligible to get the full payment and enclosed the copy of the Joint Inspection Reports. The Joint Inspection Reports show that Pre dispatch inspection has taken place and it is cleared for dispatch and it has not mentioned anything about completion of commissioning at site.
11. For the reasons stated above, this Adjudicating Authority is of the view that the petition does not qualify for admission under Section 9 of the IB Code and therefore, the same is rejected. No order for cost.
12. It is made clear that observations made in this order shall not be construed as an expression of opinion on the merits of the controversy. The rights of the Petitioner before any other forum shall not be prejudiced on account of dismissal of the instant petition.
13. Registry is directed to communicate this order to both parties.



**Chockalingam Thirunavukkarasu  
Adjudicating Authority &  
Member (Technical)**



**Manorama Kumari  
Adjudicating Authority &  
Member (Judicial)**