

Sa. No- 229/2019

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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: DR. POONDLA BHASKARA MOHAN,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

Company Petition No. (IB)- 237/9/JPR/2019

(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:

SURYAA CHAMBALL POWER LIMITED

**...OPERATIONAL CREDITOR/
APPLICANT**

VERSUS

PRAKRITI POWER PRIVATE LIMITED

**...CORPORATE DEBTOR/
RESPONDENT**

For the Applicant:
National Company Law Tribunal
Jaipur

For the Respondent:

**Shivangshu Naval, Adv.
Raunak Bapna, Adv.**

Uddyam Mukherjee, Adv.



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Suryaa Chamball Power Limited
Versus

Prakriti Power Private Limited

Assistant Registrar

MEMO OF PARTIES

Suryaa Chamball Power Limited
Registered Office At: - Village Rangpur,
 Tehsil Ladpura, Kota- 324002 (Rajasthan)

...Operational Creditor/Applicant

VERSUS

Prakriti Power Private Limited
Registered Office at: Village - Punjiyas,
 Jaroda Kala, Merta Road,
 Mertacity, Nagaur- 341511 (Rajasthan)

...Corporate Debtor/Respondent

Order Pronounced On: 25.09.2019

ORDER

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Suryaa Chamball Power Limited (for brevity 'Applicant') claiming to be an Operational Creditor, with a prayer for initiation of Corporate Insolvency Resolution Process against Prakriti Power Private Limited (for brevity "Corporate Debtor"). This Application is filed through Mr. Girish Agarwal

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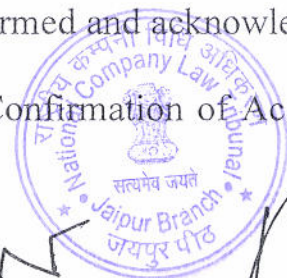
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an Authorised Representative of the Applicant, authorised vide Board Resolution dated 01.08.2017.

2. The Applicant is a Public Limited Company, registered with Registrar of Companies, Jaipur bearing CIN: U31909RJ1997PLC013826 and the Registered Office of the Applicant is at Village- Rangpur, Tehsil - Ladpura, Kota- 324002 (Rajasthan).
3. The Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 08.06.2007, duly registered with Registrar of Companies, Jaipur bearing CIN: U40102RJ2007PTC043170 and the Registered Office of the Corporate Debtor is at Village Punjiyas, Jaroda Kala, Merta Road, Mertacity, Nagaur- 341511 (Rajasthan).
4. It is the case of the Applicant that as per the request of the Corporate Debtor vide letter dated 22.12.2011, the Applicant had placed a purchase order for procurement and installation of weighbridge of 40 MT capacity at the premises of the Corporate Debtor at Gangapur City. As per the request of the Corporate Debtor, the Applicant has also issued purchase order dated 07.01.2012 on M/s Jyoti weighing Systems Limited. In respect of the same the Applicant had raised debit notes dated 31.03.2012 and 31.03.2013 for amount of Rs. 8,64,250/- and Rs. 4,29,292/- respectively against the Corporate Debtor. The Corporate Debtor has confirmed and acknowledged the total due amount of Rs. 12,93,542/- through Confirmation of Account

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letters dated 1.04.2015, 01.04.2016, 01.04.2017 and 01.04.2018. Copies of these letters are annexed as Annexure-D with the Application. It seen from the document filed by the Applicant that the Corporate Debtor in its Balance Sheet for the Financial year 2014-2015 under the head Other Long-Term Liabilities has shown that an amount Rs. 12,93,542/- is due to the Applicant.

5. The applicant had issued numerous letters to the Corporate Debtor to make payment of Rs. 12,93,542/- but all went in vain. Thus, the applicant issued demand notice under Section 8 of the Insolvency and Bankruptcy Code for an amount of Rs. 12,93,542/- dated 28.11.2018 on the Corporate Debtor, which was duly received by Corporate Debtor through post on 05.12.2018. Copy of tracking report as proof of service of said Section 8 notice is annexed as Annexure- E with the Application.
6. It is submitted that the Corporate Debtor did not reply to the said notice nor made any payment after receiving the demand notice. The applicant therefore filed the present Application under Section 9 of Insolvency and Bankruptcy Code, 2016 and duly served to the corporate debtor.
7. The Applicant has filed certificate under Section 9 (3) (c) of Insolvency and Bankruptcy Code, 2016 from the UCO Bank, Rampura Branch confirming that there is no payment by the Corporate Debtor during the period 01.04.2018 to 01.02.2019.

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8. The total amount claimed by the applicant as mentioned in Part IV is a sum of Rs. 12,93,542/- excluding interest of Rs. 8,79,609/- as an outstanding amount which is due and payable by the corporate debtor as described below:

PART IV

Sr. No.	Particulars of Operational Debt	
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.	Rs. 12,93,542/- (Principal Debt) + Interest @12 % p.a. from 01.04.2013 till the date of payment
2.	Amount claimed to be in default and the date on which the default occurred	<ul style="list-style-type: none"> • Rs. 12,93,542/- (Rupees Twelve Lakh Ninety-Three Thousand Five Hundred and Forty-Two Only) as Principal and Rs. 8,79,609/- (Rupees Eight Lakh Seventy-Nine Thousand Six Hundred Nine Only) as Interest. Total amount claimed: Rs. 21,73,151/- • Date of default is the date of last acknowledgment i.e. 01.04.2018

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9. The Corporate Debtor has filed reply through its authorised representative Mr. Ashok Kumar M. Lulla on 24.05.2019 and raised a preliminary objection of limitation. The Corporate Debtor submits that the Debit Notes of Rs. 8,64,250/- and Rs. 4,29,292/- fell due on 01.04.2013. The confirmation of accounts on which the applicant the relying for the year 2014-15 was signed by Mr. S. R. Wagle and for the years 2015-16, 2016-17 and 2017-18 were signed by Mr. Jagdish Kabra. The Corporate debtor submits that both Mr. S.R. Wagle and Mr. Jagdish Kabra had no authority to sign any account / financial statement on behalf of the Corporate Debtor. Thus, the corporate debtor submits that the Application filed by Applicant is barred by limitation.
10. The Corporate Debtor further submits that two Settlement cum Termination Agreements dated 24.08.2018 were executed between Corporate Debtor, Focal Biomass Holdings Limited, Mr. Sanjay Bagrodia (Promoter of Corporate Debtor and Applicant) and Sunborne Energy Rajasthan Solar Private Limited, and another Agreement was executed between Sathyam Green Power Private Limited, Focal Energy Projects Limited, Focal Biomass Holding Limited, Mr. Sanjay Bagrodia and the Corporate Debtor. It is stated that by the said Agreements all disputes between Mr. Sanjay Bagrodia and Corporate Debtor had been settled. It is further submitted that the said settlement was placed before this tribunal in IB -108(PB)2017, CP No. 350(ND)/2017 and CP No. 49/71/ND/2018 an Application filed by Mr.

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Sanjay Bagrodia against the Corporate Debtor and on the basis of the said Settlement Agreement the said Applications were dismissed as withdrawn. The Corporate Debtor further submits that the said Settlement cum Termination Agreement reflects the intention of the parties to settle all claims which may have been brought by Mr. Sanjay Bagrodia, himself or through his companies, including the Applicant against the Corporate Debtor and it is evident from the exchange of emails between the Applicant and the Corporate Debtor. In email dated 21.08.2017 the applicant has proposed the following settlement:

"If, so desired, Sanjay and Suryaa Chamball may take the weigh bridge after settlement with Prakriti. Alternatively, he may wait till the same is disposed of and the amount realized from its sale will be refunded to Suryaa Chamball after adjusting demurrage charges / expenses incurred by Prakriti towards its storage / civil work".

11. The Corporate Debtor submits that on 01.11.2017 the advocate for Mr. Sanjay Bagrodia (Petitioner before NCLT, New Delhi Bench in C.P. No. 350/2017) addressed a letter to the Advocate for the Corporate Debtor setting out a proposal for an amicable settlement. It is stated in the said letter that under item 3 of the "Summarized Balance Sheet of Prakriti Power Pvt. Ltd." Rs.12.94 lakhs were owed to "Sundry Creditors". Further, "Alternative 2" of the settlement proposal required Rs. 12.94 to be paid to the Applicant who was the "Sundry Creditors" therein.

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12. The Corporate Debtor submits that due amount of Rs. 12,93,542/- had been disputed by the Corporate debtor and submits that it is evident from email dated 21.08.2017 that the cheques for the amount of Rs. 12,93,542/- sent by the Applicant to obtain signatures of the Authorized Signatories of the Corporate Debtor had been sent back unsigned. The Corporate Debtor disputes the purchase order dated 22.12.2011 as the same was signed by Mr. J.C. Dargar, who was a representative of Mr. Sanjay Bagrodia and an authorised signatory of the Corporate Debtor. It is further submitted that the dues are with respect to a weigh bridge which was procured on the specific request of Mr. Sanjay Bagrodia and not the Corporate Debtor for procurement of fuel at the Applicant's Plant in Kota. It is further submitted that the Corporate Debtor made several attempts to return the weighbridge to the Applicant but the Applicant refused to cooperate. The Corporate debtor had transported the weighbridge to the Applicant's Plant in Kota on 02.03.2019 but the Applicant has refused to allow it to be unloaded. Copy of images taken near the Applicant's premises showing Corporate Debtor's attempts to return the weighbridge are annexed as Annexure R-12 with the reply.

13. The Applicant has filed rejoinder and submits that the Corporate Debtor has confirmed and acknowledged the balance due to the Applicant commencing from 01.04.2015 to 31.03.2018 thereby saving the claim from being time

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barred. It is further submitted that Mr. S. R. Wagle and Mr. Jagdish Kabra had signed the confirmation of Accounts in their capacity as directors of the Corporate Debtor. It is further submitted that the Applicant is not a party to both the two Agreements referred by the Corporate Debtor and no disputes have been settled vide execution of the said agreement. It also submitted that the two agreements pertain to the disputes arising out of Shareholders Agreement (SHA) signed by Mr. Sanjay Bagrodia with Sathyam Power and the Corporate Debtor. It is further submitted that the CP No. 350(ND)/2017 and CP No. 49/71/ND/2018 filed against Corporate Debtor by Mr. Sanjay Bagrodia pertained to issues completely unrelated to the one raised in this present Application. It is further submitted that the Applicant was under no obligation to accept the Weighbridge if the Corporate Debtor has failed to make payments to the Operational Creditor.

14. The Corporate Debtor has filed its Written arguments on 12.09.2019 and states that the disputes have been brought to the attention of the applicant in 2017. It is further stated that the applicant is bound by the arrangement agreed in the Settlement Agreement as can be referred from clause 6.01 which reads as:

“Subject to Clause 5, in consideration for the faithful performance of the terms of this Agreement, the Parties, for themselves and their shareholders, personnel, advisors, officers, representatives and

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affiliates, do hereby relinquish, waive, release, acquit and forever discharge each other of and from any and all claims, disputes, actions, charges, contractual obligations, complaints, causes of action, rights, demands, debts, damages, or accountings of whatever nature, at law or in equity, known or unknown, asserted or not asserted, which they have now or may have in the future against one another, based on any actions or events prior to the date of this Agreement, including without limitation, the Disputes and any matters arising out of or related to the Prakriti SHIA, as well as Articles of Association of Prakriti, and any claims for delay, disruption and impact and any claims (including claims based on statute or equity) for attorneys' fees and costs incurred in connection with each of the aforesaid, and any claims for interest and from the date of completion of all actions Contemplated under Clauses 4 and 5 of this Agreement, acknowledge and agree that the Prakriti SHA shall automatically stand terminated."

15. The Applicant has filed written arguments on 18.09.2019 and states that the Demand Notice was served upon the Corporate Debtor on 05.12.2018 and neither any dispute was raised nor any payment was made by the Corporate Debtor. The Applicant thereby submits that there is an existence of an undisputed Operational Debt. The Applicant further submits that the Applicant is neither a party in the Settlement Agreement nor there is any

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reference of the Applicant's name in the Agreement and also the Agreement does not contain any suggestion that the debt payable to the Applicant will in any manner be affected or compromised.

16. The learned counsel for the parties has placed detailed arguments. Following points are to be considered for discussion:

- (a) Whether the Application is within the Law of Limitation.
- (b) Whether there has been payment of the unpaid operational debt.
- (c) Whether the dispute as raised by the corporate debtor is genuine or can be categorised as moonshine dispute.

17. Section 18 (1) of Limitation Act, 1963 provides as follows:

“Effect of acknowledgement in writing:

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.”

18. It is seen from record that though the debit notes were raised on 31.03.2012 and 31.03.2013 but the same were acknowledged through confirmation of

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Accounts letters dated 01.04.2015, 01.04.2016, 01.04.2017, 01.04.2018 bearing the stamp of the Corporate Debtor and signed by authorised signatory of the Corporate Debtor. Thus, in terms of Section 18 (1) of the Limitation Act, 1963 the Application is within the Law of Limitation.

19. It is seen from documents filed by both the parties that the Applicant is not a party to the Settlement Agreement dated 24.08.2018 nor the Corporate Debtor has submitted any proof of payment made to the Applicant with respect to the debt due in the present Application. It is also observed that Applications bearing CP No. 350(ND)/2017, CP No. 49/71/ND/2018 and IB-108(PB)/2017 dismissed as withdrawn in view of the Settlement Agreement by the NCLT, Jaipur Bench, were filed by Mr. Sanjy Barodia and not by the Applicant and also as stated by the Applicant the subject matter of these Applications were not related to the subject matter in the present Application. Thus, there is no payment of the unpaid operational debt.
20. Section 5 (6) of the Insolvency and Bankruptcy Code, 2016 defines the term Dispute as under:

"dispute" includes a suit or arbitration proceedings relating to—

- (a) *the existence of the amount of debt;*
- (b) *the quality of goods or service; or*
- (c) *the breach of a representation or warranty;*



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21. As it is observed above, that the Corporate Debtor has acknowledged the debts through Confirmation of Accounts and also it is seen that the Corporate Debtor has admitted in its Balance Sheet dated 31.03.2015 that Rs. 112,93,542/- is due from the Applicant. The corporate debtor has not produced evidence that the Corporate Debtor has objected/ disputed the debit notes or its contents prior to the receipt of section 8 notice. The defence of raising a dispute is lame and without any supporting evidence and can be categorised as moonshine dispute.
22. The Registered Office of the Corporate Debtor is situated in Nagaur, state of Rajasthan and therefore this Tribunal has jurisdiction to entertain and try this application.
23. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond reasonable doubt. In the light of above facts and records the present application deserves to be admitted and this application is admitted.
24. The Applicant has named the Interim Resolution Professional (IRP), and accordingly Mr. Jai Narayan Khandelwal having registration number IBBI/IPA-001/IP-P00208/2017-2018/10408 and E-Mail ID khandelwaljn@reiffmail.com, Mobile No. 9414188696, duly registered

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with Insolvency and Bankruptcy Board of India, is appointed as the Interim Resolution Professional. The applicant has filed consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 stating therein that no disciplinary proceedings are pending against named IRP, along with certificate of Registration of IRP.

25. The consequences of initiation of CIRP shall be inter alia are as follows: -

- (i) The Resolution Professional Mr. Jai Narayan Kahndelwal, having Registration No. IBBI/IPA-001/IP-P00208/2017-2018/10408 is hereby appointed as the Interim Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the Provisions of IBC, 2016, including issue of publication in widely circulated newspapers as contemplated under the Provisions of IBC, 2016 and calling for the claims from the creditors of the Corporate Debtor and collating of the same shall be done.
- (ii) Further as a consequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during CIRP of the Corporate Debtor. The IRP shall carry out Corporate Insolvency Resolution Process strictly as per the timelines specified and as envisaged under the Provisions of IBC, 2016 in relation to the Corporate Debtor.



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- (iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016. With a view to defray his expenses to be incurred and fees on account, the Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- (Two Lakh only) to the account of IRP within 3 days from the date of this order. The IRP shall duly file the status report appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Sections 17 and 19 of IBC, 2016 all personnel of the Corporate Debtor including its promoters and Board of Directors, whose powers shall stand suspended will extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- (iv) In terms of Section 9 of IBC, 2016 a copy of this order shall be communicated to the Operational Creditor, Corporate Debtor as well as the Interim Resolution Professional appointed by this Tribunal to carry out the CIRP at the earliest not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

Accordingly, this CP. No. (IB)- 237/9/JPR/2019 is admitted.



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Sd/-
**SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)**

Sd/-
**DR. POONDLA BHASKARA MOHAN
MEMBER (JUDICIAL)**

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