

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB)No.3010/MB/C-IV/2019**

Under section 9 of the Insolvency &  
Bankruptcy Code, 2016

*In the matter of*

**Isgec Heavy Engineering Limited**

[CIN: L23423HR1933PLC000097]

...Operational Creditor

Versus

**Cane Agro Energy (India) Limited**

[CIN: U01115PN2007PLC130211]

... Corporate Debtor

**Order pronounced on : 10.06.2020**

***Coram:***

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)

Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

***Appearances:***

For the Operational Creditor : DMD Advocates

For the Corporate Debtor : No representation

**ORDER**

***Per: Rajasekhar V.K., Member (Judicial)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Isgec Heavy**

**Engineering Limited(Operational Creditor)[CIN: L23423HR1933PLC-000097]**, a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Vice President-Legal, Mr Kapil Kumar Singh, on the basis of a Board Resolution dated 14.02.2018 seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Cane Agro Energy (India) Limited(Corporate Debtor)**.

2. The Corporate Debtor is a public company limited by shares and incorporated on 25.05.2007 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Pune. Its CIN is U01115PN2007PLC130211. Its registered office is At Raigaon, Post Hingangaon (Budruk), Tal- Kadegaon, Sangli 415305, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 22.07.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹12,46,524.00 (Rupees twelve lakh forty-six thousand five hundred and twenty-four only) as principal and ₹10,69,620.00 (Rupees ten lakh sixty-nine thousand six hundred and twenty only) as interest as on 21.12.2015, which is the date of default.
4. The case of the Operational Creditor is as follows: -
  - (a) The Operational Creditor is a company engaged in the business of design, engineering, manufacture, procurement,

fabrication, supply, testing, erection and commissioning of various types of boilers, sugar mills and associated machinery and equipment. The Corporate Debtor is engaged in the business of power generation and allied activities, including sugar production (para 1 at page 7 of the Petition);

- (b) On 17.08.2015, the Corporate Debtor issued a Purchase Order (placed at p.23 of the Petition), in favour of the Operational Creditor for supply and supervision of Erection and Commissioning of one Condensate Flash Recovery System (CIGAR) suitable for 6000 TCD<sup>1</sup> crush rate, for the site situated at Raigaon, Post Hingangaon, District Sangli, for a total consideration of ₹45,00,000/- (Rupees forty-five lakh only) excluding taxes, duties and levies (para 2 at page 7 of the Petition);
- (c) Out of the total consideration of ₹45,00,000/- (Rupees forty-five lakh only), the Operational Creditor has received a total sum of ₹39,00,000/- (Rupees thirty-nine lakh only) (para 4 at page 7-8 of the Petition);
- (d) Upon the assurance of the Corporate Debtor, the Operational Creditor completed the commissioning of the CIGAR system on 29.07.2017. The minutes of the meeting recording successful installation of the CIGAR system is annexed as Exhibit 'E' to the Petition (para 4 at page 7-8 of the Petition);

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<sup>1</sup>Tonnes of Cane Per Day

- (e) A total amount of ₹12,47,120/- (Rupees twelve lakh forty-seven thousand one hundred and twenty only) remains due and payable as per the books of the Operational Creditor (para 5 at page 8 of the Petition);
- (f) The Corporate Debtor has also not fulfilled its obligations in providing Central Sales Tax Form 'C'. In terms of the Purchase Order, in case of default in providing Form 'C', the Corporate Debtor shall be liable to pay the differential sales tax, penalty and interest to the Operational Creditor. The Corporate Debtor has defaulted in providing Form 'C' for supplies made worth ₹16,49,726/- which would result in additional tax liability. (para 6 & 7 at page 8 of the Petition);
- (g) Upon multiple requests and reminders, the Corporate Debtor issued a cheque No.127573 dated 10.11.2018 for a sum of ₹12,46,524/- drawn on SVC Cooperative Bank Limited, Karad Branch, Satara, in favour of the Operational Creditor. However, upon presentation, the said cheque was returned unpaid with the remark "payment stopped by drawer." Copies of the cheque have been placed on record at Exhibits 'F' and 'G' of the Petition (para 8 at page 8-9 of the Petition).
5. Invoices have been placed on record as **Exhibit 'J'** at pp.37. The invoices provide for interest in case of delayed payments, to be charged at the rate of 24% per annum. The total debt due and payable to the Operational Creditor is ₹23,16,144.00 (Rupees

twenty-three lakh sixteen thousand one hundred and forty-four only), as mentioned at page 6 of the Petition.

6. The Operational Creditor had served a Demand Notice in Form 3 dated 11.05.2019 to the Corporate Debtor (**Exhibit 'H'**, pp.31-35) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice. Necessary affidavit of No Dispute in terms of section 9(3)(b) of the IBC has been filed separately, which is taken on record.
7. The Corporate Debtor has not submitted any reply in the matter.
8. We have heard the arguments of the Learned Advocate for the Operational Creditor and perused the records.
9. It is seen from the record that a purchase order has indeed been placed on 17.08.2015 by the Corporate Debtor on the Operational Creditor for CIGAR suitable for 6000 TCD on 24 hour basis. The same appears to have been successfully commissioned, in terms of the Minutes of Meeting held between the parties on 29.07.2017, placed as Exhibit 'E' at p.28 of the Petition.
10. It is also a matter of record that the Corporate Debtor has issued a cheque dated 10.11.2018 for a sum of ₹12,46,524/-, which is the principal sum claimed in the present petition. The cheque return memo from the Operational Creditor's bankers placed at Exhibit G at p.30 of the Petition reveals that the reason for

dishonour of the cheque is "Payment stopped by Drawer." Stoppage of cheque lawfully drawn attracts penal consequences in terms of section 138 read with section 139 of the Negotiable Instruments Act, 1881, with a lawful presumption that the cheque has been given in discharge of a lawful debt. The onus of rebutting the presumption is on the Corporate Debtor, which has not been discharged.

11. The matter was listed on various dates, *i.e.*, 06.09.2019, 20.09.2019, 10.10.2019, 05.12.2019, 03.01.2020 and finally on 30.01.2020. On all these dates, there was no appearance on behalf of the Corporate Debtor. There was also no reply filed to the Petition. There was no reply to the Demand Notice either.
12. From the material available on record, it is seen that the Demand Notice has been served on the Corporate Debtor on 10.06.2019. There was no reply to the Demand Notice. The Operational Creditor has placed the necessary affidavit under section 9(3)(b) also on record.
13. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this

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Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

14. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.

15. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP (IB)No.3010/MB/C-IV/2019** filed by **Isgec Heavy Engineering Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Cane Agro Energy (India) Limited [CIN:U01115PN2007PLC130211]**, the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(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 (Sarfaesi) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of

Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, this Adjudicating Authority hereby appoints **Mr Shailesh Bhalchandra Desai, Registration No.IBBI/IPA-001/IP-P00183/2017-18/10362**, having address at 1006, Raheja Centre, Nariman Point, Mumbai 400021 [email: ip10362.desai@gmail.com, Mobile: 9821031996] as the IRP. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their

possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP of the Corporate Debtor.
- (i) The Operational Creditor shall deposit a sum of ₹3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (j) In terms of section 9(5)(i) of the IBC, the Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp (wherever feasible) immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

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Sd/-  
**Ravikumar Duraisamy**  
**Member (Technical)**

10.06.2020

Sd/-  
**Rajasekhar V.K.**  
**Member(Judicial)**