

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I, SPECIAL BENCH
KOLKATA**

CP (IB) No. 203/KB/2022

*An application 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:

ALD Automotive Private Limited
[CIN: U50100MH2005PTC151239]

...Operational Creditor

Versus

Green Valley Energy Ventures Private Limited
[CIN: U13100WB2010PTC140900]

...Corporate Debtor

Date of pronouncement of order: 25 January 2024

Appearances (through hybrid mode):

For the Operational Creditor : Mr. Joy Saha, Senior Advocate
Mr. Pankaj Agarwal, Advocate

For the Corporate Debtor : Ms. Shivika Mehra, Advocate
Mr. Rohit Kumar Keshri, Advocate
Mr. Nitish Kumar Singh, Advocate
Mr. Aditya Pandey, CS

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed 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 by **ALD Automotive Private Limited (“Operational Creditor”)**, represented by **Shri Ramkrishna**

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Tripathi (Manager-Recovery), authorized through a Letter of Authority dated 2nd December, 2021¹ seeking to initiate Corporate Insolvency Resolution Process (“*CIRP*”) against *Green Valley Energy Ventures Private Limited* (“*Corporate Debtor*”).

3. The Corporate Debtor was incorporated on 11 January, 2010 having CIN: U13100WB2010PTC140900, under the Companies Act, 1956. Its registered office is at 19A/B, Muktaram Babu Street, 3rd Floor, Kolkata-700007. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 13 July 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.4,41,53,499.72/- (Rupees Four Crore Forty-One Lakh Fifty-Three Thousand Four Hundred Ninety-Nine and Seventy-Two Paise only) as on 30 April 2022. The first date of default is stated to be in November, 2019.
5. *Submission of the learned Senior Counsel appearing on behalf of the Operational Creditor*
 - 5.1. The learned Senior Counsel submitted that the Operational Creditor and Corporate Debtor entered into a Master Lease Agreement (“*MLA*”) dated 28 May 2019² containing the terms and conditions for lease of vehicles by the Operational Creditor.
 - 5.2. According to Clause 2 of the said MLA, for each vehicle leased to the Corporate Debtor, a Vehicle Lease Contract (“*VLC*”) was to be executed. The terms and conditions of the VLC were required to be read along with the MLA and the Corporate Debtor was under an obligation to provide a Fixed Deposit as security equivalent to 3 months of rental per vehicle along with a promoter’s guarantee to the Operational Creditor.

¹ Annexure B of the Petition

² Annexure C of the Petition

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5.3. The Operational Creditor leased a total of 105 vehicles to the Corporate Debtor and the same were received without any demur or protest and were duly inspected by the Corporate Debtor as per clause 5 of the MLA. VLC's were executed for each vehicle. The Corporate Debtor was to pay the monthly rental of such leased vehicles in advance as per clause 10 of the MLA.

5.4. Subsequently, the Corporate Debtor made payments of monthly lease rentals till November 2019 by way of Electronic Clearing System ("ECS") and started defaulting in its repayment since December 2019 as the ECS was getting dishonoured due to insufficient balance.

5.5. The Operational Creditor issued an email dated 24.03.2020³ to which the Corporate Debtor responded and informed its inability to pay the debts. However, the Corporate Debtor continued to make such defaults and the Operational Creditor once again issued an email dated 01.08.2020⁴ to which the Corporate Debtor vide an email dated 04.08.2020⁵ intimated its inability to pay the debt and requested for restructuring the same. The Corporate Debtor after getting several opportunities to repay the debt failed to pay the same and this entire time the Corporate Debtor derived benefits from the leased vehicles.

5.6. The Operational Creditor once again issued an email dated 01.02.2021⁶ to which the Corporate Debtor paid no heed and after continuous defaults kept occurring, the Operational Creditor forfeited the fixed deposits amounting to a sum of Rs. 42,47,995.94/ on May 28, 2021 and informed the same vide an email dated 31.05.2021⁷ and also called upon the Corporate Debtor to pay the balance outstanding amounting to Rs. 60,43,000/-.

5.7. Thereafter, the Operational Creditor terminated the MLA vide a termination notice dated 16.07.2021 and called upon the Corporate Debtor to pay the outstanding dues of Rs. 1,97,61,894.61/- as on June 30, 2021 and either return

³ Annexure D of the Petition

⁴ Annexure E of the Petition

⁵ Annexure F of the Petition

⁶ Annexure G of the Petition

⁷ Annexure H of the Petition

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the 105 vehicles as per clause 6.6. of the MLA or pay termination charges of 2,47,78,000.19/- as per clause 14.1(b) of the MLA for the said 105 vehicles. The Corporate Debtor once again approached the Operational Creditor and requested for restructuring the outstanding amounts. Considering the situation of the Corporate Debtor, the Operational Creditor agreed to provide moratorium in repaying the debt, but the Corporate Debtor once again continued to make defaults and made payments of meagre amounts of Rs. 4,00,000/- and Rs. 6,00,000/- through RTGS on December 8, 2021 respectively.

5.8. After such defaults occurring on the part of the Corporate Debtor and its inability to pay the outstanding dues, the Operational Creditor through its Advocate was constrained to issue demand notice dated June 2, 2022⁸ in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor by an email dated 06.06.2022 and 17 June 2022 and also by registered post with A/D which was returned with the remarks "Addressee Moved". The same was served upon the registered office of the Corporate Debtor through Courier service namely "The Professional Couriers" and also by hand, but it was found that the registered office does not exist at the address given in the official portal of the Ministry of Corporate Affairs. The said notice was however duly sent to the Directors of the Corporate Debtor and as such the said notice is duly served in terms of the Code and the rules framed thereunder.

5.9. It is further submitted that the Corporate Debtor has raised an allegation that the amount which falls within the exemption of section 10A of the Code has been included. The amount of payable during the said period amounts to Rs.1,50,22,639.70 and even after the exclusion of the same from Rs.4.41 Crore, the claim of the Operational Creditor will still be Rs,2,91,30,860/- which is still above the threshold limit.

⁸ *Annexure J of the Petition*

6. Submission of the learned Counsel appearing on behalf of the Corporate Debtor

6.1. The Corporate Debtor in para 27 and 28 of the Reply Affidavit has mentioned that out of the 105 leased vehicles, some vehicles were not operational due to some technical defects, that those were of bad quality, however, the same went ignored by the Operational Creditor. It is also mentioned in para 46 of the Reply Affidavit that the Corporate Debtor had to acquire vehicle from other companies for carrying on the work amounting to Rs.8,77,50,000/- due to non-fulfilment of the reciprocal obligations of the Operational Creditor. The Corporate Debtor had informed the Operational Creditor on several occasions. In support of his contention, the learned Counsel placed reliance on the judgment of the Hon'ble Supreme Court in ***Jai Balaji Industries v. D.K. Mohanty & Ors., 2021 SCC OnLine SC 3104.***

6.2. In para 38 of the Reply Affidavit, the Corporate Debtor had referred to clauses 5.13 and 5.15 of the MLA which stated about the liability of the Operational Creditor for maintenance and repair charges incurred by the Corporate Debtor.

6.3. In para 17 of the Reply Affidavit, the Corporate Debtor has stated that there was an arbitration clause in the MLA executed which was invoked by the Corporate Debtor vide a notice dated 18.08.2022⁹ sent to the Board of Directors of the Operational Creditor but the Operational Creditor has denied the same vide a notice dated 06.09.2022¹⁰. It is submitted that a Petition under section 11 of the Arbitration and Conciliation Act, 1996 has been filed before the Hon'ble High Court of Bombay bearing Commercial Arbitration Application (L) No. 3364 of 2023 for appointment of the Arbitrator.

6.4. In para 23 of the Affidavit, the Corporate Debtor has mentioned that due to the onset of pandemic and due to the malafide actions of the Operational Creditor, the business of the Corporate Debtor was adversely affected and a chart showing the same is as follows:

⁹ Annexure R-4 of the Reply Affidavit

¹⁰ Annexure R-5 of the Reply Affidavit

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Financial Year	Profit/Loss
2018-2019	Profit before tax was Rs. 28,40,091.98
2019-2020	Profit before tax was of Rs. 4,03,831
2020-2021	Loss of Rs.5.61 Crores
2021-2022	Loss of Rs.1.96 Crores

6.5.It is submitted that in the year 2019, the Corporate Debtor received vehicles on two dates i.e. 01 July 2019 and 01 September 2019 and some of the vehicles were not operational and the technical defects were informed to the Operational Creditor but the Operational Creditor refused to repair the same.

6.6.In para 9 of the Reply Affidavit, the Corporate Debtor has taken the plea that while calculating the total outstanding amount of Rs.4,41,53,499.72/-, the Operational Creditor has also included an amount of Rs.16077580.20/- (principal) and Rs.3050695/- (interest) which fell due within the suspension period as prescribed under Section 10A of IBC i.e., from 25.03.2020 to 25.03.2021.

6.7.The learned Counsel submitted that the present petition is not maintainable in the view of section 10A of the Code, as section 10A of the Code prohibits filing of an application in relation to defaults occurring on or after 25 March 2020. The amount claimed by the Operational Creditor i.e. Rs.4,41,53,499.72 is inclusive of such amounts arising out of the debts incurred between the period of 20 March 2020 and 25 March 2021.

6.8.It is further submitted that it is the submission of the Operational Creditor that *vide* email dated 01 August 2020, it had called upon the Corporate Debtor to make payment of the outstanding dues pertaining to the month of March to August 2020 and another email was sent on 01 February 2021 to clear the outstanding dues.

6.9.Further, the Operational Creditor has admitted that an amount of Rs.1,75,76,223.01 is an amount which fell due during the exempted period as stated in section 10A of the Code.

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- 6.10. The Learned Counsel placed reliance on the judgment of the Hon'ble Supreme Court passed in *Ramesh Kymal v. Siemens Ganesa Renewable Power Private Limited, (2021) 3 SCC 224* wherein it has been held that the expressions "shall ever be filed" is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of CIRP in respect of a default that occurred on or after 25 March 2020. For a period of six months, extended upto one year as notified.
- 6.11. The learned Counsel has also placed reliance on *Plus Corporate Ventures Private Limited v. Transnational Growth Fund Limited, C.A.(AT)(Ins.) No. 1270 of 2022* and *Small Industries Development Bank of India v. Sambandh Finserve Private Limited, C.P. (IB) No. 27/CB/2023*.
- 6.12. The learned Counsel submitted that the Form 3 i.e. demand notice sent under section 8 of the Code includes the amount for the period which is barred under section 10 A of the Code and hence the demand notice is faulty. Thus, the Operational Creditor cannot institute the present petition as the entire foundation in which the Company Petition has been filed is invalid due to the faulty demand notice.
- 6.13. It is further submitted that payments have been made even during the period that has been exempted under section 10A of the Code. An amount of Rs.59,00,637.65 has been paid by the Corporate Debtor after November 2019.
- 6.14. It is submitted that the Operational Creditor has stated that this is a case of continuous default i.e. from November 2019 to April 2022. Such submission is not rational as the Corporate Debtor has made several payments after November 2019. It is further submitted that the Operational Creditor has filed credit notes as uploaded in the GST Portal which has been filed in the Additional Affidavit filed by the Corporate Debtor.

Analysis and Findings

7. Heard the learned Senior Counsel appearing on behalf of the Operational Creditor and the learned Counsel appearing on behalf of the Corporate Debtor and perused the records.
8. The issues raised herein for consideration are:

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- 8.1. The date of default falls within the period of section 10A of the Code?
- 8.2. Whether there is existence of pre-existing dispute?
9. With reference to the first issue, the Operational Creditor has submitted that the Corporate Debtor first defaulted in November 2019 and thereafter it was a continuing default, the last of which occurred in 30 April 2022. From the emails exchanged between the Operational Creditor and the Corporate Debtor, it is clear that there was a default in November 2019, the amount in default and the terms of the MLA was restructured¹¹ to enable the Corporate Debtor to make payments. On perusal of the email dated 14 May 2021, it is seen that part payment was received with respect to the proposal and thereafter there was a default in payment.
10. In the demand notice dated 02 June 2022, the date of default has been stated as a continuous event of default, last of which occurred on 30 April 2022.
11. Hence, considering the date of default given in the Petition and Form 3, both dates fall outside the purview of section 10A of the Code.
12. Secondly, let us deal with the issue of pre existing dispute, the Corporate Debtor has contented in its submissions and affidavit in reply has stated that the vehicles given by the Operational Creditor were not operable.
13. On perusal of the record filed before us, the information that the vehicles were not operable has been mentioned in the letter dated 18 August 2022, which is after the demand notice had been sent to the Directors of the Corporate Debtor. Several emails have been exchanged between the Corporate Debtor and the Operational Creditor but none of the emails have any mention of the non-operation of vehicles after the vehicles were given in 2019. Thereafter, there is a mention with regard to the non-function of diesel vehicles provided *vide* agreement dated 15 August 2019 in the reply to the termination notice dated 16 July 2021. Before that period there is no document to substantiate the contention of the Corporate Debtor as made in the Affidavit in reply that the Operational Creditor was informed of the same but the dispute was ignored.

¹¹ Annexure F @ pg. 74 of the Petition

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In paragraph 10 of the letter dated 16 July 2021, there is no reference that the dispute was duly informed to the Operational Creditor.

14. It is amply clear that the a purported pre-existing dispute that has been raised is an afterthought on the part of the Corporate Debtor.
15. In view of the above observations, no doubt remains that the Operational Creditor had provided services and the Corporate Debtor accepted the said services. Payments were being made but thereafter the Corporate Debtor committed default in payments. There has been no communication of pre-existing dispute and there was no communication of the same to the Corporate Debtor.
16. The petition is complete in all respects and meets all requirements stipulated under the Code.
17. It is, accordingly, hereby ordered as follows:-
 - i. The application bearing **CP (IB) No. 203/KB/2022** filed by **ALD Automotive Private Limited** (*Operational Creditor*), under section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Green Valley Energy Ventures Private Limited**, the Corporate Debtor, is *admitted*.
 - ii. There shall be a moratorium under section 14 of the IBC.
 - iii. 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.
 - iv. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - v. **Mr. Niraj Agrawal**, having registration number **IBBI/IPA-001/IPP00130/2017-18/10272**, email: **_____**
niraj@execonservices.com is hereby appointed as Interim

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- Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.
- vi. The fee payable to IRP or the RP, as the case may be, 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 Code.
- vii. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
18. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
19. The Operational Creditor shall initially 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). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
20. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
21. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available

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means 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.

22. **CP (IB) No. 203/KB/2022** to come up on **08 March 2024** for filing the progress report.
23. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is pronounced on the 25th day of January 2024.

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