

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) - 2390/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of

ASK Energy Solutions Private Limited
A-66, Ramdoot Society, 1070 Sadashiv
Peth, near Shanipar, Pune- 411030

.... Petitioner

vs.

Shri Saikrupa Sugar & Allied Industries
Limited

Shop No. 6, Annasaheb Magar Bhavan
Gultekdi, Market Yard, Pune- 411037

.... Corporate Debtor

Order Pronounced on: 03.08.2021

Coram: Hon'ble Suchitra Kanuparthi, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Shweta Busar
For the Corporate Debtor: Adv. Vignesh Iyer

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. ASK Energy Solutions Private Limited (hereinafter called as 'Petitioner') has sought the Corporate Insolvency Resolution Process of Shri Saikrupa Sugar & Allied Industries Limited (hereinafter called as the 'Corporate Debtor') on the ground that the Corporate Debtor committed default to the extent of Rs. 1,03,28,901/- by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Contentions of the Petitioner:

2. The Counsel for the Petitioner submits that the Petitioner is engaged in the business of providing commissioning support, operation, maintenance and management services in power projects, whereas, the Corporate Debtor is a public limited company incorporated under the Companies Act, 1956 and is engaged in the business of sugar and allied services.

3. The Counsel for the Petitioner further submits that the Corporate Debtor was desirous to engage any suitable operator for re-commissioning support, operation, maintenance and management of a cogeneration project of power plants and for availing Operational & Management (O & M) Services so the Petitioner approached the Corporate Debtor to submit its offer. The Corporate Debtor found the offer submitted by the Petitioner suitable to meet its requirements amongst other offers received from various other contractors. In pursuant to the above offer, the Petitioner and the Corporate Debtor entered into and executed an Operation and Maintenance Agreement on 20.03.2018.

4. The services, as given under Article 3 of the said Agreement, were duly provided to the Corporate Debtor by the Petitioner. The Petitioner, after providing its services on monthly basis, raised monthly invoices which were duly accepted by the Corporate Debtor and the invoices are attached to the Petition at Annexure II-D. As per Article 7.2 of the said Agreement, the O & M fees for the performance of services, which were payable by the Corporate debtor to the Petitioner, would be to the tune of Rs. 36,00,000/- per month till 19.03.2019 and Rs. 39,60,000/- thereafter as stipulated therein. Further, the Article 7.2 of the said Agreement specifically provided the credit period of seven business days from the receipt of the each invoice for the payment of O & M fees. However, the Corporate Debtor failed to pay the O & M fees as agreed in the said Agreement to the Petitioner. Articles 7.2 and 7.3 of the said Agreement

are extracted hereinbelow:

7.2 Monthly Operating Fee.

7.2.1 For the first Contract Year (till 19.03.2019), Owner shall pay to Operator the sum of **Rs. 36, 00,000/- (Rupees Thirty Six Lacs Only)** per month as consolidated fee for all services to be provided by Operator as per provisions of this agreement. For subsequent years, the monthly operating fee shall be as following:

Sr. No	Year of Operation	Amount, Rs
1	2 nd year	Rs 39,60,000/- (Rupees Thirty Nine Lacs Sixty Thousand Only.)

7.3 Billing and Payment.

Monthly O & M fee shall be paid within **7 Business days** from the receipt of the invoice raised by the Operator.

5. The Counsel for the Petitioner submits that the Petitioner has several times reminded the Corporate Debtor for the payment of the outstanding amount against the pending invoices through various letters, the last email being dated 03.01.2019. However, the Corporate Debtor failed and neglected to respond to any of its emails/ reminders. It is submitted that the aggregate amount towards the invoices raised by the Petitioner and which were due and payable by the Corporate Debtor was Rs. 1,63,28,901/- (One Crore Sixty Three Lakhs Twenty Eight Thousands and Nine Hundred One). The last payment received by the Petitioner on 19.10.2018 from the Corporate Debtor was of Rs. 15,00,000/- and thus, the Corporate Debtor has in total made payment of a sum of Rs. 60,00,000/- till now. Thus, the total amount of unpaid operational debt to be payable by the Corporate Debtor to the Petitioner aggregates to Rs. 1,03,28,901/-. The details of the transactions and the debt amount is reproduced below:

Details of the Transactions on account of which the Debt fell due and the Date from which such Debt fell due

Sr. No.	Invoice No.	Invoice Date	Invoice Value (in Rupees)	Credit Period (In Days)	Due Date of Payment	Date of receiving amount	Amount Received (in Rupees)
1.	AESPL/SSSAIL/INV/001	01/06/2018	20,39,040	7	08/06/2018	21/06/2018	15,00,000
2.	AESPL/SSSAIL/INV/002	02/06/2018	28,53,011	7	09/06/2018	11/09/2018	30,00,000
3.	AESPL/SSSAIL/INV/003	03/07/2018	30,72,720	7	10/07/2018	19/10/2018	15,00,000
4.	AESPL/SSSAIL/INV/004	08/08/2018	31,09,262	7	15/08/2018		
5.	AESPL/SSSAIL/INV/005	3/09/2018	21,69,221	7	10/09/2018		
6.	AESPL/SSSAIL/INV/006	09/10/2018	14,76,888	7	16/10/2018		
7.	AESPL/SSSAIL/INV/007	14/11/2018	16,08,759	7	21/11/2018		
Total Outstanding/ Invoice Amount (in Rupees)			1,63,28,901	Total Amount Received (in Rupees)			60,00,000
Unpaid Operational Debt (in default)			Rs.1,03,28,901/-				

6. The Petitioner thereafter issued and sent the Demand Notice dated 27.03.2019 under Section 8 of the Code to the Corporate Debtor which was returned with the remark "addressee moved" on 29.03.2019. Later, the Petitioner, through its Advocate, sent the Demand Notice vide an email dated 26.04.2019 to the Corporate Debtor and its Managing Directors. However, the Corporate Debtor neither made any payment towards the above mentioned unpaid debt nor it disputed the existence of the same as stipulated under the provisions of the Code. Hence, the Petitioner proceeded to file the present Petition.

Findings:

7. The Bench notes that the present Petition is a clear case of the debt and default. The Corporate Debtor herein had been using the services provided by the Petitioner as per Article 3 of the O & M Agreement dated

20.03.2018. The Petitioner issued seven monthly invoices upon the Corporate Debtor for the services provided by the Petitioner. The total amount of all invoices comes to Rs. 1,63,28,901/-, out of which the Corporate Debtor paid only Rs. 60,00,000/- till now. The Petitioner sent several reminder emails to the Corporate Debtor for the payment of the outstanding but they were of no avail as the Corporate Debtor did not reply to any email of the Petitioner.

8. Thereafter, the Section 8 Demand Notice dated 27.03.2019 issued by the Petitioner to the Corporate Debtor which was returned with the remark "addressee moved" on 29.03.2019. So, the Petitioner issued another Demand Notice vide an email dated 26.04.2019 through its advocate, but the Corporate Debtor did not pay any heed towards the reply nor the payment.

9. The Bench also notes that the Petitioner has annexed the Ledger Account of the Corporate Debtor for demonstrating the outstanding liabilities due and payable to the Petitioner. The Ledger Account is as below:

ACCOUNT STATEMENT - AESPL/SSSAIL/O & M - Dated 14.11.2018											
DATE OF INVOICE	INVOICE NUMBER	INVOICE AMOUNT (RS)	FEES FOR O&M (RS)	LESS ADV (RS)	TOTAL FEES (RS)	FEES TO BE PAID (RS)	GST @18% (RS)	NET AMOUNT TO BE PAID (RS)	RTGS DATE	AMOUNT RECD (RS)	BALANCE AMOUNT TO BE PAID (RS)
01.06.2018	AESPL/SSSAIL/INV/001	10 39 040	17 28 000		17 28 000	17 28 000	3 11 040	20 39 040			20 39 040
02.06.2018	AESPL/SSSAIL/INV/002	18 53 011	24 17 806		24 17 806	24 17 806	4 35 205	28 53 011			48 92 051
									21.06.2018	15 00 000	33 92 051
03.07.2018	AESPL/SSSAIL/INV/003	10 72 720	26 04 000		26 04 000	26 04 000	4 68 720	30 72 720			64 64 771
											64 64 771
08.08.2018	AESPL/SSSAIL/INV/004	11 09 262	26 34 968		26 34 968	26 34 968	4 74 294	31 09 262			95 74 033
03.09.2018	AESPL/SSSAIL/INV/005	11 69 221	18 38 323		18 38 323	18 38 323	3 30 898	21 69 221			117 43 254
									11.09.2018	30 00 000	87 43 254
09.10.2018	AESPL/SSSAIL/INV/006	14 76 888	12 51 600		12 51 600	12 51 600	2 25 288	14 76 888			102 20 142
									19.10.2018	15 00 000	87 20 142
14.11.2018	AESPL/SSSAIL/INV/007	16 08 759	13 63 355		13 63 355	13 63 355	2 45 404	16 08 759			103 28 901
		163 28 901			138 38 052	138 38 052	24 90 849	163 28 901		60 00 000	103 28 901
TOTAL OUTSTANDING AMOUNT AS ON 14.11.2018(Rs)											103 28 901

10. There is one more important fact which attracts the Bench's attention and it is that the Corporate Debtor never appeared before the Bench except on the last date of hearing, i.e., 15.07.2021. This matter had come up for hearing on several occasions in the past namely

13.08.2019, 26.08.2019, 06.09.2019, 23.09.2019, 14.10.2019,
05.11.2019, 20.11.2019, 13.11.2019, 19.11.2019, 20.11.2019,
03.12.2019, 07.01.2020, 21.01.2020, 31.01.2020, 19.02.2020,
16.04.2021 and 15.07.2021. On 15.07.2021, the Bench observed the
following:

ORDER

1. Both sides present. Mr. Vignesh Iyer, Advocate, appeared for the Counsel for the Respondent and submitted that he has not received papers as yet whereas papers have been served upon them and Affidavit of service was filed by Counsel for the Petitioner wherein tracking report shows that item was delivered to the Respondent on 30.09.2019. Despite service of notice, Respondent has failed to file reply. It is to be noted that his right to file reply has been forfeited.
2. The matter came up for hearing on 19.02.2020 and last chance was given to the Respondent side. Again, the matter came up on 16.04.2021 and now it is finally heard today.
3. Heard the Counsel for the Petitioner.
4. **Reserved for orders.**

11. With the mere reading of the above mentioned facts, it has become crystal clear to the Bench that the Corporate Debtor has clearly defaulted in paying its dues to the Petitioner. The Bench has no hesitation in concluding that the Corporate Debtor has committed a default and therefore, it is a fit case for admission.

12. This Bench, on perusal of the documents filed by the Petitioner, is of the view that the Corporate Debtor defaulted in paying the total outstanding dues to the Petitioner. Therefore, the Petition under Section 8 & 9 of the code is taken as complete, accordingly this Bench hereby admits this Petition, prohibiting all of the following of item-(I), namely:

(I) (a) 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;

(b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(c) 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 (SARFAESI Act);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from the date of pronouncement 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.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Mr. Harshad Shamkant Deshpande; having Registration No. IBBI/IPA-001/IP-P-00166/2017-18/10335; having address at Flat No. 403, Kumar Millenium, Jaibhavani Nagar, Paud Road, near Rohan Corner, Kothrud, Pune- 411038 as an

Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

13. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)