

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH"  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 150/Chd/Hry/2018

Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.

**In the matter of:**

**Vee Kay Electricals**  
having its office at  
1859, Gali No. 4, Kartar Nagar,  
Chheharta, Amritsar-143105  
Punjab (India) a sole proprietorship  
of Vijay Kumari.

...Applicant/Operational Creditor

Versus

**Ubitech Pvt. Ltd.,**  
having its registered office at  
ID/10B P N.I.T.  
Faridabad -121001,  
Haryana (India).

...Respondent/Corporate Debtor

Judgement delivered on: 13 .09.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the Operational Creditor: 1). Mr. Puneet Kansal, Advocate  
2). Ms. Nikhita Kansal, Advocate

For the Corporate Debtor : 1). Mr. Pulkit Jain, Advocate  
2). Mr. Sahil Sharma, Advocate

**Per: Pradeep R. Sethi, Member (Technical)**

**JUDGEMENT**

This petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **Rules**) by M/s. Vee Kay Electricals (**Operational Creditor**) for initiating the Corporate Insolvency Resolution



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*V. Vatsavayi*

Process (CIRP) in the case of M/s. Ubitech Pvt. Ltd (**Corporate Debtor**). As per master data at page 235-236 of the petition, the registered office of the Corporate Debtor is at ID/10B P N.I.T, Faridabad, Haryana (India). Therefore, the jurisdiction lies with this Bench of the Tribunal.

2. It is stated that the operational creditor entered into different agreements from time to time with the corporate debtor for execution of work order-cum-contract agreement bearing No. 4/ASR and 5/ASR dated 08.07.2011 awarded by Punjab State Power Corporation Ltd. (hereinafter referred to as **PSPCL**) for shifting of existing single/three phase energy meters outside the consumer premises in the metal meter boxes (MMB's)/ in the pillar boxes in the city area of Amritsar/Tarn Taran. Copies of agreements are appended as Annexure A-1 (colly). The operational creditor issued various invoices/bills on the corporate debtor from 30.01.2012 to 30.08.2015 and further raised final bills of ₹16,32,234, ₹15,79,724 and ₹15,87,475 on 30.10.2015. The corporate debtor had received an amount of ₹16,67,395/- till 30.08.2015. In Part 4 of Form 5 the total amount of debt as on 30.10.2015 is stated to be ₹41,18,454/- comprising of operational debt of ₹31,31,905/- along with 18% interest till 31.08.2017 of ₹9,86,549/-.

3. A demand notice in Form No. 3 is stated to be issued on 23.01.2018 (Annexure A-11 of the petition). The demand notice in Form No. 3 is stated to be served by speed post on the corporate debtor on 27.01.2018 (Page No. 124 of this petition). The operational creditor has not received any amount after serving of demand notice till date and a certificate from the banker of the operational creditor along with bank statement is enclosed at

Annexures A-17 & Annexure A-18.



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4. In part III of the Form No.5, the operational creditor has not proposed any Interim Resolution Professional.

5. The petition is signed by Shri Jinder Pal Bhalla, Authorized Signatory of the operational creditor. Shri Jinder Pal Bhalla has also filed an affidavit dated 10.05.2018 verifying the contents of Form No. 5 (page No.29-30). He has also filed an affidavit dated 10.05.2018 (Annexure A-21) stating that reply was given by the corporate debtor to the demand notice and that there is no dispute of unpaid operational debt pending between the parties in any court of law or authorities as on date.

6. Vide order dated 31.05.2018, notice of this petition was directed to be issued to the corporate debtor to show cause as to why the petition be not admitted on 25.07.2018.

7. The Authorized Signatory of the operational creditor filed compliance affidavit dated 04.07.2018 (Diary No. 2365 dated 09.01.2018) along with postal receipt and tracking report showing that the copy of the notice to the corporate debtor was delivered by speed post at the registered address of the corporate debtor on 11.06.2018 (Pages 3 & 4 of Diary No. 2365 dated 09.07.2018). The copy of the notice is also stated to be sent by e-mail on 11.06.2018 on the e-mail address as reflected in the master data of the corporate debtor and successfully delivered (Page 6 of Diary No. 2365 dated 09.07.2018).

8. The corporate debtor filed reply dated 09.11.2018 (Diary No.4344 dated 12.11.2018). It is stated in the reply that as per clause 5(1) of the Contract Agreement, the Petitioner was to complete the work within 30 days from the date of issue of work order failing which a penalty @1/2 % per week

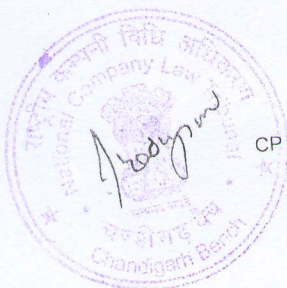


was liable and the petitioner have miserably failed to do the same. Further, it is stated that there is already a dispute with the sister concern namely Jay Pee Engineers pertaining to Section 138 of the Negotiable Instruments Act, 1881 in the Faridabad District Court and that the final inspection is yet to be taken place. Also, the respondent had issued notice dated 20.11.2015 to the petitioner showing existence of dispute and there is a dispute with the sister concern of the Petitioner and also to return the surplus and mismatched material lying with Petitioner worth ₹28.08 lacs (along with interest 18%). It was further stated that the Petitioner has violated clause 2.0, 5(1) and 11 of the terms of the work order and the dismantled material is still unaccounted for and not returned to store.

9. We have heard and carefully considered the submissions of the learned counsel for the operational creditor and corporate debtor and have also perused the records.

10. It has been held in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. Civil Appeal No.9405 of 2017** as under:-

*"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence*



*is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."*

11. The facts of the present case are being examined with reference to the above judgement of the Hon'ble Supreme Court.

12. During the course of the hearing, the learned counsel for the corporate debtor has referred to its reply dated 05.10.2017 to the demand notice in Form 3 dated 21.09.2017 (Annexure A-10 of the petition). It is submitted that it is stated therein that the corporate debtor has issued a notice dated 20.11.2015 duly received by the operational creditor asking the operational creditor to submit the final bills and finalise their terms and returning of surplus and dismantled material lying with the operational creditor and that the operational creditor has not complied with the notice. Reference has also been made to the reply dated 02.02.2018 (Annexure A-12 of the petition) to the demand notice in Form 3 dated 23.01.2018. It is submitted that it was stated therein that the operational creditor has breached the trust/contract agreement deliberately and intentionally and not completed the assigned work on time, the material of unfinished work has not been returned, payment as per assignment agreement has been made, but bills and account statements are not submitted till now. It is pleaded that in this reply also, reference was made to the notice dated 20.11.2015 (*supra*).

13. The learned counsel for the operational creditor has referred to Annexure-14 of the petition which is stated to be a reply dated 30.11.2015 to legal notice dated 20.11.2015 of the corporate debtor. It is submitted that it was stated therein that surplus and dismantled material was to be adjusted



and handed over from time to time from 2011 onwards and factually done and that is why the notice dated 20.11.2015 is totally vague and contains no details of these materials because it is false and of no ground.

14. We note that in the reply filed vide Diary No.4344 dated 12.11.2018 (para no.10), it is *inter alia* stated that the materials issued to the tune of ₹28.08 lacs were not returned. However, the details of the materials claimed to be not returned has not been furnished with the reply. There is no evidence to show that at any stage, the details of the return of materials claimed has been submitted to the operational creditor. In the circumstances, the contention of the operational creditor that the surplus and dismantled material was adjusted and handed over from time to time from 2011 onwards is to be accepted. The corporate debtor has not placed any material on record that any claim with regard to the alleged delay in completion of work was made upon the operational creditor. The dispute with the sister concern namely Jay Pee Engineering pertaining to Section 138 of the Negotiable Instruments Act, 1881 is not relevant to the present proceedings.

15. In view of the judgement of the Hon'ble Supreme Court in the **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. Civil Appeal No.9405 of 2017**, we conclude that the dispute sought to be raised by the corporate debtor are assertions of fact unsupported by evidence and the dispute is spurious, hypothetical and illusory and is therefore, rejected.

16. The provisions of Section 9(5)(i) of the Code are as follows:-

"(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—



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- (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—
- (a) the application made under sub-section (2) is complete;
- (b) there is no payment of the unpaid operational debt;
- (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
- (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
- (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any."

17. We have gone through the contents of the application filed in Form No. 5 and find the same to be complete. As discussed above, there is an unpaid operational debt amounting to ₹41,18,454/- (along with interest). Copy of Ledger Account of the corporate debtor in the books of the financial creditor for the period of 01.04.2011 to 31.03.2018 [Annexure A-19 (colly) of the petition] has been filed showing recoverable amount of ₹31,31,905/-. Moreover, demand notice in Form No. 3 was also sent on 23.01.2018 stating that the amount due from the corporate debtor to the operational creditor is ₹41,18,454/- including interest of ₹9,86,549/-. We have held above that the demand notice in form No.3 dated 23.01.2018 was properly delivered by the Operational Creditor and the reply has been examined above and found to be not acceptable.



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18. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP process in the case of the Corporate Debtor M/s Ubitech Pvt. Ltd. and direct moratorium and appointment of Interim Resolution Professional as below.

19. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

(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;

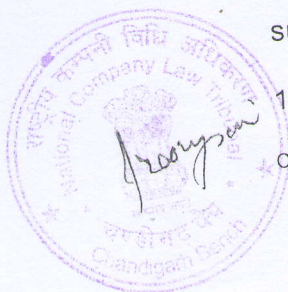
(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(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.

20. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section

14(3) shall however, not apply to such transactions as may be notified by the



Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

21. The order of moratorium shall have effect from the date of this order till 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.

22. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for corporate insolvency resolution process is made by an operational creditor and –

“a) *no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*

b) xxxxx”

Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

23. In this regard a letter bearing File No. 25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New



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Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02 dated 24.06.2019 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.07.2019 to 31.12.2019. We select Ms. Pooja Trikha appearing at Serial No. 44 of the panel to be appointed as Interim Resolution Professional.

24. The Law Research Associate of this Tribunal has checked the credentials of Ms. Pooja Trikha and nothing adverse against her. In view of the above, we appoint Ms. Pooja Trikha, IP Registration No. IBBI/IPA-001/IP-P01375/2018-19/12173, email Id: pooja\_trikha@hotmail.com, Mobile No. 9779731147 as the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Ms. Pooja Trikha shall be in accordance with the provisions of Section 16(5) of the Code;
- ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of



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the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as



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a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and
- vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

25. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

-sd-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

September 13, 2019  
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(Pradeep R. Sethi)  
Member (Technical)

Proneered  
in open court

Pradeep R. Sethi

13.9.2019





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 National Company Law Tribunal  
 Chandigarh Bench, Chandigarh

(Member (Technical))  
 (Member (Legal))

(Member (Legal))  
 (Member (Technical))

September 2019