NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 322 (ND)/2021

IN THE MATTER OF:
M/S NATRAJ TRANSPORT
A REGISTERED PARTNERSHIP FIRM,
THROUGH ITS PARTNER
MR. PIYUSH AGRAWAL
HAVING OFFICE AT:
GUPTA GALI, MAIN ROAD,
KORBA, CHHATTISGARH-495678

.... OPERATIONAL CREDITOR

VERSUS

M/S TRN ENERGY PRIVATE LIMITED,
HAVING REGD. OFFICE AT 18,
VASANT ENCLAVE, ROA TULA RAM MARG,
NEW DELHI-110057

........CORPORATE DEBTOR

SECTION: U/S 9 of IBC, 2016

Order delivered on: 07.12.2021

CORAM:
MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
MR. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

For the Applicant/Operational Creditor: Mr. Devashish Bharuka, Mr. Ravi Baruka, Mr. Rishab Garg and Mr. Ankit Agrawal, Advocates.
For the Respondent/Corporate Debtor:

ORDER
AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

This is an application filed under Section 9 of the IBC 2016 and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the

Applicant/ operational creditor, **M/S NATRAJ TRANSPORT A REGISTERED PARTNERSHIP FIRM, THROUGH ITS PARTNER MR. PIYUSH AGRAWAL HAVING OFFICE AT: GUPTA GALI, MAIN ROAD,**

KORBA, CHHATTISGARH-495678 for initiation of CIRP against the Corporate Debtor namely M/s T.R.N. Energy Pvt. Ltd. **HAVING REGD. OFFICE AT 18, VASANT ENCLAVE, ROA TULA RAM MARG,**

NEW DELHI-110057.

2. It is contended on behalf of the Operational Creditor that the Operational Creditor had entered into an agreement to transport of coal and accordingly, they used to send its truck to 'Swastik Washery' or 'Kushmanda Mines' for transportation of the coal to the power plant of the Corporate Debtor. It is further contended that the coal so transported was thereafter unloaded at the plant of Corporate Debtor. Each such loading and unloading of the coal from the trucks of Operational Creditor was recorded in 'Bilti'.

3. It is further contended that thereafter, Corporate Debtor used to send an email every month with an attached excel sheet confirming the total amount of the coal transported including the rates of transportation, by the Operational Creditor and other service providers every month under various delivery orders of the Corporate Debtor. It is further contended that the total nine emails dated 21.07.2019, 21.07.2019, 09.08.2019, 07.09.2019, 03.10.2019, 08.11.2019, 04.12.2019, 11.01.2020 and 03.02.2020 were sent by the Corporate Debtor to the Operational Creditor. Accordingly, the Operational Creditor has raised 13 invoices from May, 2019 to January, 2020.

4. It is further contended that a total sum of Rs. 22,33,19,044.90/- amount was raised through 13 invoices and out of that, the Corporate Debtor had made payment of Rs. 12,32,15,033/- on various dates and paid additional entire TDS @ 2 % of Rs. 44,66,386/-.

5. It is further contended that last payment was received in the month of December 2019 and the principal balance of Rs. 9,56,37,626/- is still left to be paid by the Corporate Debtor.

6. It is further contended that various emails were sent by the Operational Creditor, but the amount was not released. It is further contended that in view of the attached excel sheet in emails dt. 6th June, 2020 and 11th November, 2020, principal outstanding due is of of Rs. 9,56,37,626/-.

7. It is further contended when the Corporate Debtor has failed to pay the amount then the demand notice under Section 8 of IBC 2016, was delivered upon the Corporate Debtor demanding payment of Rs. 10,94,29,893.37/- which includes the principal amount of Rs. 9,56,37,626.18/- + Rs. 1,37,92,267.19/- Interest @ 12 % per annum.

8. It is further contended that since that demand notice was not delivered, then again the Operational Creditor sent a fresh demand notice on 31st May, 2021 under Section 8 of the IBC, which was duly delivered on the email ID of the Corporate Debtor on 31st May, 2021 and through registered post on 10th June, 2021. But despite the service of the statutory demand notice no reply or dispute has been raised by the Corporate Debtor.

9. On notice the Corporate Debtor has appeared and filed the reply.

10. It is contended on behalf of the Corporate Debtor that the Operational Creditor does not have the locus-standi to initiate the proceeding under Section 9 of the IBC as the applicant is not an Operational Creditor under Section 5 sub Section 20 of the IBC.

11. In para 9 of the Reply, it is contended that "***That be that as it may, it is stated that without prejudice to the contentions herein, the amount of Rs. 11,14,97,327.30/-(Rupees Eleven Crores Fourteen Lacs Ninety Seven Thousand Three Hundred and Twenty Seven and Thirty Paise Only) being claimed in the present petition is an exaggerated amount, which is disputed and vehemently denied. The petition under reply is accordingly legally untenable and devoid of any merit and deserves to be***

dismissed with immediate effect as nothing is payable by the Corporate Debtor".

12. It is further contended that the Operational Creditor has not provided the complete facts. It is further contended that the applicant has not enclosed the documents with respect to the delivery of the goods, on which the claim is made in the present petition. It is further contended that on several occasions, there was delay in sending the materials causing huge loss to the Corporate Debtor.

13. We have heard the Ld. Counsel appearing for the applicant and perused the averments made in the application. None appeared on behalf of the respondent. Therefore, we have gone through the averments made in the reply and we notice that the respondent in its reply has raised the issue of exaggerated amount and the preexisting dispute but no document was enclosed with the reply to substantiate the facts mentioned in the reply. At this juncture, we would like to refer to averments made in the rejoinder filed by the applicant.

14. That the petitioner in the rejoinder has stated almost same statement as stated in the petition except that it is incorrect to say that the applicant is not Operational Creditor. It is also incorrect to say that the amount of Rs. 11,14,97,327.30/- is either exaggerated amount or disputed. It is further contended that the principal amount of Rs. 9,56,37,626.18/- is the admitted principal amount by the Corporate Debtor.

15. The Ld. Counsel appearing for the applicant has raised all the facts mentioned in the application as well as rejoinder and submits that despite the delivery of the demand notice, the Corporate Debtor has failed to raise any disputes, in view of Section 8 (2) of the IBC.

16. Before considering the prayer, at this juncture, we would like to refer to part IV of the application. The scanned copy of the part IV of the application is reproduced below:-

PART – IV

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	a) Total amount of debt: i. Rs.11,14,97,327.30 (Rs.9,56,37,626.18/- + Rs.1,58,59,701.12/- Interest @12% p.a.) towards Coal transportation charges by road for transportation of coal by the Operational Creditor from Kusmunda Mines, Korba to the Plant of Corporate Debtor from May, 2019 to January, 2020. **b) Details of transactions on account of which debt fell due** ii. The Operational Creditor at the instructions of Corporate Debtor used to send its trucks for loading of coal at '*Swastik Washery*' or

'*Kusmunda Mines*' for transportation of the Coal to the power plant of Corporate Debtor. The Coal so transported was thereafter unloaded at the plant of Corporate Debtor. Each such loading and unloading of the coal at the trucks of the Operational Creditor was recorded in 'Bilti'. Every month the Corporate Debtor used to send an email confirming the total amount of coal transported by the Operational Creditor under various delivery order ('DO') of the Corporate Debtor. Accordingly, the Operational Creditor raised invoices against such delivery. In total 13 invoices were raised Operational Creditor against such delivery which mentioned as hereunder:

Invoice No.	Invoice Date	Total Amount
0001	25.07.2019	2,21,50,316.50
0002	25.07.2019	87,05,736.00
0003	25.07.2019	79,638.00
0004	09.07.2019	3,25,100.40
0005	01.08.2019	3,49,25,150.00

0005A	09.08.2019	2,21,36,848.50
0006	24.09.2019	1,96,39,444.50
0006A	24.09.2019	4,97,116.00
0007	05.10.2019	1,03,04,671.00
0008	08.11.2019	78,09,588.00
0009	09.12.2019	2,58,67,803.00
0010	16.01.2019	4,39,86,183.00
0011	04.02.2019	2,68,91,450.00
TOTAL		**22,33,19,044.90**

iii. The Corporate Debtor as against the total invoices has made adhoc payment of Rs. **12,32,15,033/-** on various dates and additionally paid the entire TDS @2% of **44,66,386/-** on the total value of invoices. However, the Principal balance of **Rs.9,56,37,626** is left to be paid.

c) **Date from which the debt fell due**

Invoice No.	Invoice Date	Due Date
0001	25.07.2019	24.08.2019
0002	25.07.2019	24.08.2019
0003	25.07.2019	24.08.2019
0004	09.07.2019	08.08.2019
0005	01.08.2019	31.08.2019
0005A	09.08.2019	08.09.2019
0006	24.09.2019	24.10.2019
0006A	24.09.2019	24.10.2019
0007	05.10.2019	04.11.2019
0008	08.11.2019	08.12.2019
0009	09.12.2019	08.01.2020
0010	16.01.2019	15.02.2020
0011	04.02.2019	05.03.2020

D) Facts leading up to filing the present petition

iv. That the aforementioned invoices raised in the year 2019 and 2020 were at no point denied by the Corporate Debtor or stated to be incorrect.

v. Constrained by the Corporate Debtors failure to pay the invoices, the Operational Creditor wrote various emails dated 12.03.2020, 05.06.2020, 01.10.2020, 26.10.2020 and letters dated 25.10.2020 and 04.11.2020.

vi. However, the Corporate Debtor vide its email dated 06.06.2020 and 11.11.2020 attached the excel sheet and admitted the principal outstanding amount of **Rs.9,56,37,626** but did not make the payments till date. Further on 11.11.2020 the Corporate Debtor also handed a signed and sealed copy of the computation admitting a balance of **Rs.9,56,37,626** towards the Operational Creditor.

vii. On 25.03.2021, the Operational Creditor issued a notice (delivered on 26.03.2021) under S. 8 under form 3 of the IBC to the Corporate Debtor. Thereafter, on completion of 10 days, on having no response from the Corporate Debtor, the Operational Creditor, filed a Section 9 application no. IB-246/ND/2021 before the Hon'ble National Company Law Tribunal, Delhi for initiation of insolvency proceedings against the Corporate Debtor. The Hon'ble NCLT, noticed that if claim is based on invoices, the demand notice is to be sent under Form 4 under Rule 5 of Adjudicatory Authority Rules. Therefore, Operational Creditor withdrew the said application with liberty to file a fresh application after sending a fresh demand notice. Copy of the Order of the Hon'ble NCLT dated 13.05.2021 is annexed herewith as **Annexure P-3.**

viii. Thereafter, on 31.05.2021 the Operational Creditor issued a notice dated 27.05.2021 in form 4 under S. 8 of the IBC to the Corporate Debtor. The same was issued to the registered email address of the Corporate Debtor as also to the directors of the Corporate Debtor and also delivered through registered post. Copy of the Statutory Demand Notice dated 27.05.2021 sent by the Operational Creditor to the Corporate Debtor along with annexures under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 is annexed herewith as **Annexure P-4**

ix. The email was duly received by the Corporate Debtor and its directors on 31.05.2021 and the email did not bounce back. The same was also issued and duly delivered by registered post on 31.05.2021 which was received at the registered office on 10.06.2021. Copy of the courier receipt and the tracking report evidencing receipt of the Demand Notice by the Corporate Debtor along with a copy of e-mail is annexed herewith as **Annexure P-5.**

x. Despite service of the statutory demand notice on 10.06.2021 the operational creditor has neither received any reply/notice from the Corporate Debtor as to the existence of dispute relating to the

		Operational Debt nor made any efforts to release the balance payments towards the transportation services rendered by the Operational Creditor to the Corporate Debtor.

2.	Amount Claimed to be in Default and the Date on which the Default occurred (Attach the workings for Computation of Amount and Dates of Default in Tabular form)	An amount of **Rs.11,14,97,327.30** (Rupees Eleven Crores Fourteen Lakhs Ninety Seven Thousand Three Hundred and Twenty Seven and Paisa Thirty only). Dates of default and related computation is illustrated in tabular form and attached as **Annexure P-6.**

17. On perusal of the Part IV of the application, we observe that the applicant has claimed Rs. 9,56,37,626.18/- as a principal amount and interest amount is of Rs. 1,58,59,701.12/- @ 12 % per annum. We further observe that altogether 13 invoices were raised by the applicant and applicant further claims that the Corporate Debtor has paid Rs. 12,32,15,033/- on different dates and the balance principal amount of Rs. 9,56,37,626.18/- are yet to be paid. We further notice that the Operational Creditor had sent a demand notice dated 27th May, 2021 and same was sent on the email ID of the Corporate Debtors and Director of the Corporate Debtors (page 442 of the paper book) and also through the post, which was duly delivered to the registered office of the Corporate Debtor, at Page 440 and the scanned copy of these two documents are re-produced below:-

Department of Posts
Ministry of Communications
Government of India

You are here: Home --> Track Consignment

Track Consignment

* Indicates a required field.

* Consignment Number [illegible]

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
[illegible] Nagar SO	31/05/2021 14:25:11	110057	[illegible]	Registered Letter	Vasant Vihar1 SO	10/06/2021 16:39:31

Event Details For : RC281438948IN
Current Status : Item Delivery Confirmed

Date	Time	Office	Event
10/06/2021	16:39:31	Vasant Vihar1 SO	Item Delivery Confirmed
10/06/2021	10:37:33	Vasant Vihar1 SO	Out for Delivery
10/06/2021	08:49:51	Vasant Vihar1 SO	Item Received
09/06/2021	03:47:22	[illegible]	Item Dispatched
09/06/2021	02:44:01	[illegible]	Item Dispatched
09/06/2021	[illegible]	[illegible]	Item Bagged
09/06/2021	[illegible]	[illegible]	Item Received
[illegible]	[illegible]	[illegible]	Item Received
07/06/2021	[illegible]	[illegible]	Item Dispatched
07/06/2021	[illegible]	[illegible]	Item Bagged
07/06/2021	[illegible]	[illegible]	Item Received
31/05/2021	[illegible]	[illegible]	Item Dispatched
31/05/2021	[illegible]	[illegible]	Item Bagged
31/05/2021	14:25:11	[illegible]	Item Booked

External Links

india.gov.in

Ravi Bharuka <ravibharuka@gmail.com> Mon, May 31, 2021 at 11:14 PM
To: cpmalik@acbindia.com, info@trnenergy.com, sjain.1961@gmail.com, virsindhu@acbindia.com, cdarha@gmail.com, legal.secretarial@acbindia.com, stltrn2017@gmail.com, coaldoc.trnenergy@gmail.com, navjotmahto.acbindia@gmail.com
Cc: Piyush Agrawal <piyushplanet@gmail.com>, Rishabh Garg <rgarg@pranshlaw.com>

To,
M/s TRN Energy Pvt. Ltd.
Having Regd. Office at
18, Vasant Enclave
Rao Tula Ram Marg,
New Delhi 110057.

Dear Sir,

Please find hereinbelow the link to download the scanned copy of the demand notice along with all the documents under the Insolvency and Bankruptcy Code, 2016 demanding payment of an unpaid operational debt due from M/s TRN Energy Pvt. Ltd. to my client M/s Natraaj Transport. The link is as hereunder:
https://1drv.ms/[illegible]
Kindly note that the hard copy of the aforesaid notice along with the entire annexure has also been sent through the Registered Post today at both the addresses mentioned in the aforesaid notice.

Thus, the undersigned requests you to unconditionally repay the unpaid Operational Debt (in default) mentioned in the aforesaid demand notice in full within ten days from the receipt of this letter failing which we shall initiate a Corporate Insolvency Resolution Process in respect of M/s TRN Energy Pvt. Ltd.

Ravi Bharuka
Advocate-On-Record, Supreme Court of India
D-29, LGF, Jangpura Extn
New Delhi - 110014
Mb: +91-[illegible]

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18. Therefore, the contention of the respondent that no demand notice was served is incorrect. At this juncture, we would also like to refer to the reply of the Corporate Debtor. Although the Corporate Debtor in its reply has admitted this fact that the Operational Creditor had rendered their services but it is stated in its reply that on several occasions, there was delay in sending the materials causing huge loss to the Corporate Debtor. But in support of his contention, no document is filed on behalf of the Corporate Debtor. We further notice that there is no document on record to show that there was any preexisting dispute prior to the issuance of the demand notice. Rather the documents sent to the Corporate Debtor along with the demand notice reveals the facts that the Corporate Debtor has acknowledged the receiving of the goods at their site.

19. On perusal of the reply, we find that there is no specific averments on the point of preexisting disputes and the other disputes as required to be raised under Section 8 (2) of IBC. Admittedly, the Corporate Debtor has not sent reply to the demand notice which was duly delivered upon the Corporate Debtor.

20. In order to admit an application under Section 9, the Adjudicating Authority is required to consider the conditions referred to in **Section 9 (5) (i) & (ii)** and the relevant provision of Section 9 (5) is reproduced below:

> ***Section 9: Application for initiation of corporate insolvency resolution process by operational creditor***
>
> ***(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—***
>
> *(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.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending4 against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

21. When we consider the prayer of the applicant in terms of Section 9 (5)(i) of IBC, then it is seen that the application filed by the applicant is complete, there is no payment of unpaid operational debt or the invoices, notice for payment to the Corporate Debtor has been duly delivered by the Operational Creditor and no notice of dispute has been received by the Operational Creditor or there is no record of dispute. So far the 5th condition is concerned; the applicant has not proposed the name of the IRP rather he has prayed for appointment the Insolvency Professional. Therefore, we are of the considered view the applicant has fulfilled all the criteria as required under Section 9 (5) (i) of the IBC. Hence, we have no option but to admit the application.

22. Accordingly, we hereby ADMIT the petition. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

> *(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
>
> *(b) transferring, encumbering, alienating or disposing of by the corporate debt or 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;*
>
> *(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.*
>
> *Further:*
>
> *(2) 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.*

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

23. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint, Mr. Ramkripal Sharma an Insolvency Professional, Registration No. IBBI/IPA-002/IP-NO1126/2021-2022/13669 email id: iprksharma@gmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

24. The Operational Creditor is directed to deposit a sum of Rupees Two lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

25. Copies of the order be sent to both the parties as well as to the IRP.

Sd/- 7/12

AVINASH K. SRIVASTVA
Member (T)

Sd/- 2-2021

ABNI RANJAN KUMAR SINHA
Member (J)