

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) No.75/ALD/2020**

***In the matter of***

*An application under Section 9 of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016*

***And***

***In the matter of:***

**Leoch Batteries Private Limited**

*Having its registered office at:*

Nile Towers, BBMP No. 117/26,

1st Floor 4th Main Road,

Ganganagar, Bangalore Karnataka-560032

**...Operational Creditor**

***Versus***

**N P S Power Solutions Private Limited**

*Having its registered office at:*

C-6, Mahanagar Extension

Lucknow, Uttar Pradesh-226006

**...Corporate Debtor**

Order reserved on 30.03.2022

Order pronounced on :27.04.2022

***Coram :***

Sh. Rajasekhar V.K. : Member (Judicial)

Sh. Virendra Kumar Gupta : Member (Technical)

***Appearances (via Video Conference):***

For Operational Creditor : Sh. Abhijeet Mukherji, Adv

For Corporate Debtor : Sh. V. N. Shukla, Adv

**ORDER**

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

**Brief facts of the case**

1. The present application has been filed by Operational Creditor, viz., **Leoch Batteries Private Limited** under section 9 of Insolvency & Bankruptcy Code, 2016 (*hereinafter referred to as "IBC" or "the Code"*) for initiation of Corporate Insolvency Resolution Process (*hereinafter referred to as*

—Sd—

**“CIRP”**) against the Corporate Debtor, namely ***N P S Power Solutions Private Limited***

2. In support of its claim, the operational creditor has placed on record copies of invoices which were raised for suppling of various kinds of batteries beginning from 27.03.2015 till 08.05. 2015. The last payment of ₹25,000/- was made by the corporate debtor on 15.10.2018 and the amount of ₹1,29,42,045/- remains to be due and payable. In spite of requests the amount due was not paid, hence, the operational creditor sent a demand notice dated 07.05.2019 which was duly received by the corporate debtor but the same was not replied by the corporate debtor. Affidavits in compliance of Section 9(3)(b) and Section 9(3)(c) of IBC, 2016 have also been placed on record.

**Arguments on behalf of the Operational Creditor**

3. Ld. Counsel appearing on behalf of the Operational Creditor submitted that the goods were supplied to the corporate debtor for various purchase orders and on 07.04.2017 the corporate debtor has admitted an amount of ₹1,42,67,045/- as due and payable to the operational creditor which is evident from the balance confirmation letter annexed at Pg.64 of the application.
4. The learned counsel for the petitioner further referred to the emails dated 10.10.2018 and 20.09.2018 in which the corporate debtor has assured the operational creditor that they will start making the payment, the copies of the emails are annexed at Pg. 57 to 61 of the .application .The learned counsel for the petitioner has also attached the copies of the ledger account maintained by the Operational creditor which is annexed as Annexure 4 at pg. 49-56 of the application and along with the bank statements of the Operational Creditor which is annexed as marked as Annexure 11 of the application in support of its application.
5. The learned counsel for the operational creditor further submitted that as last payment was made by the corporate debtor on 15.10.2018 which is evident from the bank account statements annexed at Pg. No.97 of the application. Hence, the application filed on 16.01.2020 was well within limitation.

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**Arguments On Behalf of Corporate Debtor**

6. The learned counsel for the corporate debtor submits that there exist several disputes with respect to the goods provided by the corporate debtor and the payments of the transactions have been made to the operational creditor and there exist no debt and default on behalf of the corporate debtor.

**Findings & Conclusion**

7. We have considered the submissions made on behalf of the operational creditor and material on record.
8. It is seen from the records that notice of default under Section 8 has been delivered and affidavit under Section 9(3)(b) of IBC has also been filed. The last payment was made on 15<sup>th</sup> October, 2018 and this application has been filed on 23.07.2019, the application is found well within the limitation in terms of provisions of Section 19 of the Limitation Act, 1963.
9. It is further noted that the corporate debtor in the emails dated 10.10.2018 and 20.09.2018 has also admitted that the amount is due and further pleas raised in reply filed by the corporate debtor is found not to be substantiated by any documents, thus we do not find any merit in the contentions raised by the counsel for the corporate debtor.
10. It is noted that the application filed under section 9 is complete and complies with the requirements of the relevant provisions of the Code.
11. The Operational Creditor has not proposed the name of any person to function as Interim Resolution Professional. Therefore, this Bench will appoint a person from the panel of names made available to it by the Insolvency & Bankruptcy Board of India.
12. Accordingly, we pass the following orders:
  - a. The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor ***NPS Power Solutions Private Limited*** is hereby **admitted**.

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- b. There shall be a moratorium under section 14 of the IBC.
- c. 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.
- d. 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.
- e. Mr. Rajeev Kumar [Reg. No.IBBI/IPA-002/IP-N00850/2019-2020/12803], having address at 20/145 Indira Nagar, Lucknow,Uttar Pradesh ,226016 [email: me.rajeev2129@gmail.com], to act as the IRP under Section 13(1)(c) of the Code. is hereby appointed as Interim 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. 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 Code.
- f. 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. 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.
- h. The Operational Creditor shall deposit a sum of Rs.2,00,000/- (Rupees two 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).

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- i. The 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.
  - j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Uttar Pradesh, Kanpur, by all available 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.
13. List the matter on 11.07.2022 filing of the progress report.
  14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

—Sd—

**Virendra Kumar Gupta**  
Member (Technical)

**Rajasekhar** Digitally signed by  
Rajasekhar V K  
Date: 2022.04.27  
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V K

**Rajasekhar V.K.**  
Member (Judicial)