

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

**(IB)-425 (ND)/2019**

**In the matter of**

**M/s. Italimpianti Orafi SPA**  
**Having Its Registered Office At:**  
**Badla Al Pino, Arezzo, Italy**  
**Through Its Authorised Representative**  
**Mr. Animesh Kumar**  
**R/o. B-160, Street No. 4, Chattarpur Extension,**  
**Opp. JVTS Garden, New Delhi- 110074**  
**(Authorised Vide Resolution Of Board**  
**Of Directors Dated 16.10.2017)**

**..... Operational Creditor**

**V/s**

**Greenworld International Pvt. Ltd.**  
**Having Its Registered Office At:**  
**B-92, WHS, Block-2, Kirti Nagar,**  
**New Delhi- 110015.**  
**E-mail: [ujwal16161@gmail.com](mailto:ujwal16161@gmail.com)**  
**[anurag@greenworldrecycle.in](mailto:anurag@greenworldrecycle.in)**  
**[vaibhav@greenworldrecycle.in](mailto:vaibhav@greenworldrecycle.in)**  
**[ujwal@greenworldrecycle.in](mailto:ujwal@greenworldrecycle.in)**  
**[vipul@greenworldrecycle.in](mailto:vipul@greenworldrecycle.in)**

**.....Corporate Debtor**

**SECTION: 9 of IBC, 2016**

**Order delivered on 22.11.2019**

**CORAM:**

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)**  
**SH. L. N. Gupta, HON'BLE MEMBER (T)**

**Present for the Petitioner: Mr. Chandra Shekhar Yadav, Advocate**  
**Present for the Respondent: Mr. Devnidhi, CA**

**ORDER**  
**PER SMT. INA MALHOTRA, MEMBER (J)**

The petitioner seeks to invoke the provisions of Section 9 of the Insolvency & Bankruptcy Code against the respondent/Corporate Debtor alleging that they have a legally recoverable claim against the Corporate Debtor, which despite repeated requests and reminders, has not been paid.

2. As per averments, the Corporate Debtor approached the Operational Creditor for supply and installation of a Plant & machinery with accessories, to be used in the process for recovery of precious metals. A sale agreement dated 13.09.2012 was executed between the parties. The total sale consideration was agreed at 1,130,000 Euros and the payment was to be made in the following manner:

1. Euro 15,000.00, confirmation of order.
2. Euro 200,000.00, before October 15<sup>th</sup> 2012
3. Euro 250,000.00, before November 15<sup>th</sup> 2012
4. Euro 780,000.00, before shipment
5. Euro 185,000.00, 15 days after commissioning.

3. It is submitted by the petitioner that the Plant and Machinery were duly imported from Italy and commissioned at the Corporate Debtor's work site in Delhi in the month of December, 2013 and has been in use and possession of the Corporate Debtor, but the full payment has not been remitted to them.

4. The grievance of the Operational Creditor's is that the last tranche of Euro 185,000.00, being the 5<sup>th</sup> and final instalment, has not been paid by the Corporate Debtor. At the request of the Corporate Debtor, this instalment was agreed to be repaid in 8 monthly instalments w.e.f. June, 2014 to January, 2015. Despite this concession, it is submitted that the Corporate Debtor has failed to release this amount. As the outstanding liability of 185,000.00 Euros stood unremitted, the Operational Creditor was compelled to file a Winding Up proceeding before the Hon'ble High Court of Delhi which has culminated in the present proceeding. Due compliance of the statutory provisions have been made by the Operational Creditor.

5. On being served, the Corporate Debtor has filed its reply and seeks to resist the prayer made in the petition on two grounds, viz. claim being barred by limitation and existence of disputes. It therefore becomes imperative for this Bench to examine both these issues.

6. With respect to the claim being within limitation, ld. Counsel for the Operational Creditor has submitted that the Corporate Debtor expressed financial constraints and conceding to their problems, a fresh MoU was drafted. This draft of the MoU, which upon negotiation between the parties was duly signed by the Operational Creditor and sent to the Corporate Debtor, was however not countersigned by the Corporate Debtor. It appears that the negotiation on this front for rescheduling the repayment of the final instalment was probably done to buy time. Since

the MoU dated 07.05.2014 rescheduling the repayment though instalments, though referred to in their subsequent mails was never countersigned by the Corporate Debtor, it does not bind them nor can extend the limitation upto the January 2015, when the last instalment was proposed to be paid. Notwithstanding the same, the liability towards payment has been expressly accepted vide emails dated 26.11.2014 & 17.12.2014 in terms of the following:

1. *From: Anurag[mailto:anurag@greenworldrecycle.in]  
Sent: 26 November 2014 15:25  
To: 'advocate.animeshkumar@gmail.com'  
Cc:'vaibhav@greenworldrecycle.in'; 'Ujwal'; 'vipul@greenworldrecycle.in'  
Subject:*

*Dear Mr. Animesh Kumar,*

*I am Anurag Srivastava, Managing Director Green World International Pvt. Ltd.*

*We have procured Turnkey Project with plant and machinery from M/s Italimpianti Orafi spa, Italy. The project was based on quantified recovery of metals from Printed Circuit Boards for which raw material was supplied from our end and results of recovery was shared to us by M/s Italimpianti Orafi spa.*

*The plant and machinery was sold to us in EUROS 11,30,000. We have already made payment of EUR 9,45,000 to the company and balance EURO 185,000 is pending.*

*XXXXXXXXXXXXXXXXXXXXXXXXXXXX*

- (ii) *From: Anurag[mailto:anurag@greenworldrecycle.in]  
Sent: 16 December 2014 17:57  
To: 'Animesh Kumar'  
Subject: FW: consumables items required*

*Dear Animeshji,  
Please find below the proposal sent to your client.  
Regards*

✓

Anurag

*From: Anurag[mailto:anurag@greenworldrecycle.in]  
Sent: 16 December 2014 15:44  
To: 'Stefano Zoi- Italimpianti Orafi Spa';  
'vipul@greenworldrecycle.in'  
Cc: 'VAIBHAV Green World Reycle'; 'Robert'; 'Animesh Kumar'  
Subject: RE: consumables items required*

*Dear Stefano,  
As we spoke on the subject, pleas find my proposal:*

*We send you advance payment for the consumables and spares requested against the proforma invoice, this is urgent to start our factory to enable us strength to pay the balance amount.*

*We pay Euro 10000 as advised to us in the payment plan by 25<sup>th</sup> December 2014*

*MoU for rest of payment is signed as soon as Mr. Animesh is free to sit with us to negotiate for your company.*

*Regards  
Anurag*

(iii) Again, as per email dated December 17, 2014

*From: Anuraganurag@greenworldrecycle.in  
Date: Wed, Dec 17, 2014 at 3:32 PM  
Subject: FW: consumables items required  
To: Roberto GuidaliRoberto.guidli@italimpianti.it, Stefano Zoi-Italimpianti Orafi Spa <Stefano.zoi@italimpianit.it> , Robert Robert.soragna@italimpianti.it  
Cc: Animesh Kumar [advocate.animeshkumar@gmail.com](mailto:advocate.animeshkumar@gmail.com)  
VAIBHAV Green World Recycle [vaibhav@greenworldrecycle.in](mailto:vaibhav@greenworldrecycle.in)  
Ujwal [ujwal@greenworldrecycle.in](mailto:ujwal@greenworldrecycle.in), [vipul@greenworldrecycle.in](mailto:vipul@greenworldrecycle.in)*

*Dear Ing. Guidalli,  
Greetings from Green World International Pvt. LTd.  
Meetings with Animesh, Stefano and ourselves was fruitful and it was reiterated that GWIPL is very very serious is disposing off its liabilities towards your company.*

*We started the working on E waste and some how due recovery reasons versus cost of refining was in losses and hence could not pay the outstanding. Factory was closed and we started working on a new venture. We have earned license from Government of India for*



*import and refining of Gold Dore bar. With this we will be able to start disposing the liability towards your company. We understand that you will support us in this matter supply us all the consumables and spares on advance payment. We are going to transfer EUR 10,000 to your account by 25<sup>th</sup> December 2014 and also sign the MoU as soon as draft is finalized.*

*I hope you will understand our situation and support us to re-start our new venture which will help us to pay off your liability as per MOU signed with your company.*

*Regards,  
Anurag*

7. Taking the aforesaid into consideration, the limitation in any event extends till 16.12.2017. The liability to pay Euros 185,000 was clearly acknowledged and was never in dispute. To enable the Corporate Debtor tide over their financial crisis, the Operational Creditor also agreed to grant them time to pay in instalments. Since the repayment schedule was not adhered to despite reminders given, the petitioner filed a Winding Up Petition before the Hon'ble High Court of Delhi being Company petition No. 474/2019. The said petition which was filed in May 2016 was transferred to the NCLT on 17.04.2017. Keeping in view the specific requirements under the Code which required the petitioner to issue a demand notice under Section 8 of the Code, the petitioner was allowed to withdraw the petition with liberty to file afresh under the Code. The said order is dated 10<sup>th</sup> August, 2017. In view of the pendency of the Writ Petition before the Hon'ble Delhi High Court and later with the NCLT, the period till 10<sup>th</sup> August, 2017 from at least 24<sup>th</sup> May, 2016 (date of the 1<sup>st</sup>



order is 25<sup>th</sup> May, 2016) is sought to be excluded. This would approximately result in extension of 442 days beyond 16.12.2017 i.e. upto 4<sup>th</sup> March, 2019. The petitioner seeks benefit under Section 14 of the Limitation Act in computing the period of limitation, and therefore, this petition which has been filed on 08<sup>th</sup> February 2019 is within limitation.

8. The second point of resistance is pendency of a prior dispute. Various correspondence are on record which corroborate that initially a dispute did exist with respect to the dissatisfaction over the performance of the plant in respect of its quantitative and qualitative output and other issues. It is the Corporate Debtor 's case that the project being one of its kind, the technology imparted for its operation and functioning was to be provided by the Operational Creditor upon which the performance/output of the machinery depended. It was communicated that the plant did not even perform at 10% of what was assured. Communications are on record regarding the problems faced in running the plant in respect of its incinerators, Gas furnace, refining problems in copper and precious metals due to which the business resulted into losses. The training to address trouble shooting in refining the metals was also not appropriately provided. It is the Corporate Debtor's case that despite having paid Euros 945,000 i.e. 84% of the agreed price, the support was not offered by the petitioner company. The staff of the Corporate Debtor was not trained on the maintenance procedure of the

machine. Reliance has been made on the reply dated 25.03.2016 to the legal notice issued by the Operational Creditor, that there was an existence of dispute between the parties on various points, primarily relating to technical issues faced by the respondent/Corporate Debtor in the installation/operation of the plant and machinery, apart from lack of training of the employees of the company and how to deal with the break down services. From the various mails relied upon the parties it appears that there were initial teething problems in operating the plant, and dissatisfaction over the overall performance of the plant commissioned by the Operational Creditor. The quality and quantity of the recovered metal was not as projected. Other than lack of training of staff on the maintenance procedure, there were other issues in respect of smelting furnaces, and services back-up. However, all these issues seem to have been addressed by the Operational Creditor. It is pertinent to note that there is no correspondence, bringing on record any dissatisfaction or raising any dispute with respect to the installation, or any other back up or ancillary service after mid 2014. The plant was used for alternate purpose i.e. refining of gold dore bars after the Corporate Debtor obtained a licence from the Government of India. There is a complete silence on the part of the Corporate Debtor thereafter, except that they promised to pay the balance due. This gives rise to the surmise that no dispute in respect of the working of machinery was raised thereafter. It is only in

reply to the legal notice that we find that all these earlier issues were again taken as a defence.

9. The dispute is sought to be raised was in respect of installation and operation, which appear to have been addressed. No dissatisfaction over the working of the machinery has been raised after May, 2014 and except for promises to pay the outstanding balance, no further complaints are on record. This evident from the email dated 26<sup>th</sup> November, 2014 when the Corporate Debtor confirms that

“when the project started, we faced certain issues with machinery and recovery was not as per results shared with us and subsequent losses”

Xxxxxxxxxxxxxxxxxxxxx

10. The Corporate Debtor then received a licence to refine gold dore bars imported under a scheme of the Government of India. It is observed that thereafter there is no complaint on record in respect of working of the plant and machinery. The communication thereafter is only for liquidating the outstanding liability in instalments.

11. Since we do not find any correspondence relating to further complaint in respect of the machine after mid-2014, when the Corporate debtor undertook to repay in instalments. Though they did not sign the MoU, it appears that the machine was being operated satisfactorily. Initial teething problems which were addressed by the Operational Creditor cannot be viewed as a

dispute to escape the liability to pay the full price of the machinery imported from the Operational Creditor. The Operational Creditor is entitled to the balance payment of Euros 185,000/- which the Corporate Debtor has failed to pay, giving rise to a default of an operational claims. The resistance on both courts as raised by the Corporate Debtor are unsustainable. The claim is within limitation. In view of the same, the petition stands admitted. Accordingly, a moratorium in terms of Section 14 of Code comes 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 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;*

(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.”*

12. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint, Mr. Sunil Kumar Gupta, Registration No. IBBI/IPA-001/IP-P00205/2017-18/10394, email: caskg82@gmail. Com



Mobile No. 9953999077 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 file his report.

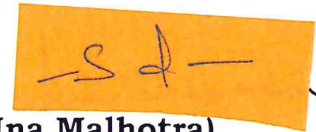
13. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs with the IRP to meet the immediate expenses, which shall be fully accounted for. The same shall be duly reimbursed to the Operational Creditor by the CoC to be recovered as CIR costs.

14. Copy of the order be communicated to both the parties as well as to the IRP.

15. To come up on for 6<sup>th</sup> January, 2020 further consideration.



**(L.N. Gupta)**  
**Member (T)**



**(Ina Malhotra)**  
**Member (J)**