

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

**IA No.690/2023
and
CP (IB) No.358/Chd/Hry/2019
Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

Nestler Protec (India) Limited

having its registered office at
Plot No.G1/1275, Rampur MundanaIndl. Area,
Bhiwadi, Alwar, Rajasthan-301019
through Sh. Balwant Singh

...Petitioner-Operational Creditor

Vs.

Ecogreen Energy Gwalior Private Limited

having its registered office at
228-236, Tower A, 2nd Floor, Spaze I-Tech Park,
Sector-49, Gurugram,
Haryana-122018, India

...Respondent-Corporate Debtor

Judgement delivered on: 22.03.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

CP (IB) No.358/Chd/Hry/2019

For the Petitioner-Operational Creditor:Mr.Anurag Kumar Aggarwal, Advocate

For the Respondent-Corporate Debtor: Ex-parte vide order dated
14.02.2023

IA No.690/2023

For Applicant/Corporate Debtor :Mr. Pradeep Sharma proxy counsel for
Mr. Chitwan Godara, Advocate
For respondent/Operational Creditor :Mr. Shobhit Rapria proxy counsel for
Mr. Anurag Kumar Aggarwal, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

IA 690/2023

The present application has been filed for the setting aside/recall the ex-parte order reserved by this Adjudicating Authority on 14.02.2023 under Rule 11 and Rule 49(2) NCLT Rules. It is contended by the applicant-corporate debtor that due to the misrepresentation of the counsel who denied to appear on 14.02.2023 deliberately resulted injustice to the applicant despite the engagement letter dated 29.02.2020 between senior counsel and corporate debtor. The applicant should not suffer because of the misconduct of the advocate. Hence, the order dated 14.02.2023 may be recalled in the interest of justice.

The present application for setting aside/recall of *ex-parte* order dated 14.02.2023 is neither maintainable nor justified as the case pertains to the year 2019 and several opportunities were already given to the respondent -corporate debtor vide orders dated 11.11.2022, 02.12.2022 and 14.02.2023 of this Adjudicating Authority for arguments. However, on 14.02.2023, none was present on behalf of the respondent-corporate debtor and even no written submissions were filed, therefore, the respondent-corporate debtor proceeded ex-parte. In view of the above facts, no ground is made out to recall ex-parte order. Moreover, reply has already been filed by Corporate Debtor-applicant and main petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 would be decided on merits which would cause no prejudice to the Corporate Debtor-applicant. Hence, the present application is dismissed and stands disposed of accordingly, without any order of costs.

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Nestler Protec (India) Limited, (for brevity 'Operational Creditor' / 'Petitioner')**, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Ecogreen Energy Gwalior Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Ecogreen Energy Gwalior Private Limited, is a Company incorporated on 18.04.2017 under the provisions of the Companies Act, 2013 with CIN No. U40300HR2017PTC068615 with its registered office at 228-236, Tower A, 2nd Floor, Spaze I-Tech Park, Sector-49, Gurugram, Haryana-122018, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure A-3.

3. The facts of the case, briefly, as stated in the petition are that the Operational Creditor is in the business of manufacturing Fuel/Ash and material handling systems. During the course of business w.e.f. January 2018 to October 2018 the Operational Creditor supplied and erected conveyor systems, ballistic separators and related hardware material to the Corporate Debtor. The Corporate Debtor raised 32 purchase orders against which 76 bills were raised by the Operational Creditor w.e.f. 10.04.2018 to 16.10.2018 for the sum of Rs.1,39,95,580/- (Rupees One Crore Thirty Nine Lakhs Ninety Five Thousand Five Hundred Eighty Rupees Only/-). The payment of Rs.30 lakhs was made by the Corporate Debtor on 06.11.2018

which was duly adjusted into the account of Corporate Debtor. The Corporate Debtor did not pay any amount till date. Notice was issued to the Corporate Debtor and a reply was sent by Corporate Debtor. However, the Corporate Debtor still did not pay any amount.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.1,17,21, 496/-- (Rupees One Crore Seventeen Lakhs Twenty One Thousand Four Hundred Ninety Six Rupees Only/-). The default occurred on 06.11.2018 i.e. when the last payment was made. Copy of purchase order and work order (Annexure A-4), invoices (Annexure A-5), Statement of Accounts (Annexure A-6 and A-7), e-mail correspondence between the parties (Annexure A-11), Bank Certificate dated 10.04.2019 (Annexure A-12) are attached with the main petition.

5. A demand notice dated 08.02.2019 in Form 3 is stated to be issued by the operational creditor. The same has been delivered to the Corporate Debtor as postal receipt and tracking report are annexed as Annexure A-8 and the corporate debtor gave a reply dated 20.02.2019 wherein it is stated that a police complaint was filed by the petitioner for which during the investigation the Director, Mr. Anoop Madan was found in collusion and connivance with the erstwhile directors of the Ecogreen Energy Gurgaon and Faridabad Private Limited (EEGFPL) and Ecogreen Energy Gwalior Private Limited (EEGPL) as they siphoned crores of rupees. The supplies were neither weighed nor checked and entries in the invoices were accepted. 27 purchase orders were manipulated for a total of Rs. 3 crores and 7 invoices were raised for Gwalior site but no supply was made. Vide email dated 25.12.2018 sent by the petitioner it stated that the purchase

orders related to the 9 transfer stations stood canceled due to a change in the conveyor system and the payments figure would change accordingly requiring renegotiation of MOM terms. The rejoinder dated 02.03.2019 to the reply was served upon the Corporate Debtor by the operational creditor (Annexure- A-10).

6. Notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The reply was filed vide diary No.5518 dated 11.10.2019 wherein it is stated that M/s China Jinjiang Environment, Holding Company is the ultimate parent company of the respondent Company. The parent company funding project was awarded to the respondent Company (Municipal Corporation of Gurgaon, Faridabad, Gwalior and Lucknow) to develop an integrated solid waste management facility. The respondent Company in order to implement the project had set a three Special Purpose Vehicles i.e. EcoGreen Energy Gurgaon Faridabad Private Limited (EEGFPL), EcoGreen Energy Gwalior Private Limited (EEGPL) and EcoGreen Energy Lucknow Private Limited (EELPL). The contracts were awarded to the Municipal Corporations and engaged five Directors out of which two Directors were Chinese. The parent company started transferring funds to the respondent Company. The erstwhile management of the respondent Company had already filed a petition before the Hon'ble Tribunal for recovery of their dues and on 20.11.2018, the erstwhile management offered their resignation by way of the settlement agreement. However, the management did not return the asset of the respondent company and revoked the acceptance of the offer of resignation in the Board Meeting held on 12.04.2018.

The respondent company orally gave instructions to the Director of the petitioner company i.e. Mr. Anoop Shankar Madaan regarding the supplies/rates. The rates of the work were accepted by erstwhile management without any negotiation with the petitioner company and without following a transparent process of competitive bidding. Thereafter, no technical BOQ was received from the petitioner company along with the offer.

The false documents/electronic records were created to accord the genuineness of two transactions evidencing payments already made. The fake and bogus process of vendor finalization was adopted by erstwhile management and no competitive bidding was done. The director of the parent company in the meeting held on 15.12.2018 confirmed that the petitioner company had issued invoices in September 2018 for material that had actually not been delivered at the Gwalior site. The forged invoices and e-way bills were created against the supplies which were actually not made by the petitioner company as there was no Good Received Note (GRN) generated.

The purchase orders were not sent to the petitioner company by way of e-mail rather they were in form of hard copies amounting to Rs.1,82,00,000/-(Rupees One Crore Eighty Two Lakhs), which were forged and manipulated. The transaction between the parties made clear that they were related parties and the respondent company siphoned off the parent company's crore rupees. The ledger statement of the petitioner company shows that a huge amount has been paid to the petitioner company by the respondent company through their Banker. The audited profit and loss

account of the petitioner company for F.Y. 2017-18, shows that huge assets were sold to the respondent company at a very high price. The petitioner approached the police with a criminal complaint. However, despite the reply filed by the respondent corporate debtor, none appeared on behalf of the respondent. Therefore, vide order dated 14.02.2023 of this Adjudicating Authority, it appeared that respondent-Corporate Debtor was not interested in defending the said petition. So, the respondent-Corporate Debtor was proceeded *ex parte*.

7. The rejoinder was filed vide diary No.7296 dated 19.12.2019 wherein it is stated that the Corporate Debtor made a false allegation of conspiracy and allegiance between the Directors of the parties. The Corporate Debtor has failed to show that there is any pre-existing dispute between the parties. The Chinese parent company was always involved with the projects which were monitored and approved by the Chinese Director-Mr. Wen Jiangrom. The e-mail sent was not marked to the Director or any employee of the Operational Creditor and they have not explained the shortcomings or defects in the goods or services provided. No dispute regarding goods was ever raised by the Corporate Debtor prior to the service of the demand notice. The random photographs submitted by the Corporate Debtor show that Corporate Debtor was taking care of the sites. There were no verbal instructions given to Procurement Department to issue purchase orders on a *post facto* basis. The rates of Operational Creditor were not accepted by the erstwhile management without any negotiations nor the proper process of competitive bidding was followed. There were no payments made against the goods delivered. The Corporate Debtor used to

call for quotations in two manners, one individually for buying spare parts wherein the site work was done by Corporate Debtor itself and the other one on a 'Turnkey' basis wherein, the spare parts and site work both were done by the seller company. The goods supplied by the Operational Creditor were weighed at the time of delivery or the same were accepted by the erstwhile management of the Corporate Debtor without any inspections. The e-way bills were generated online by submitting the proper GST Number along with complete details of goods supplied, amount, vehicle number and the input tax credit was claimed for the same. The operational Creditor was taking care of three different projects and the revenue generated cannot be attributed to an alleged conspiracy between the parties. The short written submissions have been filed by the petitioner vide Diary No.00652/2 dated 08.07.2022.

8. We have heard the learned counsel for the petitioner and have perused the records.

9. The first issue for consideration is whether the demand notice dated 08.02.2019 in Form 3 is stated to be issued by the operational creditor. The same has been delivered to the Corporate Debtor as postal receipt and tracking report are annexed as Annexure A-8 and the corporate debtor gave a reply dated 20.02.2019. Therefore, the demand notice was duly served.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of the affidavit by the Operational Creditor that the Operational Creditor has neither received full payment of its operational debt from the Corporate Debtor nor has received

any notice of dispute from the Corporate Debtor relating to the unpaid operational debt. It is further deposed that there is no existence of any dispute between the Corporate Debtor and the Operational Creditor for the operational debt in question. Although, it is alleged in the reply by the Corporate Debtor that the respondent company orally gave instructions to the Director of the petitioner company i.e. Mr. Anoop Shankar Madaan regarding the supplies/rates. The rates of the work were accepted by erstwhile management without any negotiation with the petitioner company and without following a transparent process of competitive bidding. False documents/electronic records were created to accord the genuineness of two transactions evidencing payments already made. The fake and bogus process of vendor finalization was adopted by erstwhile management. The forged invoices and e-way bills were created against the supplies which were actually not made by the petitioner company as there was no Good Received Note (GRN) generated.

However, there is no cogent and convincing evidence present on record to substantiate forgery or false fabrication of invoices/accounts. Thus, the facts stated by the petitioner-Operational Creditor have remained unrebutted. Therefore, it can be safely concluded that there is no pre-existing dispute between the parties with respect to the defaulted amount claimed by the petitioner.

11. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 08.02.2019 in Form 3 was duly served on the corporate debtor. However, the period of limitation would begin from the date of default on 06.11.2018 i.e. when last payment was

made. This application was filed on 08.05.2019 vide Diary No.2347 and was refiled vide Diary No.2883 dated 07.06.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs.1,17,21, 496/- (Rupees One Crore Seventten Lakhs Twenty One Thousand Four Hundred Ninety Six Rupees Only/-) is still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Copy of purchase order and work order (Annexure A-4), invoices (Annexure A-5), Statement of Accounts (Annexure A-6 and A-7), e-mail correspondence between the parties (Annexure A-11), Bank Certificate dated 10.04.2019 (Annexure A-12) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

13. However, Corporate Debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above the threshold limit.

14. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after

the demand made by the petitioner. 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 CIR Process in the case of the Corporate Debtor, **Ecogreen Energy Gwalior Pvt. Ltd.** and also direct moratorium on taking effect and appointing Interim Resolution Professional as below:-

15. In Part-III of Form No.5, Mr.Sanjay Agrawal, Interim Resolution Professional (IRP) has been proposed by the petitioner. Form-2 dated 17.02.2023, Certificate of Registration issued by IBBI (Insolvency and Bankruptcy Board of India) and Form B in which AFA is valid upto 07.12.2023 are submitted vide Diary No.00648/4 dated 24.02.2023. The Law Research Associate of this Tribunal has checked the credentials of Mr. Sanjay Agrawal and there is nothing adverse against him. In view of the above, we appoint Mr. Sanjay Agrawal, Registration No. IBBI/IPA-001/IP-P00494/2017-18/10882,E-mail:ska9001@gmail.com, Mobile No. 9810376790 the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Sanjay Agrawal 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 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 the 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 a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation

by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the

determination of the operational 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

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. 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 Operational 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.

17. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. 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.

19. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to

send a copy of this order to the Interim Resolution Professional at his email address forthwith.

21. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)
March 22, 2023
PRF/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)



**THE NATIONAL COMPANY LAW TRIBUNAL
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(Exercising powers of Adjudicating Authority under
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Under Section 9 of the Insolvency and
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Nestler Protec (India) Limited

...Petitioner-Operational Creditor

Vs.

Ecogreen Energy Gwalior Private Limited

...Respondent-Corporate Debtor

Present :- Mr. Pradeep Sharma proxy counsel for Mr. Chitwan Godara, Advocate, for the respondent-Corporate Debtor in main CP and Applicant/Corporate Debtor in IA No.690/2023.
Mr. Shobhit Rapria proxy counsel for Mr. Anurag Kumar Aggarwal, Advocate, for the petitioner-Operational Creditor in main CP and for the respondent/Operational Creditor in IA No.690/2023.

Vide separate detailed order of even date, IA No.690/2023 is dismissed and CP (IB) No.358/Chd/Hry/2019 is admitted accordingly.

Sd/-

**(Subrata Kumar Dash)
Member (Technical)**

March 22, 2023
PRF

Sd/-

**(Harnam Singh Thakur)
Member (Judicial)**