

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, SPECIAL BENCH (COURT NO. IV)

Company Petition No. IB-240/ND/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

MR. AKASH AGARWAL

PROPRIETOR OF MS. TIRUPATI GREEN ENERGIES

...Applicant/Operational Creditor

VERSUS

M/s STEAMAX ENVIROCARE

PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 16.12.2019

CORAM:

SMT. INA MALHOTRA

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Mr. Sourabh Gupta, PCS

For the Respondent : Ms. Charu Tyagi, Adv.

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## MEMO OF PARTIES

**MR. AKASH AGARWAL**

**PROPRIETOR OF M/S TIRUPATI GREEN AGENCIES**

Having its registered office at:

House No. 139/2, Anaj Mandi,

Near Guru Gobind Singh Complex,

Paonta Sahib, Sirmaur,

Himachal Pradesh-173025

**...Applicant/Operational Creditor**

**VERSUS**

**M/S STEAMAX ENVIROCARE PRIVATE LIMITED**

Having its registered office at:

901-A, Vishwadeep Tower,

Janakpuri, District Centre,

New Delhi- 110058

**...Respondent/Corporate Debtor**

**ORDER**

**PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)**

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by

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Mr. Akash Agarwal (for brevity 'Applicant'), proprietor of M/s Tirupati Green Energies, a sole proprietorship firm, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s Steamax Envirocare Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, namely Mr. Akash Agarwal, is the sole proprietor of M/s Tirupati Green Energies, a sole proprietorship concern, having Udyog Aadhar Number HR19B0002494, having its office at House No. 139/2, Anaj Mandi Road, Near Guru Govind Singh Complex, Ponta Sahib, Sirmaur, Himachal Pradesh-173025.
3. The Respondent, namely M/s Steamax Envirocare Private Limited, is a company incorporated on 30.07.2015 under the provisions of Companies Act, 1956 with CIN No. U40300DL2015PTC283368, having its registered office at 901-A, Vishwadeep Tower, District Centre, Janakpuri, New Delhi 110058. The Authorised Share Capital of the respondent company is Rs.10,00,000/- and Paid Up Share Capital of the company is Rs.10,00,000/- as per Master Data of the company.

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4. It is the case of the applicant, that it deals in briquette, wood chips and kutti patta products. The Respondent approached the Applicant for supply of briquette, wood chips and kutti patta. During the course of business transactions several invoices were raised as per the agreement between the parties, whenever any amount was to be paid by the Respondent, the amount was adjusted against the invoices on FIFO basis. The Applicant issued total invoices amounting to Rs.26,51,303/- (Rupees Twenty Six Lakhs Fifty One Thousand Three Hundred Three), out of which a debit notes were also issued by the Respondent amounting to Rs.19,788/- (Rupees Nineteen Thousand Seven Hundred Eighty Eight), for "Lack of Quantity" during the period 16.03.2018 to 17.04.2018. Hence the total dues are Rs.25,85,612/- (Rupees Twenty Five Lakhs Eight Five Thousand Six Hundred Twelve).
5. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 21.07.2018, under Section 8 of the



Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire payment of Rs.25,85,612/- (Rupees Twenty Five Lakhs Eighty Five Thousand Six Hundred Twelve), along with interest @ 18% per annum, within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

6. The applicant has annexed postal receipt, along with the tracking report, showing the delivery of the said demand notice at the registered office of the Corporate Debtor.
7. After the delivery of demand notice sent under Section 8 of the Code, the Respondent filed its reply to the said notice, however, it has not raised any notice of dispute, but has acknowledged its liability towards an amount of Rs.5,42,577/- (Rupees Five Lakhs Forty Two Thousand Five Hundred Seventy Seven). As no payment was coming, hence this application, seeking to unfold the process of CIRP.
8. The applicant has stated that total debt due and payable is Rs.25,85,612/- (Rupees Twenty Five Lakhs Eighty Five



Thousand Six Hundred Twelve), along with interest @ 18% per annum, as per the invoices from 14.03.2018.

9. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The applicant has also filed affidavit of service wherein he states that the respondent has been served through speed post on 07.02.2019. The postal receipt, along with the tracking report, along with email, showing the delivery status has been annexed along with the application.

10. After the service of said notice, the respondents have caused appearance in the matter and have filed their reply, in its reply to the present section 9 application, the respondent states that after few months of satisfactory supply of the raw materials, the Operational Creditor had demanded arbitrary and discriminatory increase in the prices of the raw material/ fuel supply. It is submitted that the price of the raw material/ fuel was Rs.2,650/- per ton initially as on 30.10.2017, which was increased to Rs.3,200/- per ton on 08.11.2017, thereafter increased to Rs.3,300/- per ton on 20.11.2017 and further increased substantially to Rs.3,550/- per ton as on



30.11.2017. The Respondent states that, the regular increase in the price of the raw material by the Operational Creditor was not only suo motu, but arbitrary as well. It is pertinent to mention herein that, due to the fact that the Respondent Company was under a contractual obligation for ensuring an un-interrupted steam supply with its client companies, the Respondent had no other option but to accept the discriminatory prices as billed by the Operational Creditor from time to time.

11. The Respondent further states that, besides steep rise in the prices of the material, there was constant degradation in the quality of the raw material/ fuel supplied by the Operational Creditor, wherein the moisture content in the raw material/ fuel supplied increased abruptly in various situations/ events, leading to not only much higher consumption of raw material/ fuel (supplied by the Operational Creditor), but it also caused the situation of constant pressure drops in the boiler resulting into lesser quantity of steam generation causing huge material losses to the Respondent and its customers. Moreover, the low quality raw material/ fuel



supplied by the Operational Creditor also affected the ability to maintain the level of required produce at the steam generation plants of the Respondent situated at Punjab, Paonta, Panipat, Roorkee and Noida.

12. In its reply the Respondent also states that, on numerous occasions he not only intimated the Operational Creditor about the low quality issues and discrepancies in the material, but also communicated about all the aforesaid discrepancies/ factors to the Operational Creditor from time to time. It is pertinent to mention herein that despite the regular follow-up and alerts by the Respondent, not a single effective step was ever taken by the Operational Creditor to maintain the fuel quality as per the standard conditions. On the contrary, instead of maintaining quality, the Operational Creditor continued to increase the fuel prices.

13. In its rejoinder the applicant states that, there was no pre-arrangement of the sort regarding the quality of goods to be supplied as has been wrongly stated in the said reply. The Corporate Debtor has stated that, at the time of entering into the contract the material price was Rs.2,650/- per ton which

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was increased by the Operational Creditor suo motu. In this regard, it is stated by the Applicant that the Corporate Debtor kept continuing and doing the business with the Operational Creditor till 17.04.2018, which is clearly reflective of the fact that the Corporate Debtor agreed with the increased rates of materials being very much in consonance with the prevailing market conditions and agreed thereby at that point of time, without any grievance in regard to the said increase, or even without any communication to that effect throughout the said business dealings. If the Corporate Debtor had any such objections to the said increase in the prices of materials, the same should have been informed or communicated to the Operational Creditor at every stage of such increase, since the said increase was very much agreed to be acceptable to the Corporate Debtor, in view of the then prevailing market conditions, more since, there were many suppliers available in the market for the same material, but since the Corporate Debtor still made continuous dealing with the Operational Creditor, the same was on the basis of clear and categorical



acceptance by the Corporate Debtor to the said increase in the prices of materials.

14. It is pertinent to note that the applicant has placed on record all the invoices, stating that the respondent itself had acknowledged the said invoices. Once the debt is shown as due, it is for respondent to prove that there are no outstanding dues to be paid to the applicant. There has been much cloud in the submission of the respondent. Therefore, without any specific details of material particulars or evidence the fact of existence of a dispute cannot be sustained.

15. In "**Innoventive Industries Ltd. (Supra)**", the Hon'ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the 'Corporate Debtor'. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.

16. In "**Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC On Line SC 1154**", Hon'ble Supreme Court held:

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“40..... 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 defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense 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.”

In the present case, there is no such dispute as pre-existing, the dispute which was being claimed to be pre-existing by the corporate debtor did not survive.



17. The applicant has attached the copy of Bank statements issued by Syndicate Bank in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
18. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
19. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
20. The Applicant has proposed the name of Interim Resolution Professional as Mr. Anjum Goyal. In view of the same, this Bench appoints the same Mr. Anjum Goyal, having registration no. IBBI/IPA-002/IP-N00251/2017-2018/10765, email address is agoyal4u@yahoo.com and contact number is +91-9818812226, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the



statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

21. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional Mr. Anjum Goyal to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.
22. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

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23. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

Sd-

(HEMANT KUMAR SARANGI)  
MEMBER (Technical)

Sd-

(INA MALHOTRA)  
MEMBER (Judicial)

*Pronounced today under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (Judicial) MRS. Ine Malhotra is not holding the court today.*

*Ine Malhotra*

*Court Officer  
16.12.2019*



*Ine Malhotra  
16/12/19*

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*Sih*  
Deputy Registrar

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National Company Law Tribunal  
CGO Complex, New Delhi-110003

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1511 of 2019**

**IN THE MATTER OF:**

Rakesh Mahajan

...Appellant

Versus

Akash Agarwal  
(Proprietor Tirupati Green Energies) & Anr.

...Respondents

**Present:**

**For Appellant:                    Mr. Siddhrth Sahrma and Ms. Charu Tyagi,  
   Advocates**

**ORDER**

**20.12.2019**        Learned Counsel for the Appellant submits that the Respondent ('Operational Creditor') was supplying poor quality of fuel relating to which dispute raised since 24<sup>th</sup> March, 2018 (page-50) with further reminder sent on 20<sup>th</sup> April, 2018 etc. onwards. It is submitted that there is pre-existence of dispute and hence, the application under Section 9 was not maintainable. It is also submitted that 'Interim Resolution Professional' has not made any publication nor constituted the 'Committee of Creditors'.

Issue notice to the Respondents. Requisites along with process fee be filed by 26<sup>th</sup> December, 2019. If the Appellant provides email addresses of the Respondents, let notice be issued through email.

Post the case 'for orders' on **14<sup>th</sup> January, 2020** within five cases. The Appeal may be disposed of on the next date.

Till the next date, the 'Interim Resolution Professional' will not make any publication, if not yet made and will also not constitute 'Committee of Creditors', if not yet constituted to enable the parties to settle the matter. However, the Appellant will handover the assets and records of the 'Corporate Debtor' to the 'Interim Resolution Professional' immediately.

In the meantime, the 'Interim Resolution Professional' will ensure that the Company remains as an on-going concern and will take assistance of the (suspended) Board of Directors, paid Director and the employees. The person who is authorised to sign the Bank cheques may issue cheques only after authorisation of the 'Interim Resolution Professional' with counter signature of the 'Interim Resolution Professional' at the back side of the cheques. In such case, the Bank shall release the payment. The 'Interim Resolution Professional' will place this order before the Banks, in which accounts of the 'Corporate Debtor' are maintained. The Bank Account(s) of the Corporate Debtor be allowed to be operated for day-to-day functioning of the Company such as for payment of Current Bills of the Suppliers, Salaries and wages of the paid Director, the employees'/workmen Electricity bills etc.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Venugopal M.]  
Member (Judicial)