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

(IB)-1587(ND) 2019

In the matter of

**JC ENTERPRISES PRIVATE LIMITED**

**H-12 & 13, Industrial Area**

**Kosi Kalan**

**Mathura, U.P. 281403**

.....Operational Creditor

V/s

**MKS OIL PVT LTD.**

**House No. 323 & 324,**

**First Floor, Block B-4**

**Sector 8, Rohini,**

**New Delhi-110085**

.....Corporate Debtor

**SECTION: 9 of IBC, 2016**

**Order delivered on: 09.12.2019**

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)**

PRESENT- Adv Manish Raghav the Petitioner  
Adv Nandini Nagar and Adv Saurabh Kalia for the Respondents

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**ORDER**

**Per Ms. Sumita Purkayastha (Member Technical)**

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.
2. As per the averment made in the application, the Operational Creditor supplied Low Aromatic white spirit to the Corporate Debtor at its site office Khanpur Koliyan G.T road Kurukshetra, Haryana 136131 and has raised invoice No. 1,2,3,6,7,12,15,29,30,32,36,37,38,39 and 40 dated 28.09.2018 and invoiced No. 43, 44 and 46 dated 29.09.2018. A total amount of Rs. 2,27,05,006/- were raised out of which amount of Rs. 1,68,05,000/- was paid and Rs. 59,00,006 is pending since September 2018. The Interest accrued at 18% is Rs. 6,58,490/-. The Corporate Debtor for partial payment of the debt issued cheque No. 05117 dated 03.12.2018, cheque No. 051118 dated 11.12.2018 & cheque no. 051119 dated 17.12.2018 amounting to Rs. 20,00,000/-, Rs. 20,00,000/- & 21,90,000/- respectively, which were returned by the banker of the Operational Creditor with the remark "Payment stopped by the drawer" i.e the Corporate Debtor.
3. The Operational Creditor served Demand notice dated 10.05.2019 by registered speed post to the Corporate Debtor U/Sec.8 of the Insolvency & Bankruptcy Code, 2016 seeking refund of payments within 10 days from the date of receipt of the notice. That neither a

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reply to the Demand Notice nor any payment has been received by the Petitioner.

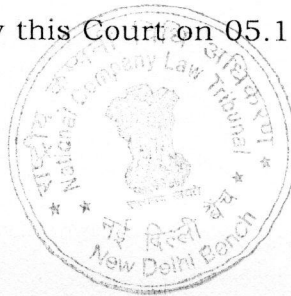
4. The Petitioner has therefore filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 59,00,006/- plus interest charged at 18% from the relevant due date till the date of payment.
5. The present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) and 9(3)(c) of Code are on record to corroborate his case.
6. Consequent to the issuing of notice by this Tribunal the Corporate Debtor filed a reply on 28.09.2019 in which the following contentions have been taken:
  - i. The alleged notice under Section 8 of the Insolvency & Bankruptcy Code, 2016 read with Rule 5 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was defective and does not conform to the mandatory requirements of law.
  - ii. The Respondent deals in sale and purchase of oils, petroleum and other spirit and has been in practice of purchasing oils, petroleum and other spirits for the sole purpose of further selling them thereby generating revenue. The Operational



Creditor has been procuring the said low aromatic white spirit from Kandla Port and delivering it further. The Respondent placed an order of low aromatic white spirit with the Operational Creditor and further supplied it to M/S Yes Corporation wherein it was found out by the Respondent that the material delivered to them was Kerosene Oil which is banned for import by the Directorate of Revenue Intelligence when M/S Yes Corporation raised concerns with regard to the same. M/S Yes Corporation refused to pay towards the invoices of Rs. 1,32,91,000/- vide bills bearing invoice no. MKS/0250, MKS/0251, MKS/0252, MKS/0253, MKS/0254, MKS/0255, MKS/0256, MKS/0257 AND MKS/0258 dated 28.09.2018 and 29.09.2018. Hence the, Respondent submits that there is an existence of dispute between the parties which requires further investigation.

- iii. The Respondent submits that the invoices raised by the Operational Creditor do not mention the date from which the sum of money raised by him becomes payable.
- iv. The Respondent submits that there no written agreement exists between the Operational Creditor and the Respondent with regards to 18% interest which is allegedly payable by the Respondent.

7. After hearing the arguments of the Learned Counsels for the parties, the order was reserved by this Court on 05.11.2019. The Operational



*[Handwritten signature]*

Creditor has also submitted their written submission which have been gone through by us alongwith the documents on record. And after hearing the Learned Counsels for the parties and after pursuing the records as well as the written submission, we are of the considered opinion that the Corporate Debtor has not submitted any document with respect to any communication between the Corporate Debtor and M/S Yes Corporation pursuant to the fact that kerosene was delivered in place of aromatic spirit which was allegedly supplied by the Operational Creditor to the Corporate Debtor. It is observed that the Corporate Debtor has not placed on record any prior communication or has raised an issue or dispute with the Operational Creditor with respect to supply of kerosene in place of aromatic spirit to substantiate the argument of per existing dispute between the parties. It is further observed that the invoices raised by the Operational Creditor mention the relevant date and the rate of Interest 18%.

8. The present petition being filed in July, 2019 is within the limitation, being within three years from the date of the cause of action. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including*

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*Signature*

*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."*



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9. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Atul Mittal, an Insolvency Professional, registration no. IBBI/IPA-001/IP-P00439/2017-18/10762 email- [a.mittal@gmail.com](mailto:a.mittal@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.

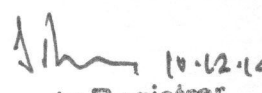
10. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

11. Petition is therefore admitted.



**SUMITA PURKAYASTHA**  
Member (T)

**INA MALHOTRA**  
Member (J)

  
10.12.19  
Deputy Registrar  
National Company Law Tribunal  
CGO Complex, New Delhi-110003

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