

IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, CHENNAI

IBA/893/2019

*Under Section 9 r/w Rule 6 of the IBC, 2016*

In the matter of M/s. J.R.T. Agromin Trading Private Limited

M/s. Nydel Resources Private Limited

---Operational Creditor

V/s

M/s. J.R.T. Agromin Trading Private Limited

---Corporate Debtor

Order delivered on: 25.10.2019

**Coram:**

**B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Operational Creditor: *Shri. S. Sathiyarayanan, Advocate*  
*Shri. KMC Arunmohan, Advocate*

For the Corporate Debtor : **Non-Present** on the date of hearing

**ORDER**

**Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)**

**Heard and dictated in Open Court on: 22.10.2019**

It is an Insolvency and Bankruptcy Application (In Short "IBA")  
filed u/s 9 of the Insolvency & Bankruptcy Code, 2016 ("the Code")  
by the Operational Creditor namely, *M/s. Nydel Resources Private*  
*Limited* seeking initiation of Corporate Insolvency Resolution Process

(CIRP) against the Corporate Debtor namely, *M/s. J.R.T. Agromin Trading Private Limited* on the ground the Corporate Debtor defaulted in repaying ₹13,74,250 along with interest @ 24% per annum as on 31.03.2018.

2. On perusal of this Company Petition, it appears that the Corporate Debtor approached the Operational Creditor for purchase of "Indonesian Steam (Non Coking) Coal in Bulk" of Indonesian Origin on High Seas Sale basis per vessel MV *Magia*, for the Operational Creditor being approached, the Operational Creditor supplied Indonesian Steam (Non Coking) Coal through vessel MV *Magia* and Bill of Lading dated 16.04.2015 was issued to the Operational Creditor. Then both the parties entered into High Seas Agreement dated 24.04.2015, wherein the Operational Creditor has agreed to sell and the Corporate Debtor has agreed to purchase "Indonesian Steam (Non Coking) Coal in bulk". First supply of the coal was made and for the same invoices were raised against the Corporate Debtor.

3. In pursuance thereof, the Operational Creditor on 30.04.2015 raised Debit Note for an amount of ₹7,60,140 for re-imbusement of custom duty. In addition to the above transaction, the Operational Creditor in between 26.08.2015 to 21.10.2015 supplied coal to the Corporate Debtor simultaneously raising 18 invoices upon the Corporate Debtor amounting to ₹31,00,359 for the coal supplied to them. On the coal purchased by the Corporate Debtor, the Corporate Debtor collected TDS amounting to ₹30,579 under the said purchase but failed to deposit the amount with Income Tax Department.

4. As against invoices raised by the Operational Creditor, the Corporate Debtor issued 7 cheques in between October, 2017 to December, 2017 for a total sum of ₹14,00,000 to clear the due outstanding, but whereas all these cheques were returned on 22.12.2017 and 10.01.2018 with an endorsement "FUNDS INSUFFICIENT". The cheques issued by the Corporate Debtor being dishonoured, the Operational Creditor on 17.01.2018 issued notice under Section 138 of Negotiable Instrument Act to the Corporate Debtor. At that point of time, the Corporate Debtor on 27.01.2018

sent an e-mail to the Operational Creditor admitting the outstanding liability and promised to clear the entire debt in six months. Besides admission of liability made on 27.01.2018, the Corporate Debtor on 01.02.2018 paid an amount of ₹50,000 to the Operational Creditor. In continuation of the same, the Corporate Debtor again on 02.02.2018 sent another e-mail admitting the outstanding dues of ₹13,54,473. When no payment was coming forthwith from the Corporate Debtor, the Operational Creditor on 12.09.2018 issued Section 8 notice to the Corporate Debtor claiming the outstanding operational debt of ₹13,74,250 along with interest to be paid within ten days of receipt of the notice thereof, failing which, the Operational Creditor counsel would initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor u/s 9 of the Code. Though the Corporate Debtor received Section 8 notice, instead of making payment as promised by them, the Corporate Debtor reiterated through e-mail dated 18.09.2018 promising to clear the entire outstanding due, but till date of filing this case, no payment was made by the Corporate Debtor, this Operational Creditor has



therefore filed this case for initiation of CIRP against the Corporate Debtor.

5. Counsel on behalf of the Corporate Debtor was present on the last date of hearing, but today he was not present. However, this Bench having already provided an opportunity to the Corporate Debtor to defend this case, since the Corporate Debtor side not being present today, for there being enough material proving existence of debt and default and there being no contention of dispute existing between the parties, we hereby admit this company application by appointing Mr. Madurai Sundaram Sankar as IRP, looking at the consent letter given by him. This Operational Creditor is further directed to pay remuneration of the IRP, public announcement expenses and other expenses, if any, until constitution of CoC. Accordingly, this IBA/893/2019 is hereby **admitted** with the following directions:

- (I) That Moratorium is hereby declared prohibiting all of the following actions, namely,

(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 Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(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.

(II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of moratorium shall have effect from **22.10.2019** till the 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.
- (V) That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.
- (VI) That this Bench hereby appoints **Mr. Madurai Sundaram Sankar, as Interim Resolution Professional, having Registration Number [IBBI/IPA-001/IP-P00770/2017-18/11315], A 1206, S & S Sarvam, 200 Feet Pallavaram Thuraipakkam Radial Road, Pallikaranai, Chennai-600100,**

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with his consent to carry the functions as mentioned under  
The Insolvency & Bankruptcy Code.

6. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by way of e-mail.

**-Sd-**

**(S. VIJAYARAGHAVAN)  
Member (Technical)**

**-Sd-**

**(B. S.V. PRAKASH KUMAR)  
Member (Judicial)**

VS/TJS