

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P. (I.B) No.816/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.12.2020**

Name of the Company: Bhadreshwar Vidyut Pvt Ltd
V/s
Maheshwari Handling Agency Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code,
2016

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
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ORDER

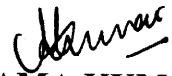
(Through Video Conferencing)

Advocate, Mr. Kunal P. Vaishnav is present on behalf of the petitioner.

The order is pronounced in the open court, vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**



**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 2nd day of December, 2020.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. (IB) 816/9/NCLT/AHM/2019

In the matter of:

M/s. Bhadreshwar Vidyut Private Limited.
(Formerly known as OPGS Power Gujarat P. Ltd.)
B-306, Solitaire Corporate Park,
Next to Divyabhaskar Press
S.G. Road, Makarba,
Ahmedabad 380 051

Registered Office at

Terra 2A, Flat No. 404
No. 2/5 Lavender Street
Mugalivakkam Ner Pon Vidyashram School,
Porur
CHENNAI 600 125 (Tamil Nadu):

Petitioner
Operational Creditor

Versus

Maheshwari Handling Agency Private Limited
Plot No. 640/12-C, Lila Shah Circle
Gandhidham, Kutch :

Respondent
[Corporate Debtor]

Order delivered on 1st December, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

Petitioner : Mr. Kunal P. Vaishnav, Advocate

ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Prashant Goyal, being authorised signatory, on behalf of **M/s. Bhadreshwar Vidyut Private Limited**, filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to

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Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The applicant/operational creditor is a private limited company, having identification No. U40101TN2007GAT063283 and having its registered office at Chennai and plant at Gandhidham.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 23.10.1992 and having identification No. U63090GJ1992PTC018481 and having registered office at Gandhidham, Gujarat State. Authorised share capital of the respondent company is Rs. 1,00,00,000/- and paid up share capital is Rs. 1,00,00,000/-.
4. The applicant/operational creditor has set up a 300 MW power plant and was in need of coal and, therefore, was importing coal from various places. That, for unloading and transportation of such coal imported through the Kandla Port, Kutch, the applicant had engaged the services of the respondent company and the respondent company had handled transportation of coal from Kandla port to the power plant of applicant from May, 2015 and towards transportation, the respondent used to raise invoices. In the year 2017, the applicant decided to shift its operations from Kandla Port to Mundra Port. In the said process an excess payment for the work committed and to be done by the respondent was made by the applicant, however, the said work of handling of coal was not undertaken by the respondent. Therefore, the applicant has to recover an amount of Rs. 51,57,359/- which was paid by the applicant in excess. That, despite several reminders the respondent has not paid the operational debt due and payable by the respondent, therefore, this petition.

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5. The applicant has further submitted that notice dated 24.09.2019 was issued which was replied by the respondent on 16.10.2019. According to the applicant, an amount of **Rs. 51,57,359/- (Rupees fifty-one lacs fifty-seven thousand three hundred fifty-nine only)** has fallen due on 30.09.2017, the day on which the last payment was received.
6. The applicant in support of its claim has furnished copy of documents like; demand notice dated 24.09.2019 (14-17), ledger account (20-28), reply dated 16.10.2019 (29-31), e-mail dated 05.12.2017 along with reconciliation statement (32-33), calculation sheet detailing the working of outstanding claimed amount, Board Resolution dated 25.06.2019 (40) bank account statement (41-90) etc.

Findings:

7. On perusal of the records it is found that the instant petition filed on 15th November, 2019 was notified for the first time on 02.12.2019. It is found that despite giving number of opportunities none turned up on behalf of the respondent nor did the respondent file any reply. Therefore, the matter was finally heard on 10.11.2020 in absence of the respondent.
8. Heard the lawyer appearing for the petitioner and perused the documents annexed to the application.
9. Admittedly, the amount claimed is excess payment made towards unloading and transportation of coal imported through the Kandla Port, Kutch and for such purpose the applicant had engaged the services of the respondent company and the respondent company had handled unloading and transportation of coal from Kandla port to the power plant of applicant from May, 2015. That, towards

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transportation, the respondent used to raise invoices. Further, in the year 2017, the applicant shifted its operations from Kandla Port to Mundra Port and in the said process the applicant had made an excess payment for the work committed and to be done by the respondent. However, the said work of handling of coal was not undertaken by the respondent. Further, the applicant, for such unloading and transportation, had paid excess amount of Rs. 51,57,359/- and for recovery of such amount the applicant has filed the instant application.

10. Now, the issue is whether the excess payment made by the applicant can be considered as "operational debt" vis-a-vis the applicant can be considered as "operational creditor". Before proceeding further, it is necessary to deal with the definition of "debt" as provided in Section 3 (11) of the IB Code which reads as under: -

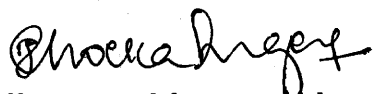
Section 3 (11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt"

Further, Section 5 (20) defines "operational Creditor" and Section 5 (21) defines the "operational debt". On plain reading of the above definitions it is very clear that the "excess payment" does not fall in the category of "operational debt"; rather, it is unintentional over-payment or advance payment and, thus, it cannot be treated as liability as the excess payment would appear as credit to the account of the corporate debtor. Further, the reason for such excess payment is that the customer was unaware of credit allowed to him or the amount which is paid towards the transportation service has not been taken into consideration. Under such circumstances the said amount does not fall in the category of debt or the applicant can be treated as operational creditor.

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11. National Company Law Tribunal, Kolkata Bench in case of **SHRM Bio-technology P. Ltd. v/s VAB Commercial Private Limited** determined the issue as to whether a claim towards refund of advance money would fall within the definition of "operational debt" and held in negative stating that operational creditor neither did render any service to the corporate debtor nor it provided any cost to the corporate debtor and, thus, such pre-payment would not constitute any "operational debt".
12. Thus, it is clear that the term "operational debt" is defined to mean "claim in respect of provision of goods or services....." Provision does not separate that the provider of goods or services shall be operational creditor and the recipient can be corporate debtor. Operational debt is only a claim in respect of provision of goods or services.
13. On perusal of the records it is observed that, in support of its claim, the applicant has not filed any valid document showing that the respondent is indebted to the applicant any amount towards goods/services provided.
14. In the result, company petition No. CP (IB) 816 of 2019 stands dismissed and disposed of without cost. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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