

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IBA/739/2019** filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of ***M/s. Nizam Coal Private Limited***

**M/s. OPG Power Generation Private Limited**

No.6, Sardar Patel Road,  
Guindy,  
Chennai – 600 032

*... Applicant/Operational Creditor*

-Vs-

**M/s. Nizam Coal Private Limited**

7<sup>th</sup> Floor, Seeetha Lakshmi Business Centre,  
684, 690, Anna Salai,  
Chennai – 600 006

*... Respondent/Corporate Debtor*

*Order Pronounced on 12<sup>th</sup> March, 2020*

CORAM:

**R. VARADHARAJAN, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : S. Karthikei Balan  
S. Shivram, Counsels*

*For Corporate Debtor : P. Jesus Moris Ravi  
G. George Raja Selvan, Counsels*

**ORDER**

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

1. This Application has been filed to initiate Corporate Insolvency Resolution Process against the Corporate Debtor as

per the Provisions of Chapter II of Part II of the Insolvency and Bankruptcy Code, 2016 ("I&B Code-2016") in the format as prescribed under Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "AAA Rules") by the Applicant in the capacity of the Operational Creditor viz., **M/s.OPG Power Generation Private Limited** against the Respondent viz., **M/s. Nizam Coal Private Limited**. The Applicant seeks to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company with CIN:U40109TN2005PTC055442. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U51909TN2002PTC049900 which was incorporated on 25.03.2011 and that its nominal share capital and paid up share capital is ₹8,00,00,000.00 and ₹8,00,00,000.00 respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be



situated at 7<sup>th</sup> Floor, Seetha Lakshmi Business Centre, 684, 690, Anna Salai, Chennai, Tamil Nadu 600 006. Part-III of the Application shows that the Operational Creditor has not proposed any "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part-IV of the Application, it is seen that on 25.02.2019 the total amount due from the Corporate Debtor is a sum of ₹1,28,71,226.00 of which ₹30,01,574.00 is towards the principal sum and ₹98,70,226.00 is towards the interest @ 36% per annum from the date on which the due occurred. The Operational Creditor caused a Demand Notice for the unpaid operational debt on 04.03.2019 and the same was duly received by the Corporate Debtor on 05.03.2019 and no reply has been given.

4. The transactions given as to the amount claimed by the Operational Creditor as against the Corporate Debtor are stated to have arisen consequent upon the Operational Creditor having supplied imported Coal pursuant to purchase order dated 12.10.2015, copy of which is seen attached in Page 52 and 53 of the Annexures.



5. Part V of the Application contains nothing relevant as to the existence of debt. As regards the details of invoices or similar other documents, if any, further contains the details of Purchase Order etc. which are mentioned below;

- (i) Purchase Order for the supply of Imported Steaming Coal between the Operational Creditor and the Corporate Debtor dated 12.10.2015 and 16.10.2015 for supply of Power.
- (ii) Confirmation of Accounts dated 01.04.2016
- (iii) OPG PG – Nizam Coal Ledger dated as on 24.12.2018 between 1-Jul-201 to 24-Dec-2018
- (iv) Demand Notice dated 25.02.2019 and sent on 04.03.2019

6. It is seen that the Operational Creditor has issued Demand Notice in Form-3 under the Insolvency and Bankruptcy Code, 2016 on 25<sup>th</sup> February, 2019 to the Corporate Debtor to the address as given in the said notice.

7. The Operational Creditor has submitted that the Corporate Debtor had approached the Operational Creditor with an intention to buy Coal and thus purchased the same. In lieu of such purchase by the Corporate Debtor several invoices



were raised by the Operational Creditor. According to the Petition, the Corporate Debtor was paying the due amounts partially and with enormous delay and now in recent times has preferred to remain silent. It is stated that the Corporate Debtor, despite several reminders failed to pay the said amount within the prescribed time.

8. It has been stated that the Corporate Debtor vide his communication dated 01.04.2016 viz., which is a statement for Confirmation of Accounts requested to acknowledge and confirm that an amount of ₹1,39,56,438.00 is payable to the Operational Creditor herein. According to the Operational Creditor, the said confirmation of outstanding balance from the Corporate Debtor was not acceptable since there was huge delay in making payments. However, after several negotiations, the Operational Creditor agreed to confirm the outstanding balance as per the Confirmation of Accounts dated 01.04.2016 which was accepted by the Operational Creditor on 26.12.2018. Even thereafter, the said admitted amount was not paid by the Corporate Debtor and the last payment made by the Corporate Debtor was as a sum of ₹10,00,000.00 on 04.03.2017 and thereafter no payments have been received whatsoever. Thus payment of ₹30,01,574.00 towards



principal amount and the accrued interest calculated till 25.02.2019 is ₹98,70,226.00 and all put together a total amount of ₹1,28,71,226.00 (Rupees One Crore twenty-eight Lakhs seventy-one thousand two hundred and twenty-six only) is due along with future interest to be calculated till the date of payment to be made by the Corporate Debtor.

9. The Operational Creditor has stated that the Demand Notice dated 14.12.2018 was duly accompanied by Proof of Service of notice and that there was neither a response nor notice of dispute by the Corporate Debtor in relation to the unpaid Operational Debt which was in default on 14.03.2018.

10. In the counter filed by the Respondent/Corporate Debtor, it has been alleged that:

- a) the Petition of the Petitioner is false and devoid of merits and is liable to be dismissed in limine.
- b) the Petitioner has suppressed several material facts and circumstances before the Hon'ble Tribunal only with hidden agenda and mala fide intentions to wind up a Company which is successful in Business.



- c) The Respondent has submitted that before filing the present application, the Petitioner has forwarded a demand notice under Rule 8(1) of the Insolvency and Bankruptcy Code, dated 25.02.2019.
- d) The Respondent has further submitted that along with the said Demand Notice dated 25.02.2019, the Petitioner has enclosed the purchase orders of the Operational Creditor dated 12.10.2015 and 16.10.2015.
- e) The Respondent has further submitted that according to the Petitioner a statement of accounts dated 01.04.2016 was sent for confirming the balance and another statement of account as on 24.12.2018.
- f) The Respondent has further submitted that for evidencing the demand made by the Petitioner, the Petitioner has never enclosed any invoice raised by them or any documents to show that they have supplied any materials to the Respondent.
- g) The Respondent has further submitted that the statement of accounts filed by the Petitioner is also improper as they have filed statement of accounts from 01.07.2017 to 24.12.2018 which was not acknowledged by the Respondent.

- h) The Respondent has further submitted that according to the typed set of documents filed by the Petitioner, the Respondent had given a purchase order to the Petitioner and according to the statement of accounts, the Respondent have supplied coal to the Petitioner and according to the statement of accounts, there was a balance claimed by them under the Petition.
- i) The Respondent has further submitted that the ledger account filed by the Petitioner was broken and they have not filed any statement consecutively from 01.04.2015.
- j) The Respondent has further submitted that conveniently the Petitioner had filed a statement of account from 01.04.2015 to 31.03.2016, thereafter from 01.04.2017 to 24.12.2018 and a bank confirmation letter which shows a payment by the Respondent to the tune of ₹30 Lakhs.
- k) The Respondent has further submitted that in the statement of accounts filed by the Petitioner, nowhere the certificate issued by the banker is seen reflected and hence the statement of accounts is inadequate and cannot be relied upon.
- l) The Respondent has further submitted that the Petitioner had not raised a valid demand under Section 8(1) of the Insolvency and Bankruptcy Code since they have not enclosed or made a



demand based on the invoice pending and the statement of account produced by them is also inadequate and broken for a certain period.

- m) The Respondent has further submitted that the petition of the petitioner is devoid of merits, false and the petitioner has suppressed several material facts and is liable to be dismissed with exemplary cost.

11. In the Rejoinder filed by the Applicant/Operational Creditor, it has been stated that the Corporate Debtor has not denied the Confirmation of Accounts given by themselves to the Operational Creditor on various dates through e-mail and the Operational Creditor has filed the same for the sake of clarity and better understanding. The Corporate Debtor has unequivocally accepted to the outstanding balance of ₹30,01,575/- even as on date of 01.04.2016 and also by furnishing the statement to the Operational Creditor once again through an e-mail dated 26.12.2018. The Corporate Debtor has raised an issue to produce the Ledger accounts by the Operational Creditor, but has not chosen to file any documents or statement either denying or disputing the said claim made by the Operational Creditor.



12. This Tribunal has examined the Petition, Counter Affidavit and Rejoinder filed by both the parties in detail and heard both the parties after giving adequate opportunities to either side to produce further documents, if any, in order to substantiate their claim. On scrutiny of the documents submitted and the submissions made during the course of hearing, we observed the following.

- (i) The Demand Notice seen to have been attached is not satisfactory in view of inadequacy of documentary proof with respect to copies of invoice, delivery challan and incidental documents of title to goods which are essential to prove passing of property in the goods from the Seller who is Operational Creditor herein to the buyer who is the Corporate Debtor herein as prescribed under the Sale of Goods Act, 1930.
- (ii) A Statement of Account is seen to have been submitted vide Page No. 54 as Annexure II (6) which is purported to have been furnished by the Corporate Debtor dated 01.04.2016, indicating a closing balance of ₹1,39,56,438.00 presumably as on 31.03.2016; it is seen that nobody has signed under "yours faithfully" but it is seen as having been signed by someone of the Operational Creditor company on 26.12.2018. This Tribunal is unable to accept this as a valid proof of acknowledgement of the debt claimed as due to

the Operational Creditor. In Page No.56 of the Petition vide Annexure II(7) a copy of Ledger Account in the heading OPG Power Generation Pvt. Ltd., the Operational Creditor, purported to appear in the Books of Nizam Coal Pvt. Ltd., the Corporate Debtor, reflecting certain transactions in the nature of sales, commencing with an Opening Credit Balance of ₹1,09,56,438.00 and entries of the following nature through Journal Voucher, leaving a closing balance of ₹30,01,575 presumably as on 17.07.2017.

OPG Power Generation  
Pvt. Ltd. .... Dr. ₹79,54,863

To Sales Account ₹79,54,863

While we are unable to appreciate the ingenuity of this transaction, we presume that the Corporate Debtor being a Coal Dealer might have sold the Coal back to Operational Creditor. However, no documents have been produced by either of both the parties to take on record the veracity of this transaction. Accordingly, we do not take into account this transaction.

- (iii) The origin of the Open Balance of ₹1,09,56,438 as mentioned in Point No.(ii) above cannot be traced back to any previous transaction as no Statement for the period commencing from 01.04.2016 to a further subsequent date has been produced to substantiate the existence of the said opening balance.



(iv) This Tribunal maintains that the existence of the Operational Debt due from Corporate Debtor to the Operational Creditor could not be proved to the satisfaction of this Tribunal by the Petitioner so as to enable him to move this application under Section 9 of the Insolvency and Bankruptcy Code in order to initiate CIRP against the Corporate Debtor.

13. Therefore, owing to the informities in the petition as mentioned above, the Petition stands **dismissed**, however without costs.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)

*Elz / Raymond*