

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: DR. P. S. N. PRASAD,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 173/9/JPR/2020

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

IN THE MATTER OF:

M/S ANNAPURNA POLYTECH PVT. LTD.

...Operational Creditor

VERSUS

M/S AJENTA CHEMICALS (INDIA) LIMITED

...Corporate Debtor

MEMO OF PARTIES

M/S ANNAPURNA POLYTECH PVT. LTD.

Plot No. G-4, Sector-2,
DSIDC, Bawana Industrial
Area, New Delhi- 110039

...Operational Creditor

VERSUS

M/S AJENTA CHEMICALS (INDIA) LTD.

120 MIA Alwar- 301030
(Rajasthan)

Also at:

Qutub Service Station (India
Oil Petrol Pump), Opposite
STC and MMTC Housing
Colony Mehrauli Road, New
Delhi- 110017

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Also to:

MR. VARUN JAIN,

*Director of M/s Ajenta
Chemicals (India) Limited,
120 MIA Alwar- 301030
(Rajasthan)*

Also at:

Qutub Service Station (India
Oil Petrol Pump), Opposite
STC and MMTC Housing
Colony, Mehrauli Road, New
Delhi- 110017

Also to:

MR. SUBODH BOSH, MANAGER

Qutub Service Station (India
Oil Petrol Pump), Opposite
STC and MMTC Housing
Colony, Mehrauli Road, New
Delhi- 110017

Also at:

J-59, Street Number 4, Laxmi
Nagar, Shakarpur, Delhi-
110092

...Corporate Debtor

FOR THE PETITIONER : Hariom, proxy counsel
Vinay Gupta, Director
FOR THE RESPONDENT : Mohit Singhvi, Adv.

Order Pronounced On: 8.12.2023

ORDER

CORAM: SHRI P. S. N. PRASAD, JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA, TECHNICAL MEMBER

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1. The present Application has been filed by *M/s Annapurna Polytech Pvt. Ltd.* ('Applicant') to initiate Corporate Insolvency Resolution Process ('CIRP') against *M/s Ajenta Chemicals (India) Limited* ('Corporate Debtor'/'Respondent') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') for the alleged default on the repayment of Operational Debt amounting to Rs. 39,58,389.52/- (Rupees Thirty-Nine Lakhs Fifty-Eight Thousand Three Hundred and Eighty-Nine).
2. The Corporate Debtor namely, *M/s Ajenta Chemicals (India) Limited* is a public company having CIN No. U24211RJ1984PLC002994 incorporated on 05.05.1984, in accordance with the Companies Act, 1956. The registered office of the Corporate Debtor is situated at 120 M.I.A, Alwar, District of Rajasthan-301030. Hence, this Adjudicating Authority has territorial jurisdiction in this matter.
3. The applicant in his application has averred as under :
 - 3.1 In the month of September/October the Corporate Debtor after perceiving product quality of Operational Creditor, initiated the business, wherein the Operational Creditor was working as procurement source for the Corporate Debtor. The main product of procurement was to deliver the custom pet bottles specially designed for the Corporate Debtor either to their registered office or their Mehrauli based corporate office. The Corporate Debtor and Operational Creditor shared the relationship of Buyer and Supplier

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respectively. The Operational Creditor delivered goods as per verbal communication by the authorised representative i.e., *Mr. Subodh Bosh*, Manager of the Corporate Debtor. The Operational Creditor intended to execute a contract/agreement so as to avoid any future inconvenience. However, the Corporate Debtor has assured the Operational Creditor that soon a binding agreement between them will be executed. The payment terms as understood between the parties were payment by cash or cheque at the time of delivery of the goods.

- 3.2 During the whole time when the Operational Creditor was working with the Corporate Debtor, the Applicant raised invoices at the time of delivery. However, the Corporate Debtor never paid the due amount at the time of delivery of goods as promised earlier. The total amount payable by the Corporate Debtor is Rs. 29,10,607/- (Rupees Twenty-Nine Lakh Ten Thousand Six Hundred and Seven only) along with interest @ 18% on the total amount for 24 months Rs. 10,74,782.52/- (Rupees Ten Lakhs Seventy-Four Thousand Seven Hundred and Eighty-Two and Fifty Two Paise), both aggregating to Rs. 39,58,389.52/- (Rupees Thirty-Nine Lakhs Fifty-Eight Thousand Three Hundred and Eighty-Nine) as on 16.01.2019. It is also submitted that whenever goods were supplied by the Corporate Debtor to the Applicant at any of its location, the invoices were duly raised. The representative of the Corporate Debtor asked the Operational Creditor

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to visit the Laxmi Nagar office on 17.12.2018 after making the payment of Rs. 7,81,920/- by way of cheque to the Operational Creditor. The Corporate Debtor confirmed that the balance amount would be cleared within a few days, but the same has not been paid so far.

3.3 The Operational Creditor has stated that he has stopped the delivery of goods after 16.01.2019 on account of immoral methods of the Corporate Debtor. The Operational Creditor used to maintain the Ledger of the Corporate Debtor which shows that a total outstanding of Rs. 39,58,389.52/- (Rupees Thirty-Nine Lakhs Fifty-Eight Thousand Three Hundred and Eighty-Nine) is due from the Corporate Debtor. The Operational Creditor sent several reminders to the Corporate Debtor for release of payments, but the Corporate Debtor refrained making of any payment. Thereafter, the legal notice dated 27.04.2019 was issued by the Operational Creditor to the Corporate Debtor which was replied to by the Corporate Debtor vide letter dated 13.05.2019.

3.4 On 09.02.2019, the Operational Creditor visited the office of the Corporate Debtor in Laxmi Nagar, where the Manger of the Corporate Debtor threatened the Operational Creditor. Subsequent to the same, the Operational Creditor has lodged the complaint against the Directors and Manager of the Corporate Debtor at Laxmi Nagar, Police Station. Pursuant to the police complaint the Manager of the Corporate Debtor

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appeared at Laxmi Nagar, Police Station. Afterwards, on 26.02.2019, the Operational Creditor was approached by goons sent by the Corporate Debtor, who threatened him to take back the complaint registered at Laxmi Nagar, Police Station.

3.5 An affidavit of compliance under Section 9(3)(B) of the IBC has been filed vide Dairy No. 689/2021 dated 15.03.2019. The amount payable by the Corporate Debtor includes Principle amount of Rs. 29,10,607/- (Rupees Twenty Nine Lakhs Ten Thousand Six Hundred and Seven Only) along with 18% interest on the total amount for 24 months of Rs. 10,74,782.52/- (Rupees Ten Lakhs Seventy-Four Thousand Seven Hundred Eighty-Two and Fifty-Two Paise). The Demand notice under Section 8 of the Code was preferred vide letter dated 04.11.2019 and replied to by the Corporate Debtor vide letter dated 24.12.2019.

3.6 The aforementioned details as mentioned in Part-IV of the application is tabulated below:

PART IV
PARTICULARS OF OPERATIONAL DEBT

1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from	<u>Amount of Debt Granted:</u> That as on the present date, a sum of Rs. 39,58,389.52/- (Rupees Thirty-Nine Lakhs Fifty-Eight Thousand Three Hundred and Eighty-Nine) inclusive of 18% interest payable by the Corporate Debtor till date.
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	which such debt fell due	<p>Date of Default: 16.01.2018.</p> <p>The above-mentioned payment arises out of the goods supplied by the Operational Creditor to the Corporate Debtor to the extent of leasing out its property bearing No. 444 at Fourth Floor in JMD Megapolix, Gurgaon to the Corporate Debtor vide lease deed dated 26.04.2017 for the purpose operating the business of your related companies.</p>
2.	Amount claimed to be in default and the date on which the default occurred	<p><u>Amount Claimed</u>: That as on the present date, a sum of Rs. 39,58,389.52/- (Rupees Thirty-Nine Lakhs Fifty-Eight Thousand Three Hundred and Eighty-Nine) inclusive of 18% interest payable by the Corporate Debtor till date.</p>

4. On receipt of the notice from this Adjudicating Authority, a detailed reply was filed by the Corporate Debtor vide Diary No. 2521/2021 dated 29.11.2021, wherein it has stated as under :

4.1. The Corporate Debtor has stated that as per the purchase order between the parties, the Corporate Debtor was only liable to pay for the bottles filled and used by it and not for all the bottles supplied to it. The same was well within the knowledge of the Applicant, hence, the Corporate Debtor is justified in paying only for the bottles that could be filled.

The Corporate Debtor has not only informed the Applicant about the

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unusable quality and wastage of the bottles supplied to it, but also not accepted the supply of bottles from the Applicant in August, 2018. Relying on the request for resumption of supplies, the Applicant was given another chance, however, the Applicant continued to supply the bottles that could not be filled and used by the Corporate Debtor. The Corporate Debtor via email dated 19.01.2019 and 22.01.2019 duly informed the Applicant regarding the faulty supplies with videos and pictures attached. The same were also attached to the reply filed by him in the matter. This clearly tantamounts that there exists a dispute regarding the quality of bottles between the parties to the present matters

- 4.2. The Corporate Debtor has relied on judgments of the Hon'ble Supreme Court to point out that in cases where there exists pre-existing dispute and the same has been raised prior to the issuance of Demand notice under Section 8, a sufficient ground to reject an application under Section 9 of IBC, 2016 is made out. The Corporate Debtor has also relied on the judgement of *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited* wherein the Hon'ble Supreme Court has categorically observed that- "34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (ii) Whether the documentary evidence furnished

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with the application shows that the aforesaid debt is due and payable and has not yet been paid? and (iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute. If any one of the aforesaid conditions is lacking, the application would have to be rejected.”

4.3. Reliance has also been placed on the case of the Hon’ble Supreme Court in *Innoventive Industries Limited Vs. ICICI Bank and Anr.* wherein it has been observed that *“The moment there is existence of such a dispute, the operational creditor gets out of the clothes of the Code.”* and *Transmission Corporation of Andhra Pradesh Limited Vs. Equipment Conductors and Cables Limited* wherein it has been held that *‘IBC was not intended to be a substitute to a recovery forum and that whenever there was existence of a real ‘Dispute’, IBC provisions could not be invoked’.*

4.4. The Corporate Debtor has further stated that it is a fast-growing supplier of Liquor filled bottles and has gained recognition in the industry because of the quality of supplies. In the year 2017, the Corporate Debtor commenced procuring custom pet bottles from the Applicant subject to the marketability and quality of the bottles. The Corporate Debtor issued purchase orders on certain mutually agreed

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terms and conditions that when the supply was made by the Applicant, the Corporate Debtor would make the payments promptly for the bottles utilized by it. The said purchase bottles were only for bottles filled and used by the Corporate Debtor and not for the bottles supplied. All such business activities took place on the basis of verbal and digital communication through email and available record of such communications between the authorised representatives of the Corporate Debtor and the Applicant.

- 4.5. As per the terms and conditions understood and agreed between the parties, due payments were to be made by a 60 days' cheque payment as provided for in the purchase order. Most of the consignments supplied by the Operational Creditor were of a sub-standard and dissatisfactory quality. Hence the Corporate Debtor was not capable to effectually market the same. Therefore, the debit notes were issued for the same. The goods were time and again returned and the additional cost of delay in production and return of goods had to be borne by the Corporate Debtor. Owing to the substandard quality of pet bottles, all supplies from the Applicant were stopped from August, 2018 and its account for bottles used was cleared of by December, 2018. The same is evident from the mail received dated 10.07.2018; also an apology letter dated 04.07.2018 has been annexed. On account of the apology letter, the work was again commenced from December, 2018. The

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Corporate Debtor has also submitted that the Applicant continued to supply faulty consignments with holes in most of the bottles. The Corporate Debtor vide email dated 16.01.2019 intimated the unusable nature of the bottle supplied to the Applicant due to wall thickness problem in supply.

4.6. It has been submitted that a debit note is provided to all the vendors every month for issues found related to the quality or any other losses which the Corporate Debtor has to bear due to defective supply from the vendors which is consigned and accepted by the vendors. The Corporate Debtor issued such debit notice to the Applicant. Regarding the defective supply and goods returned in accordance with the terms and conditions of the purchase orders, the Applicant has issued credit notes. However, the Applicant is trying to claim the consideration of the defective goods. Moreover, the ledger account of the Corporate Debtor shows that as on 10.12.2018 the balance of Applicant was Rs. 0.540 and hence nothing is payable on behalf of the Corporate Debtor. Moreso, the reply dated 13.05.2019 clarified the truth of the matter and denied any claim made by the Operational Creditor in the demand notice dated 27.04.2019.

5. The Applicant has filed rejoinder vide Dairy No. 2795/2022 dated 19.09.2022 containing the following:

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- 5.1. There was no quality dispute between the parties herein. The Corporate Debtor did not make payments on time and for the same the Applicant sent various e-mails requesting the Corporate Debtor to make the payments. Copy of the e-mail dated 30.05.2018 and 07.08.2018 have been annexed with the rejoinder. Another e-mail dated 20.06.2018 was sent by the employee of the Respondent Company to the Director of the Corporate Debtor showing that there is no issue of the quality of the Applicant's goods otherwise the same would have been mentioned or discussed in the aforesaid e-mails. Also, the Corporate Debtor was charging the rates of the bottles on their own wishes and not making payments on time.
- 5.2. The Applicant supplied the goods on regular basis to the Corporate Debtor who filed month wise packaging material report. Based on this report, it is evident that there was no wastage material in the supply of goods by the Applicant to the Corporate Debtor. The Applicant was never intimated by the Corporate Debtor that the Corporate Debtor was only liable to pay for the bottles filled and used. Regarding alleged faulty supplies on behalf of the Applicant, it has been submitted that the pictures show the bottles which have not been manufactured by the Applicant for the bottles which are manufactured by the Applicant bear certain marks and the bottles in the picture did not bear the same marks.



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Also, the Corporate Debtor never communicated to the Applicant to return the said alleged bottles.

- 5.3. It has been explicitly denied by the Applicant that the Corporate Debtor informed the Applicant regarding the alleged substandard and dissatisfactory quality of the goods supplied. The e-mail dated 10.07.2018 was preferred by the Applicant to one *Globus Group* and not to the Corporate Debtor and the alleged apology letter dated 04.07.2018 was also not concerned with the Applicant. Even otherwise bare perusal of the letter makes it clear that the said letter was not an apology letter. The Applicant also states that it never received any debit note from the Corporate Debtor and the credit notes as issued by the Applicant for in good faith.
6. We have heard the Ld. Counsels for the parties as well as Director of the Operational Creditor and gone through the averments made in the application, reply, rejoinder and the documents submitted by both the parties.
7. In the hearing on 10 Nov.2023, one Mr. Hariom stated to be proxy counsel appeared and there is no vakalatnama filed so far by the counsel. However, one Director of the Applicant Company i.e. *Mr. Vinay Gupta* was also present with the proxy counsel. It has been noticed that despite clear orders of this Bench vide order dated 19.10.2023, stating that no further opportunity will be given to file Vakalatnama and the matter will be heard on the basis of the records available with this Adjudicating Authority, even today like in

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the past few months, a new Advocate without Vakalatnama appeared. In the spirit of natural justice, this Adjudicating Authority asked whether the representing lawyer wished to argue the case. The Learned Counsel from the Respondent side *Dr. Mohit Singhvi, Adv.*, was willing to argue the case today. *Mr. Vinay Gupta*, Director of the Operational Creditor was asked to present the case. Accordingly, the submissions made in the light of the pleadings were heard by the Bench.

8. The Director of Corporate Creditor stated that there is an Operational Debt to the extent of Rs. 39,58,389.52/- (Rupees Thirty-Nine Lakhs Fifty-Eight Thousand Three Hundred Eighty-Nine and Fifty Two Only) due from the Corporate Debtor arising out of the outstanding payments towards supply of PET bottles to the Corporate Debtor. The Applicant stated that a legal notice was served on the Corporate Debtor vide letter No. LN04/19 dated 27.04.2019 through their Advocate *Shri A.K. Chadha* which is annexed at Annexure A-11 at Page 120 of the Application. Thereafter, the Demand Notice under Section 8 of the Code dated 04.11.2019 was served on the Corporate Debtor alleging default of Rs. 39,58,389.52/- (Rupees Thirty-Nine Lakhs Fifty-Eight Thousand Three Hundred Eighty-Nine and Fifty-Two Paise).
9. The Corporate Debtor stated that there were some issues with the quality of some PET bottles. The Corporate Debtor has not given any evidence of return of the bottles like e-way bill, weight bridge record, carrier details etc.

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It is also submitted by the Applicant that the statement of bottles consumed taken from the data of the Excise Department showed their rejections as zero, therefore, they have prayed that the Corporate Debtor may be directed to pay the sum of Rs. 39,58,389.52/- (Rupees Thirty-Nine Lakhs Fifty-Eight Thousand Three Hundred Eighty-Nine and Fifty-Two Paise). Learned counsel for the Corporate Debtor informed that they had responded to the legal notice as well as the Demand Notice vide their letter dated 13.05.2019 (Annexure A-12) and to the demand notice vide Letter dated 24.12.2019 (Annexure- A-14 at Page 148 Application) respectively, categorically denying dues of Rs. 39,58,389.52/- (Rupees Thirty-Nine Lakhs Fifty-Eight Thousand Three Hundred Eighty-Nine and Fifty-Two Paise) as alleged by the Applicant.

10. The Corporate Debtor had not only intimated the Applicant about the unusable quality and wastage of the bottles supplied, but had also seized the supplies from the Applicant in August 2018 due to the same. After relying on the apology and request for resumption of supplies by the corporate creditor they were given another chance on benevolent considerations, however, the Operational Creditor continued supplying the bottles that could not be filled and used by the Corporate Debtor. Thereafter the Corporate Debtor via emails dated 19.01.2019 and 22.01.2019 informed the Applicant about the faulty supplies in January, 2019, for which the Operational Debtor

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.issued debit notes but applicant submitted that no bottles were returned by the Operational debtor.

11. The Corporate Debtor further submitted that the ledger account of the Applicant is not authentic as the same differs from the Ledger account provided by the Applicant to the Corporate Debtor vide e-mail dated 30.05.2019, which is annexed as Annexure- R/7 of the Reply. It has also been pointed out that as per the ledger statement placed at Page 33 of the reply, an amount of Rs. 6,03,752/- (Rupees Six Lakhs Three Thousand Seven Hundred and Fifty-Two Only) was due which was further reduced to Rs. 3,549.66/- (Rupees Three Thousand Five Hundred Forty-Nine and Sixty-Six Paise) as on 31.03.2019 (Page 37 of the Reply to the petition). In the mail dated 30.05.2018, the Counsel of the Corporate Debtor also pointed that the confirmation of net balance due Rs. 6,03,752/-(Rupees Six Lakhs Three Thousand Seven Hundred and Fifty-Two Only). Reliance has been placed upon the debit notes raised by them on the other party annexed at Annexure R-6 of the Reply (Page No. 26 to 31; in all 13 entries), towards defective goods supplied.

12. The Corporate Debtor also highlighted the email dated 16.01.2019 sent to the Applicant informing '*wall thickness problem in supply*' along with certain photographs attached. Another email dated 22.01.2019 by the Corporate Debtor informing the director of the Applicant reads '*see the attached video and picture. We have huge loss because of your PET pin hole*

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problem. We are debited to you. Bad quality will not be accepted'. Five photographs have been attached with the said email. A letter dated 04.08.2018 as apology for poor quality was written by Director of the Applicant, *Sh. Vinay Gupta* to *Globus Spirits Ltd.* who are using PET bottles supplied by Corporate Debtor.

13. The Corporate Debtor highlighted that as per the purchase orders between the parties, the Corporate Debtor was only liable to pay for the bottles filled and used by it and not for all the bottles supplied as such and the same was well within the knowledge of the Applicant. Hence, the corporate debtor is justified in paying only for the bottles that could be filled. A copy of their purchase orders is placed at annexure A1 at page 20 of the reply which reads additional bottles below 9.6 gram weight and 190 BFC consignment will be rejected filling base for factory.

14. After perusing, this Adjudicating Authority finds that:

14.1. There was no binding agreement entered into between the parties before supply of goods. Therefore, no agreed terms of payment were mutually decided by the parties. The Operational Creditor was raising invoices at the time of delivery.

14.2. There is dispute between the parties and the operational creditor has lodged a police complaint against the directors and managers of the Corporate Debtor company at Laxmi Nagar Police Station vide reference letter No. 81680541900310. Also, the Corporate Debtor

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had filed a police complaint with SHO Kishangarh Mehrauli, Delhi on 22.02.2019 followed by a complaint with Commissioner of Police on 11.04.2019 vide their letter dated 11.04.2019.

- 14.3. It is evident that there is pre-existing dispute between the parties in regard to the quality of goods supplied and non-payment by the Corporate Debtor for which various emails have been attached, both the parties have even filed police complaint against each other. At one stage the Operational creditor has acknowledged ledger balance at Rs. 6,03,752 as stated by Corporate Debtor's books.
- 14.4. The IBC is not a recovery forum and dispute between the parties regarding the pre-existing disputes cannot be brought before this Tribunal for initiating actions under Section 9 of the Code. The Hon'ble Supreme Court has laid down in the matter relating to Transportation Corporation of Andhra Pradesh Limited Vs. Equipment Conductors and Cables limited that IBC was not intended to be a substitute to a recovery forum that whenever there was existence of a real dispute, IBC provision could not be invoked. Therefore, the instant application preferred by the Operational Creditor is liable to be rejected for being inconsistent with the established scheme of availing remedy under IBC, 2016.
- 14.5. In view of the foregoing, we are of the considered view that the Section 9 applicant has not established a case to initiate the CIRP of

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the Corporate Debtor. Accordingly, the CP No. (IB)-173/9/JPR/2020 is rejected and thereby stands dismissed without costs.

- 14.6. The Registry is directed to provide a copy of the order to the parties to the case.

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**DR. P. S. N. PRASAD,
JUDICIAL MEMBER**

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**SHRI RAJEEV MEHROTRA,
TECHNICAL MEMBER**