

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

CP No. (IB)-2581(ND)/2019

IN THE MATTER OF:

**M/s. Jakson Engineers Limited
626,6th Floor, Tower A
DLF Tower, Jasola,
New Delhi-110025**

...Applicant/Operational Creditor

VERSUS

**M/s. UM Green Lighting Private Limited
806, Devika Tower, 6
Nehru Place, New Delhi-110019**

...Respondent/Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on: 13.12.2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For Applicant : Sr. Adv. Krishnendu Datta, Adv. Divyam Agarwal
and Adv. Geetanjali Shah with Ms. Sonakshi Singh

For Respondent : Adv. Rajiv Singh, Adv. Eknor Deep

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/s. Jakson Engineers Limited (for brevity the '**Operational Creditor/ Applicant**') has filed the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s.UM Green Lighting Private Limited (for brevity the '**Corporate Debtor/ Respondent**').

2. That the Applicant is a Company incorporated on 16.01.1981 with CIN U74210DL1981PLC011261 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 626, 6th Floor, Tower-A, DLF Tower Jasola, New Delhi-110025.

3. That the Authorized Share Capital of the Applicant Company is Rs.1,20,00,000/- and Paid-up Share Capital is Rs.24,00,000/- as per the Master Data of the Applicant Company.

4. That the Corporate Debtor (CD) namely, M/s.UM Green Lighting Private Limited is a Company incorporated on 26.11.2010 with CIN U31500DL2010PTC210780 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 806, Devika Tower, 6, Nehru Place, New Delhi-110019.

5. That the Authorized Share Capital of the Corporate Debtor is Rs.5,00,00,000/- and Paid-up Share Capital is Rs.3,43,97,900/- as per the Master Data of the Corporate Debtor.

6. It is submitted by the Applicant that in December 2014, tenders were issued by Uttar Pradesh Renewable New Energy Development Agency (“UPNEDA”) and the corporate debtor was declared as the successful bidder for home lighting and street lighting system. Accordingly, the corporate debtor issued three purchase orders for supply of Street Lighting and Home Lighting Systems. In terms of the purchase orders, three MOUs were executed between the parties in the year 2015, which recorded that the supply of products shall be made in terms of the purchase orders. Accordingly, supplies were made by the Operational Creditor during 2015-16 and invoices were raised by the Applicant for products supplied.

7. It is further stated that the corporate debtor initially made part payments. On 04.02.2017, a meeting was held between the representatives of the Corporate Debtor and the Applicant, wherein the representative of the Corporate Debtor admitted the dues of Rs.5,02,02,749/- as on February 2017. Thereafter, the Corporate Debtor released another part payment of Rs.59,06,192/- leaving the total outstanding liability to Rs.4,42,98,557/-

8. That it is submitted by the Applicant that subsequently, he filed an Application under Section 9 of the Insolvency and Bankruptcy Code,

2016 bearing no. IB/463(ND)/2018. After filing of the said Application, the parties entered into a settlement dated 19.05.2018, whereby the Corporate Debtor agreed to pay Rs.4,42,95,557/- in the following manner:

Debt to be received by Jackson (INR)	Due date by which due to be paid by UM Green
2,58,16,305/-	31.05.2019
1,84,82,252/-	31.05.2020

9. It is submitted that pursuant to the settlement, the Application under Section 9 bearing no. IB/463(ND)/2018 was withdrawn. After execution of the settlement Agreement, the Corporate Debtor paid a sum of Rs.6,29,000/- only. The Corporate Debtor failed to comply with the terms of Settlement Agreement and despite repeated reminder failed to pay the balance amount. The Settlement Agreement dated 19.05.2018 specifically provided that the Applicant will have the liberty to revive the Insolvency Application in case of any default. Therefore, the Applicant filed an application seeking revival of insolvency application on 31.07.2019. That in the meantime, the Applicant received an email dated 12.08.2019 from the Director of the Corporate Debtor Mr. Desraj Kamboj admitting that they had promised to clear the following pending debts in view of expected receivables from UPNEDA :

- (i) Rs.2,58,16,305/- dues to be cleared by 31.05.2019,
- (ii) Rs.1,84,82,252/- dues to be cleared by 31.05.2020.

The Mr. Kamboj further admits that they have paid only Rs.6,29,000/- in May, 2018 out of the abovementioned due amount. He sought more time to repay the outstanding dues and requested to hold the Application for revival of the Application.

10. It is further submitted that accordingly, the Applicant sent the Demand notice under Section 8 of IBC dated 05.09.2019 demanding a total operational debt due of Rs.2,51,87,305/-. The Demand Notice was served upon the Corporate Debtor at their registered office on 06.09.2019. The Tracking Report has been annexed. It has been submitted that on 12.09.2019, the Applicant received an envelope containing 14 blank pages. Thus, the Corporate Debtor neither replied to the Demand Notice nor raised any dispute.

11. It is submitted by the Applicant in the Part-IV of its Application that the “total amount of the operational debt due as on date” is of Rs.2,51,87,305/-. The Applicant has also filed an Affidavit under Section 9(3)(b) stating that no notice of dispute is raised by the CD.

12. That as per the Ledger Account at page no. 91 maintained by the Applicant, the operational debt has been reflected. The scanned copy of the Ledger Account is reproduced overleaf :

JAKSON ENGINEERS LTD

UM GREEN LIGHTING PVT LTD



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Accounts statement as on 05th Sept 19

Date	Particular	Reference	Amount	
			Debit	Credit
01/05/2018	Opening Balance		4,42,98,557	
22/05/2018	Payment received	CNRBH14200623134		6,29,000
05/09/2019	Closing Balance			4,36,69,557
			4,42,98,557	4,42,98,557

13. The Corporate Debtor has filed reply dated 24.02.2020 to aforesaid Application and raised the following objections:

- a) That the Application is not maintainable on grounds of non-compliance of Section 8(1) by the Petitioner. The Applicant has deliberately ignored the Letters dated 09.09.2019 & 17.09.2019 sent by the Corporate Debtor, wherein the disputes as regards to the quality, non-functioning and warranty of the products supplied by the Applicant. It is further stated by the Corporate Debtor that in case the Applicant was not inclined to support the efforts of the Respondent, then Letters dated 09.09.2019 and 17.09.2019 should be considered as Appropriate notice for invoking "Arbitration" under the Dispute Resolution mechanism as mentioned in the 03 MoUs as well as the Settlement Agreement dated 19.05.2019, which was coercively got signed from the Director of the Respondent.

- b) That the Corporate Debtor had participated in the tenders of UPNEDA and entered into a quasi-partnership business relationship with the Applicant by signing 03 MOUs for supply, installation, commissioning, 5 years comprehensive warranty and maintenance of 'LED based Home Lighting Systems' and 'Solar Street Lightning System (W-LED based) in Uttar Pradesh New & Renewable Energy Development Agency ("UPNEDA"). As per the partnership, all finance and products were responsibility of the Operational Creditor and execution of the work was responsibility of the Corporate Debtor. After the installation and commissioning, both the parties were to calculate the profit margin on actual expenses. Therefore, as a direct consequence of the issues that were raised vide Letter dated 09.09.2019 and 17.09.2019 by the Corporate Debtor invoking the arbitration clause as regards to the quality of work, UPNEDA held back the payments due to the Applicant and Corporate Debtor on proportionate basis.
- c) In terms of the MOUs, in the event of any dispute or disagreement from the MOUs or over interpretation of any of the terms or any claim of liability of any party, the parties were required to refer the matter to the sole Arbitrator to be appointed by the Applicant and whose decision shall be final and binding upon the parties. The Corporate Debtor states that he made repeated requests to the Applicant to resolve the maintenance and warranty issues raised by the UPNEDA and meet the UP-Government officials to

ensure release of payments upheld by them. However, the Applicant failed to support and therefore, the Corporate Debtor issued Letter dated 09.09.2019 and 17.09.2019, stating that the letter must be considered as an appropriate notice for invoking 'Arbitration' under the Dispute Resolution.

- d) It is also stated that the Respondent has made proportionate payments to the Applicant from the payments as received from UPNEDA. *"The Respondent has so far paid amounts aggregating to Rs.24.23 Crores to the Petitioner, which is approximately 85% of the total sales Value agreed between the parties."* It is the contention of the Corporate Debtor that despite payment of the substantial amount, the Applicant has been pressurizing and demanding the balance amounts from the Corporate Debtor.
- e) That no email or speed post containing notice & Application has ever been delivered to the Directors of the corporate debtor. That the Applicant is indulging in delay tactics to defeat the legal remedies of the Corporate Debtor to contest the present Application by not effecting service of notice issued by this bench upon the Corporate Debtor. It is added that the Applicant has filed a false affidavit in this regard and in terms of the said affidavit this Hon'ble Tribunal has passed an ex-parte Order dated 20.01.2020. Pursuant to the inspection of the service affidavit, it has been found that the email id provided by the Applicant is wrong and is not the email address of any of the Directors of the Corporate Debtor. Moreover, upon enquiry from

the post office it has been found that the notice of the Application alleged to have been served upon the Corporate Debtor through speed post was delivered back to the “Sender” on 24.10.2019. The tracking report as obtained from the post office has been annexed.

- f) The Corporate Debtor has raised objections and denied the amount claimed by the Applicant under the settlement agreement dated 19.05.2018. It is further contented that the said settlement was signed by Corporate Debtor under duress and coercion from the Applicant. That the claim of the Applicant lies upon the 03 MOU’s signed between the parties, however, there is no mention of the said MOU’s in the settlement agreement dated 19.05.2018.
- g) That the Applicant has deliberately concealed that there are pending and subsisting disputes pertaining to the quality of goods, as a consequence the UPNEDA withheld the annual amount payable.

14. The Applicant has filed its written submissions and averred the following:

- a) That the Corporate Debtor has placed on record Purchase Orders dated February 24, 2015 and March 04, 2015 on the Operational Creditor for supply of Street Lighting System and Home Lighting Systems towards which various invoices were raised by the Operational Creditor for the products supplied. Subsequent to the Purchase Orders, Memorandum of Understanding (“MoU”) were

executed for supply of Street Lighting System. As per the MoU, it was an agreed position that there was no joint venture or partnership.

- b) The Applicant supplied lighting systems in terms of the Purchase Orders. However, payment amounting to Rs.4,36,69,557/- (Rupees Four Crore Thirty-Six Lakh Sixty-Nine Thousand Five Hundred and Fifty-Seven only) remained unpaid by the Corporate Debtor, which clearly constitutes an operational debt.
- c) It is further stated that the Corporate Debtor admitted the operational debt vide settlement Agreement dated May 19, 2018. Thereafter on 12.08.2019, vide email the Corporate Debtor again acknowledged that only a sum of Rs.6,29,000/- has been paid to the Applicant and also sought time to pay the outstanding dues of the Applicant. Accordingly, the existence of debt and default is established. It is the averment of the Applicant that the Corporate Debtor raised no defect and deficiencies before raising the notice under Section 8.
- d) It has been argued by the Corporate Debtor that the settlement agreement was executed under coercion. However, at no stage, the Corporate Debtor initiated any proceedings challenging the factum and validity of the settlement agreement nor filed any criminal complaint against the Applicant. Moreover, the execution of the said agreement has not been disputed rather it has been admitted time and again during the arguments. With

regards the argument of the Corporate Debtor that there is no mention of the settlement agreement in the purchase order the Applicant has relied upon the case of Ircon International Ltd. vs. Vinay Heavy Equipment.

- e) The Corporate Debtor has alleged that there exists a pre-existing dispute raised prior to the issue of demand notice. Further argument is also advanced that in response to the demand notice dated 05th September 2019, a response was sent on 9th September 2019, which was never received. The Applicant has placed reliance as being covered under the settled position as laid down by the Hon'ble Supreme Court of India in *Mobilox Innovation Private Limited Vs. Kirusa Software Private Limited* and *K. Kishan Vs. Vijay Nirman Co.(P) Ltd.* (2018) 17 SCC 662.


15. After perusing the pleadings and written submissions placed by the parties on record, this Bench observes that the Corporate Debtor has failed to place or produce any document, which could depict that there is a dispute existing prior to the issuance of the Demand Notice. Therefore, we find no force in the contentions of the Corporate Debtor that there is a pre-existing dispute between the parties.

16. That it has been further contended by the Corporate Debtor that it has not received the Demand Notice issued by the applicant under Section 8 of IBC, 2016. However, when we peruse the postal receipt and tracking report annexed with the application, it is observed that the

demand notice was delivered to the Corporate Debtor via speed post.

The scanned copy of the same is reproduced below :

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You are here Home >> Track Consignment

Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

ED375820047IN

Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivered On
Andrewganj SO	06/09/2019 12:58:48	110019	47.20	Speed Post	Kalkaji HO	07/09/2019 17:21:54

Event Details For : ED375820047IN

Current Status : Item Delivery Confirmed

Date	Time	Office	Event
07/09/2019	17:21:54	Kalkaji HO	Item Delivery Confirmed
07/09/2019	10:26:16	Kalkaji HO	Out for Delivery
07/09/2019	08:37:18	Kalkaji HO	Item Received
06/09/2019	16:37:46	Andrewganj SO	Item Dispatched
06/09/2019	16:25:08	Andrewganj SO	Item Bagged
06/09/2019	12:58:48	Andrewganj SO	Item Booked

More Information >>

Dial 1800 266 8888

Author

Operator

Holiday

Fee

Postage

ED375820047IN INR:4968375820047

SP ANDREWGANJ SO (110019)

Counter No:3,06/09/2019,12:57

To:UM GREEN LIGHTING,SOE

PIN:110019, Kalkaji HO

From: S SAGAR ASSOCIATES

Wt:330gms

Rate:47.20(Cash)Tax:7.20


<Track on www.indiapost.gov.in>

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17. That it is further contended by the Corporate Debtor that the present Application is not maintainable in view of invocation of the Arbitration Clause vide letters dated 09.09.2019 and 17.09.2019 sent by the Corporate. However, when we peruse the record, we find no such

document which could depict pendency of any Arbitration Proceeding, prior to the issuance of Demand Notice.

18. We are conscious of the fact that mere existence of an Arbitration Clause in the MOUs between the parties does not bar the Jurisdiction of this Adjudicating Authority to initiate CIR Process against the Corporate Debtor. At this stage, we would like to refer to Section 238 of IBC, 2016 which reads as below:

“238. Provisions of this Code to override other laws.

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

Thus, provisions of Section 238 of IBC, 2016 clearly have the overriding effect over the Arbitration and Conciliation Act, 1996.

19. It is further observed that the Director of the Corporate Debtor Mr. Desraj Kamboj vide email dated 12.08.2019 to the Applicant has communicated that they had promised to clear the following pending debts in view of expected receivables from UPNEDA :

- (i) Rs.2,58,16,305/- dues to be cleared by 31.05.2019,
- (ii) Rs.1,84,82,252/- dues to be cleared by 31.05.2020.

That Mr. Kamboj further admits that they have paid only Rs.6,29,000/- in May, 2018 out of the abovementioned due amount. He sought more time to repay the outstanding dues and requested to hold the

Application for revival of the Application. The email dated 12.08.2019 is reproduced overleaf :

From: "Desraj Kamboj" <desraj@umgreen.in>
Date: August 12, 2019 at 6:08:03 PM GMT+5:30
To: <sanjay.mehotra@jakson.com>, <sk.gupta@jakson.com>
Cc: <gauravmamik@umgreen.in>
Subject: Regarding settlement of case bearing IB No.463(ND)/2018

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Kind Attention: Mr. Sanjay Malhotra & Mr. S K Gupta II

Dear Sir

This has reference to your application dated 31.07.2019 received by us from J. Sagar Associates(Advocate) on behalf of Jackson Engineering Ltd regarding revival of case bearing IB No.430(ND)/2018 regarding settlement of outstanding dues to be paid by UM Green Lighting Pvt Ltd.

In this regard, we would like to bring to your kind notice that we had promised to clear the following pending debts in view of our expected receivables from UPNEDA:

1. Rs.2,58,16,305/- dues to be cleared by 31.05.2019
2. Rs.1,84,82,252/- dues to be cleared by 31.05.2020

We have paid only Rs.6,29,000/- in May 2018 out of the above mentioned due amount.

We are sorry to inform you that no payment has been received till date inspite of our regular follow up with UPNEDA and Ministry of New and Renewable Energy(MNRE). The correspondence between UPNEDA and MNRE are enclosed for your ready reference.

As per present scenario, MNRE is in the process of releasing required funds to UPNEDA shortly and UPNEDA, in turn, will release our due payments. We will transfer the funds immediately to you without any delay as soon as we receive it from UPNEDA.

In view of the above, we request you to kindly provide some more time to pay your outstanding dues mentioned above and further request to kindly hold the application for revival of case bearing IB No.463(ND)/2018.

We promise we will pay all your dues in a short span of time as per latest correspondence with UPNEDA and MNRE.

Thanking you in anticipation!

With best regards

Thanks & Regards

20. In the context, we are strengthened by the law laid down by the Hon'ble Supreme Court in the matter of **"Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407"**, whereby it is held that:

*"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an installment amount. **For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).** The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority."*

(Emphasis supplied)

21. Since the Corporate Debtor has admitted its liability for an amount of more than Rs1,00,000/-, therefore, we are inclined to admit the present Application.

22. Hence, in sequel to the above, the Operational Creditor has succeeded in establishing the default on the part of the Corporate Debtor in making payment of the Operational Debt. The Application filed under Section 9 fulfills all the requirements of the law. **Therefore, the present Application is admitted in terms of Section 9(5) of the**

IBC, 2016. Accordingly, the CIRP is initiated and ‘moratorium’ is declared in terms of provisions of Section 14 of the Code. As a necessary consequence of declaration of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- (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;
- (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.

23. The Applicant has not proposed the name of IRP. **Accordingly, this Bench appoints Mr. Amar Gopal Gambhir (aggandassociates@gmail.com) having registration no. IBBI/ IPA-002/IP-N00753/2018 - 2019/12327, as the IRP of the Corporate Debtor,** subject to the

condition that no disciplinary proceedings are pending against him. The specific consent of the IP in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 are required to be filed. **This Bench, therefore, directs Mr. Amar Gopal Gambhir IP to take charge of the CIRP of the Corporate Debtor with immediate effect.**

24. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP, namely Mr. Amar Gopal Gambhir, IRP to meet out the expenses and perform the functions as assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this Order by the Applicant. This amount, however, will be subject to adjustment by the Committee of Creditors, as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

25. A copy of this Order shall be communicated by the Registry/Court Officer immediately by all modes to the Operational Creditor, the Corporate Debtor and the IRP named above. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer to IBBI and ROC concerned for their records.

**Sd/-
(L. N. GUPTA)
MEMBER (T)**

**Sd/-
(ABNI RANJAN KUMAR SINHA)
MEMBER (J)**