



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT-III

IB – 827/ND/2020

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. NEPTUNUS POWER PLANT SERVICES PVT. LTD.

Having Its Registered Office at:
A/554, TTC Indl. Area, MIDC,
Mahape, Navi Mumbai-40071

..... Applicant/Operational Creditor

VERSUS

M/s. JAGSON INTERNATIONAL LIMITED

Having Its Registered Office at:
5, Krishnamenon Lane,
New Delhi-110001

..... Respondent/Corporate Debtor

ALSO AT:

301, 3rd Floor, Vandana Building 11,
Tolstoy Marg, New Delhi- 110001

Order Pronounced On: 09.01.2024

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES

For the Applicant: Mr. Gaurav Mitra, Advocate.

For the Respondent: Mr. Shashwat Bajpai, Advocate.



ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by M/s. Neptunus Power Plant Services Pvt. Ltd., the Applicant/Operational Creditor herein, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against M/s. Jagson International Limited, the Respondent/Corporate Debtor, on the ground that the Corporate Debtor defaulted/failed to clear the outstanding amount of Rs. 1,32,99,727.58/- (Rupees One Crore Thirty-Two Lakhs Ninety-Nine Thousand Seven Hundred Twenty-Seven and Fifty-Eight Paise Only) along with interest @ 18% p.a. The ***Date of Default*** is 18.03.2020.

2. Submissions of the Operational Creditor:

- i. M/s. Neptunus Power Plant Services Private Limited i.e. the Operational Creditor is a company incorporated on 24.06.1996 under the Companies Act, 1956 CIN: U74210MH1996PTC100435 having its registered office at A-554, MIDC, TTC Ind. Area, MIDC Mahape, navi Mumbai, Thane, Maharashtra, 400701.
- ii. The Corporate Debtor had purchased various Caterpillar Make (CAT) engine parts for Rig Deep Sea Matdrill and Fortune from the Operational Creditor. The Corporate Debtor engaged the services of the Operational Creditor for Electromotive Diesel (EMD) Engine Services to meet their periodic needs.
- iii. The Operational Creditor raised invoices on the Corporate Debtor for aforesaid sales/ services from time to time. The debt fell due as agreed in terms of invoice



which was raised by the Operational Creditor, since the Corporate Debtor failed to make the payments. The details of the invoices are mentioned below:

Sr. No	Date of Invoice	Invoice no.	Type of Offering	Date of Default	Amount on Invoice as well as showing on ledger	Balance Pending Amount	With 18% Interest on the balance amount(Pending Amount+ Overdue date from Invoice)	Total Due including Interest	Remarks
1	18/3/2015	NPPSSER14098	Service	17/4/2015	197,192.00	1,561.00	1,393.35	2,954.35	Not Acknowledged by Jagson International Limited
2	30/6/2015	I1516INS3021	Service	29/8/2015	2,344,553.00	33,301.00	27,523.96	60,824.96	Not Acknowledged by Jagson International Limited
3	10/10/2015	I1516INT1042	Spares	9/11/2015	103,950.00	68,220.00	53,962.95	122,182.95	Acknowledged by Jagson International Limited
4	20/10/2015	I1516INS3060	Service	19/11/2015	1,419,070.00	184,425.00	144,973.21	329,398.21	Acknowledged by Jagson International Limited
5	23/11/2015	I1516INT1047	Spares	23/12/2015	1,445,906.00	1,445,906.00	1,112,357.27	2,558,263.27	Acknowledged by Jagson International Limited
6	10/12/2015	I1516INT1051	Spares	9/1/2016	51,750.00	51,750.00	39,378.21	91,128.21	Acknowledged by Jagson International Limited
7	13/2/2016	I1516INS3093	Service	3/3/2016	1,832,000.00	1,095,148.00	804,168.68	1,899,316.68	Acknowledged by Jagson International Limited
8	9/3/2016	I1516INT1074	Spares	8/4/2016	943,317.00	943,317.00	675,931.86	1,619,248.86	Acknowledged by Jagson



									International Limited
9	26/3/2016	I1516INT1078	Spares	25/4/2016	5,400.00	5,400.00	3,824.09	9,224.09	Acknowledged by Jagson International Limited
10	17/8/2016	I1617INS/3066	Service	16/10/2016	1,212,962.50	166,176.00	103,420.66	269,596.66	Not Acknowledged by Jagson International Limited
11	23/8/2016	I1617INS/3069	Service	22/9/2016	299,000.00	299,000.00	189,623.34	488,623.34	Acknowledged by Jagson International Limited
12	20/4/2017	I1718INS/2503	Service	20/5/2017	253,575.00	32,200.00	16,609.91	48,809.91	Invoices pending and due
13	23/5/2017	I1718INS/2506	Service	22/7/2017	827,138.00	635,950.00	308,287.65	944,237.65	Invoices pending and due
14	28/9/2018	I1819S/9772	Service	28/10/2018	451,350.00	451,350.00	115,743.45	567,093.45	Invoices pending and due
15	6/11/2019	1920S/1124	Service	6/12/2019	4,067,755.00	3,838,835.00	219,602.40	4,058,437.40	Invoices added after the Demand Notice was issued
16	17/2/2020	1920S/1186	Service	18/3/2020	228,920.00	228,920.00	1,467.60	230,387.60	Invoices added after the Demand Notice was issued
To tal						9,481,459.00	3,818,268.58	13,299,727.58	

iv. The Corporate Debtor had acknowledged the liability by way of Acknowledgement letter dated 29.08.2018 signed by Authorised Representative of Corporate Debtor. The Corporate Debtor promised to pay the outstanding debt of Rs. 40,93,166/- (Rupees Forty Lakhs Ninety-Three Thousand One Hundred Sixty-Six) within 10-15 days from the date of Acknowledgment. But remaining debts of all invoices went beyond 100 days from the date of Receipt of invoices.



- v. The Operational Creditor had sent a demand notice to the Corporate Debtor on 03.01.2020 and 24.01.2020. The demand notice was sent for outstanding debts since 2015 amounting to Rs. 87,67,953.55 along with interest of 18% per annum (in accordance with Section 16 of the MSME Act). Reply to the demand notice dated 20.01.2020 was received from the Corporate Debtor.

3. Submissions of the Corporate Debtor:

- i. M/s. Jagson International Limited i.e. the Corporate Debtor is a company incorporated on 23.08.1988 under the Companies Act, 1956 CIN: U52110DL1988PLC032914 having its registered office at 5, Krishnamenon Lane, New Delhi-110001. The Corporate Debtor is engaged in the business of off-shore drilling for oil and gas exploration.
- ii. The Corporate Debtor has denied the contentions raised by the Operational Creditor and prayed for the rejection of the present Application under Section 9 of the Insolvency & Bankruptcy Code, 2016, on the following grounds –
 - a) Application is below the statutory limit of Rs. 1 Crore.
 - b) There is a pre-existing dispute between the Operational Creditor and the Corporate Debtor which is evident from the emails send by the Corporate Debtor to the Operational Debtor even before the issuance of the Demand Notice.
 - c) Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 is time barred.



iii. It is submitted that the present petition deserves to be rejected since it is below the pecuniary limit as per Notification dated 24.03.2020 by the Central Government under Section 4 of the IBC Code, 2016, specifying the minimum amount of default to be Rs. 1 Crores and above.

The same is extracted hereby for ready reference –

“S.O. 1205(E). — In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section. [F. No. 30/9/2020-Insolvency]”

iv. The Applicant had sent the Demand Notice dated 03.01.2020 which was received on 11.01.2020 by the Respondent) specifying the alleged “operational debt” amounting to Rs. 87.67 Lacs (54.12 Lacs Principal + 33.54 Lacs interest @18%.

v. Thereafter, without any prior notice, the applicant served upon the respondent the instant application on 25.04.2020 through email, alleging “unpaid operational debt” amount increased to Rs. 1.32 Crores, with the sole intention to make the petition fall within the ambit of the pecuniary jurisdiction of this Hon’ble Tribunal.

vi. The alleged “unpaid operational debt” cannot be changed from the Demand notice to the Section 9 Application filed before this Hon’ble Tribunal. The Demand Notice in Form 3 requires the default amount and date to be explicitly mentioned in the notice so that on the basis of documents the default amount could be ascertained. For the sake of brevity as of now, the respondent is limiting the ‘dispute’ issue to invoices surreptitiously added later directly in the petition, which were never part of the Demand Notice.

vii. The main dispute was that the work of complete maintenance of the Corporate Debtor’s Rig’s engine was given to the Operational Creditor (Invoice No.



1920/S/1124 dated 19.11.2019). The said work done was so poor, bad and defective that the Engine broke down within 10 days. The Engine was supposed to run for a minimum of 1 year after the service instead it broke down within few hours. This incident of breakdown was brought to the notice of the Operational Creditor prior to the Operational Creditor's demand notice vide email dated 26.12.2019. Photographs and pictures of the incident along with the Rig inspection report was also sent to the Operational Creditor.

viii. With respect to the invoice No. 1920/S/1124 dated 06.11.2019 the Corporate Debtor had stated discrepancies regarding the charges and requested the Operational Creditor to send the corrected revised Invoice vide email dated 02.01.2020, again this was prior to the Demand Notice. The Corporate Debtor had raised prior dispute but the Operational Creditor never sent the disputed invoice with the demand notice. The said dispute arose prior to the Demand Notice dated 03.01.2020 which was sent by the Operational Creditor.

ix. Vide email dated 31.01.2020, the respondent had categorically stated to the Applicant that,

“Please note that we have spent approximately Rs. 72 Lakhs in repairing Engine No.3 from Neptunus. However, we regret to inform that workmanship quality of Neptunus was very poor as our Engine No. 3 broke down within 10 days once the Rig went into operation.

We also requested you to come to our Delhi Office to discuss and address our concern however you are not willing to do so. The cost of the breakdown amounting to Rs. 72 Lakhs will be recovered from your Invoices. Hence we are returning all your bills which you will receive in your Office shortly.”

x. Vide emails dated 01.04.20 & 27.04.2020) w.r.t. the defective work done –
“...you attended to our engine no 3 during maintenance period and this very engine broke down shortly after rig went into operation which clearly is a case of



substandard repair job. and that the respondent had already spent huge amount on its repair and spare parts, hence it needed to be repaired including spare parts on FOC basis – have not even been replied to or answered to by the Applicant in its mails, clearly highlighting its admission qua the same.

- xi.** It was also made clear that in case the applicant fails to carry out the repairs FOC then the respondent would have no choice but to get this engine repaired on its own cost and will back charge the applicant for the full cost of repair and spare parts. In fact, based on trust, the spare parts were provided, the costs of which the respondent is now entitled to recoup and recover from the applicant, as is evident from the respondent's ledger as well.
- xii.** There is existence of the 'Dispute' as there was no "unpaid operational debt", as per their own admission emails and as is evident from the fact that on several occasions the issue was discussed between the parties both orally and in written correspondence. The said dispute arose Prior to the Applicant's sending the Demand Notice on 3.01.2020, as is categorically evident in all the communication prior to and even after the said Notice.
- xiii.** The applicant without giving any opportunity to the Respondent to refute and establish the dispute, hurriedly filed the instant petition during the Lockdown period; especially when the emails as discussed were well within their knowledge and failed to produce the same before this Hon'ble Tribunal. The applicant has in fact made part of the petition another invoice which is dated 45 days after the sending of the Demand Notice.
- xiv.** The Operational Creditor has wrongly added interest amount to the alleged principal. The alleged principal amount in the notice was actually Rs. 54,13,704/- which unilaterally along with interest @ 18% has been aggregated to total of Rs. 87,67,953/- as claimed in the Demand Notice. The interest accumulated is Rs. 33.54 Lacs. No such interest amount has ever been agreed



to in any of the invoices or in any other documents and no agreement exists for the same.

4. Analysis and Findings

- i.** We have heard the Ld. Counsel appearing for both parties and also perused the records.
- ii.** The Operational Creditor has claimed an amount of Rs 87,67,953/- (Rupees Eighty-Seven Lakhs Sixty-Seven Thousand Nine Hundred Fifty-Three Only) towards principal and amount of Rs 33,00,000.54/- (Thirty-Three Lakhs and Fifty-Four Paisa) towards interest. The entire claim is based on invoices issued by the Operational Creditor to the Corporate Debtor. The Operational Creditor has claimed to be an MSME and has charged interest being an MSME. The Operational Creditor has not shown any clause in the invoice which shows that interest is leviable in case of default or late payment. In the absence of any such clause Operational Creditor cannot claim interest.
- iii.** In the present case, as per the record the application has been filed on 27.04.2020 and the debt claimed in default is 1,32,99,727.58/- (Rupees One Crore Thirty-Two Lakhs Ninety-Nine Thousand Seven Hundred Twenty-Seven and Fifty-Eight Paisa Only) including Interest @18%. The Total amount of debt in the demand notice sent by the Operational Creditor is Rs, 87,67,953/- along with interest @ 18%. The interest accumulated is Rs 33,00,000.54/- (Thirty-Three Lakhs and fifty-four paisa). The Operational Creditor has failed to satisfy the minimum pecuniary threshold for default being Rs 1 Crore as mandated in the amendment to Section 4 of IBC, 2016.
- iv.** The Corporate Debtor contended that prior dispute existed relating to poor and defective work before the issuance of the Section-8 demand notice. The



Operational Creditor has issued 2 demand notices, one on 03.01.2020 and the second on 24.01.2020. The Corporate Debtor has placed on record emails to show that dispute with respect to quality of goods were raised. The following e-mails dated 26.12.2019 and 02.01.2020 which are extracted below, that show the pre-existing dispute.

E-mail dated 26.12.2019

“Dear Soumik Ji

As per earlier discussion, please fund attached EMD #-Incident Photographs on rig ds fossil

Also as attached break down report.

Kindly see and resolve the issue immediately FOC basis.

Regards

Laksman Singh”

Dear Soumik Ji

E-mail dated 02.01.2020

“Dear Soumik Ji

As attached ref. invoice #1920/S/1124, DT, 06.11.19

Against this invoice not applicable any extra work scope and waiting charge due to not agreed these charges in our work order.

Also remove the 5k routine maintenance for emergency generator and this work not done on rig ds fossil—

Our team has done this job and attached report copy for your reference.



Kindly remove as below charges in Line item no- 4, 5, 6, 7 & 8 and send back to us revised invoice immediate basis. For Line item no 5 to 8 attached time sheet for your reference.

Regards

Laksman Singh

Jagson International Ltd”

- v.** It is well settled that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument, it would suffice for the Adjudicating Authority to reject the application filed under Section-9 of the Code.
- vi.** In the facts and circumstances of the instant case, we are of the view that the Corporate Debtor has been able to raise a plausible contention regarding the pre-existence of “dispute” between the parties.
- vii.** Further even after issuance of Demand Notice the Corporate Debtor had sent emails to the Operational Creditor for the defective quality of goods which are in consonance with the earlier emails sent by the Corporate Debtor before issuance of the Demand Notice. Based on the averments made by the Corporate Debtor and substantiating documents i.e. the emails dated 31.01.2020, 01.04.2020, 27.04.2020. This makes it clear that the Corporate Debtor was not negligent in its obligations and it is the Operational Creditor who did not pay the heed to the concerns raised by the Corporate Debtor. The said emails are mentioned below:
- viii.** Vide email dated 31.01.2020, the respondent had categorically stated to the Applicant that,



“Please note that we have spent approximately Rs. 72 Lakhs in repairing Engine No.3 from Neptunus. However, we regret to inform that workmanship quality of Neptunus was very poor as our Engine No. 3 broke down within 10 days once the Rig went into operation.

We also requested you to come to our Delhi Office to discuss and address our concern however you are not willing to do so.

The cost of the breakdown amounting to Rs. 72 Lakhs will be recovered from your Invoices. Hence we are returning all your bills which you will receive in your Office shortly.”

ix. It is extremely important to mention that the specific lines of mails (dated 01.04.20 & 27.04.2020) w.r.t. the defective work done –

“...you attended to our engine no 3 during maintenance period and this very engine broke down shortly after rig went into operation which clearly is a case of substandard repair job. and that the respondent had already spent huge amount on its repair and spare parts, hence it needed to be repaired including spare parts on FOC basis – have not even been replied to or answered to by the Applicant in its mails, clearly highlighting its admission qua the same.

x. We are of the view that there is existence of the ‘Dispute’. It is clear from the emails and is evident from the fact that on several occasions the issue for defective goods was discussed between the parties both orally and in written correspondence. The Dispute arose prior to the Operational Creditor’s Demand Notice dated 03.01.2020, as is categorically evident in all the communication prior to and even after the said Notice.



5. Order

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- i. The Application bearing **IB-827/ND/2020** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **dismissed**.
- ii. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
No order as to costs.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**