



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH – V, NEW DELHI**  
**C.P (IB)/502(ND)2023**

*An application 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 NATIONAL AGRICULTURAL COOPERATIVE  
MARKETING FEDERATION LIMITED**

Office at: NAFED House,  
Siddharth Enclave, Ashram Chowk,  
Ring Road, New Delhi-110014  
(Through its Manager Sh. S.N. Jha)

... Operational Creditor

**VERSUS**

**M/s SYNERGY PETRO PRODUCTS PRIVATE LIMITED**

Office at: 78, Ground Floor, National Park,  
Lajpat Nagar- 4, South Delhi, 110024

... Corporate Debtor

**Order Delivered on: 03.12.2024**



**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**  
**DR. SANJEEV RANJAN HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Adv. Deepali Aggarwal

For the Respondent : Adv. Priya Soni

**ORDER**

**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

1. The instant application is filed by M/s National Agricultural Cooperative Marketing Federation Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the CODE/IBC') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s Synergy Petro Products Private Limited (hereinafter referred as 'Respondent/Corporate Debtor') for failing to make the payment of Operational Debtor amounting Rs. 3,14,36,864/- (Rupees Three Crore Fourteen Lac Thirty-Six Thousand Eight Hundred Sixty-Four Only)
2. The Respondent Company "M/s Synergy Petro Products Private Limited" was incorporated on 19.09.2001 under the provisions of the Companies Act, 1956 having its registered office situated at 78, Ground Floor, National Park, Lajpat Nagar 4, New Delhi 110024. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Tribunal



having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor.

**Averments of the Applicants:**

3. Briefly stated the facts of the present case as averred by the applicant are that the Applicant/Operational Creditor is the owner of a plot of land bearing Plot No. B-481 situated at Industrial Area, Bhiwadi, Rajasthan admeasuring 8444 sq. mts consisting of building and vacant land. The corporate debtor needed the said premise for its business purpose i.e. production of wide width PE Film, rigid PVC pipe, etc. Accordingly, an Agreement dated 17.08.2005 was executed between the Applicant/Operational Creditor and the Corporate Debtor and possession of the said premise was given to the Corporate Debtor for use and occupation by it and payment of license fee.
4. Applicant further submitted that the agreement dated 17.08.2005 between the Applicant/Operational Creditor and the Corporate Debtor was later substituted by another agreement dated 03.07.2006 (hereinafter referred to as 'subsequent agreement'). In terms of the subsequent agreement, the Corporate Debtor was liable to pay to the Applicant/Operational Creditor a monthly license fee of Rs. 50,000/- for the covered area and Rs. 0.50/- per sq. ft. for the open area subject to increase of 25% every three years. The premise was given to the Corporate Debtor for use and occupation by the Corporate Debtor for a period of 5 years and the monthly license fee was payable in advance on or before the 5th day of each English calendar month.



5. Applicant submitted that initially the Corporate Debtor paid the lease/license fee but later defaulted in paying the monthly license fee from April 2007 onwards. Even reminders and legal notice were sent to the Corporate Debtor but it evoked no response and the Corporate Debtor continued to occupy the said premise of the Applicant/Operational Creditor despite the termination of the agreement dated 03.07.2006 and demand by Applicant/Operational Creditor for vacation of premises.
6. Applicant further submitted that in these circumstances arbitral dispute arose between the Applicant/Operational Creditor and the Corporate Debtor which culminated in Arbitral Award dated 10.07.2019 passed by Sh. A. K. Garde, Ld. Sole arbitrator and in terms of the said Arbitral Award, the Corporate Debtor is liable to pay to the Applicant/Operational Creditor a sum of Rs. 55,37,797/- (i.e., monthly license fee from April 2007 to October 2009) and due license fee from November 2009 to 15th July 2015 and interest @ 6% per annum from 01.04.2007 to 15.07.2015, as the Corporate Debtor continued to hold the possession of the said premise for the period mentioned above. Despite the award being passed on 10.07.2019 and the same becoming enforceable on expiry of a period of 90 days thereafter, the Corporate Debtor has failed to make the payment in terms of the award and has thus committed default in terms of section 7 IBC.
7. Applicant submitted that the Operational Creditor filed a petition u/s 7 of the IBC seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor under assumption that it is Financial Creditor. However, the said application is dismissed by the Principal Bench, NCLT, New Delhi holding that the Applicant is not a Financial Creditor and is an Operational Creditor. Thereafter, the Operational



Creditor filed an appeal before the NCLAT challenging the order dated 31.05.2021 passed by the Principal Bench, NCLT, New Delhi. However, the NCLAT vide its judgment dated 11.10.2022 dismissed the appeal and affirmed the order passed by the NCLT. Thereafter, on 04.02.2023, the Operational Creditor issued a demand notice under section 8 of the IBC to repay the unpaid operational debt (in default), which is duly received by the Corporate Debtor on 07.02.2023. However, the Corporate Debtor has failed to either pay the amount due on account of operational debt or to give notice of existence of dispute. Hence, this application filed.

**Reply of the Respondent Corporate Debtor:**

8. On the other hand, the respondent through his reply submitted that all averments, statements, submissions, grounds, contentions or allegations made by the Applicant are baseless, misconceived and false, and hence, are denied in entirety.
9. Respondent submitted that the Insolvency Resolution Process is not a medium for execution of any decree or award nor was conceptualized for the same. Further the Respondent submitted that the amount as claimed by the Operational Creditor is contradictory to the expressed terms of the alleged Award being in conflict with the express terms of the Arbitration Award and the same is disputed by the Corporate Debtor in writing since 2021.
10. Further the Respondent submitted that the Insolvency Resolution Process is not a suit for execution of any decree or award and is distinct from Section 35 of the Arbitration and Conciliation Act, 1996. Respondent further submitted that the Applicant has not approached before this Tribunal with clean hand and has concealed material facts. It



has concealed the factum of security deposit amount paid by the Corporate Debtor at the time of agreement to the Applicant. It has further concealed that the machinery belonging to the Corporate Debtor is lying at the premises within the possession of the Applicant.

11. Applicant submitted that there is a pre existing dispute between the corporate debtor and applicant with respect to the amount claimed under the present Application as the same is in contravention to the expressed terms of the Arbitration Award itself.

### **Rejoinder by the Applicants**

12. The Operational Creditor through its rejoinder has submitted that the reply filed by the Corporate Debtor is totally false, frivolous and vexatious and is devoid of any merit. Applicant further submitted that it is an established position of law that CIRP process can be initiated against the corporate debtor when there is an undisputed debt and a default in payment thereof. The arbitral award dated 10.07.2019 has attained finality as it has not been challenged till date and the period of filing petition under section 34 of the Arbitration and Conciliation is over a long time ago. Therefore, the debt of the Applicant/ Operational Creditor is undisputed as the same is as per the arbitral award. Further, the failure on part of the Corporate Debtor/Respondent to repay the said amount is a clear case of default debt.
13. Applicant further submitted that at the time of issuing demand notice in terms of section 8 of IBC dated 04.02.2023 to the Corporate Debtor, there was no existence of dispute between the parties. It is submitted that the plea of the Corporate Debtor that there exists a dispute since 2021 is baseless and without any merit. It is settled principle of law, if



there is any pre-existing dispute about the debt, it must be brought to the notice of the operational creditor in response to notice under section 8 of IBC, with 10 days of service of such notice. In the present case, there is nothing on record that the Corporate Debtor has issued notice of pre-existing dispute to the Applicant with 10 days of service notice under section 8 of the IBC or even thereafter. This is a clear case of default of a proved and adjudicated debt in terms of an Arbitral Award dated 10.07.2019 in favour of the operational creditor and against the Corporate Debtor.

- 14.** Applicant further submitted that the Arbitral Award has not been challenged by the Corporate Debtor under section 34 of the Arbitration and Conciliation Act, 1996 and now it has attained finality. Therefore, there is no dispute about the debt of the Operational Creditor and its default by the Corporate Debtor.
- 15.** Applicant submitted that the reply filed by the Corporate Debtor, the only basis of the existence of dispute between the parties is the reply to application under section 7 IBC, 2016 filed by the Operational Creditor and even the said reply does not dispute the amount, the only dispute it raises is to the interest component to such debt. It is submitted that the dispute with respect to interest is also baseless and only raised in order to avoid CIRP. Further submitted that the present application is not the application for seeking enforcement of the arbitral award dated 10.07.2019.
- 16.** Applicant submitted that the calculation sheet annexed as Annexure A-5 with the application has duly taken into account the security deposit amount paid by the Corporate Debtor and the same has been deducted while calculating the amount of debt. Further, the machinery belonging to the Corporate Debtor which is lying at the premises within the



possession of the Applicant has been attached by the Arbitral award but its monetary value has not been realised.

17. Applicant submitted that the Corporate Debtor has committed a default of undisputed Operational debt of more than Rupees One Crore. Therefore, the application be allowed and CIRP be initiated against the Corporate Debtor.

### **Analysis and Findings**

18. We have heard Ld. Counsels for the applicant as well as the Ld. Counsel for the Respondent and perused the averments made in the application, duly authorized counter affidavit and rejoinder filed by the Respondent. The relevant documents annexed with the submissions have also been examined.
19. It is noted that there was a business relationship between the Applicant/Operational Creditor and the Respondent/Corporate Debtor. As per the agreement dated 17.08.2005 between the Applicant and the Corporate Debtor which was later substituted by another agreement dated 03.07.2006 executed between the parties, wherein the Applicant entered into a monthly license fee of Rs. 50,000/- for the covered area and Rs. 0.50/- per sq. ft. for the plot of land bearing Plot No. B-481 situated at Industrial Area, Bhiwadi, Rajasthan subject to increase of 25% every three years. The default amount stated by the Applicant/Operational Creditor is Rs. 3,14,36,864/- for which a demand notice under section 8 of the Code was send on 04.02.2023 by the Applicant/Operational Creditor. The proof of service is also placed on record.
20. The Respondent/Corporate Debtor through its reply took the defense that the present petition is non-maintainable on the grounds that there



is a pre-existing dispute between the parties in the present application. The Respondent also argued that this Adjudicating Authority is not a recovery forum for executing any decree or award through the CIRP under the IBC.

- 21.** The Pleadings and arguments throw-up the following two issues to be decided:
- a) Whether there is a Pre-existing dispute with respect to the amount claimed to be due in the present petition or not?
  - b) Can the CIRP be initiated directly based on an Arbitral Award?
- 22.** Upon perusal of the Annexure A-4 (Page No. 57-85) filed by the Applicant in the present petition, we observed that an Arbitral Award dated 10.07.2019 has been passed by the Sh. A.K Garde, (Ld. Sole arbitrator) and instructed the Corporate Debtor to pay the amount of Rs.55,37,797/- along with the due license fee from November 2009 to 15th July 2015 and interest @ 6% per annum from 01.04.2007 to 15.07.2015 to the Applicant.
- 23.** After that, a period of 90 days plus the discretionary period of 30 days has clearly expired from the date of Arbitral Award i.e 10.07.2019, neither petition under section 34 of the Arbitration and Conciliation Act, 1996 has been filed nor has a belated petition under section 34 of the Arbitration and Conciliation Act, 1996 been filed before appropriate Appellate Authority by the Corporate Debtor.
- 24.** The Hon'ble Supreme Court in ***K. Kishan v. Vijay Nirman Company Ltd. (C.A.No. 21824 of 2017)*** has held that *“awards against which proceedings are available for setting aside the award would not be ‘final’ and the debts would be considered disputed until those proceedings are disposed-off by the relevant court.”*



*“debts under awards cannot be used to initiate insolvency proceedings when setting aside proceedings are pending or available”*

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***“insolvency may be initiated on the basis of an award, when either the proceedings for setting-aside have been rejected or the limitation period to file such proceedings has expired.”***

- 25.** In view of “*K. Kishan*” (supra), the Corporate Debtor in the current matter having not challenged the Arbitral Award before the appropriate Appellate Authority, the Award remains unchallenged and thus there is no pre-existing dispute between the parties.
- 26.** Furthermore, from a perusal of Annexure A-7 (page no. 91-95) filed by the Applicant herein, we observed that an application under Section 7 of the IBC (i.e., CP (IB) 1106 (PB) of 2020) filed by the Applicant before this Adjudicating Authority, was dismissed by an order dated 31.05.2021 holding that the Applicant is not a Financial Creditor and is an Operational Creditor without a hearing on merit. Further the appeal filed by the Applicant also been dismissed by the Appellant Tribunal vide its Order dated 11.10.2022 affirmed the order dated 31.05.2021 passed by this Adjudicating Authority. Therefore, the aforementioned application cannot be considered a pre-existing dispute between the parties. Hence, the first issue (i.e., issue- a) is answered in favour of the Applicant.
- 27.** In perusal of the second issue in hand i.e., Can the CIRP be initiated directly based on an Arbitral Award? We observed that the Insolvency proceedings under the IBC can be initiated by Financial Creditors, Operational Creditors, and the Corporate Debtor itself with the primary trigger for such proceedings being a default. This means that insolvency



proceedings cannot be initiated unless the Corporate Debtor has failed to meet its obligations.

- 28.** Under the IBC, Award-holders are considered creditors regardless of whether they are classified as Financial or Operational Creditors. The key requirement for initiating insolvency proceedings is the existence of a debt that has gone into default. A joint reading of Sections 3(11) and 3(12) of the IBC makes it clear that insolvency can only be triggered when a Corporate Debtor fails to pay a crystallised obligation or liability. Section 3(10) of the IBC defines a "Creditor" as *any person to whom a debt is owed. This includes Financial Creditors, Operational Creditors, Secured Creditors, Unsecured Creditors, and decree-holders.*
- 29.** According to Section 36 of the Arbitration Act, when the time for filing an application to set aside an arbitral Award under Section 34 has expired, the Award can be enforced in accordance with the Code of Civil Procedure, 1908, as if were a decree of the court. In the present case, the arbitral award has not been challenged; it has attained finality and thus can be treated as decree of the court. Therefore, the second issue (i.e., issue- b) is also answered in favour of the Applicant.
- 30.** Further, in view of the above discussed facts, we come to conclusion that the nature of debt is a "Operational Debt" as defined under section 5 (21) of the Code and the amount of outstanding Operational Debt is above the pecuniary threshold limit of Rs.1 Crore as envisaged under Section 4 of the Code, 2016. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Corporate Debtor. Therefore, the two essential qualifications, i.e., existence of "debt" and "default", for admission of a petition under section 9 of the Code, 2016 have been met in this case.



**31.** The Hon'ble Supreme Court in **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017 para 34]**, wherein the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9.

*“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? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished 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 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. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

- 32.** It is a settled preposition of law that an application under Section 9 of the Code, 2016 has to be mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) of the IBC are satisfied.
- 33.** Having regard to the conspectus of facts of the present case and the judgements cited (supra), this Adjudicating Authority is of the considered view that the corporate debtor is in default of payment of the outstanding



operational debt owed to the applicant and the mandatory requirements as prescribed under Section 9(5) of the Code, 2016 are satisfied. Therefore, the present company application (C.P. No. (IB)-502/(ND)/2023) stands admitted and the CIRP is hereby initiated against M/s Synergy Petro Products Private Limited.

- 34.** The applicant in Part -III of the application has proposed the name of IRP, accordingly, this bench appoints Mr. Sanjeet Kumar Sharma, as the Insolvency Resolution Professional (“IPR”) of the corporate debtor. The registration number of the IRP being IBBI/IPA-001/IP-P01132/2018-2019/11827 and email id – sansharma1975@gmail.com. The IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 is attached with the application. The AFA validity of the IRP valid upto 21.12.2024
- 35.** We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Sanjeet Kumar Sharma to meet out the expense to perform the functions 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 Operational Creditor. The amount however shall be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
- 36.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:



*“(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.”*

*(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”*

**37.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and



Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

- 38.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
- 39.** It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under section 19 of the IBC to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- 40.** A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
- 41.** Let the copy of this order be served to the parties.

**Sd/-**

**(DR. SANJEEV RANJAN)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**