



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI**

**COURT – IV**

**C.P. (IB) NO.: 63/ND/2025**

***[Under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]***

**IN THE MATTER OF:**

**Harji Engineering Works  
Private Limited**

**...APPLICANT/OPERATIONAL CREDITOR**

**VERSUS**

**M/s. Enerture  
Technologies Pvt. Ltd.**

**...RESPONDENT/CORPORATE DEBTOR**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,  
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,  
HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on: 17.04.2025**



**For the Applicant** : Mr. Sahil Garg, Ms. Samiksha Jain, Advs.

**For the Respondent** :

## **ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

1. The present application has been filed by M/s. Harji Engineering Works Pvt. Ltd. (hereinafter referred to as Operational Creditor/Applicant) through its Authorised Representative, namely, Mr. Uttam Kumar Mondal to initiate Corporate Insolvency Resolution Process (“CIRP”) in accordance with Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) against the Corporate Debtor/Respondent herein, i.e., M/s. Enerture Technologies Private Limited (hereinafter referred to as the ‘Corporate Debtor’) for the alleged default on the part of the Respondent amounting to INR 4,29,98,630/- being the total amount due (out of which INR 3,75,00,000/- being the principal amount, INR 54,98,630/- being the interest for the delayed period from the date the said debt fell due till 09.01.2025.
2. The Corporate Debtor herein, i.e., M/s. Enerture Technologies Private Limited, incorporated under the provisions of the Companies Act, 1956 has its registered office situated at 128, 2<sup>nd</sup> Floor, Kaveri Apartment, D-



6, Vasant Kunj, South Delhi-110070. Since the registered office of the Respondent Corporate Debtor is in New Delhi, this Adjudicating Authority has jurisdiction in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Corporate Debtor.

### **CONTENTIONS**

3. The particulars of transactions leading to the filing of the present application as averred by the Applicant/Operational Creditor are as under—

a. The Operational Creditor/Applicant herein is a leading name in the engineering sector and provides engineering construction services in the execution of projects of varied nature. It is pertinent to mention herein that the Applicant is registered under MSME Act, 2006 under 'Small Enterprise'.

b. The Corporate Debtor are said to be MNRE channel partner and are engaged in the business of providing end-to-end solar solutions, engineering designs, project execution, solar PV installation, charging station and other allied works.

c. It is submitted that the parties involved herein entered into a Memorandum of Understanding (hereinafter referred to as MoU-



- I) dated 23.01.2024 in order to bid, secure and jointly perform a solar project for *'setting up of 100 MW ISTS connected solar power on pan India basis with operation and maintenance for 3 years for CUF @29.66% and the annual generation of 260 million units (MU) including operation and management for 3 years after the warranty period of 12 months from the Commercial Operation Declaration (COD)'*.
- d. Subsequently, in accordance with the aforementioned MoU-I, the Applicant and Corporate Debtor entered their bid as a consortium and were awarded the tender vide Letter of Award dated 26.02.2024.
- e. It is categorically submitted that during the course, several disputes arose between the parties involved *qua* the allocation of work as well as profit-sharing thereof. It is pertinent to mention herein that there had been a flurry of legal notices sent by the parties to each other, along with filing of complaints concerning the issue.
- f. Thereafter, after multiple instances of correspondences, both of the parties involved herein deemed to enter into a Second Memorandum of Understanding dated 01.06.2024 in order to put



a *quietus* to the disputes which had been arisen between the parties.

- g. In accordance with clause 4 of MoU-II, *inter-alia*, it was mutually agreed and admitted between the parties involved that as against the lawful and legitimate outstanding dues of the Applicant herein, the Respondent shall pay an amount of Rs.5,00,00,000/- (Rupees Five Crores only) along with applicable taxes against service invoices to the Applicant within 4 months from the date of signing of the MoU-II, i.e., 01.06.2024. In lieu thereof, it was further agreed that the Corporate Debtor shall handover two post-dated cheques amounting to Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakh only) each in favour of 'M/s. Harji Energy Works Pvt. Ltd.', which is a sister concern to the Applicant herein.
- h. Subsequently, the Respondent herein issued two post-dated cheques in accordance with the aforementioned terms. However, when the cheque was deposited, it got dishonoured vide Return Memo dated 03.09.2024 reflecting the reason as 'funds insufficient'. Thereafter, there were multiple communications and the Respondent herein assured the Applicant for depositing the cheque again, and when the Applicant herein, based on these assurances, deposited the two cheques again on 19.11.2024; the



said cheques were dishonoured again vide Return Memo dated 20.11.2024 reflecting the reason as 'funds insufficient'.

- i. As a result, the Applicant was compelled to issue a Legal Notice dated 23.11.2024 under section 138 read with Section 141 of Negotiable Instruments Act for the dishonor of the aforementioned cheques along with interest charged @24% per annum.
- j. Simultaneously, aggrieved due to the non-payment of outstanding amount, the Applicant herein issued a Demand Notice dated 23.11.2024 under Section 8 of the Code for the unpaid debt amounting to INR 4,29,98,630/- (Rupees Four Crores Twenty-nine Lakh only) which is inclusive the interest for default period of 335 days amounting to INR 54,98,630/- (Rupees Fifty-four Lakh Ninety-eight Thousand Six Hundred Thirty only).
- k. In light of the aforementioned facts and circumstances, the Applicant herein has filed the instant Application against the Corporate Debtor under Section 9 of the Code read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The amount that is alleged to be outstanding by the Operational Creditor aggregates up to INR 4,29,98,630/- (Rupees Four Crores Twenty-nine Lakh only) which is inclusive of for the default as on 23.11.2024.



## **ANALYSIS**

4. This Adjudicating Authority has thoroughly perused all of the submissions tendered by the parties involved herein along with recording the arguments made thereupon.
5. At this juncture, it is appropriate to understand and interpret Section 9 of Code, which is reproduced hereinbelow—

***“9. Application for initiation of corporate insolvency resolution process by operational creditor—***

*(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.*

*(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.*

*(3) The operational creditor shall, along with the application furnish—*

*(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;*



*(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;*

*(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;*

*(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and*

*(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.*

*(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.*

*(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

*(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if—*

*(a) the application made under sub-section (2) is complete;*

*(b) there is no payment of the unpaid operational debt;*



*(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*

*(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*

*(e) there is no disciplinary proceeding pending<sup>4</sup> against any resolution professional proposed under sub-section (4), if any.*

*(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—*

*(a) the application made under sub-section (2) is incomplete;*

*(b) there has been payment of the unpaid operational debt;*

*(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;*

*(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or*

*(e) any disciplinary proceeding is pending<sup>4</sup> against any proposed resolution professional:*

*Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.*



*(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.”*

6. The aforementioned section refers to the term ‘operational debt’ which is elaborately defined in accordance with Section 5(21) of the Code. The said section is reproduced hereinbelow for better interpretation of the same—

*“(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”*

7. A mere reading of the aforementioned provision expressly states the pre-requisite circumstances on the basis of which any debt can be made eligible to be ‘operational debt’. However, in accordance with the information provided to the Adjudicating Authority concerning the instant application, the debt that has been termed as ‘default’ under Section 9 of the Code hereof, cannot be considered as ‘operational debt’ due to the basis of the said debt not falling under the aforementioned pre-requisite conditions as mentioned above.



8. In the judgment passed by Ld. National Company Law Tribunal, Indore Bench in the matter of *Permal Wallace Pvt. Ltd. vs Narbada Forest Industries Pvt. Ltd.*; C.P(IB) No.: 668 of 2019 which is of the opinion that any amount outstanding arising out a settlement agreement can be said to be ‘operational debt’ in accordance with Section 5(21) of the Code. The germane excerpt from the said judgement has been reproduced hereinbelow—

“8. At the outset, we note that this application is filed by the Operational Creditor for execution of terms of settlement agreement dated 07.11.2017. In our considered opinion, the amount arising out of some settlement agreement cannot be termed as operational debt within the meaning of Section 5(21) of the IBC, 2016.”

9. It is pertinent to mention herein that the aforementioned judgement has been upheld by the Hon’ble National Company Law Appellate Tribunal, New Delhi in the matter of *Permal Wallace Pvt. Ltd. vs Narbada Forest Industries Pvt. Ltd.*; C.A. (AT) (Ins.) No.:36 of 2023. The Hon’ble Appellate Authority has further formed a view that such an attempt can be viewed as a recovery tool as well. The germane excerpt from the judgment is mentioned hereinbelow—



*“5. ...we are of the view that Adjudicating Authority did not commit any error in rejecting Section 9 Application. It has been laid down by the Hon’ble Supreme Court in “Swiss Ribbon Pvt. Ltd. Vs. Union of India” ((2019) 4 SCC 17), IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of the interest and application was not filed for resolution of any insolvency of the Corporate Debtor...”*

10. Resultantly, this Adjudicating Authority is of the considered view that the instant application ought to be rejected on the basis of the aforementioned ground solely, as the said default cannot be expressly categorised as ‘operational debt’.

11. Another observation made by this Adjudicating Authority is the existence of disputes between the parties prior to the filing of the instant application. It is categorically submitted by the Applicant herein that there had been multiple disputes between the Applicant as well as the Respondent concerning allocation of the work assigned as well as the profit-sharing thereof. Due to the said issues, there were multiple correspondences between the parties involved herein. And it is pertinent to mention herein that as a result of the existing disputes, the



parties herein entered into second Memorandum of Understanding dated 01.06.2024.

12. A landmark judgment passed by the Hon'ble National Company Law Appellate Tribunal in the matter of *M/s. Sumilon Polyester Private Limited vs M/s. Parikh Packaging Private Limited* wherein the Hon'ble Appellate Authority had pointed out that any established dispute between the parties can be a ground for rejection of an application under Section 9 of the Code. The germane excerpt from the aforementioned judgment is reiterated hereinbelow—

*“18. It may not be out of place for this Tribunal to make a pertinent mention that in law if there was a ‘Dispute in existence’ and even before the issuance of Demand Notice under Section 8(1) of the I&B Code, the Application for initiation of Insolvency Process by an Operational Creditor can be rejected by the Adjudicating Authority.”*

13. The Hon'ble National Company Law Appellate Tribunal in another eminent matter of *Mr. Umesh Saraf vs Tech India Engineers Private Limited*; held that exchange of correspondences and/or legal notices as well as filing of complaints, as referred in the instant application; clearly establishes that there is a pre-existing dispute between the parties involved herein. And to that effect, due to the pre-existing dispute, the



Adjudicating Authority is bound to not admit the application under Section 9 of the Code. The vital excerpt from the judgment is reproduced hereinbelow—

*“24. Therefore, it is quite clear that there is pre-existing dispute regarding completion of the work and the learned Adjudicating Authority ought not to have admitted the application under Section 9 of IBC filed by the Operational Creditor...*

*26. ...it is re-iterated that the Code is beneficial legislation intended to put the Corporate Debtor on its feet and it is not a mere money recovery legislation for the Creditors.”*

14. Therefore, this Adjudicating Authority is of the considered view that there are disputes existing between the parties involved, as admitted by the Applicant herein. As a result, this Adjudicating Authority is of the considered opinion to reject the instant application on the basis of the said ground.

15. In view of the averments as well as arguments tendered by the Applicant herein, this Adjudicating Authority is of the considered view that due to the prior existence of the dispute between the parties concerning the quality of the products, the instant application cannot be admitted under Section 9 of the Code.



## **CONCLUSION**

16. In light of the abovementioned facts as well as averments along with arguments on part of the parties involved, this Adjudicating Authority **rejects** this petition as it has been made amply clear that there exists a pre-existing dispute.

Accordingly, the present petition bearing **C.P.(IB) No.:63 of 2025** is **rejected.**

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

Let the copy of the said Order be served to the parties involved.

Consign the file to the record room.

**Sd/-**

**(DR. SANJEEV RANJAN)**

**MEMBER (T)**

**Sd/-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

**MEMBER (J)**