

**In the National Company Law Tribunal
Single Bench, Chennai**

TCP/428/(IB)/CB/2017

Under Section 9 of the IBC, 2016

In the matter of

Vituous Urja Limited
V/s
Nanda Energy Limited

Order delivered on: 31.07.2017

For the Petitioner/OC: T.K. Bhaskar, Advocate

For the Respondent/CD: U. Karnakaran, Advocate

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under Consideration is a Company Petition filed by Vituous Urja Limited (in short, '**Petitioner/Operational Creditor**') against Nanda Energy Limited (in short, '**Respondent/Corporate Debtor**') under section 433 (e) and (f), 434 (i) (a) and 439 (i) (b) of the Companies Act, 1956 before the Hon'ble Madras High Court which has been transferred to this tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016. Now, pursuant to the Central Government notification number GSR 119(E) dated 07.12.2017, this petition needs determination as per the provisions of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**').

2. Before I proceed with the matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. Shri T.K. Bhaskar, the learned counsel appearing on behalf of the petitioner/OC submitted that the Petitioner is a Public Limited Company engaged in the business of import and trading of steam coal and coal products whereas the Respondent/CD is a company engaged in the business of generating, buying, selling and dealing in electric power in all its branches. In the ordinary course of business, the Respondent Company placed two Purchase Order Nos. 202 and 204 dated 23.02.2011 and 21.03.2011 respectively with the Petitioner/OC for the supply of 5000 MT and 3000 MT imported streaming (non-cooking) coal respectively. The Petitioner had raised several invoices for a consolidated sum of Rs. 2,70,36,751/- out of which the petitioner only received Rs. 1,47,50,000/-, leaving an amount of Rs. 1,22,86,751/- unpaid.
4. It is further submitted that the Purchase Orders were payable in the form of part payments for the first 15 days every day after which a security Cheque was to be given and the balance was to be reviewed after 15 days. It is also submitted that part

payments were made by the Respondent and a few payments were made by one Clenergen India Private Limited on behalf of the Respondent. The Petitioner/OC also received a security cheque for a sum of Rs. 1.69 Crores dated 10.03.2011 from Clenergen India Private Limited as it operated the Bio Mass Plant from Respondent on lease/agreement to sale with effect from 01.10.2010. Also, all the six cheques received from Clenergen India Private Limited for a sum of Rs. 37 lakhs each were dishonoured for the reasons “insufficient funds”. It is also submitted that there were several e-mail exchanges between the petitioner and Clenergen India Private Limited and since Clenergen India Private Limited was under liquidation, the respondent/CD became liable to make good the entire balance due to the petitioner.

5. It is further submitted that the petitioner, having awaited for a long period of time for their legitimate dues and despite the respondent acknowledging its dues to the petitioner via e-mail dated 25.08.2011, issued a statutory notice dated 28.11.2015 under section 434 of the Companies Act, 1956 calling upon the respondent to make the payment of the principal amount of Rs. 1,22,86,751/- along with 18% interest per annum and thus now claimed to be an Operational Creditor under the

provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.

6. Shri U. Karnakaran, the learned counsel appearing on behalf of the Respondent Company vehemently opposed the contentions put forth by the counsel for the Petitioner and submitted that the instant petition filed by the Petitioner is false, vexatious and also not maintainable. He submitted that an agreement dated 18.06.2010 was entered between Respondent and M/s. Clenergen India Private Limited whereby the entire management of production, supply, marketing and all other business activities of Respondent was allowed to be performed by M/s. Clenergen India Private Limited.
7. It was further submitted that the petitioner company and M/s. Clenergen India Private Limited entered into an agreement dated 18.10.2010 and M/s. Clenergen India Private Limited alone had purchased the coal from the petitioner company and paid the consideration for the same. Thus, if any liability is pending, then the petitioner has to claim the same from M/s. Clenergen India Private Limited and not from respondent. It is also submitted that there was no direct transaction between the

Petitioner and respondent. Also, if the petitioner has accepted some part payment from respondent, then the respondent can't be made liable for the rest of the amount.

8. The learned counsel further submitted that the purchase order was not signed by the authorised person from the respondent company and it is also clearly shown that the purchase order was placed from the place of M/s. Clenergen India Private Limited. Therefore, the counsel finally submitted that there was no contract between the petitioner and respondent and the petitioner should approach M/s. Clenergen India Private Limited for recovery of dues, if any.
9. With regard to the contention raised in above para, the learned counsel for the petitioner submitted that only respondent company is supposed to pay as the petitioner supplied the coal to the respondent only and not to M/s. Clenergen India Private Limited. Hence, there is no question of claiming payments due from M/s. Clenergen India Private Limited as neither the coal was supplied to it nor it is a party to the suit, thus claiming privity of contract.
10. After hearing submissions of both the parties and having perused the record, the Respondent has failed to show by way of placing a documentary proof that there was a contract

between the petitioner and M/s. Clenergen India Private Limited and also the respondent could not substantiate that the person, who signed the purchase order, didn't belong to his company. It is also clear from the record that the contract to supply coal was between the Petitioner/OC and Respondent/CD and not with M/s. Clenergen India Private Limited.

11.The Operational Creditor has complied with all the requirements as stipulated under section 9 (3) (b) & (C) of the I&B Code, 2016 stating therein that the Corporate Debtor has not raised any dispute pertaining to the unpaid operational debt and also produced Bank Transactions.

12.Therefore, the instant petition is admitted and I order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

13. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit all of the following, namely :

- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.*

14. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

15. It is pertinent to mention herein that the Petitioner has not proposed the name of an IRP and prayed to make a reference to the Insolvency and Bankruptcy Board of India (IBBI) for recommending the name of an IRP. Therefore, the Registry is

directed to make a reference to IBBI for recommending the name of an IRP.

16. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.



K. ANANTHA PADMANABHA SWAMY
Member (J)