ORDER

Date:17.12.2018

1. This is an application filed by M/s Jay Ace Technologies Ltd against M/s Micromax Energy Ltd., the Respondent company seeking to initiate Corporate Insolvency Resolution Process ("CIRP") u/s 9 of the Insolvency and Bankruptcy Code ("the Code") for the alleged default on the part of the Respondent in clearing the dues of the Applicant of Rs. 88,48,294/- towards the supply of batteries effected by the Applicant to the Respondent. The facts leading to the filing of this application are as follows:

   i. It is stated that the Respondent considering the reputation of Applicant in the market approached the Applicant at its office at Ashok Vihar, Delhi for procuring the batteries and after satisfying itself with regard to quality and rates of the batteries agreed to purchase the batteries on the agreed rates with an assurance that the payment of each invoice shall be paid within 30 days from the date of receipt of invoice, otherwise interest @ 15% p.a. shall be payable thereafter.

   ii. Accordingly, the first purchase order dated 04.04.2017 was issued by the Respondent from its office situated at 21/14, Block, Phase-II, Nariana Industrial Area, New Delhi to the

Applicant. It is evident to point out here that the Applicant supplied the material in terms of the purchase order to the absolute satisfaction of the Respondent. Consequently, the Applicant handed over the invoice of the delivered material at the agreed price, for payment. Although as per the agreed terms the payment of each invoice was to be made within 30 days from the date of the receipt of the material but the payment was not released within the agreed time.

iii. The Respondent issued further purchase orders at different intervals of time in favour of Applicant for the supply of the batteries. It is submitted that the Applicant after supplying the material used to raise the invoice for the respective delivery for payment. It is evident to point to point out here that respondent initially used to release the payment of the respective invoice after receiving the material but later on respondent started releasing on account payment to the Applicant. The Applicant regularly maintained the ledger account under the name and style of Micromax Energy Ltd. to maintain the record relating to delivery of the material, payment received, date of receipt and payment due and payable.

iv. It was an utter shock to Applicant when the Respondent against the terms of supply without any rhyme or reason started

withholding the payment of the invoices post August 2017 for which the material had already been delivered to the Respondent long back to its satisfaction. After great persuasion by the Respondent, the Applicant vide its email dated 03.11.2017 confirmed to the Applicant that an amount of Rs. 2,73,94,780/- was due and payable against 17 invoices and further undertook to pay the aforesaid due amount in terms of the schedule of payment mentioned in the mail by the Respondent.

v. It is evident to point out here that despite acknowledging the balance payment of Rs.2,73,94,780/- and undertaking to release the admitted payment in terms of the schedule, the Respondent paid an amount of Rs. 1,84,41,385/- and did not take any further steps to release the balance ledger amount of Rs. 88,48,294/- only. No further payment was released by the Respondent arising out of invoices bearing No. RKE1718/1000456, RKE1718/1000457, RKE1718/1000460, RKE1718/1000466 and RKE1718/1000467 and same fact has also been certified by the bankers of the Applicant in its certificate that no payment after 24.11.2017 has been received by the Applicant from the Respondent.

vi. Thereafter, the Applicant on account of the default in the admitted payment of Respondent, issued a demand notice dated 04.01.2018 under Section 8 of the Code to the Respondent demanding an unpaid debt of Rs. 88,00,000/- along with the interest of Rs.2,09,043/- against the actual due amount of Rs. 88,48,294/- appearing as due and payable by the Respondent in the ledger account maintained by the Applicant in day to day course. It is submitted that demanding the amount of Rs. 88,00,000/- under demand notice dated 04.01.2018 was an inadvertent mistake as actual due amount as per the ledger account maintained by the Applicant is Rs. 88,48,294/- only. The aforesaid legal notice dated 04.01.2018 was sent through speed post/courier on 10.01.2018 and the notice of default was served to the respondent on 11.01.2018/12.01.2018.

vii. It is submitted that although the notice of default was served to the respondent on 11/12.01.2018 no action whatsoever has been taken by the Respondent within 10 days as prescribed under the Act. It is submitted that the Respondent after the expiry of the statutory 10 days sent a reply dated 01.02.2018 stating that a sum of Rs. 60,00,000/- has been retained by the Respondent as the warranty period of the batteries has not

expired and Rs. 30,00,000/- was kept on account of excise amount.

2. The Respondent filed its reply to the application and has contended as follows:

   i. The Applicant has only referred the email dated 03.11.2017, wherein the outstanding amount was finalized at Rs. 2,73,94,780/- but the Applicant has intentionally concealed the email dated 23.11.2017, whereby it was specifically clarified to the Applicant by the Respondent that the final balance payment of Rs. 54,00,000/- was agreed to be released on the condition that Rs. 60,00,000/- relating to warranty period will be released on completion of warranty period and a sum of Rs. 30 lakhs relating to excise benefit was being retained which would be adjusted as soon as the Applicant received the amount from the government.

   ii. The Applicant also concealed the fact of supply of poor qualities of products, due to which the reputation of the Respondent was adversely affected in the market, and sale of the products was reduced only because of poor quality of products of the Applicant, for which the Respondent has to claim damages from the Applicant. The worth of such

defective batteries are Rs. 49 lakhs and more than 250 batteries worth more than Rs. 16.25 lakhs are lying with different dealers, which are to be returned to the Respondent. This is the condition of batteries within one year, whereas the batteries have been sold for warranty of two and three years. As such ultimately it is the Applicant, who has to pay amount to the Respondent.

iii. It is worth to state that as future business transaction with the Applicant was stopped after October 2017 and stock of product of the Applicant was lying with the Respondent, in the month of November 2017, the Applicant was specifically informed that if the Applicant does not take back the stocks lying in the godown of the Respondent a sum of Rs. 60 lakhs shall be withheld till the warranty period of the batteries got over. Only after this communication the balance amount of Rs. 54,00,000/- through cheque was released to the Applicant, which was duly received and encashed by the Applicant. Hence there no question of claiming the concerned amount arises.

3. The Applicant has filed the rejoinder to the points raised by the Respondent in which it has refuted the reply filed by the Respondent as follows:

   i. A perusal of e-mail dated 03.11.2017 makes it clear that the balance amount of Rs. 2,73,94,780/- was confirmed by the Respondent without pointing out any dispute with regard to quality, quantity and the payment. Further, no dispute was raised with regard to quality, quantity and payment prior to the e-mail dated 03.11.2017. Hence to say so that there was any dispute with regard to quality, quantity and payment at any time is absolutely incorrect and against the correct facts.

   ii. The desired material was lastly delivered to the Respondent through the invoice dated 30.09.2017 and till 30.09.2017 no objection whatsoever had been raised by the Respondent with regard to quality, quantity and the payment arising from the invoices delivered to the Respondent. Therefore, the Respondent vide e-mail dated 03.11.2017 confirmed the balance amount of Rs. 2,73,94,780/- against the 17 invoices mentioned in the said e-mail. The Respondent also provided the schedule of the payment of the confirmed due amount to the Applicant and till the aforesaid date there was no assertion of existence of any dispute with regard to any part of the

payment confirmed by the Respondent, hence the reference to the contents of e-mail dated 23.11.2017 is of no consequence in as much as the same are nothing but a self-declaratory claim of the Respondent which has nothing to do with the terms and conditions of the supply of the material.

iii. Further there was no agreement whatsoever with regard to deduction of any amount from the rates already accepted by the Respondent, therefore since the beginning of the supply till the last payment no deduction whatsoever has been carried out on account of the cost of the warranty of the respective battery. Hence the withholding of the amount on account of expiry of warranty period is false, frivolous, concocted and against the terms of the supply.

iv. The other amount of Rs. 30,00,000/- withheld by the Respondent is also without any reason in as much as the Respondent cannot withhold any amount from the bills of the Applicant on account of budgetary policy introduced on 05.10.2017 for existing eligible manufacturing units operating in states of Jammu and Kashmir, Uttarakhand, Himachal Pradesh etc. It is submitted that the benefit of tax has been given by the Central Government to the manufacturing units existing in the aforesaid states and the benefits are personal to

the manufacturing units, therefore the Respondent cannot claim any right on the benefit of the tax extended by the Central Government to the manufacturing unit/Applicant.

4. We have perused the documents filed by both the parties and heard the arguments of both sides at length. In the instant case the Respondent has confirmed the dues to be paid to the Applicant as Rs. 2,73,94,780/- in email dated 03.11.2017 and has also sent a tentative schedule for clearing the dues by email. The respondent has paid the amount as per the schedule up to 05.12.2017 and the amounts due to be paid on 15.12.2017 and 20.12.2017 amounting to Rs. 88,48,294/- were not cleared. The reasons quoted by the Respondent for not clearing the dues are as discussed in the earlier paras.

5. The issue to be decided is whether there is any dispute raised by the Respondent regarding the supplied effected by the Applicant. While settling the invoices raised by the Applicant the Respondent has never deducted any amount on quality considerations in the previous transactions. Even while confirming the dues on 03.11.2017 by way of email the Respondent did not raise quality problems on the materials supplied by the Applicant. Only on 23.11.2017 the details of withholding an amount of Rs. 60,00,000/- towards warranty issues

and Rs. 30,00,000/- towards excise benefit issue were communicated to the Applicant vide email. Whether this email correspondence amounts to raising a 'dispute' as outlined in the code is a point to be answered. Had the respondent received the batteries with quality issues, he could have addressed the Applicant to take back the defective batteries as listed out in the annexure by the Respondent. The list is only a compilation of batteries and other details and the respondent has not produced any correspondence made to the Applicant on quality issues. Moreover, the contention of the Respondent that he will hold up the payment till the warranty period is also not as per the terms of business transactions in the normal course. There is no document submitted by the Applicant showing that the retention of money for warranty/excise duty was followed in the normal course of business. Thus, as discussed above the issues raised by the respondent cannot be considered as sufficient material to qualify as a 'dispute' as per the procedures outlined in the code.

6. In view of the above this the Tribunal is inclined to admit this application and accordingly initiate the process of CIRP of the Respondent. Since the Applicant has not named the insolvency resolution professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Avineesh

Matta, with registration number IBBI/IPA-001/IP-P00610/2017-18/11070 (email – matta@avaca.in, Mobile No. 9811052264) as the Interim Resolution Professional ("IRP") subject to the condition that no disciplinary proceedings are pending against such an IRP named and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the application being admitted in terms of Section 9(5) of the Code the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Respondent:

a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

7. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

> (2) The supply of essential goods or services to the respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.
>
> (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

8. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

> (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:
>
> Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of respondent under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

9. The Applicant is directed to pay a sum of Rs.2,00,000/- to the interim resolution professional ("IRP") upon the IRP filing the necessary declaration form as required under the provisions of the Code to mete out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of

India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

10. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the registry. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of resolution professionals forwarded by IBBI be also furnished with copy of this order forthwith by the registry.

Sd/- 17/12/2018

(Dr. V.K. SUBBURAJ)

MEMBER (TECHNICAL)

Sd/- 17/12/18

(R. VARADHARAJAN)

MEMBER (JUDICIAL)

Deepak

FORM A

PUBLIC ANNOUNCEMENT

(Under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

FOR THE ATTENTION OF THE CREDITORS OF MICROMAX ENERGY LTD.

	RELEVANT PARTICULARS	
1.	Name of corporate debtor	MICROMAX ENERGY LTD.
2.	Date of incorporation of corporate debtor	18 October 2010
3.	Authority under which corporate debtor is incorporated / registered	Registrar of Companies (RoC) Delhi
4.	Corporate Identity No. / Limited Liability Identification No. of corporate debtor	U37100DL2010PLC209463
5.	Address of the registered office and principal office (if any) of corporate debtor	A21/14, Naraina Industrial area Phase-II, New Delhi-110028
6.	Insolvency commencement date in respect of corporate debtor	17.12.2018 (vide order dated 17.12.2018 passed by Hon'ble NCLT Bench – III New Delhi in CP No. IB-330(ND)/2018)
7.	Estimated date of closure of insolvency resolution process	15th June 2019
8.	Name and registration number of the insolvency professional acting as interim resolution professional	AVINEESH MATTA IP Regn. No. IBBI/IPA-001/IP-P00610/2017-2018/11070
9.	Address and e-mail of the interim resolution professional, as registered with the Board	AVA & Associates, 4 – F, Gopala Tower, Rajendra Place, New Delhi – 110008 matta@avaca.in
10.	Address and e-mail to be used for correspondence with the interim resolution professional	Address as per '9' above Email: claims.micro@avaca.in
11.	Last date for submission of claims	02.01.2019 (within 14 days of receipt of order by IRP, i.e. on 19.12.2018)
12.	Classes of creditors, if any, under clause (b) of sub-section (6A) of section 21, ascertained by the interim resolution professional	Not ascertainable as on date
13.	Names of Insolvency Professionals identified to act as Authorised Representative of creditors in a class (Three names for each class)	Not ascertainable as on date
14.	(a) Relevant Forms and	Weblink: https://ibbi.gov.in/downloadform.html Physical Address: AVA & Associates, 4 – F, Gopala Tower, Rajendra Place, New Delhi – 110008
	(b) Details of authorized representatives are available at:	Not applicable

Notice is hereby given that the National Company Law Tribunal has ordered the commencement of a corporate insolvency resolution process of the **MICROMAX ENERGY LTD.** on 17th **December 2018.**

The creditors of **MICROMAX ENERGY LTD.** are hereby called upon to submit their claims with proof on or before **2nd January 2019** to the interim resolution professional at the address mentioned against entry No. 10.

The financial creditors shall submit their claims with proof by electronic means only. All other creditors may submit the claims with proof in person, by post or by electronic means.

A financial creditor belonging to a class, as listed against the entry No. 12, **(Not Applicable)** shall indicate its choice of authorised representative from among the three insolvency professionals listed against entry No.13 to act as authorised representative of the class [specify class] in Form CA.

The submission of claims is to be made in accordance with Chapter IV of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The claim with proof is to be submitted in following specified forms along with documentary proof in support of claim:

Form B: Claim by operational creditors except workmen and employees
Form C: Claim by financial creditors
Form CA: Claim by financial creditors in a class
Form D: Claim by workmen or an employees
Form E: Claim submitted by an authorised representative of workmen or employees
Form F: Claim by creditors (other than financial creditors and operational creditors)

Submission of false or misleading proofs of claim shall attract penalties.

AVINEESH MATTA
IP Regn. No. IBBI/IPA-001/IP-P00610/2017-2018/11070
Date: 21st December 2018
Place: New Delhi