

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL
COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 10.03.2026 AT
10.30 A.M. THROUGH VIDEO CONFERENCING:**

**PRESENT: SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)**

APPLICATION NUMBER : --

PETITION NUMBER : C.P. (IB)/136(CHE)2025

NAME OF THE PETITIONER : Sany Heavy Industry India Private Limited

NAME OF THE RESPONDENT(S) : Nico Allen Infrastructure Private Limited

UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

ORDER

Vide separate order pronounced in open court, **CP(IBC)/136/CHE/2025**
is Allowed.

**Sd/-
RAVICHANDRAN RAMASAMY
Member (Technical)**

**Sd/-
JYOTI KUMAR TRIPATHI
Member (Judicial)**

Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s Sany Heavy Industries India Private Limited**, (hereinafter referred to as '*Operational Creditor*') seeking to initiate Corporate Insolvency Resolution Process against **M/s NICO Allen Infrastructure Private Limited** (hereinafter referred to as '*Corporate Debtor*').

2. Part-I of the Petition sets out of the details of the Operational Creditor. It is averred that the M/s Sany Heavy Industries India Private Limited, is engaged in the business of manufacturing of mining and concrete equipment such as Excavators, Piling Rig, Crawler Crane, Boom Pumps etc. along with the presence of dealer network for sale and after sale service across the country with skilled technicians and infrastructure, which is represented by Mr. Rohit Sharma with its office situated at Plot No. E-4, Chakan Industrial Area, Phase-III, Kuruli, Taluka – Khed, Pune, Maharashtra – 410 501.

3. Part-II of the Petition sets out the details of the Corporate Debtor, M/s NICO Allen Infrastructure Private Limited, with Identification No. U45200TN2021PTC145697, incorporated on 25.08.2021, with an Authorized Share Capital of Rs. 5,00,00,000/- and the Paid-up Share Capital of Rs. 5,00,00,000/- having its registered office at 1/44, S2 Parvathy Apartment Bazaar Road, Mogappair East, Chennai, Tamil Nadu – 600 037

4. In Part-III of the Petition the Operational Creditor has not proposed any Insolvency Professional to act as a Resolution Professional and therefore,

prayed the Tribunal to make a reference to the board for appointment of Interim Resolution professional.

5. Part-IV of the Petition states that the total outstanding Debt is Rs. 9,99,42,002/- (Rupees Nine Crore Ninety Nine Lakhs Forty Two Thousand and Two Only), out of which Rs. 7,79,57,880/- (Seven Crores Seventy Nine Lakhs Fifty Seven Thousand Eight Hundred and Eighty Only) is payable towards two invoices and Rs. 2,19,84,122.16/- (Two Crores Nineteen Lakhs Eighty Four Thousand One Hundred and Twenty Two and Paise Sixteen) is payable towards the interest at a rate of 24% p.a. The date of Default is 30.01.2024 and 31.01.2024 respectively for the two invoices.

6. Part-V of the Petition describes the particulars of the Operational Debt, documents, records and evidence of the default as below:

- A copy of the Purchase Order dated 03.01.2024 is annexed herewith and marked as ANNEXURE-2.
- A copy of Invoice No. 3240000315 and Invoice No. 3240000318 are annexed herewith and marked as ANNEXURE-3.
- Copies of E- Way Bills are annexed Herewith ANNEXURE-4.
- Copies of Commissioning Reports are annexed herewith and marked as ANNEXURE-5.
- A copy of letter dated 21.01.2025 and two cheques issued by the Corporate Debtor is annexed herewith and marked as ANNEXURE-6.
- Copy of the Demand Notice dated 12.03.2025 is annexed herewith and marked as ANNEXURE-12.
- Copies of the GSTR-3B Forms for the are annexed herewith and marked as ANNEXURE-15

7. **OPERATIONAL CREDITORS SUBMISSIONS:**

7.1 It is submitted that the total outstanding Debt is Rs. 9,99,42,002/- (Rupees Nine Crore Ninety Nine Lakhs Forty Two Thousand and Two Only), out of which Rs. 7,79,57,880/- (Seven Crores Seventy Nine Lakhs Fifty Seven Thousand Eight Hundred and Eighty Only) is payable towards two invoices and Rs. 2,19,84,122.16/- (Two Crores Nineteen Lakhs Eighty Four Thousand One Hundred and Twenty Two and Paise Sixteen) is payable towards the interest at a rate of 24% p.a. The date of Default is 30.01.2024 and 31.01.2024 respectively for the two invoices.

7.2 It is submitted that the Corporate Debtor had issued a Purchase Order dated 03.01.2024 bearing no. SANY-PUR/Jan/2023 for purchase of two SR235 Rotary Drilling Rig from the Operational Creditor. It is also submitted that the said equipment was delivered to the Corporate Debtor and accordingly, Tax Invoices bearing Invoice No. 3240000315 dated 30.01.2024 and Invoice 3240000318 dated 31.01.2024 were raised by the Operational Creditor for an amount of Rs. 3,89,78,940/- (Rupees Three Crore Eighty Nine Lakhs Seventy Eight Thousand Nine Hundred Forty Only) each with an interest at the rate of 24 % per annum upon failure to make the payment.

7.3 It is further submitted that on 16.02.2024, Commissioning Report was issued indicating delivery was issued by the Operational Creditor with respect to SR235 Rotary Drilling Rig Serial SR325CCD13738 against the

Invoice No. 3240000313 and on 28.02.2024, Commissioning Report with SR235 Rotary Rig Serial No. SR325CCD13758 against the Invoice No. 3240000315 was issued.

7.4 It is submitted that the Corporate Debtor vide letter dated 21.01.2025 stated that due to the delay in the release of payment from Union Bank of India, it had arranged the payment on its own by issuing two cheques dated 21.01.2025 bearing No. 72031934 and 72031935 in favour of the Operational Creditor.

7.5 It is further submitted that the Corporate Debtor vide letter dated 04.02.2025 informed that it will not avail credit facility from Union Bank of India and was in process of securing credit facilities from other institutions and requested the OC not to present the said cheques for encashment.

7.6 It is submitted that the Corporate Debtor vide letter dated 07.02.2025 stated that it make payment on 24.02.2024 and 31.03.2025 respectively for the two invoices.

8. **RESPONDENT'S SUBMISSIONS:**

8.1 The Respondent has filed a reply dated 02.07.2025, wherein it has been stated that the respondent is a private limited liability company carrying on

the business of D-Wall, Shoring, Piling, Anchoring, Grouting, Bridge, Tunnel and Marine with an unblemished record.

8.2 It is submitted that the respondent/corporate debtor intending to purchase piling rigs had approached the Union Bank of India, seeking finance for the purchase. The cost of the two piling rigs is Rs.7,79,57,880/ -. The said bank after scrutiny of documents sent a delivery order dated 11.12.2023 to the applicant confirming sanction of commercial equipment loan of Rs. 5,84,68,410/- at Rs. 2,92,34,205/- per rig and the respondent had to pay the remaining margin. The applicant had delivered the said rigs based on the same.

8.3 It is further submitted that the Bank had also sanctioned other facilities totalling to Rs. 23,90,10,000/- against the hypothecation of stock and machinery and mortgage of immovable property vide sanction letter dated 30.12.2023.

8.4 It is submitted that the Respondent had undertaken a subcontract for the construction of New Double Tier 4 Lane Elevated Corridor from Chennai Port to Maduravoyal, where the said machines were put to use.

8.5 It is also submitted that the bank had to make the payment after 365 days from the date of invoice, but the bank had delayed the release despite the complying the requirements. It is submitted that the respondent took back all the documents from the bank and the mortgages were also discharged.

8.6 It is submitted that the respondent had raised the cheques to address the concerns of the applicant and requested to hold the cheques, but the applicant had been constantly insisting the immediate payment vide emails dated 30.01.2025 and 31.01.2025.

8.7 It is further submitted that the applicant had locked the machines of the respondent. Thereby, the respondent had filed a complaint in the Anna Nagar Police station regarding the illegal locking by the applicant, consequent to which the applicant unlocked the machines.

8.8 It is also submitted that the due to this act of the applicant the construction work that is for the benefit of the public is disrupted. It is also stated that the respondent had invested heavily on the project and the actions of the applicant were putting pressure on the resources of the respondent.

FINDINGS OF THE TRIBUNAL

9. We have heard the learned Counsels for both the parties and perused the documents on record.

10. It is noted that the date of default in the present case is 30.01.2024 and 31.01.2024, respectively, in relation to the two invoices raised by the Operational Creditor. The present petition has been filed on 14.05.2025. Accordingly, it is evident that the petition has been filed within a period of

three years from the date of default and is therefore well within the period of limitation as prescribed under law.

11. It is further observed from the petition that the total debt amount claimed is Rs. 9,99,42,002/- (Rupees Nine Crore Ninety-Nine Lakhs Forty-Two Thousand and Two Only), which is above the minimum threshold limit of Rs. 1 Crore as stipulated under the Insolvency and Bankruptcy Code, 2016.

12. In the present case, there is no material on record to show that the Respondent had, at any point in time, raised any dispute with respect to the debt or its liability to make payment of the said amount. Further, there is no document evidencing any dispute regarding the quality or quantity of the goods/services supplied by the Operational Creditor.

13. It has been held in the case of Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software Pvt. Ltd., reported in MANU/SC/1196/2017 that if there is a debt and default, and there is no pre-existing dispute the petition filed under Section 9 of IBC has to be admitted. The relevant para of the Judgment is extracted here below;

Para 25 - 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.

Para 40 –

..... the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

14. It is observed that the primary contention raised by the Respondent is that it had obtained sanction for a loan from Union Bank of India in respect of the said purchase order, and that the Bank had allegedly delayed the processing and release of the loan amount despite the Respondent having complied with the required formalities.

15. It has been held in the case of *Epicrop Organics Ltd. v. Cropberry Foods Pvt. Ltd.*, (2026) ibclaw.in 504 NCLT as extracted below,

"24. We also observe that the plea of "financial hardship" and "liquidity constraints" is not a legally recognised ground to reject an otherwise maintainable petition under Section 9 once default is established. The Code

proceeds on the objective criterion of default, and the Adjudicating Authority cannot rewrite the commercial bargain by granting instalments or time in place of the statutory consequence of admission, except in situations contemplated by law."

16. Hence, such contention cannot be considered as a valid dispute under the provisions of the Insolvency and Bankruptcy Code, 2016. In the present case, there is clear evidence on record establishing the existence of operational debt and default, and the same falls within the prescribed limitation period. Further, there is no material to demonstrate the existence of any pre-existing dispute between the parties.

17. Moreover, from the reply filed by the Respondent, it is evident that the Respondent has admitted the liability towards the debt and has merely sought indulgence on the ground of financial constraints.

18. Taking into consideration the facts and circumstances of the case, as well as the position of Law, we are of the view that the petition filed by the Operational Creditor, is to be **Admitted** under Section 9(5) of the IBC, 2016.

19. In the present case, the operational creditor has not proposed any IRP name and hence this Tribunal appoints **Mr. Ayyamplalayam Venkatesan Arun** having Reg No: **IBBI/IPA-001/IP-P01079/2017-18/11792**, (Email: *avarun77@gmail.com*) whose AFA is valid till **30-06-2026** as the "Interim Resolution Professional" (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required

under the Code, more specifically in terms of Section 15, 17, 18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

20. As a consequence of the Petition being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14 shall apply in relation to the Corporate Debtor as under:

“(1) Subject to provisions of subsections (2) and (3) on the insolvency commencement date the Adjudicating Authority shall by order declare prohibiting all of the following namely:

- 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.*

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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 or a similar grant or right during moratorium period;

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

“(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.”

22. 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 Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.”

23. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/- (Rupees Two Lakhs only)** to the Interim Resolution Professional to meet 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.

24. Based on the above terms, the Petition 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 Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

25. Accordingly, Company Petition CP (IB) / 136(CHE) / 2025 is **allowed** and disposed of.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)