

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

**PRESENT: HON'BLE SHRI MADAN BHALCHANDRA GOSAVI- MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 29.09.2021 AT 13.00 HRS

| | |
|----------------------------------|------------------------------|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | CP(IB) No. 261/9/HDB/2020 |
| NAME OF THE COMPANY | Vivanta Laboratories Pvt Ltd |
| NAME OF THE PETITIONER(S) | Sun (inox) Steels Pvt Ltd |
| NAME OF THE RESPONDENT(S) | Vivanta Laboratories Pvt Ltd |
| UNDER SECTION | 9 of IBC |

Counsel for Petitioner(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |
| | | | |

Counsel for Respondent(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |
| | | | |

ORDER

Orders passed in **CP(IB) No. 261/9/HDB/2020** vide separate orders.

CP(IB) No. 261/9/HDB/2020 is allowed


MEMBER (TECHNICAL)


MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1, HYDERABAD**

**CP(IB) No. 261/9/HDB/2020
U/s. 9 of Insolvency & Bankruptcy Code, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016**

In the matter of:

M/s. Sun (Inox) Steels Private Limited
having its Registered Office at
1-8-449/2/A, Pattigadda, Begumpet
Hyderabad – 500 016

... Applicant/Operational Creditor

Vs.

M/s. Vivanta Laboratories Private Limited
having its Registered Office at
8-3-229/D/97/4, Flat No.401, Jubilee Hill County
Road No.11, Jubilee Hills, Hyderabad – 500 045

... Respondent Company/Corporate Debtor

AND

The Secretary
Union of India
Through the Ministry of Corporate Affairs
A-Wing, Shastri Bhavan, Rajendra Prasad Road
New Delhi – 110 001

...MCA

Date of Order: 30.09.2021


Coram:

**Hon'ble Shri Madan B. Gosavi, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)**

Parties / Counsels :

For the Petitioner : Mr. Tapasvilal Deora, PCS

Heard on: 06.08.2021, 13.08.2021, 22.09.2021



[Per: Bench]

ORDER

1. The instant Petition is filed by **M/s. Sun (Inox) Steels Pvt. Ltd. /Operational Creditor** alleging that **M/s. Vivanta Laboratories Private Limited/Corporate Debtor** had defaulted an amount of **Rs.18,09,884/- (Rupees Eighteen Lakhs Nine Thousand Eight Hundred and Eighty Four only)** till 29.02.2020, which includes Principal amount of Rs.13,76,773/- alongwith interest @ 36% p.a. of Rs.4,33,111/- against the invoices raised by the Operational Creditor for the period from 11.10.2018 to 01.06.2019. **A copy of the detailed working of the Operational Debt is shown as Annexure-4 at page 26 of the petition.**

Hence, this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments of the petition filed by M/s. Sun (Inox) Steels Private Limited/Operational Creditor/Petitioner in brief are described hereunder:
 - i. The Corporate Debtor approached the Operational Creditor for supply of different kinds of industrial materials and both the parties negotiated the supply terms and finalized. Pursuant to the negotiations, the Corporate Debtor raised several Purchase Orders and the Operational Creditor duly supplied the materials ordered under Delivery Challans and raised GST Invoices. The Corporate Debtor agreed to make the payments within 45 days from the date of invoices, failing which, interest @ 36% is liable to pay for the delayed payments. **Copies of the Purchase Orders and Invoices are shown at page Nos.27 to 45 and 46 to 66 of the petition respectively.**



- ii. It is averred for the 1st Invoice No.430, dated 11.10.2018 for Rs.11,60,684/-, the Corporate Debtor made payment of Rs.11,55,556/- leaving a balance of Rs.5,128/- and later, the Corporate Debtor had not made any payments on any of the invoices raised by the Operational Creditor and has committed breach in the agreed terms under the supply contract. It is also averred that the payments due were at any point of time not disputed with regard to the supplied material quality, quantity and rates despite receiving and acknowledging the same. However, the Operational Creditor continued supplying the material based on the assurances given by the Corporate Debtor for payment of the same.
- iii. It is averred after rigorous follow up by the Operational Creditor to recover the aforesaid amount, the Corporate Debtor admitted its liability under the supply contract and issued the following cheques promising to make the balance payments soon:

| S.No. | Cheque No. & Date | Amount | Name of the Bank |
|-------|--------------------|------------|-------------------|
| 1. | 211440 /24.01.2019 | 3,98,503/- | South Indian Bank |
| 2. | 211441 /31.01.2019 | 1,96,664/- | South Indian Bank |
| 3. | 211442 /02.02.2019 | 25,834/- | South Indian Bank |

After issuing the cheques, the Corporate Debtor vide its e-mails from November, 2018 to February, 2019 requested the Operational Creditor not to deposit the above cheques stating that they are in the process of getting a term loan and will make the payment in a week's time. Relying on the assurances given by the Corporate Debtor and keeping the business relationship in view, the Operational Creditor has not deposited the cheques and went on supplying the materials against the Purchase Orders issued by the Corporate Debtor till June, 2019.



- iv. It is averred as the Corporate Debtor failed to make the amounts due, a Demand Notice was issued on 30.12.2019 for payment of Rs.17,27,051/- which includes principal amount of Rs.13,76,773/- alongwith interest @ 36% p.a. of Rs.3,50,278/-, which was received by the Corporate Debtor on 01.01.2020. Even after issuing the demand notice, the Respondent failed to clear the outstanding dues.
- v. It is averred that the outstanding amount due to the Operational Creditor have never been disputed by the Corporate Debtor in any manner whatsoever.
- vi. It is averred that the Petitioner left with no further option, filed the petition under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on 17.03.2020, which was listed on 16.09.2020. A copy of the petition was served by the Petitioner through Registered Post on 16.03.2020 (**Annexure-13**).
- vii. It is averred as per the directions of the Hon'ble Tribunal on 16.09.2020, the Practising Company Secretary (PCS) for Petitioner issued a notice to the Corporate Debtor for their appearance on the next hearing date which is scheduled to be held on 05.10.2020 by Registered Post and E-mail on 20.09.2020, which was received by the Corporate Debtor on 25.09.2020. The proof of service was filed with the Hon'ble Tribunal. **A copy of the same is shown at page 4 of the letter of PCS dated 29.09.2020.** Despite receipt of the above notice, the Respondent did not appear before the Hon'ble Tribunal on 05.10.2020.



- viii. It is averred that as per the directions of the Hon'ble Tribunal on 05.10.2020, the Petitioner again served a notice by Registered Post and E-mail on 08.10.2020 and 07.10.2020 respectively on the Corporate Debtor to make it convenient to attend the hearing scheduled to be held on 27.10.2020. In this regard, proofs of service were also filed with the Hon'ble Tribunal. **Copies of the same are shown at page 2 & 3 of the letter of PCS dated 19.10.2020.** On 27.10.2020, the matter was adjourned to 18.11.2020 due to poor internet connectivity and related technical issues.
- ix. It is averred that as per the directions of the Hon'ble Tribunal on 18.11.2020, the Petitioner again served a notice to the Corporate Debtor for appearance by Registered Post and E-mail on 27.11.2020 stating that the next hearing is scheduled to be held on 14.12.2020 and requested to attend the hearing on 14.12.2020, failing which, the Hon'ble NCLT, Hyderabad Bench may decide the matter Ex-Parte. The proofs of service were also filed with the Hon'ble Tribunal. **Copies of the same are shown at page nos. 2 to 10 of PCS letter dated 09.12.2020.** It is also averred inspite of receipt of the notices, Respondent once again did not appear before the Hon'ble Tribunal on 14.12.2020 and the matter was again posted to 18.01.2021 and issued order stating that 'issue paper publication in English and Vernacular Languages for appearance and making submissions. The matter was again posted to 15.02.2021 due to poor internet connectivity.
- x. On 15.02.2021, no representation for both sides. The matter again posted to 03.03.2021. But again on 03.03.2021, even though paper publication was made, there is no representation from the side of Corporate Debtor and treated as ex-parte. For hearing submissions on the side of Operational Creditor, the matter was posted to 30.03.2021. Again on 30.03.2021 also there is no representation for Corporate Debtor and the matter is Reserved for Orders.



- xi. Due to change in the composition of Bench, matter reopend on 06.08.2021 and posted to 13.08.2021. The Corporate Debtor did not appear on these dates also. The matter again posted to 22.09.2021 but the Corporate Debtor did not appear and the matter reserved for orders.
3. We have heard the learned counsel for the Operational creditor. In this case, there is no contest of the case of the Operational Creditor by the Corporate Debtor. The Operational Creditor has issued Demand Notice dated 30.12.2019, which was received by the Corporate Debtor on 01.01.2020 and there was no reply to the Demand Notice. The Operational Creditor has further relied on the invoices shown at page nos.46 to 66 of the application. The case of the Operational Creditor is that the Corporate Debtor committed default of the operational debt to the tune of Rs.18,09,884/- till 29.02.2020, which includes Principal amount of Rs.13,76,773/- alongwith interest @ 36% p.a. of Rs.4,33,111/-.
4. Despite sending notices and paper publication, the Respondent have not appeared either in person or through counsel in the matter. We have thoroughly perused the records and heard the submissions made by the Counsel for Petitioner. The petition is in order. The petition deserves to be admitted. Accordingly, the petition is admitted.
5. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions:-
- i. The Bench hereby prohibits 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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in



respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

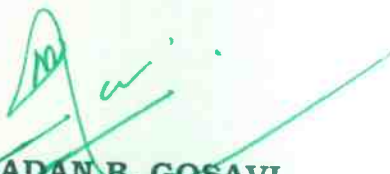
- ii. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.
- iii. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- iv. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- v. That the order of moratorium shall have effect from 06.01.2021 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.





- vi. The Operational Creditor proposed the name of CS Pavan Kankani, as Interim Resolution Professional and he has given his consent in Form-2. As per the Insolvency and Bankruptcy Board of India (IBBI) Website, CS Pavan Kankani's Authorisation for Assignment is valid upto 24.11.2021. Accordingly, this Tribunal appoints CS Pavan Kankani as Interim Resolution Professional, having Registration No. IBBI/IPA-002/IP-N00368/2017-18/1062.
- vii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- viii. Accordingly, this Petition is admitted.
- ix. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


MADAN B. GOSAVI
MEMBER (JUDICIAL)

Syamala