NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 01.03.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 205/7/HDB/2020
NAME OF THE COMPANY	Tejaswini Engineering Pvt Ltd
NAME OF THE PETITIONER(S)	BRS Enterprises & Trading Ltd
NAME OF THE RESPONDENT(S)	Tejaswini Engineering Pvt Ltd
UNDER SECTION	7 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

CP (IB) 205/7/HDB/2020 is listed today for orders.

Counsel for Corporate Debtor is present in person.

Orders pronounced vide separate orders.

MEMBER (T) **MEMBER(J)**

Syamala

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No. 205/7/HDB/2020

U/s 7 of IBC, 2016
R/w Rule 4 of I & B (AAA) Rules, 2016

IN THE MATTER OF:

TEJASWINI ENGINEERING PRIVATE LIMITED

BETWEEN

M/s. BRS ENTERPRISES & TRADING LIMITED
Shop No.2, Beside Nuzen Hair Oil, Police Station Road,
IDA Bollaram, Jinnaram(Md), Bollaram 502 325.

...Petitioner/
Financial Creditor

AND

M/s TEJASWINI ENGINEERING PRIVATE LIMITED
Plot No.34, Nagarjuna Hills, Punjagutta,
Hyderabad-500 082.

Respondent/
Corporate Debtor

Date of order: 01.03.2021

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / counsels present:

For the Petitioner : Shri Saurabh Agarwal, Advocate.

For the Respondent: Shri G.Bhupesh, Advocate

PER: Shri Veera Brahma Rao Arekapudi, Member Technical.

Heard on: 22.02.2021.

ORDER

1. The Present Petition is filed by the Financial Creditor to initiate Corporate Insolvency Resolution Process in the matter of M/s.TEJASWINI ENGINEERING PRIVATE LIMITED. The Petitioner stated that the respondent/ corporate debtor is due and liable to pay an amount of Rs.13,26,49,938/-(Rupees Thirteen Crores Twenty Six Lacs Forty Nine Thousand Nine Hundred Thirty Eight Only) consisting of Principal 10,11,11,470/-(Rupees Ten Crores Eleven Lacs Eleven Thousand Four Hundred Seventy Only) and interest @12% from 1st October, 2016 to 31st March, 2018 amounting to Rs.1,82,00,065/- and interest @12% per annum from 1st April 2018 to 31st October, 2019 amounting to Rs. 1,33,38,404/- as on 01.11.2019. Hence the petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, Read with Rule 4 of Insolvency& Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 seeking commencement of Corporate Insolvency Resolution Proceedings CIRP against the Corporate Debtor.
2. The averments of the petition filed by the Petitioner/Financial Creditor in brief are:

   a. It is averred that financial creditor was incorporated in the year 2011 under Companies Act, 1956. The main objective of the Company is to trade steel and its allied products. Corporate debtor is also a company incorporated in the year 1999 with an objective of trading steel.

   b. It is averred that in June, 2016, Financial creditor has received a purchase order in requirement of 1525 MT of TMT Bars and 230 no's of Chilled Bars from corporate debtor. Considering the long relationship with the corporate debtor, financial creditor accepted for the supply of 1525 MT of TMT Bars and 230 no's of Chilled Bars. Further they have made certain terms and conditions of Purchase Order.

- The material should be supplied within 60 days from the date of Purchase Order and
- Payment terms are 60 days credit from the date of supply.

c. It is averred that as per the terms and conditions of the purchase order, financial creditor had supplied TMT Bars and Chilled Bars. The total sales value being Rs. 10,11,11,470/-. Since the expiry of the credit period from the supply of goods, the financial creditor requested the corporate debtor repeatedly to make the payment.

d. It is averred that due to blockage of funds financial creditors yearly financial statements got severely affected and also financial creditor having financial limits with banks and timely inflow of funds had also effected. The financial creditor was forced to pay extra interest on Rs.10,11,11,470/- which is huge burden on the company since it incurred extra expenditure of Rs.2.00 crores on the Company.

e. It is averred that due to the financial burden on the financial creditor, he put severe pressure on the corporate debtor for releasing the funds along with interest. On 10th March, 2018 both the parties agreed and entered into a loan agreement on the terms and conditions to return the money in 12 equated monthly installments from 1st April, 2018 and in case of any default in payment of the installments, interest will be charged @12% p.a from the due date i.e 1st October, 2016 till the payment of that installment.

f. It is averred that corporate debtor failed to honor even single payment and thus the financial creditor had given further time upto 31st , 2019. But the corporate debtor did not honor any of the installments. Thus the financial creditor has approached the NCLT for recovery of money along with interest.

3. The respondent/corporate debtor filed reply. The objections raised in the counter in brief are as under:-

(i) The respondent/ corporate debtor has denied the averments made by the financial creditor in the Company petition. Further stated that petition liable to be dismissed.

(ii) It is averred that Financial Creditor being in the business of steel approached the corporate debtor and expressed its intent to supply steel and related material to corporate debtor. Thus corporate debtor placed a purchase order in the month of June, 2016 for supply of 1525 MT of TMT Bars and 230 no's of Chilled Bars.

(iii) As per the terms and conditions financial creditor supplied the material within 60 days to the corporate debtor. In the meantime due to downfall of the market corporate debtor was unable to arrange funds for making payment towards the value of the purchase order.

(iv) It is averred that after several discussions both the parties entered into a loan agreement dated 10.03.2018 wherein corporate debtor agreed to pay the balance amount in 12 monthly installments commencing from 01.04.2018 and in case of default interest @12% per annum commencing from 01.10.2016 till the payment of the installment.

(v) It is averred that corporate debtor is not in a position to pay the amounts, and approached the financial creditor multiple times and requested for waiver of the interest part. Further, corporate debtor requested the financial creditor to take back its material supplied.

(vi) However, financial creditor neither considered the waiver of the interest amounts nor to take back its material supplied and further approached the Tribunal by filing the present petition.

(vii) It is further averred the application is not maintainable sine the transaction between the financial creditor and corporate debtor is not financial transaction but an operational transaction leading to an operational debt. Thereby, the financial creditor ought to have approached the Tribunal by preferring an application under Section 9 of the I&B Code, 2016.

(viii) It is further submitted that the amount claimed by the financial creditor in the instant petition is disputed as the entire claim is untenable and unlawful. Thus the petition is not fit case to be admitted for CIRP process under the Insolvency and Bankruptcy Code, 2016. In the circumstances the present petition can't be accepted and should be rejected with costs.

5. We have heard the counsel for financial creditor and the counsel for the corporate debtor. The case of the financial creditor is that corporate debtor is due an amount of Rs.13,26,49,938/-(Rupees Thirteen Crores Twenty Six Lacs Forty Nine Thousand Nine Hundred Thirty Eight Only) consisting of Principal 10,11,11,470/-(Rupees Ten Crores Eleven Lacs Eleven Thousand Four Hundred Seventy Only) and interest @12% from 1st October, 2016 to 31st March, 2018 amounting to Rs.1,82,00,065/- and interest @12% per annum from 1st April 2018 to 31st October, 2019 amounting to Rs. 1,33,38,404/- as on 01.11.2019. Counsel for financial creditor had filed copy of purchase order, and copy of letters addressed to corporate debtor and reply from corporate debtor as well and further reminder letters from financial creditor which are annexed to the

petition at Page no.15-23. Counsel for financial creditor has also filed the copy of loan agreement entered between the parties, which is annexed at Page no.24-26. Thus the learned Counsel for the financial creditor filed the petition is therefore liable to be admitted as the corporate debtor committed default of debt.

6. On the other hand it is the case of corporate debtor that Corporate debtor is facing numerous financial difficulties and was unable to pay the debt owned from the financial creditor. Further corporate debtor contended that the transaction between the parties is not a financial transaction but an operational transaction leading to an operational debt. Thereby, financial creditor ought to have filed Application under Section9 of I&B Code, 2016. The counsel contended that there is no bonafide on the part of the financial creditor in initiating action against the corporate debtor and the application is liable to be dismissed.

7. We have gone through the documents filed on behalf of financial creditor. The grounds stated by corporate debtor will not prevent the financial creditor from initiating CIRP against corporate debtor. There are grounds to admit the petition. No tenable objections are raised by the corporate debtor about the debt. The financial creditor suggested the name of the IRP and filed his consent in Form-2. The petition is complete and therefore deserves to be admitted.

9. Hence, the Adjudicating Authority admits this Petition under Section 7 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) That supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(iii) 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.

(iv) That the order of moratorium shall have effect from 01.03.2021 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.

(v) We hereby appoint Jagadees Kumar Morri, Address:10-5-7, Sri Sai Surya Complex, Sevasadan School, Ramnagar, Visakhapatnam-530 013. Andhra Pradesh. Mobile No. 9666829111 as proposed Interim Resolution Professional (IRP), having Registration No.IBBI/IPA-001/IP-P00398/2017-18/10716, who has given his consent in Form-2.

(vi) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

(vii) Accordingly, petition is admitted.

(viii) 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.

01/03/24

Veera Brahma Rao Arekapudi
Member Technical

Bhaskara Pantula Mohan
Member Judicial

Pavani