

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**the Insolvency and Bankruptcy Code, 2016)**  
**(Through Physical Hearing/ VC Mode (Hybrid))**

**C.P. (IB)No.136/BB/2023**  
**Application U/s. 9 of IBC, 2016**  
**R/w Rule 6 of I&B (AAA) Rules, 2016**

**IN THE MATTER OF:**

**Shri Manoj Kumar Jain**

*Proprietor of Guru Rajendra  
Minerals Trading Company  
Satyanarayana Nilaya,  
Opposite Hero Honda Show Room,  
100-Bed Hospital Road,  
Hosapete – 583 201.*

- Petitioner/Operational Creditor

**Versus**

**M/s. Sai Krishna Minerals Pvt. Ltd.**

*K.R. Road, Ranipet,  
Hospet –583 201.*

- Respondent/Corporate Debtor

**Order delivered on: 04.09.2024**

**CORAM:** 1. Hon'ble Shri K. Biswal, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Shri Atul Madhavan  
For the Respondent : Ms. Lakshmi Menon

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present Petition has been filed on 15.09.2023 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC/ Code), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **Shri Manoj Kumar Jain, Proprietor of Guru Rajendra Minerals Trading Company** (for brevity 'Petitioner/Operational Creditor') *inter alia* seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s. Sai Krishna**

**Minerals Pvt. Ltd.** (for brevity 'Respondent/Corporate Debtor') on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs.60,05,87,615/- (Rupees Sixty Crore Five Lakh Eighty Seven Thousand Six Hundred and Fifteen Only). In Part-IV of Form No.5 filed with the Petition, the following information is given:


<p>2.Amount claimed to be in default and the date on which the default occurred (Attach the workings for computation of amount and dates of default in tabular form)</p>	<p><b>Amount claimed to be in default:</b> Rs.60,05,87,615/- (Rupees Sixty Crores Five Lakhs Eighty-Seven Thousand Six Hundred and Fifteen Only).</p> <p><b>Note:</b> The amount is inclusive of compound interest calculated at the rate of 24% per annum as agreed by the Corporate Debtor.</p> <p>The break-up of outstanding is as follows:</p> <table border="1"> <thead> <tr> <th>Particulars</th> <th>Amount in INR</th> </tr> </thead> <tbody> <tr> <td>Advance payment made to Corporate Debtor</td> <td>8,00,00,000</td> </tr> <tr> <td>Material Supplied by the Corporate Debtor</td> <td>(50,674,000)</td> </tr> <tr> <td>Repayment made by the Corporate Debtor</td> <td>(10,00,000)</td> </tr> <tr> <td>Payment received from the Director on behalf of the Corporate Debtor</td> <td>(64,26,000)</td> </tr> <tr> <td>TDS paid by the Operational Creditor</td> <td>64,260</td> </tr> <tr> <td><b>Balance payable (Principal)</b></td> <td><b>2,19,64,260</b></td> </tr> <tr> <td><b>Interest payment as on 10.07.2023</b></td> <td><b>57,86,23,355</b></td> </tr> </tbody> </table>	Particulars	Amount in INR	Advance payment made to Corporate Debtor	8,00,00,000	Material Supplied by the Corporate Debtor	(50,674,000)	Repayment made by the Corporate Debtor	(10,00,000)	Payment received from the Director on behalf of the Corporate Debtor	(64,26,000)	TDS paid by the Operational Creditor	64,260	<b>Balance payable (Principal)</b>	<b>2,19,64,260</b>	<b>Interest payment as on 10.07.2023</b>	<b>57,86,23,355</b>
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	<b>Total outstanding including interest</b>	<b>60,05,87,615</b>
<b>The date on which the default occurred:</b> The amount was outstanding from the Financial Year 2008-09. However, the Corporate Debtor has confirmed the balance payable on 28 <sup>th</sup> March 2022.		

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner in the Company Petition and rejoinder as follows:

- i. M/s. Sai Krishna Minerals Private Limited (for brevity 'Respondent/Corporate Debtor') is a Company incorporated under the provisions of the Companies Act, 1956, on 03.12.2001, having CIN:U26994KA2001PTC029832. Its Nominal Share Capital is Rs.1,00,00,000/- and Paid-up Share Capital of Rs.1,00,00,000/-.
- ii. It is stated during the year 2008, the Corporate Debtor and the Operational Creditor had entered into an agreement by which the Corporate Debtor agreed to supply Calibrated Iron Ore to the Operational Creditor and for which the Operational Creditor agreed to make an advance payment of Rs.8 crore. Accordingly, the Operational Creditor paid the entire amount of Rs.8 crore to the Corporate Debtor in four tranches. After receipt of the above payments, the Corporate Debtor supplied iron ore worth Rs.5,06,74,000/- between 01.07.2008 and 28.02.2009 under 12 invoices and expressed their inability to supply any more material and undertook to refund the excess advance amount of Rs.2,93,26,000/- with a compound interest at the rate of 24% per annum payable from 01.04.2009 till the final payment. Further, the Corporate Debtor made payment of Rs.10,00,000/- on 25.04.2009, subsequent to which an amount of Rs.2,83,26,000/- was due from the Corporate Debtor to the Operational Creditors.

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- iii. It is also stated that after numerous follow-ups, Mr. B. S. Praveen Singh, Director of the Corporate Debtor sold his personal property and paid Rs.64,26,000/- on 14.11.2019 on behalf of the Corporate Debtor. Further, an amount of Rs.64,260/- TDS towards on the above transaction was paid by the Operational Creditor. Accordingly, after crediting the above said amount of Rs.63,61,740/- (i.e. Rs.64,26,000/- minus Rs.64,260/-), the Corporate Debtor was liable to make payment of Rs.2,19,64,260/-.
- iv. The Corporate Debtor never disputed on the outstanding amount, however, did not make any payment to the Operational Creditor. Also, every year since the Financial Year 2010-11, the Corporate Debtor issued balance confirmation letter and the latest letter of acknowledgement of debt is on 28<sup>th</sup> March 2022. As on date of 10<sup>th</sup> July 2023, an amount of Rs.60,05,87,615/- (Rs.2,19,64,260/- towards Principal and Rs.57,86,23,355/-) towards interest as calculated at the rate of 24% compoundable yearly).
- v. Pursuant to Section 8 of the Code, the Demand Notice dated 12<sup>th</sup> July 2023 was sent to the Corporate Debtor through NeSL as well as through RPAD. Further, the Demand Notice sent through RPAD was returned and the Operational Creditor once again sent Demand Notice through email to the Corporate Debtor. The Corporate Debtor responded to the Demand Notice sent through NeSL seeking two-three weeks' time to send suitable response stating the reason being due to the collapse of business and consequential disturbance of normal activities, all the accounting and administrative staff have left the Corporate Debtor. The Corporate Debtor has not disputed even to the information submitted to the NeSL and the record of default has been issued by NeSL as "Deemed authentication".
- vi. The Petitioner has relied on the judgments of Hon'ble Supreme Court in the matter of *M/s. Consolidated Construction Consortium Ltd. Vs. M/s Hitro Energy Solutions Pvt. Ltd.* in Civil Appeal No.2839 of 2020 decided on 04.02.2022 and in the matter of *M/s.*

*Innoventive Industries Ltd. vs. ICICI Bank & Anr.* in Civil Appeal Nos.8337-8338 of 2017 decided on 31.08.2017.

3. On 27.05.2024, this Adjudicating Authority has directed the Operational Creditor to file a Memo explaining the satisfaction of limitation in tabular format, providing cross reference to documents showing part payment or other acknowledgements related to the transactions which can satisfy the limitation point.
4. In compliance to the same, the Operational Creditor has filed a Memo vide Dy. No.3896 dated 04.07.2024 wherein the Operational Creditor has produced balance confirmation statement acknowledged by the Corporate Debtor for the FYs from 31.03.2011 to 01.04.2019 & from 01.04.2020 to 28.03.2022. It is noticed from the said Memo that the Corporate Debtor made a part payment of Rs.10,00,000/- on 25.04.2009 and Rs.63,61,740/- on 14.11.2019.
5. The Corporate Debtor filed its reply vide Diary No. 1493 on 06.03.2024, contending as under:
  - i. It is submitted that an outstanding principal amount of Rs.2,19,64,260/- was due as on 10.07.2023.
  - ii. It is also submitted that the Respondent has responded vide letter dated 21<sup>st</sup> July, 2023 to the Demand Notice sent on NeSL portal acknowledging the debt but asking time to pay the due amount within a short period of time as there was collapse in the business and consequential disturbance of normal activities due to the accounting and administrative staff leaving the Corporate Debtor. After becoming aware of the extraordinary developments and 'force majeure' circumstances, the Operational Debtor willingly engaged in negotiations to settle the outstanding balance owed by the Corporate Debtor. The Director of the Corporate Debtor also took effort to repay the due amount by selling his personal property and paid Rs.64,26,000/- towards the debt. Therefore, it is very clear that the Corporate Debtor has no intention to defraud the Operational Creditor but rather is taking best efforts to settle the amount. The unfortunate situation of non-payment of the due

amount was because of the bad market conditions and unfortunate obstacles in the iron ore industry.

- iii. It is also submitted that the provisions of the IBC, 2016 cannot be invoked and the NCLT should not be considered as a money recovery forum. This principle has been firmly established by various forums. The Hon'ble Supreme Court in the case of *Invent Asset Securitisation and Reconstruction Pvt. Ltd. (2022 SCC Online SC 808)* held that:

*"4. Time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such."*

- iv. It is further submitted that similar principle was also held by the Hon'ble NCLAT Delhi Bench in the matter of *Yash Nachrani Vs. Pardesi Construction Pvt. Ltd. and Ors. (2023 ibclaw.in 178 NCLAT)* where the Tribunal held that:


*"23. What also heavily weighs on our mind is that both in terms of the objectives of the IBC and settled proposition of law as expressed and explained time and again by the Hon'ble Supreme Court, the provision of IBC cannot be turned into a debt recovery proceeding as the underpinning of this special code is to bring a Corporate Debtor on its feet. Where operational creditor seeks to initiate insolvency process against a corporate debtor, it can only be done in clear cases where no real dispute exists between the two which is not so borne out given the facts of the present case."*

6. Heard the learned Counsels for the Petitioner and the Respondent, and perused the pleadings.
7. The Hon'ble Supreme Court in the matter of *M/s. Consolidated Construction Consortium Ltd. (supra)* has dealt with the issue whether a debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an operational debt. The Hon'ble NCLAT in that particular case had restricted the definition of the 'operational debt' and 'operational creditors' to only include the suppliers of the goods or services to a corporate debtor and had excluded those who had received goods or services from the corporate debtor. The Hon'ble Apex Court relied on the definition of




‘operational debt’ under Section 5(21) along with Section 8(1) of the IBC read with Rule 5(1) and Form 3 and also the Regulation 7(2)(b)(i) and (ii) of the CIRP Regulations 2016. Further, reliance was also placed on the earlier judgment of Hon’ble Apex Court in the case of *Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors.* [2019] ibclaw.in 13 SC. Accordingly, it was held that a debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an ‘operational debt’. Relying on the judgment of the Hon’ble Apex Court, the Petition under Section 9 of the IBC, 2016 in this case seeking the refund out of the advance payment, for an amount of Rs.2,19,64,260/- is maintainable. The threshold requirement of Rs.1 crore at the time of filing the Petition is thus fulfilled.

8. It is noticed from the Memo filed by the Operational Creditor vide diary no.3896 dated 04.07.2024 that the Operational Creditor has made an advance payment of Rs.8 crore between 05.06.2008 and 15.09.2008 to the Corporate Debtor in four tranches. After Receipt of the above payments, the Corporate Debtor supplied iron ore worth Rs.5,06,74,000/- between 01.07.2008 and 28.02.2009 under 12 invoices. Further, the Corporate Debtor made a part payment of Rs.10,00,000/- on 25.04.2009 and Rs.63,61,740/- on 14.11.2019. Accordingly, after crediting the above amounts, the Corporate Debtor is liable to make a payment of Rs.2,19,64,260/-; and for the same the Corporate Debtor has given balance confirmation every year starting from 31.03.2011 to 28.03.2022. Since, the present Petition was filed on 15.09.2023, the same has been filed within the limitation period.
9. In view of the above discussion, the existence of the debt and default is established. Therefore, the present petition bearing **C.P.(IB) No.136/BB/2023** is **admitted** in respect of the Corporate Debtor **M/s. Sai Krishna Minerals Pvt. Ltd.** under section 9 of the I & B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

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- (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 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 Corporate Debtor.*
  - (e) *It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;*
  - (f) *The provisions of Sub- Section 14 (3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;*
  - (g) *The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;*

10. In Part-III of Form No.5, the Operational Creditor has proposed the name of Shri Hari Babu Thota bearing Registration No. IBBI/IPA-002/IP-N00084/2017-18/10225 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Form-2 Written Communication by the IRP has been filed along with the C.P. is found at Page 119-122 of the Petition. However, since the Authorisation for Assignment (AFA) shown in Form-B was expired on 21.08.2024, the IRP



shall file the copy of renewed AFA within one week from the receipt of this order.

11. In view of the above, we appoint **Shri Hari Babu Thota** bearing Registration No. IBBI/IPA-002/IP-N00084/2017-18/10225 having registered address at #41/1, 02<sup>nd</sup> Floor, 11<sup>th</sup> Cross, 08<sup>th</sup> Main, 02<sup>nd</sup> Block, Jayanagar, Bengaluru-560011, Contact No.9740237291, e-mail:[csharibabuthota@gmail.com](mailto:csharibabuthota@gmail.com) as the Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP is directed to take the steps as mandated under Section 15, 17, 18, 20 and 21 of the IBC 2016.
12. The Operational Creditor shall deposit a sum of **Rs.2,00,000/-** (Rupees Two Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
13. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
14. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

**Sd/-**  
**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(K. BISWAL)**  
**MEMBER (JUDICIAL)**