



SL. No.110

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

(Video Conference)

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON’BLE MEMBER (J)
CORAM: SHRI VEERA BRAHMA RAO AREKAPUDI, HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 19.10.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.650/9/HDB/2019
NAME OF THE COMPANY	Istiva Steel Pvt Ltd
NAME OF THE PETITIONER(S)	Satec Enver Engineering (India) Pvt Ltd
NAME OF THE RESPONDENT(S)	Istiva Steel Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Order pronounced vide separate Sheets.

In the result, Petition is allowed. Corporate Debtor is admitted into CIR Process.

MEMBER (T)

Satya Priya

MEMBER (J)



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

C.P. (IB) No.650/9/HDB/2019
Under Section 9 of the IB Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of
M/S ISITVA STEEL PRIVATE LIMITED

Between:

M/S Satec Envir Engineering (India) Private Limited,
Plot No. A/107-108, TTC Industrial Area, MISC,
Khairane, Thane-Belapur, Navi Mumbai,
Thane, Maharashtra – 400705.

...Applicant/Operational Creditor

A N D

M/S Isitva Steel Private Limited,
45-60, Keesara Road, Nagaram,
Hyderabad, Telangana - 500083.

...Respondent/Corporate Debtor

Date of Order: 19.10.2022

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Member, Judicial
Sri Veera Brahma Rao Arekapudi, Member, Technical

Counsel present:

For the Operational Creditor: Ms. Mily Ghoshal

For the Corporate Debtor: Mr. Y. Suryanarayana







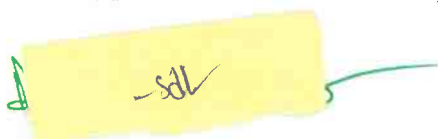
Per : Bench

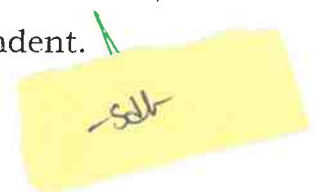
ORDER

1. Under consideration is an Application filed by M/S Satec Envir Engineering (India) Private Limited (hereinafter referred to as the "Applicant/Operational Creditor") under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code, 2016"), read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against M/S Isitva Steel Private Limited (hereinafter referred to as the "Corporate Debtor"), alleging default of an operational debt by the Corporate Debtor.
2. Brief facts of the matter, as submitted by the Applicant are as follows:
 - a) The Applicant is into the business of design, manufacture, supply and installation of prefabricated and pre-engineered.
 - b) The Applicant entered into a business relationship with the Respondent vide work orders: 1) Work Order No. ISITVA/SATEC/007/2017-18, dated 03.06.2017, 2) Work Order No. ISITVA/SATEC/015/2017-18, dated 06.07.2017, towards supply, installation, testing and commissioning activities of AC work of 33KV for an 8 MWAC solar power plant.
 - c) The applicant has issued 3 work order contracts to the Respondent for supply, erection and commissioning of transmission lines at a project site.
 - d) Work Order No.1 was successfully completed by the Respondent and Applicant had paid the full, the amount of the invoices raised.
 - e) With regard to Work Order No.3, as per the terms of work order, the Applicant had issued an advance amount of Rs. 6,37,200/-, which constitutes 20% of Rs. 31,86,000/-, which is the total amount of the said work order.



- f) As per the terms of the work order, the Respondent was to issue post-dated cheques to secure the advance amount released by the Applicant. Accordingly, the Respondent issued a post-dated cheque for an amount of Rs. 6,37,200/-, in the name of Applicant.
- g) The Respondent failed to execute the work order and on breach of contract, the Applicant presented the said post-dated cheque issued by the Respondent to secure the advance amount. The amount was, thereby, released and same was mentioned by the Respondent in its reply notice. Further, no dispute was raised by the Respondent, in this regard.
- h) With regard to Work Order No. 2, the Applicant had issued an advance amount of Rs. 25,40,000/-, which constitutes 20% of Rs.1,27,00,000/, which is the total value of the said work order. As per the terms of the work order, the Respondent issued a post-dated cheque for an amount of Rs. 25,40,000/- in the name of Applicant, in order to secure the advance amount released by the Applicant.
- i) The Respondent failed to execute the work order.
- j) The Applicant presented the post-dated cheque issued by the Respondent to secure the advance amount, but the said cheque got dishonoured on 26.09.2018, due to 'insufficient funds'.
- k) The Applicant issued a demand notice, dated 12.03.2019, under Section 8 of the Code, 2016, to the Respondent.
- l) The Respondent vide reply, dated 25.03.2019, responded to the said demand notice without raising any dispute against the claim amount, but had taken a defence that the cheque issued by the Respondent is only for purpose of security. Hence, there is no dispute raised by the Respondent.
- m) The cheque issued by the Respondent in respect of the operational debt owed to the Applicant, was dishonoured, which tantamounts to 'default' as defined under this Section 3(12) of the Code, 2016. Therefore, the Applicant shall be an Operational Creditor of the Respondent.







- n) The Hon'ble NCLT, Mumbai Bench, in the *M/S Acasia Tele Services Private Limited v. M/S Auspice Trading Private Limited*, held that "undisputedly, the advance money is an operational debt".
- o) The objection raised by the Respondent that the work required to be completed by the Respondent pursuant to Work Order No.2, for an amount of Rs.1,27,00,000/-, was not completed as there was no co-operation from the Applicant, is a blind allegation of the Respondent, without the production of evidence or any communication from either party.
- p) The objection raised by the Respondent that Respondent had raised certain invoices against Work Order No.2 and the said invoices had been adjusted against the advance amount paid by the Applicant, is false and there was a breach of the terms of the said work order by the Respondent, which by itself raised the invoices and adjusted the advance amount illegally, without the permission of the Applicant. There is no term in the contract that a party has a right to adjust the advance against the invoices. Further, those invoices were not acknowledged by the Applicant.
- q) As per one of terms of the contract, payment shall be due only post release of the joint inspection report, invoices and quality check-list, duly authorized by the Applicant and the Respondent. None of the invoices raised by the Respondent contain the inspection report and quality check signed and acknowledged by the Applicant.
- r) The averment of the Respondent that it is a practice and understanding between the Applicant and the Respondent to adjust the advance amount paid by the Applicant towards the outstanding amount payable by the Applicant.
- s) As far as Work Orders No. 2 and 3 are concerned, there is no completion of the work, which amounts to breach of contract and therefore, the advance amounts cannot be adjusted against such breach of contract. Accordingly, the Applicant also encashed the amount of Rs. 6,37,200/- in relation to Work Order No.3 and no objection had been raised by the Respondent.

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t) There was an operational debt due from the Respondent and the respondent failed to pay the amount as the dishonouring of cheque due to insufficient funds is a clear indication that the respondent failed to pay the debt and there is no dispute which exists prior to issuance of demand notice under Section 8.

3. *Per contra*, the Respondent assailed the maintainability of the instant Application and submitted as follows:

- a) The Application is not maintainable under the provisions of the Code, 2016, for the reason that neither is the Applicant an Operational Creditor, nor is the Respondent the Corporate Debtor.
- b) In Part IV of its Application, the Applicant has stated that "*Respondent Company has failed to perform the work assigned and as per the terms of the Works orders it is breach of contract.*" It is the contention of the Applicant that the Respondent has committed a breach of contract. Even if it is so assumed, the remedy for such breach of contract is either filing a suit for specific performance/ recovery of damage or initiation of arbitration proceedings and not filing an application under the Code, 2016.
- c) As per the work order, "*in the event of any dispute, controversy or claim arising out of or relating to the offer or any contract resulting there from, the parties shall exert their best efforts to consult with each other in good faith with the view to arriving at a mutually satisfactory agreement; however, in case of failure to reach an amicable settlement, any dispute, controversy or claim shall be settled by arbitration held in Maharashtra, India. The award made pursuant to such arbitration shall be final and binding upon both the Buyer and the seller.*". The Applicant has neither made any efforts to clarify the issue of advance payment as purportedly claimed by it nor has it exercised the option of arbitration.
- d) The Applicant had raised the 3 work orders for fabrication, galvanization and supply of module mounting structures design, supply, erection & commissioning of 3KM 33KV Transmission Line (dedicated feeder) and associate 33KV Bay Extension and supply,



installation, Testing & Commissioning activities of AC Work of 33KV for 8MWAC solar power plant at Nawabpet, Telangana. The details of the work order are as follows:

Sr. No.	Date of the Purchase order	Order no.	Amount (Rs.)
1.	18 th May, 2017	SEE/BJ/204/2017-2018	40,41,171
2.	3 rd June, 2017	ISITVA/SATEC/007/2017-18	1,27,00,000
3.	6 th July, 2017	ISITVA/SATEC/015/2017-18	31,86,000

- e) The work required to be performed under the 1st purchase order, dated 18.05.2017, was duly completed and Tax Invoices No. 54, 62 and 63 were raised by the Respondent, for which the Applicant had made the required payments. For the said purchase order, the Applicant had paid Rs. 12,12,351/- as the advance for the performance of the work and the same was adjusted towards the outstanding payment. It is a general understanding between the Respondent and the Applicant to do so.
- f) The Applicant had issued purchase order, dated 03.06.2017, for Rs. 1,27,00,000/-. The work required to be completed by the Respondent pursuant to the said purchase order was not completed as there was no co-operation from the Applicant. The Applicant did not respond to any of the communications. In fact, in spite of the personal visits by the representatives of the Respondent to the office of the Applicant, there were no co-operation from the Applicant for execution of the said work order.
- g) The Respondent admits that the Applicant had paid Rs. 25,40,000/- as advance for the abovementioned purchase order. The Respondent had performed part of the works as mentioned in the purchase order and had raised invoices amounting to Rs. 39,09,829/-. The advance paid by the Applicant was adjusted with the invoices raised as the Applicant failed to make the payment of Rs. 39,09,829/-. As per the invoices raised for part-performance of the said work order, there are amounts payable by the Applicant, even after adjusting the advance payment, as received from the Applicant.

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- h) It is to the utter shock of the Respondent that the Applicant has raised a demand notice for the advance which was already adjusted with the amounts payable. Out of the total outstanding payable by the Applicant for the said work order of Rs. 39,09,829/-, the Applicant paid only Rs. 10,00,000/-, apart from the advance of Rs. 25,40,000/-. After adjusting Rs. 35,40,000/-, the total outstanding payable by the Applicant is Rs. 3,69,829.
- i) The details of the invoices raised and the amounts received by the Respondent and the amounts payable by the Applicant are as follows:

Invoice No.	P.O. date/ invoice date	P.O. value/ invoice value
1. SEE/BJ/204/2017-2018 dated 18.05.2017 amounting to 40,41,171		
054	04.06.2017	13,48,790
062	14.06.2017	13,49,270
063	16.06.2017	13,43,111
Total amount of invoices raised (A)		40,41,171
Amount paid by the Applicant Company		
Receipt 1	02.06.2017	12,12,351 (Advance received)
Receipt 2	29.06.2017	18,99,306
Receipt 3	18.07.2017	9,29,177
Total amount paid by the Applicant Company (B)		40,40,834
Outstanding amount payable by the Applicant Company (C= A-B)		337

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2. ISITVA/SATEC/007/2017-18 dated 03.06.2017 amounting to 1,27,00,000		
28	22.07.2017	11,23,200
29	22.07.2017	4,86,750
42	29.07.2017	13,73,815
92	19.08.2017	9,26,064
Total amount of invoices raised (D)		39,09,829
Amount paid by the Applicant Company		
Receipt 1	14.06.2017	25,40,000 (Advance received)
Receipt 2	14.08.2017	5,00,000
Receipt 3	22.08.2017	5,00,000
Total amount paid by the Applicant Company (E)		35,40,000
Outstanding amount payable by the Applicant Company (F= D-E)		3,69,829
3. ISITVA/SATEC/015/2017-18 dated 06.07.2017 of Rs. 31,86,000		
No invoice raised as the work is yet to be performed (G)		Nil
Receipt 1	15.09.2017	5,00,000
Total amount paid by the Applicant Company (H)		5,00,000
Outstanding amount payable by the Applicant Company (I= G-H)		(5,00,000)

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Total amount payable by the Applicant Company as per the invoices raised by the Respondent Company (J= A+D+G)		79,51,000
Total amount paid by the Applicant Company (K= B+E+H)		80,80,834
Total amount outstanding from the Applicant Company (L= J-K)		(1,29,834)
Post dated cheque issued by the Respondent Company for security purpose against advance amount wrongfully encashed by Applicant Company (M)		6,37,200
Amount payable by the Applicant Company (N= L-M)		5,07,366
Add: Tax amount payable due to Non- issuance of Form C by the Applicant Company due to which the Respondent Company incurred full tax @14.5% on Rs. 39,61,932/- as mandatory on supplies		5,74,480

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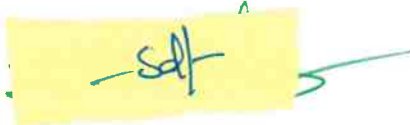
Total amount payable by the Applicant Company		10,81,846
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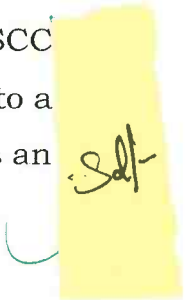
- j) From the above table, it is evident that it a practice between the Applicant and the Respondent to adjust the advance amount paid by the Applicant towards the total outstanding amount payable. Hence, the allegation of the Applicant that the Respondent is required to pay Rs. 25,40,000/- to the Applicant is unjustified.
- k) The allegation of the Applicant that the Respondent acknowledges the due amount and hence, had issued a cheque of Rs. 25,40,000/-, which itself constitutes debt is absolute misleading. As stated by the Respondent in the reply to the demand notice, dated 25.03.2019, the Respondent had issued an undated cheque of Rs. 25,40,000/-, towards the security for the purpose of securing the advance amount given by the Applicant to the Respondent for execution of the contract work.
- l) The advance amount received by the Respondent is adjusted towards the amount payable by the Applicant and thus, the same does not amount to a default and neither is the same due from the Respondent.
- m) The work order issued by the Applicant referred herein is dated 03.06.2017 and the letter sent by the Respondent requesting the Applicant to release the advance payment is dated 09.06.2017. The advance was released by the Applicant on 14.06.2017. It is pertinent to note that as per the work order, the Applicant Company is liable to pay the advance along with the work order, but the advance was paid later, on 14.06.2017.
- n) Further, as per the conditions of the work order, the post-dated cheque shall be for 3 months from the date of the work order i.e., 3 months from 03.06.2017 viz., 03.09.2017. But since the advance was received by the Applicant on 14.06.2017, 3 months from the said date would be 14.09.2017. In any of the circumstances, the date on the cheque shall be either 03.09.2017 or 14.09.2017. In no circumstances, the date of the cheque shall be 18.09.2018. The cheque issued by the Respondent



was an undated cheque. The Applicant with a malafide intention had written the date and subsequently, presented the same, which was dishonoured.

- o) The Applicant is claiming the advance amount paid by it for the performance of the work order, but does not mention about the progress of the order or even that the order was terminated due to the lack of support from the Applicant itself.
4. We have heard the learned counsel for the parties and perused the record.
5. The following questions arise for our consideration in the instant matter:
 - 1.) Is there a debt owed by the Respondent to the Applicant and there is a default thereof?
 - 2.) Is there a pre-existing dispute that proscribes the instant Application?
6. We may note here that the dispute in instant matter is not with regard to the quantity or quality of the services provided by the Respondent, but is with regard to the repayment of the advance amount paid to it, upon the alleged non-performance of the work order towards which, the said advance amount was paid, by the Applicant.
7. The question whether an amount paid towards advance for supply of goods or services would entail an operational debt is no longer *res integra*. The Hon'ble Supreme Court, in the case of *Consolidated Construction Consortium Limited v. Hitro Energy Solutions Private Limited* [(2022) 7 SCC 164], has 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.







8. Before proceeding further, it may be of some significance to note here that the total amount of debt that is due in the instant Application is below the current threshold amount of Rupees One Crore, which is mandatory for the initiation of the CIRP. We deem it prudent to clarify the issue. The instant Application was filed in the year 2019, when the threshold amount for the initiation of CIRP was only Rupees One Lakh. It has been judicially settled that the increase in the threshold amount will have a prospective effect and not a retrospective one.
9. It is not in dispute that the said amount was received by the Respondent as advance towards the work assigned under the work order, dated 03.06.2017. The fact that the work so assigned was not completed is also not in dispute.
10. At this juncture, we may take note of the assertion made by the Applicant that when a similar situation arose and work assigned under the work order, dated 06.07.2017, was not completed, the Applicant encashed the post-dated cheque, which was given by the Respondent to secure the advance amount that was already paid by the Applicant.
11. The Respondent, in its reply to the demand notice issued by the Applicant, has asserted that the work could not be completed as a result of non-cooperation from the Applicant, which did not turn up for the execution of the work, in spite of several e-mails and personal visits to the office of the Applicant. However, the Respondent has not produced any record of the correspondence regarding the same and there is nothing on record to show that a dispute has been raised by the Applicant, regarding the completion of work, prior to the issuance of the demand notice, dated 12.03.2019.
12. With regard to the contention of the Respondent that it is a practice and understanding between the Applicant and the Respondent to adjust the advance amount paid by the Applicant towards the outstanding amount payable by the Applicant, it is trenchantly opposed by the Applicant, which



stated that the Respondent by itself raised the invoices and adjusted the advance amount illegally, without the permission of the Applicant, even when such invoices were not acknowledged by the Applicant. The Applicant pointed to the fact that there is no term in the contract that a party has a right to adjust the advance against the invoices, a submission that the Respondent has not negated.

13. The Hon'ble Supreme Court, in *Mobilox Innovative Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* [(2018) 1 SCC 353], held that the dispute must not be a patently feeble argument or an assertion of fact that is unsupported by evidence. While this Tribunal does not need to go into the merits, it is important to separate the wheat from the chaff and reject a bogus defense that is nothing more than mere bluster, as held by the Hon'ble Apex Court.
14. When tested against the above ruling of the Hon'ble Supreme Court, it becomes clear that the defense taken by the Corporate Debtor is feeble and is blown away by the reasoning, as elaborated above, with no substantial evidence being presented to point to the existence of a genuine dispute between the parties.
15. In the circumstances, we are of the view that a debt is owed to the Respondent, by the Applicant and there has been a default thereof. There is also no evidence of a pre-existing dispute between the parties, which might have prevented the instant Application.
16. Accordingly, the Application is, hereby, admitted and this Tribunal orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016, reckoning from the date on which this order is passed.
17. The Applicant has proposed the name of Mr. Prakash D. Naringrekar, as the Interim Resolution Professional (hereinafter referred to as the "IRP"). Hence, we appoint Mr. Prakash D. Naringrekar, bearing Registration No. Sdt



IP-10783, E-Mail ID: prakash03041956@gmail.com, R/o 503 A, Blue Diamond CHS LTD, Chincholi Bunder, Link Road Junction, Malad (West), Mumbai – 400064. The IRP is directed to file Authorization for Assignment within three days from the date of receipt of this order.

18. The IRP is directed to take charge of the management of the Corporate Debtor immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claim in the manner as prescribed.
19. We direct the Applicant to pay a sum of Rs. 2,00,000/- towards the advance fee of the IRP and the expenses towards the CIRP, which shall be ratified later on by the Committee of Creditors, upon submission of the statement of expenditure, detailing the fee and other expenses incurred in this regard.
20. Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:
 - i. 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 or law, tribunal arbitration panel or other authority;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;
 - iii. 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 (54 of 2002);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
 - v. 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.

21. The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any 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. Furthermore, the provisions of sub-section (1) of Section 14 shall not apply to 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.
22. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the Code, 2106. The Directors, Promoters or any other person associated with the management of the Corporate Debtor are directed to extend all assistance and co-operation to the IRP, as stipulated under Section 19 and for discharging his functions under Section 20 of the Code, 2016.
23. The Petitioner and the Registry are directed to send the copy of this order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016.
24. The Registry is directed to communicate this order to the Petitioner and to the Corporate Debtor.

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25. The Registry shall also communicate this order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.

26. Accordingly, this Application is admitted.

Veera Brahma Rao Arekapudi
Member, Technical

Dr. N.V. Ramakrishna Badarinath
Member, Judicial