S.No. 9

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **26-09-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA (IBC) 546/2022 in CP(IB) No. 237/9/HDB/2020
U/s 9 of IBC, 2016

IN THE MATTER OF:

Action Group Associates **… Operational Creditor**

Vs

BEML Midwest Ltd **… Corporate Debtor**

C O R A M:-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA (IBC) 546/2022:- Orders pronounced and recorded vide separate sheets. In the result, the application is allowed.

CP (IB) No. 237/9/HDB/2020:-

Orders pronounced and recorded vide separate sheets. In the result, the Company Petition is admitted and CIRP is ordered against the Corporate Debtor as per the terms mentioned in the order.

Sd/- Sd/-

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

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I

IA No.546 of 2022
in
CP(IB) No. 230/9/HDB/2020

[U/s.60(5) of IBC for receiving of Additional Documents]

Between:

M/s. Action Group Associates
A proprietary Concern
Having its office at S6, The Grand Landscape
Behind Mahalaxmi Temple, Panaji, goa
Rep. by its Proprietor, Mr. Ivan Singh

… Applicant

Vs.

M/s.BEML Midwest Limited
Regd. Office at
8-2-684/3-55, Shrinivas Nilayam
Banjara Green Colony, Road No.12
Banjara Hills, Hyderabad

… Respondent/Corporate Debtor

Date of Order: 26.09.2022

Coram:

Hon'ble Dr. Venkata Rama Krishna Badarinath Nandula, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels Present:

For the Petitioner : Mr.G. Kalyan Chakravarthy, Advocate

Date of Order: 26.09.2022

[PER : BENCH]

ORDER

I. This is an application filed on behalf of the Applicant, M/s. Action Group Associates under Section 60(5) of Insolvency and Bankruptcy Code, 2016 for seeking to permit the Operational Creditor to file the additional documents and receive the same and place on record in the main Company Petition.

II. The gist of the Applicant's brief is –

a) It is averred that the Company Petition is filed by M/s.Action Group Associates/Operational Creditor for initiation of CIRP against M/s.BEML Midwest Limited/Corporate Debtor on 12.03.2020. While filing the Company Petition, the following documents were not filed, which would clearly show the transactions between the Main Company/BEML Limited, its Joint Venture Company/BEML Midwest Limited/Corporate Debtor and Operational Creditor that give more light on the facts of the case in relation to liability of the Corporate Debtor.

i. Additional Arbitral Award dated 05.01.2019, which is passed amending the typographical errors made in the actual award dated 11.10.2018. A copy of the same is filed at page nos.43 to 46 of the application.

ii. Arbitral Award dated 11.10.2018, which is passed in relation to similar situation issues, wherein the Corporate Debtor is one of the respondents. A copy of the same is filed at page nos.47 to 67 of the application.

iii. Agreement dated 25.01.2008 executed between the Main Company/M/s.BEML Limited and M/s.BEML Midwest Limited/Corporate Debtor, in relation to export of Iron Ore Fines and terms were fixed. A copy of the same is filed at page nos.18 to 24 of the application.

iv. Final Notice dated 30.07.2020 issued by the Operational Creditor to the Corporate Debtor is filed at page nos. 36-37 of the application.

v. Agreement dated 01.04.2005 executed between Foreign exporter and BEML Limited (Trading Division) is filed at page no.6 to 17 of the application.

vi. Reply letter dated 22.09.2017 issued to the Learned Arbitrator in relation to proceedings initiated by the Operational Creditor for the dues, which is filed at page nos.38 to 39 of the application.

vii. Letter dated 17.11.2020 issued by BEML Limited in relation to the functioning of the Corporate Debtor, which is filed at page nos.40 to 41 of the application.

viii. Statement in relation to the supplies made by the Operational Creditor and with Corporate Debtor.

b) When the outstanding amounts not paid, the Operational Creditor filed cases before the Arbitral Tribunal against the Corporate Debtor and also against the Corporate Debtor & Main Company. The Operational Creditor obtained the award both against the Corporate Debtor and also against the Main Company.

c) It is averred that for the purpose of better adjudication, the above mentioned documents are filed alongwith the present application. These documents are just and necessary to have fair and full-fledged proceedings.

III. We have heard the Learned Counsel for Operational Creditor and perused the record.

IV. This IA is filed by the Operational Creditor on 06.06.2022, who filed the application vide CP(IB) No.230/9/HDB/2020 seeking permission of the Tribunal to file additional documents which are relevant for better adjudication of the main Company Application. The counsel averred that these documents prove that there are transactions between the parties and it has lead to passing of arbitral award and quantifying the amount. As the quantification of the amount was done through the Arbitral Award, the Applicant has filed this Application to take these additional documents on record in the main CP for better adjudication of the matter.

V. Eventhough, the main CP is reserved for Orders alongwith this application, we do not have any reason not to allow this application. The other side has also did not raise any objections in the matter. As such, the IA is allowed. Accordingly, the additional documents filed alongwith the IA is taken on record for better adjudication of the matter.

VI. Accordingly, **IA 546/2022 in CP (IB) No.230/9/HDB/2020** is allowed and stands disposed of.

Sd/-	Sd/-
VEERA BRAHMA RAO AREKAPUDI **MEMBER (TECHNICAL)**	**Dr.N.V.RAMA KRISHNA BADARINATH** **MEMBER (JUDICIAL)**

Syamala

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I

CP(IB) No. 237/9/HDB/2020

[Under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

Between:

M/s. Action Group Associates
A proprietary Concern
Having its office at S6, The Grand Landscape
Behind Mahalaxmi Temple, Panaji, goa
Rep. by its Proprietor, Mr. Ivan Singh

… Operational Creditor

Vs.

M/s.BEML Midwest Limited
Regd. Office at
8-2-684/3-55, Shrinivas Nilayam
Banjara Green Colony, Road No.12
Banjara Hills, Hyderabad

… Corporate Debtor

Date of Order: 26.09.2022

Coram:

Hon'ble Dr. Venkata Rama Krishna Badarinath Nandula, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels Present:

For the Petitioner : Mr. Kalyan Chakravarthi, Advocate.

[PER : BENCH]

<u>ORDER</u>

I. This is a Petition filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the application, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon against the Corporate Debtor, alleging that the Corporate Debtor had failed in discharging the debt of an amount of Rs.8,29,32,271/- (Rupees Eight Crores Twenty Nine Lakhs Thirty Two Thousand Two Hundred and Seventy one only) which includes Principal of Rs.3,76,12,176/- and interest of Rs.4,53,20,096/- interest @ 12% per annum from the date of default i.e. on 31st March, 2009. However, the date of default to be construed as 11.10.2018 i.e. from the date of Arbitral Award.

II. The gist of the Operational Creditor's brief in Application as well as Written Submissions are -

i. M/s. Action Group Associates, for short 'Petitioner/Operational Creditor', having registered office at S6, the Grand Landscape, Behind Mahalaxmi Temple, Panaji, Goa. M/s. BEML Limited is a Central Government Public Sector Undertaking, having its

Registered Office at Bangalore, inter alia, is engaged in the business of exporting iron ore and other minerals. The Trading Division of BEML proposed Joint Venture with M/s. Midwest Granites Private Limited, having Registered Office at Hyderabad, which is experienced in handling bulk commodities, such as, Iron Ore and Coal across Asia and African Continents, for exporting Iron Ore to the foreign countries in the name and style of BEML Midwest Limited, for short 'Respondent/Corporate Debtor'. The Joint Venture Company will be engaged in the area of exploration, mining, processing of Coal, Iron ore, Limestone etc. with multi location operations of mining, processing and trading.

ii. M/s.BEML Limited and M/s.BEML Midwest Limited/Joint Venture Company entered into an Agreement on 25.01.2008 for exporting iron ore fines.

iii. The Corporate Debtor had placed Purchase Order on the Operational Creditor for supply of Iron ore fines for the purpose of export and executed Tripatriate Agreement on 17.03.2008 for supply of Iron Ore Fines and further executed Sales and Purchase Contract on 02.04.2008. As per the Agreement, the Operational Creditor supplied Iron Ore fines for exporting to Abierra Macao Commercial Offshore Limited Macao and loaded the shipment on 17.04.2008 for Rs.18,43,48,611/- at Goa Port, through MV Ocean Spirit Ship and raised an Invoice No.AGA/BEML/MIDWEST/23, dated 30.05.2008 for

Rs.19,21,12,176/-. The Corporate Debtor paid totaling to an amount of Rs.15,45,00,000/- leaving a balance of Rs.3,76,12,176/- as on 31.03.2009.

iv. It is averred that shipment was received at Macao and M/s.BEML Limited has realized the sale proceeds on 29.04.2008 and made payments to the Corporate Debtor. Despite repeated requests, when the Corporate Debtor has not made payments to the Operational Creditor, the Operational Creditor has invoked the Arbitration Clause before the Hon'ble High Court, Mumbai in the year 2009, which was disposed of on 30.09.2011 by appointing an Arbitrator. On 11.10.2018, the Learned Arbitrator granted an award in favour of the Operational Creditor directing the Corporate Debtor to pay the amount of Rs.3,67,12,176/- alongwith interest @ 12% from the date of award till realization.

v. Thereafter, when the due amount was not paid by the Corporate Debtor after continuous follow up, got issued a Demand Notice dated 04.05.2019 in Form-3, demanding payment of the outstanding debt amount of Rs.8,29,32,271/- (Rupees Eight Crores Twenty Nine Lakhs Thirty Two Thousand Two Hundred and Seventy One only) which includes Principal of Rs.3,76,12,176/- as well as interest.

vi. When the other shipment payments were not made, one more Arbitration proceedings were initiated against the Corporate Debtor and also against the BEML Limited. The Operational

Creditor also obtained another Award 05.01.2019 for payment of the outstanding dues against the Corporate Debtor and also against the BEML Limited.

vii. When notices were issued to the Corporate Debtor, the notices were returned. Hence, notice to Corporate Debtor by way of publication has been ordered. As the Corporate Debtor failed to be present before the Tribunal pursuant to the Notice by way of publication, the Corporate Debtor was called absent on 05.05.2022 and was set exparte.

III. In the above backdrop, the point that emerges for consideration by this Adjudicating Authority is –

Whether an Operational Debt as claimed by the Applicant exists? If so, whether the Corporate Debtor defaulted in payment of the said Operational Debt?

IV. We have heard the Learned Counsel for Operational Creditor and perused the record placed before us.

V. At the outset, it is pertinent to state that pursuant to the notice to the Corporate Debtor by way of publication, as the Corporate Debtor was called absent on 05.05.2022, and as there was no representation for the Corporate Debtor, the Corporate Debtor was set ex-parte and on 28.07.2022, the Adjudicating Authority reserved the Company Petition for Orders. Thereafter, the Operational Creditor filed an IA 546/2022 seeking to permit the Operational Creditor to file the additional documents and the same was allowed.

VI. In the above backdrop, we have carefully perused the records with us. Before instituting this petition, the Operational Creditor had issued demand notice in terms of Section 8(2) of the Code and the same has been received by the Corporate Debtor. The Corporate Debtor neither satisfied the debt nor raised any dispute. The Corporate Debtor did not contest the Company Petition. Thus, Operational Debt payable by the Corporate Debtor remain rebutted. There is no record available from the side of the Corporate Debtor that the sum demanded under the above notice has been discharged. The Arbitration Award dated 05.01.2009 clearly establishes the debt due and payable by the Corporate Debtor, which debt has not been paid by the Corporate Debtor. Thus, the debt and default since established, it is a fit case to put under CIRP.

VII. The Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one for the Insolvency Resolution Professionals as IRP. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period from July 1, 2022 to December 31, 2022 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Ms. Padma Priyanka Vangala, having Registration No.IBBI/IPA-002/IP-N00980/2020-2021/13143, e-mail: priyapoluri@gmail.com as Interim Resolution Professional. As per the IBBI website, her AFA is valid upto 06.01.2023. The aforesaid IRP has no disciplinary proceedings pending against her. She shall file her written communication and all relevant papers immediately before the Registrar of this Adjudicating Authority but not later than three days.

VIII. 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. Corporate Debtor, M/s.BEML Midwest Ltd. is admitted in Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency & Bankruptcy Code, 2016.

ii. 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.

iii. 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.

iv. 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.

v. 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.

vi. That the order of moratorium shall have effect from the date of this Order 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.

vii. The Petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional within three days from the date of this Order to meet out the expenses and his fee to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The initial expenditure incurred by IRP shall, however, be subject to the approval by the Committee of Creditors, in its first meeting.

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

ix. The Operational Creditor is directed to communicate this order to the IRP appointed in this case.

x. Accordingly, this Petition is admitted.

xi. Registry to send a copy of this order to the Operational Creditor and IRP in this case.

xii. 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.

Sd/-	Sd/-
VEERA BRAHMA RAO AREKAPUDI	**Dr.N.V.RAMA KRISHNA BADARINATH**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Syamala