NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)

PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 07.03.2022 AT 10.30 AM.

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.60/9/AMR/2020		9 of IBC	Chevari Enterprises Vs Sindhura Paper Pvt Ltd

Counsel for Petitioner(s):
Ries

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

Counsel for Respondent(s):
Ries

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

ORDER

CP (IB) No.60/9/AMR/2020 is admitted, vide separate orders.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT HYDERABAD

CP (IB) No.60/9/AMR/2020

Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of
M/s. SINDHURA PAPER PRIVATE LIMITED

BETWEEN:

M/s.Chevuri Enterprises,
Rep.by Mr.Laksmi Narayan (Sole Proprietor),
H.No.29-30-6, Tobacco Barrens Street,
Suryaraopet, Vijayawada, Krishna District,
Andhra Pradesh -520002

.... Operational Creditor

AND

M/s.Sindhura Paper Private Limited,
D.No.1-115, Lakshminagar,
H/o. Marampalli (V), DwarakaTrumala Mandal,
Andhra Pradesh - 534202

.... Corporate Debtor

Orders pronounced on: 07.03.2022

***Coram*:**

Justice TelaproluRajani, Member Judicial.

Parties/Counsels Present:

For the Operational Creditor: Mr.M.Maharshi Viswaraj, Advocate

For the Corporate Debtor : Mr.V.Raghunath&
Mr. V.Chandra Sekharam, Advocates

ORDER

1. This application is filed by M/s.Chevuri Enterprises ("hereinafter referred to as Operational Creditor") seeking initiation of Corporate Insolvency Resolution Process in respect of M/s. Sindhura Paper Private Limited ("hereinafter referred to as Corporate Debtor") alleging that the Corporate Debtor committed default in payment of Rs.**3,60,11,075**/- which is due to the Operational Creditor, towards invoices raised against the goods supplied.

2. The facts briefly as stated in the petition are as follows:

   i. The Operational Creditor is in the business of supply of waste papers, old newspapers, etc. The Corporate Debtor placed several orders on Operational Creditor and the Operational Creditor has been selling, supplying and dispatching the waste papers, old newspapers, etc., to the Corporate Debtor for which the Operational Creditor has been issuing dispatch details of the supplies of waste paper and invoices. Corporate Debtor has been receiving the goods dispatched by Operational Creditor in good order and condition and no complaint about any defects or shortcomings of the said supplies has been received.

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ii. The Operational Creditor raised invoices on the Corporate Debtor against the supplies made by it. But the Corporate Debtor has miserably failed in making payments to Operational Creditor for the invoices, beginning from 14.11.2017 to 30.11.2019.

iii. Operational Creditor issued demand notice dated 16.03.2020 to the Corporate Debtor for which no reply was issued. Since the Corporate Debtor failed to discharge the amount, this application seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Insolvency Resolution Professional (IRP) as prescribed under the Code and Rules thereon.

3. The Corporate Debtor filed counter denying the averments in the application and raising certain contentions as follows:

i. The Corporate Debtor is an MSME which has been manufacturing and supplying the kraft papers for the last several years. It gave part of the industrial premises on lease to M/s. Vishnavi Impex for carrying the similar business. The Corporate Debtor and M/s. Vishnavi Impex simultaneously received the supplies from the Operational Creditor and the purchase bills/invoices of both the parties

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were handed over to the Corporate Debtor's Office as the M/s.Vishnavi Impex did not have separate office staff. In this event, the accounts team erroneously clubbed all the purchases belonging to the Corporate Debtor as well as M/s. Vishnavi Impex and recorded them into Corporate Debtor's Books of Accounts. Later the Corporate Debtor's Statutory Auditor rectified those accounting mistakes by passing the necessary journal entries during the audit for the year 2019-20 and issued certificate stating that the debit balance of Rs.2,47,97,175.50/- is excess over the credit balance.

ii. The specific case of the Operational Creditor is the claim of Rs.3,60,11,075/- for the period of 14.11.2017 to 30.11.2019 arising out of 284 invoices. It is true that the Corporate Debtor made the aforementioned purchases. Despite that the Operational Creditor did not mention the payments made by the Corporate Debtor, the Corporate Debtor so far paid Rs.13,63,22,059/- from 01.04.2017 to 31.03.2020 to the Operational Creditor on various dates. Whereas, the purchases and opening balance of the Operational Creditor is Rs.11,15,24,883/-. The excess balance of Rs.2,47,97,176/- is arrived as debit balance over the credit in the Corporate Debtor's accounts. The Corporate Debtor's Statutory Auditor declared the debit balance of Rs.2,47,97,176/- and issued a certificate. The Operational

Creditor in lieu of paying back excess balance to the Corporate Debtor had filed the present Petition.

iii. The Operational Creditor enclosed bank account statement for the period starting from 16.03.2020 to 07.05.2020. But, the Operational Creditor did not file its Bank Account Statements prior to 16.03.2020 i.e., the period from where the invoices were raised or even before. The Corporate Debtor has stopped the bank transactions after 21.03.2020 with the Operational Creditor as the excess balance appeared in the books of accounts.

iv. The payments made by the Corporate Debtor either in the accounting period of 14.11.2017 to 31.03.2020 or in the claim period of 14.11.2017 to 30.11.2019 both satisfies the value of dues claimed by the Operational Creditor.

v. From the transactions present in the bank account statement, it is clear that the Operational Creditor made excess payments.

vi. The ledger account statements of the Operational Creditor consists only the sales to the Corporate Debtor and not the receipts to the Operational Creditor.

vii. In respect of document No.310 in the Petition, letter issued by M/s.Vaishnavi Impex to the Operational Creditor states that the supplies made to M/s.Vaishnavi Impex would be paid by the Corporate Debtor. It is impractical to make the Corporate Debtor liable for the payments of M/s.Vaishnavi Impex by the Operational Creditor. The Corporate Debtor was never aware about the letter given by M/s. Vaishnavi Impex and never undertook the payment guarantee to the Operational Creditor on behalf of M/s. Vaishnavi Impex. The Corporate Debtor, Operational Creditor and M/s.Vaishnavi Impex among or between them did not enter into any combined mutual agreement in this regard. The letter consists only the seal of the Corporate Debtor Company but does not contain any attestation by the authorized signatory of the Corporate Debtor.

viii. It is logical to understand that some malafide act was carried by the Operational Creditor and M/s.Vaishnavi Impex to harass the Corporate Debtor and both have taken undue advantage from the error made in the accounts of the Corporate Debtor. Hence, the petition is liable to be dismissed.

4. Operational Creditor filed rejoinder answering the contentions made in the counter as follows:

i. The Managing Director (MD) of the Corporate Debtor by name P.Nageswara Rao is also the Managing Partner of M/s.Vaishnavi Impex. In the year 2017 said Mr.P.Nageswara Rao approached the Operational Creditor and requested to supply goods to the Corporate Debtor as well as to his firm in the capacity of managing partner of M/s.Vaishnavi Impex. He addressed a letter dated 17.07.2017 to Operational Creditor requesting to supply goods to M/s.Vaishnavi Impex.

ii. The management and employees of Corporate Debtor and M/s.Vaishnavi Impex are one and the same and are being managed by Mr.P.Nageswara Rao who is the MD of the Corporate Debtor. Since the Corporate Debtor and M/s.Vaishnavi Impex are managed by the same person, there cannot be any possibility of collusion between M/s.Vaishnavi Impex and Operational Creditor. Both the companies are being run in the same premises and the same is admitted in the counter.

iii. The Operational Creditor supplied goods to the Corporate Debtor and M/s.Vaishnavi Impex as per their respective purchase orders/instructions. The Authorized Signatory of M/s.Vaishnavi Impex informed the Operational Creditor that they have instructed their sister concern i.e., the

Corporate Debtor to make payments to the Operational Creditor from the account of the Corporate Debtor on behalf of M/s.Vaishnavi Impex. A letter is also issued to that effect which is dated 13.07.2018. The Corporate Debtor used to make payments on behalf of M/s.Vaishnavi Impex and the same used to be credited to the account of M/s.Vaishnavi Impex. The Corporate Debtor is well aware of the same. The Operational Creditor supplied goods worth Rs.11,25,51,454.3/-. During the period from 01.04.2017 to 30.11.2019 the Corporate Debtor made part payments to a tune of Rs.7,65,40,378/- and the remaining balance is Rs.3,60,11,075/-. The Operational Creditor supplied goods worth Rs.8,36,00,143/- to M/s.Vaishnavi Impex and received payments to a tune of Rs.8,26,48,867/- and still Rs.9,51,276/- is due from M/s.Vaishnavi Impex. The Corporate Debtor acknowledged the debt on the ledger account statement of Operational Creditor maintained by the Corporate Debtor. The Corporate Debtor took benefit out of the invoices in the form of availing input tax credit. As per Section 16(2) of the Central Goods and Services Act, 2017 a person is not entitled to claim input tax credit benefit unless he has received the goods and services. The moment the Corporate Debtor availed the input tax benefit, the Corporate Debtor is under the obligation to pay the invoices amount.

iv. The Corporate Debtor failed to make payments. The Corporate Debtor created a false story that their accounts team erroneously clubbed all the purchases belonging to the Corporate Debtor and M/s.Vaishnavi Impex, for the first time. The Corporate Debtor did not file any documents to show that M/s.S.Rao & Associates are the Statutory Auditors of the Corporate Debtor. The Corporate Debtor did not file Form-DT1 with Registrar of Companies appointing him as Statutory Auditors of the Company. The Corporate Debtor's registered office is located in West Godavari, Andhra Pradesh whereas the alleged Statutory Auditor is from Bangalore.

v. If really excess payments as alleged by the Corporate Debtor are made it would have taken appropriate steps for recovery of the same. Having acknowledged the debt the Corporate Debtor is liable to pay the amount. Since, he did not pay inspite of repeated demands, this Application seeking for initiation of CIRP.

5. Heard the arguments of both sides and perused the written submissions filed by the either side. From the pleadings and the arguments the points that arise for considerations are:

I. Whether the Operational Creditor could prove that the Corporate Debtor has failed to discharge the debt that is due to the Operational Creditor and whether CIRP can be initiated against the Corporate Debtor.

II. To what result.

I. <u>Whether the Operational Creditor could prove that the Corporate Debtor has failed to discharge the debt that is due to the Operational Creditor and whether CIRP can be initiated against the Corporate Debtor.</u>

There is no dispute that the Operational Creditor used to supply goods to the Corporate Debtor and there is a clear admission in the counter that the Corporate Debtor made the purchases covered by the 284 invoices pertaining to the period from 14.11.2017 to 30.11.2019. The Counsel for the Operational Creditor draws the attention of this Tribunal to the mail dated 26.02.2019 addressed by the Operational Creditor to the Corporate Debtor stating that they have sent their account copy from 01.04.2018 to 26.02.2019 in M/s.Vaishnavi Impex and M/s.Sindhura Papers Limited and called upon them to send their account copy. The said mail was addressed to the Corporate Debtor/Sindhura Paper Limited. In response to the said mail a reply mail was issued on 21.03.2019 stating that they have attached the account copy from 2017 to 2018 and 2018 to 2019. The four

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attachments with the mail are the statements of M/s.Vaishnavi Impex for the years 2017-2018 and 2018-2019 and the statements of M/s.Sindhura Paper Limited for the years 2017-2018 and 2018-2019. A perusal of the same would show that the accounts are separately and clearly maintained for both the Corporate Debtor and M/s.Vaishnavi Impex. The account of the Corporate Debtor would show the closing balance as on 31.03.2018 is Rs.2,38,88,424.50/-. The ledger account of the Operational Creditor which is duly acknowledged by the Corporate Debtor would also show the same amount as a closing balance as on 28.02.2019. Hence, it is clear that by 28.02.2019 there was due of Rs.2,38,86,424.50/- to the Operational Creditor from the Corporate Debtor. With regard to the remaining amount of the claim, invoices pertaining to the said period and also to the period prior to that are filed which are 284 in number and the same are categorically admitted by the Corporate Debtor in its counter. It also can be noted that the Corporate Debtor did not reply for the demand notice and for the first time it is raising the defences as raised in the counter after this application is filed. The account statement filed by the Operational Creditor would show that the amounts paid by the Corporate Debtor are adjusted and the claim is only with regard to the amount remaining after such adjustment. As rightly contended, there is no evidence with regard to the certificate issued by the Auditor and that the auditor has issued the said certificate based on proper evidence and that he is the auditor of the Corporate Debtor at all. Hence, no value can be attached to the said statement made in the counter for the first time.

The contention that both the accounts of the Corporate Debtor and M/s.Vaishnavi Impex having been maintained in the same premises, an error occurred does not receive any support and moreover is stands contradicted by the fact that the e-mail given by the Corporate Debtor along with the two separate statements of Corporate Debtor and M/s.Vaishnavi Impex would show that the two accounts were properly maintained without any mincing. The contention of the Operational Creditor that the two companies are managed by the same person is not refuted. In the said circumstances, any collusion between M/s.Vaishnavi Impex and the Operational Creditor as alleged cannot be assumed. Hence, it is clear from the material on record that the Corporate Debtor has incurred a debt of Rs.3,60,11,075/- and defaulted in discharging the same inspite of the demand notice. Hence, the petition is liable to be admitted and as such it is admitted.

II. To what result.

In the result, the Company Petition is admitted. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence. The Operational Creditor has suggested one name i.e., Ms. Narala Varalakshmi, Insolvency Resolution Professional (IRP). Hence, the Tribunal is inclined to appoint the above proposed IRP as prayed for.

i. Ms. Narala Varalakshmi, **(Registration No. IBBI/IPA-002/IP-N00620/2018-2019/11980)**, having office at 1-8-588/29/A, Achhainagar, Baghlinngampally, Backside RTC Kalyana Mandapam, Hyderabad, Telangana-500044; e-mail: **ip.varalakshmin@gmail.com**; Mobile: +91 **9000987444** is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.

ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.

iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.

iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.

v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.

vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu