

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
19-04-2022 AT 10:30 AM THROUGH VIDEO CONFERENCE

Company Petition IB/225/2021
U/s 7 of IBC, 2016

IN THE MATTER OF:

K. Venkata Ratna Prasad

...Financial Creditor

Vs

Hindustan Magnesium Products Pvt Ltd

...Corporate Debtor

CORAM:-


DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Order in CP (IB) No. 225/7/HDB/2021 pronounced, recorded vide separate sheets. In the result petition is allowed and Corporate Debtor is admitted into CIRP as per terms mentioned in the order.


MEMBER (T)


MEMBER (J)

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**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

CP (IB) NO. 225/7/HDB/2021

**Application under Section 7 of IBC, 2016,
R/w Rule 4 of I & B (AAA) Rules, 2016**

Between

Mr.K.Venkata Ratna Prasad

H.No.50-52-15/7,
NE Layout, Near Shiridi Sai Temple,
Seethammadhara Ward No.9, Visakahpatnam (Urban)
P&T Colony(VM), Visakhapatnam,
Andhra Pradesh.

**...Petitioner/
Financial Creditor**

Versus

M/s.Hindustan Magnesium Products Pvt Ltd.,

Registered office at
Plot No.98/1, Phase-2,
IDA Cherlapally, Hyderabad,
Ranga Reddy, Telangana- 500 051.

**...Respondent/
Corporate Debtor**

Coram:


Dr N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance

For Applicant: Shri Santhosh Jadav, Shri K.V.Raman Kumar
and other counsels.

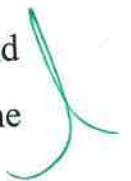
For Respondent: Shri V.Sethu Madhava Rao, Mrs. V.Dyumani, Counsels.



Date of order: 19.04.2022

[PER BENCH]

1. This Petition is filed by Mr.K.Venkata Ratna Prasad under Section 7 of Insolvency and Bankruptcy Code (hereinafter to be referred as “Code”), read with Rule 4 of Insolvency and Bankruptcy admission of the petition, seeking initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent defaulted in the payment of alleged debt of Rs 2,00,00,000/- (Rs. Two crore) with interest @24% as on 31.01.2021.
2. The averments in brief are: -
 - (1) The corporate debtor is in the business of manufacturing magnesium and aluminium products/components for aerospace, defence and other space applications. For expanding the business corporate debtor approached the financial creditor and requested him to invest an amount of Rs.7,00,00,000/-(Rs. Seven Crore).
 - (2) Based on the business forecasts of corporate debtor , financial creditor agreed to invest. After a series of negotiations and having undergone various financial transactions both the



parties have entered into Subscription and Shareholders agreement dated 26.12.2018.

- (3) Pursuant to the said agreement financial creditor invested an amount of Rs. 7,00,00,000/- (Rs.Seven Crores) out of which Rs.5,00,00,000/-(Rs.Five Crores) for subscribing share capital of the Company and the remaining Rs.2,00,00,000/-(Rs.Two Crores) as unsecured loan in the Company. A copy of the Subscription and Share Holders Agreement is filed as **Annexure-H**.
- (4) It is averred that unsecured loan amount has to be paid within 24 months with a grace period of 6 months @14% interest. Further corporate debtor gave post-dated cheque dated 31.01.2021 worth Rs.2,00,00,000/- for security purpose. In case of non-clearance of cheque corporate debtor would pay interest @24%. A copy of Cheque is filed as **Annexure-J**.
- (5) Despite of several reminders corporate debtor has not remitted the interest on unsecured loan. Further corporate debtor vide email dated 21.01.2021 acknowledged the debt and disputed the interest payable on it. Further corporate debtor requested not to deposit the cheque which was given for security purpose.
- (6) Thus the default occurred on 10.01.2019 and again on 31.01.2021. The computation of amount of default, date of default and days of default has been annexed as **Annexure-N**



to the petition. Thus prayed the Adjudicating Authority to initiate CIRP against the Corporate debtor.

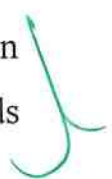
3. Gist of the counter filed by corporate debtor:
- a. The Corporate Debtor filed counter, inter-alia, contending that as per the receipts filed at page no. 72-76, 128 to 134, it is clear that the amounts referred in the receipts are only received towards equity investment and it is not loan/ debt.
 - b. Further stated that the Petitioner is not financial creditor, corporate debtor in the process of expanding its business , the promoter approached the Petitioner invest in the Company and accordingly subscription and shareholder agreement was entered on 26.12.2018. As per Clause No.17 of the Agreement “ if any dispute , controversy or claim between the parties arises out or in connection with agreement including the breach, termination or invalidity thereof the party shall give notice that the dispute has arisen and has to resolve this issue” and the petitioner is not entitled to invoke provisions under Section 7 of IBC Code.
 - c. In this connection, corporate debtor has referred the Judgment passed by Hon’ble Apex Court in Arbitration Petition (Civil No.48/2019) in Indus Biotech Private Limited Vs Kotak India Venture (Offshore), wherein the Hon’ble Apex Court allowed the Arbitration petition and appointed Arbitrator for adjudication.



- d. It is also averred that the petitioner also filing separate application under Section 8 of Arbitration and conciliation Act, 1996.
 - e. Further submitted that corporate debtor and its promoter already filed COP No.8/2021 before the Hon'ble Commercial Court Judge, R.R.District at L.B.Nagar under Section 9 of the Arbitration and conciliation Act and the C.P. is pending.
 - f. Thus, submitting, since there is no legal debt payable or due to or defaulted to the Applicant, the Learned Counsel prayed the Adjudicating Authority to dismiss the application.
4. Learned counsel for financial creditor filed written submissions dated 22.03.2022 and reiterated the facts mentioned in the petition and prayed to initiate CIRP against the corporate debtor.
 5. In the light of the contest put-forth by the Corporate Debtor, the points that emerges for consideration by this Tribunal is.

Point:1 Whether the documentary evidence furnished with application show that a debt is due and payable and has not been paid by the corporate debtor?

6. We have heard the Learned Counsel for Financial Creditor, Shri Santhosh Jadav and Shi V.Sethu Madhava Rao, Learned Counsel for the Corporate Debtor, perused the record and the case law.
7. At the outset it may be stated that, this being a petition filed under Section 7 of IBC at the behest of the financial creditor for initiation of CIRP against the Respondent/Corporate Debtor herein, as regards



scope of enquiry in this petition, we refer to the authoritative ruling of the Hon'ble Supreme Court of India, in re, Mobilox, where in it was held that,

“On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.” (Emphasis is ours).

8. Therefore in the light of ruling it is imperative for Tribunal to see whether there is debt and default which has been defaulted by the corporate debtor. While it is the case of applicant/financial creditor that corporate debtor had defaulted Rs.2 Crores, that out of total investment of Rs.7 Crores. A sum of Rs. 5 crores was contributed for Subscription of Share Capital of the corporate debtor company and remaining Rs.2 crore has been invested as unsecured loan with the corporate debtor Company. The corporate debtor agreed to pay interest on the said sum. However, defaulted in repayment of the same hence application is initiated to proceed CIRP against the corporate debtor.
9. Learned Counsel for corporate debtor would contend that there is no debt and default as claimed by the applicant/financial creditor and



entire amount was only towards Subscription of Share Capital. Hence in the absence of the debt between the parties the very application is not sustainable.

10. Nextly, learned counsel for corporate debtor would contend that there is an arbitration Clause in the "Subscription and Share Holder Agreement" between the parties, as such when a separate dispute resolution mechanism as above is provided, the present application is not maintainable. We have carefully considered the respective submissions, taking into consideration of the record placed before us besides the submissions made by both sides counsels. At the outset it may be stated that the contention of the corporate debtor that the entire sum of Rs.7 crores has been invested towards Shareholders Capital by the financial creditor can't be countenanced for the reason of Clause 4 of Subscription Share Holders Agreement admittedly entered between the parties states as follows:

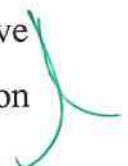
"The Company is desirous of the expanding its business activities. For this purpose the promoter approached the investor requesting him to invest in the Company. Accordingly, the investor has agreed to invest an amount of Rs.5,00,00,000/- in the Company for subscribing the share capital of the Company and an amount Rs.2,00,00,000/- as unsecured loan to the Company".

11. Therefore, having accepting above terms under the Subscription Shareholders Agreement the corporate debtor is now estopped from contending that sum of Rs.2 crores is not towards Unsecure Loan but



only as an investment in the share capital of the corporate debtor company. That apart, the correspondence between the parties i.e financial creditor and corporate debtor dated 05.12.2019 amply demonstrates that the sum of Rs.2 crores was given as Unsecured Loan to the corporate debtor but not towards share capital.

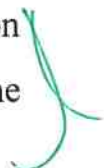
12. In this regard a bare perusal of the email from the corporate debtor dated 21.01.2021 clearly discloses that “ The loan of 2 Crores @14% is due on 18.06.2021(24 months +6 months Grace period), we have still time to repay the loan by June 2021”
13. Therefore, from the above mail apart from establishing the fact that corporate debtor had availed Unsecured Loan of Rs.2 Crores but also establish the default in non-payment of the same. Therefore, debt and default stands established.
14. In so far as the plea that as the Subscription of Shareholders Agreement provides for resolution of the disputes under the dispute resolution mechanism namely Arbitration in respect of disputes in the said agreement. As such, the present application Under Section 7 of IBC is not maintainable. It may be said that while there is no dispute in terms of “Clause 17” of the agreement, the dispute resolution by way of Arbitration is provided for resolving the dispute that arise under the agreement. However, it may be stated that it is not the case of the Applicant/financial creditor that no record has been placed before this Tribunal that the Arbitration Clause as above has been invoked by the corporate debtor. That apart no petition



under Section 8 of Arbitration and Conciliation Act for stalling the proceedings before Tribunal also has been moved.

15. In respect of the plea that corporate debtor moved the Commercial Court at Ranga Reddy by filing COP No. 8/2021 and the same is pending. However, no record has been placed before this Tribunal to substantiate the same. We therefore unable to accept the plea of the corporate debtor that COP No.8/2021 has been filed. Therefore, we held that financial debt as claimed in the petition is defaulted by the corporate debtor. We are also satisfied with record placed before us as regards to the financial debt of Rs.2 crores has been defaulted by the corporate debtor as such it is a fit case to initiate CIRP against the corporate debtor.
16. In the light of our discussion on the above points, we firmly hold that this is a fit case to order CIRP, against the CD herein. 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 following directions:
 - (1) 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;
- (2) 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.
 - (3) 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.
 - (4) That the order of moratorium shall have effect from 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.
 - (5) This Bench hereby appoints Mr. V.Shankar, Insolvency Professional, having Registration No. IBBI/IPA-002/IP-N00145/2017-2018/10436, # 303, Block-A, Legend Commercial Complex, 3-4-770 & 136, Above Keshav Medicals, Barkatpura, Hyderabad, Telangana, 500027, email. Id. 1981shanky@gmail.com, as Interim Resolution Professional.



- (6) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- (7) Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.


Veera Brahma Rao Arekapudi
Member Technical


Dr. N.V. Ramakrishna Badarinath
Member Judicial

Pavani