

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON 23.11.2021 AT 10:30 AM
THROUGH VIDEO CONFERENCE

CP(IB)/475/9/HYD/2019
U/s 9 of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

Varnika Industries Pvt Ltd

...Operational Creditor

Vs

Tushara Energy Ventures Pvt Ltd

...Corporate Debtor

CORAM:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER JUDICIAL
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL**

ORDER

**Orders pronounced vide separate sheets. In the result the petition is
admitted.**


MEMBER (T)


MEMBER (J)

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

**CP(IB) No. 475/9/HDB/2019
U/s. 9 of Insolvency & Bankruptcy Code, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016**

In the matter of:

M/s. Varnika Industries Pvt. Ltd.
Rep. by its Director, Mr. B. Srinivasa Rao
Veera Reddy Building, IInd Floor
Above Aspire Technologies, Road No.15
IDA, Jeedimetla
Hyderabad - 55.

.... Operational Creditor

Vs.

M/s. Tushara Energy Ventures Pvt. Ltd.
Plot No.34/B, Electronics Complex, Kushaiguda
Hyderabad - 500 062

... Corporate Debtor

Date of Order: 23.11.2021

Coram:

**Hon'ble Dr. N.V.Rama Krishna Badarinath, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member
(Technical)**

Parties / Counsels :

For the Petitioner : Mr. V.K.Sajith, Advocate

For Respondent : --

Heard on: 08.03.2021, 24.03.2021, 06.10.2021, 03.11.2021





[Per: Bench]

ORDER

1. The instant Petition is filed by **M/s. Varnika Industries Pvt. Ltd. /Operational Creditor** alleging that **M/s. Tushara Energy Ventures Pvt. Ltd./Corporate Debtor** had defaulted an amount of **Rs.85,15,212/- (Rupees Eighty Five Lakhs Fifteen Thousand Two Hundred and Twelve only)** against the invoices raised by the Operational Creditor for the period from 08.01.2018 to 30.03.2019. **A copy of the outstanding amount is shown at page nos.18 to 20 of the petition.**

Hence, this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments of the petition filed by M/s. Varnika Industries Pvt. Ltd./Operational Creditor/Petitioner in brief are described hereunder:
 - i. It is averred that the Corporate Debtor gave an Order to the Operational Creditor for supply of Copper Strip, CRGO Core, Clamps, CRGO lamination Shaft, Frames and other related material for manufacturing of Transformers and



Stabilisers. According to the Order, the Operational Creditor supplied the material and raised invoices during 08.01.2018 to 21.01.2019 for a total invoices amount of Rs.1,59,10,789.59. Out of the total invoices amount of Rs.1,59,10,789.59, the Corporate Debtor paid an amount of Rs.64,51,939/- on different dates. The last payment made by the Corporate Debtor was on 01.12.2018 and the total outstanding amount of Rs.85,15,211.59 is to be received from the Corporate Debtor. The detailed statement is shown at page nos.18 to 20 of the Petition.

- ii. It is averred that the Operational Creditor on several occasions had approached the Corporate Debtor directly, over phone and personal visit to their office(s) and requested to clear the dues but the Corporate Debtor ignored the promise given earlier and refused to respond to the calls.
- iii. It is averred as the Corporate Debtor failed to make the amounts due, a Demand Notice dated 06.06.2019 was issued in Form-3 for payment of Rs.85,15,211.59/- which was received by the Corporate Debtor on 08.06.2019. However, even on service of demand notice, the Respondent failed to send any reply within the statutory time period of 10 days to indicate either payment of debt or existence of dispute.



- iv. It is averred that the outstanding amount due to the Operational Creditor have never been disputed by the Corporate Debtor in any manner whatsoever.
 - v. It is averred that the Petitioner left with no further option, filed the present petition under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
 - vi. A copy of the petition was sent to the Corporate Debtor on 06.07.2019 by speed post vide Postal Ack. No."EN422806580IN" which was delivered to the Corporate Debtor on 08.07.2019 and proof of service was also filed with the Hon'ble Tribunal. **A copy of the same is shown at page 4 of the Memo dated 09.07.2019 filed by the Operational Creditor.**
3. The averments of the reply filed by M/s. Tushara Energy Ventures Pvt. Ltd./Corporate Debtor/Respondent in brief are described hereunder:
- i. It is averred that the claim is denied in total and not existent as on date since the same was set off against rejections for the defective goods supplied and also understanding with similar vendors including the



Applicant for adjustment of receivables against each other to minimize the cash outflows though they are all not group companies / entities.

- ii. The averments made by the Applicant are strongly and vehemently denied and stated that whatever submissions made by the Applicant under para 7 of the captioned Application has since been replied to the notice given in Form 3. It is also averred that this application has been made to harass the answering respondent and also by misusing the process of law.

- iii. It is averred that the Applicant Company viz. Varnika Industries Private Limited itself is a respondent in CP(IB) 229/9/HDB/2019 filed by M/s. Servel Electronics Private Limited which was admitted by the Hon'ble Tribunal on 04.07.2019 and appointed a Resolution Professional. In spite of fully aware the orders passed by the Hon'ble Tribunal, the petitioner herein has filed this application. Hence, this petition needs to be dismissed and the answering respondent is ready to furnish such information as may be required by the Resolution Professional to the claims made in the present application and prayed to dismiss the present application.



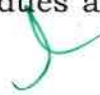


4. We have heard the learned counsel for Operational Creditor and Practising Company Secretary for Corporate Debtor. The Operational Creditor has issued Demand Notice dated 06.06.2019, which was received by the Corporate Debtor on 08.06.2019 and there was no reply to the Demand Notice. The Operational Creditor has further relied on the invoices shown at page nos.25 to 115 of the application. The case of the Operational Creditor is that the Corporate Debtor committed default of the operational debt to the tune of Rs.85,15,211.59/- against the invoices raised for the period from 08.01.2018 to 31.03.2019.
5. We have thoroughly perused the records and heard the submissions made by the Counsel for Petitioner. The petition is in order. The petition deserves to be admitted. Accordingly, the petition is admitted.
6. It is seen from the record that the Operational Creditor herein, M/s. Varnika Industries Pvt. Ltd. was already admitted by this Adjudicating Authority on 04.07.2019 and initiated Corporate Insolvency Resolution Process (CIRP) in CP(IB) No. 229/9/HDB/2019, which was filed by M/s. Serval Electronics Private Limited/Operational Creditor against M/s. Varnika Industries Pvt. Ltd./Corporate Debtor under Section 9 of Insolvency & Bankruptcy Code, 2016. In view of this, the Operational Creditor herein is to be represented by the RP in all the CIRP proceedings.



7. 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. 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;
 - ii. 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.

- iii. 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.
- iv. 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.
- v. 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.
- vi. The Operational Creditor, vide Memo dated 18.11.2021 proposed the name of Mr. Pavan Kankani as Interim Resolution Professional and he has given his consent in Form-2. As per the Insolvency and Bankruptcy Board of India (IBB) website, Mr.Pavan Kankani's Authorisation for Assignment is valid upto 10.11.2022. Accordingly, this Tribunal appoints Mr. Pavan Kankani as Interim Resolution Professional, having Registration No. IBBI/IPA-002/IP-N00368/2017-2018/11062.

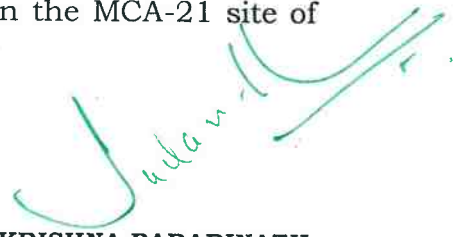


Date of Order: 23.11.2021

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



VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)



DR. N.V.RAMA KRISHNA BADARINATH
MEMBER (JUDICIAL)

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