



S.No.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
14-07-2023 AT 10:30 AM

CP (IB) No. 263/9/HDB/2022
u/s. 9 of IBC, 2016

IN THE MATTER OF:

A.S. MET corp Private Limited

...Operational Creditor

VS

K L S R Infratech Limited

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders in CP 263/2022 pronounced. Recorded vide separate sheets. In the result, the company petition is allowed. CIRP against the Corporate Debtor is hereby ordered, IRP appointed and moratorium imposed.

SD/-
MEMBER (T)

SD/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT No.1. HYDERABAD BENCH, HYDERABAD**

CP (IB) No.263/9/HDB/2022

Under section 9 of 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 A.S. Met Corp Private Limited

CIN: U74900TG2014PTC096666

Flat No.501, Vishal's Srinivasa Krupa Apts

Adj to Manasarovar Heights, RTC Colony

Hasmathpet, Hyderabad,

Telangana – 500009.

**.. Petitioner/
Operational Creditor**

VERSUS

M/s K L S R Infratech Limited

CIN: U45400TG2011PLC072158

2-56/D/213/9A & 9B, F. No.48

KLSR Towers, Ayyappa Society

Madhapur, Hyderabad

Telangana – 500081.

**.. Respondent
Corporate Debtor**

Date of order: 14th July 2023



Coram:

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

and

**SHRI CHARAN SINGH
MEMBER (TECHNICAL)**

Parties / counsels present:

For the Petitioner: Shri Shaik Ghouse, PCS, Shri Mahadev Tirunagari
and Shri Venka Reddy Bathina, Advocates.

For the Respondent: Shri Vivek Reddy, Senior Counsel and Ms. Manasa,
Advocate.

ORDER

The Company Petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, read with Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, is preferred by M/s A.S. Met Corp Private Limited, through its Director. Board of Directors of the Operational Creditor had passed Resolution in its Meeting of the Board of Directors dated 31.05.2022 (**Annexure-7**, page 87) authorising any of its directors for filing petition before NCLT. The petition is filed claiming an amount of **Rs.3,79,06,143/-** (Rupees three crores seventy nine lacs six thousand one hundred and forty three only) as on 31.05.2022. The Operational Creditor seeks admission of this petition,



initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

II. The averments made in the application are:

(i) The petitioner, at the request of the respondent, has supplied goods, viz. C.R.F.H. Strips, C.R.F.H. Coils, Steel Strapping Seals, etc. in the year 2019. It was the practice between the petitioner/ Operational Creditor and respondent/ Corporate Debtor to make payments against the goods supplied by issuing Letter of Credit.

(ii) The respondent/ Corporate Debtor has made last payment on 20.12.2021 amounting to Rs.92,01,161/- against Invoice No.GST/21-22/0250, and GST/21-22/0251. The Corporate Debtor has undertaken to pay outstanding dues of Rs.2,88,79,417/- plus mutually agreed interest by way of Affidavit dated 15.03.2022 (**Annexure-1**). The petitioner/ Operational Creditor had addressed several communications to clear outstanding dues, the latest being e-mail dated 22.03.2022 (**Annexure-2**).

(iii) Ultimately, the petitioner/ Operational Creditor has issued Demand Notice in Form-4 dated 31.05.2022 (**Annexure-3**) under Rule 5 of



Insolvency and Bankruptcy (AAA) Rule, 2016 by Speed Post, followed by e-mail dated 14.06.2022 (**Annexure-4**), demanding the following amounts:

	Rs.
• Principal amount outstanding ..	2,72,29,416
• Interest payable .. (as on 31.05.2022)	0,38,69,370
• Penal charges @ 25% amounting to ..	0,68,07,357

Total amount of debt as on 31.05.2022: **3,79.06,143**

Date of default : 20.12.2021.

Statement of Invoices pending payment is at **Annexure-9**. Bank statements where deposits are made or credit received normally by the Operational Creditor qua the debt of the Corporate Debtor is at **Annexure-10**.

(iv) Respondent/ Corporate Debtor gave reply dated 15.06.2022 (**Annexure-5, pages 82-83**) to said Demand Notice. Above Demand Notice dated 31.05.2022 sent by Speed Post was returned by Postal authorities with a remark,

“Item on hold. Door locked and so item returned unclaimed.”



Speed Post Tracking status report dated 30.07.2022 (03.33 AM) is enclosed as **Annexure-6**.

III. The Corporate Debtor has filed COUNTER dated 26.10.2022, wherein allegations of connivance between the employees of the Corporate Debtor and the Operational Creditor are levelled. Even names of such alleged conspirators were divulged in the Counter. Allu Nagesh, Director of the Corporate Debtor is not authorised to acknowledge anything on behalf of the Corporate Debtor and that he is not authorised to do so, says the Corporate Debtor. Gist of such contentions raised in the Counter are:

(i) The respondent/ Corporate Debtor is making continuous profits and is not an insolvent company. It has average annual turnover of over Rs.300,00,00,000 (Rupees three hundred crores) for the last five financial years, figures of which are furnished in page 2 of the Counter.

(ii) The respondent/ Corporate Debtor submitted that the respondent/ Corporate Debtor had participated in the auction of a sick company, namely, M/s Midfield Industries Limited and the Corporate Debtor



became the highest bidder. Said M/s Midfield Industries Ltd was engaged in production of steel strips and one M. Madhu Mohan Reddy was the Chairman & Managing Director of the said company. He is related to the Managing Director of the respondent/ Corporate Debtor. Sale Certificate was issued on **22.09.2017** by the Recovery Officer of the Bank, which was duly registered. Thus, the respondent/ Corporate Debtor group became the owner of the properties together with plant and machinery at:

Plot No.6 and 4C
Survey No.79, Jeedimetla Village.

At that time, the Corporate Debtor engaged the services of Allu Nagesh, a former employee of Axis Bank to advise the Corporate Debtor in its financial matters. Said Allu Nagesh was a classmate of the Managing Director of the Corporate Debtor. He was appointed as independent Director of the Corporate Debtor.

(iii) The respondent/ Corporate Debtor further submitted that the Corporate Debtor had carried on all necessary repairs and brought the said sick company into production during May 2018.

(iv) It is submitted that suppliers of raw materials to the Corporate Debtor were the earlier suppliers of raw materials of M/s Midfield Industries Limited. During December 2021, it is observed by the



management of the Corporate Debtor that the payments made against the payables is getting higher than the amounts receivable from the receivables from the said activity of steel strapping. At that time Letters of Credit opened by the steel strips unit have fallen due, which prompted the accounting team of the petitioner/ company to take a look at the receivables of the unit in the said month. A huge outstanding of about Rs.16,86,80,746/- was being shown as receivables, which includes a sum of Rs.11,97,86,978/- from RINL, Visakhapatnam.

(v) The respondent submitted that on scrutiny of accounts, invoice-wise both in respect of sales and purchases, the management decided to stop procurement of raw materials. In the first week of April 2022, the management decided to recommence the manufacturing activity. At that time two of the employees, namely, Siva Krishna and Jagadeesh stopped attending their duties.

(vi) The respondent submitted that on issuance of Purchase Order, supplier would raise proforma invoice and on being forwarded of the same, the Corporate Debtor would request its banker to issue Letter of Credit which will be forwarded to the suppliers.



(vii) The respondent submitted that the suppliers would either discount the invoices or await payment under the Letter of Credit. Invariable all the suppliers including the petitioner / Operational Creditor had discounted the Letters of Credit without exception.

(viii) The respondent submitted that the Corporate Debtor used to repay the same to the Bank at the end of the Letter of Credit period together with interest. On receipt of raw material, the same would be entered in the stock registers and it should be accompanied by Test Certificate of quality of goods supplied as to whether it is in conformity with the requirements of the PO. Said raw material would be used for manufacturing steel strips, which will either be supplied back to the raw material supplier, if any, on their ident or sold in the market.

(ix) The respondent/ Corporate Debtor, in para (IX), pages 8-10 of the Counter the Corporate Debtor has reproduced all the invoices raised by the Operational Creditor to the Corporate Debtor commencing from 28.11.2019 to 18.08.2021. It is stated that against the above invoices, the Corporate Debtor had issued Letters of Credit and all the payments were received by the Operational Creditor through discounting. It is further stated by the Corporate Debtor that between July 2021 and December



2021, invoices mentioned at pages 12-14 of the Counter were raised by the Operational Creditor and were paid by discounting of Letters of Credit.

Against the above invoices, the Corporate Debtor issued Letter of Credit and all payments were received by the Operational Creditor through discounting. However, during audit, it is noticed that in respect of the invoices mentioned at page 15-17 of the Counter, though payments were made actually, stocks were not received by the Corporate Debtor. On careful perusal it has become evident that the same were copies of the earlier invoices.

(x) The respondent submitted that against the aforesaid invoices the Corporate Debtor has issued letters of credit and all the payments were received by the Operational Creditor through discounting. However, during the audit the respondent discovered that though payments were made actually, stocks were not received by the Corporate Debtor. Besides, the quantities purported to have been supplied were far in excess and beyond the carrying capacity of the vehicles.

(xi) The respondent Corporate Debtor answers the claims made by the Operational Creditor in Form-5 as under:



- In reply to Para g, Part-V of Form-5 it is stated that the petitioner is engaged in business of supply of various goods to various debtors and also dealing in supply of CRFH strips, CRFH coils, Steel Strapping Steels is true.
- In reply to para h of Part-V, the averment that subsequent to every supply and dispatch of materials, an invoice was raised by the Operational Creditor upon Corporate Debtor, upon which the Corporate Debtor shall make payment of invoice is false.
- In reply to para I to m of Part-V, the averment that 14 invoices and a debt note for Letter of Credit usage charges were pending for payment amongst invoices raised between 09.07.2021 to 01.12.2021 for an amount of Rs.3,38,47,540/- however, against few invoices, the Corporate Debtor has made part payment and balance of Rs.2,72,29,416/- is due and payable by the Corporate Debtor from time to time since 20.12.2021 is absolutely false.

(xii) The respondent submitted that the Operational Creditor has to establish that for the supplies made against the said invoices a fraud has been committed by Operational Creditor and Police investigation is under



progress as authorised person, Piyush Mehta of the Operational Creditor is absconding.

(xiii) In reply to paras o to t of Part V it is contended that:

“It is true that there is no pending suits or arbitration proceedings between the Operational Creditor and the Corporate Debtor except a criminal case is pending against the company and authorised person Mr. Piyush Mehta of the Operational Creditor in respect of forgery, cheating, dishonest intention, criminal conspiracy, criminal breach of trust, offering bribe, fabrication of documents, etc. Still the authorised person Mr. Piyush Metha of the Operational Creditor is absconding and Police are searching for him.”

(xiv) The Corporate Debtor has enclosed to the Counter the following documents:

- F.I.R. No.539 of 2022 dated 30.06.2022 with Jeedimetla Police Station.
- Further investigation by Detective Inspector.
- Case Diary Part-11.
- Remand Report
- Remand Case Diary
- Profit & Loss Accounts of the Corporate Debtor.
- Bank statement of the Corporate Debtor reflecting payments to the Operational Creditor.
- E-mail of Operational Creditor regarding rejection of material under invoices nos.227, 228 and 229.



IV. Corporate Debtor has filed ADDITIONAL COUNTER dated 26.04.2023, the submissions of which are summarised hereunder:

(i) Before proceeding to appreciate the contentions in this Additional Counter it is apt to note the chronology:

31.05.2022 Demand Notice (Annexure-3) was issued by the petitioner/ Operational Creditor along with computation sheet of Demand Account and invoices pending for payment.

15.06.2022 The respondent/ Corporate Debtor sent Reply to Demand Notice – Annexure-5, page 822 of the application.

30.06.2022 Respondent/ Corporate Debtor has filed F.I.R. No.539 of 2022 dated 30.06.2022 with Jeedimetla Police Station under sections 420 and 496 of the IPC, (Page 25 of the Counter dated 26.10.2022).

29.08.2022 The present petition under section 9 of the I&B Code is filed.

Oct./ Nov. 2022 Writ Petition under section 482 of the Code of Criminal Procedure being Writ Petition No.42528 of 2022, is filed before the Hon'ble High Court of Telangana for quashing of FIR bearing No.171 of 2023 dated 04.03.2023 registered with Jeedimetla Police Station, which is pending adjudication.



04.03.2023 Petitioner/ Operational Creditor has filed a cross-complaint registered as C.R. No.171 of 2023 with SHO, Jeedimetla under sections 420, 403, 422 and 34 of the IPC against the respondent/ Corporate Debtor and its Directors and the same is pending on the file of learned VIII Metropolitan Magistrate, Medchal. A copy of FIR is at page 86 of this Additional Counter.

(ii) The invoices relied on by the Operational Creditor are false, for which F.I.R. No.539 of 2022 dated 30.06.2022 is lodged with Economic Offence Wing, Cyberabad pending on the file of VIII Metropolitan Magistrate, Medchal under sections 406, 409, 420, 468, 471, 467, 381 and 120B read with 109 of IPC.

(iii) Respondent/ Corporate Debtor submitted that the respondent, in the criminal case lodged by it, has levelled serious allegations against the petitioner, such as, criminal breach of trust, fraud, cheating, criminal conspiracy, common intention, creation of false and fabricated invoices in electronic mode and using the same as genuine ones, deceitful intention, etc.

(iv) The petitioner/ Operational Creditor has filed a Petition under section 482 of the Code of Criminal Procedure in Hon'ble High Court of Telangana being W.P. No.42485 of 2022 for quashing of the impugned



FIR. The respondent has filed Additional Counter therein (page 24 of this Additional Counter) seeking dismissal of the said Quashing Petition. The petitioner/ Operational Creditor has filed reply (Page 36 of this Additional Counter) in response to the Additional Counter filed by the respondent/ Corporate Debtor before the Hon'ble High Court of Telangana.

(v) The petitioner has filed a cross-complaint registered as C.R. No.171 of 2023 dated 04.03.2023 with SHO, Jeedimetla under sections 420, 403, 422 and 34 of the IPC against the respondent/ Corporate Debtor and its Directors and the same is pending on the file of learned VIII Metropolitan Magistrate, Medchal. A copy of FIR is at page 86 of this Additional Counter.

(vi) The respondent/ Corporate Debtor has relied on sections 10 and 5 of the Indian Evidence Act. The respondent/ Corporate Debtor in support of its contention that there is a pre-existing dispute has relied on order dated 13.01.2022 of the Hon'ble NCLAT in Sherbahadur D. Yadav Vs. M/s Rohan Dyes and Intermediates Limited, wherein it was held that:

“8. When the allegations against each other are serious allegations including allegations of offence against each other, we Case Citation: (2022) ibclaw.in 78 NCLAT IBC Laws/ www.ibclaw.in Company Appeal (AT) (Ins) No. 472 of 2021 5 are



not convinced by the Appellant that police complaint do not evidence any dispute between the parties. It is to be noted that all the aforesaid complaints are much before initiation of proceedings u/s 9 by the Appellant. The Adjudicating Authority has not committed any error in relying of the facts and materials on record to come to the conclusion that there was pre-existing dispute between the parties.

9. We are of the view that IBC proceedings are not for the purposes of adjudicating such dispute between the parties and are not the recovery proceedings to recover the unpaid amount by the official creditor whose claim is disputed by the 'Corporate Debtor'. We, thus, do not find any error in the order of the Adjudicating Authority, the appeal is dismissed."

(vii) The respondent submitted that the proceedings under the I&B Code shall not be instituted for recovery of amounts and a profit making and solvent company shall not be subjected to CIRP as was decided by the NCLT and the Hon'ble Supreme Court in various cases.

V. Operational Creditor has filed WRITTEN SUBMISSIONS dated 28.04.2023 submitting that:

(i) The petitioner/ Operational Creditor is in the business of supply of CR Strips and CR Coils uses as raw material by the Corporate Debtor for manufacturing steel strips. The Operational Creditor supplied goods to the Corporate Debtor and thus both of them were in business relationship since 2019.

(ii) The petitioner/ Operational Creditor submitted that the Corporate Debtor had acknowledged the invoices (Pages 33-80 of the application)



and the petitioner/ Operational Creditor paid GST amounts during the period as applicable (Pages 138 and 148 of the application for payment of GST).

(iii) Operational debt has been acknowledged by the Director of the Corporate Debtor by way of Affidavit dated 15.03.2022 (page 28 of the application). The applicant sent e-mail dated 22.03.2022 (page 29 of the application) to the Corporate Debtor requesting for statement of accounts in Books of the Corporate Debtor and for release of payment. However, there was no response from the Corporate Debtor.

(iv) It is submitted by the petitioner/ Operational Creditor that in reply dated 15.06.2022 (Annexure-5, pages 82-83) to the Demand Notice, the Corporate Debtor had informed that the employees of the Corporate Debtor had committed fraud and it was detected in the last week of December 2021 and investigation was going on in this regard. It was claimed in the said reply that the Corporate Debtor has strong supporting evidence without divulging the same.

(v) It is submitted by the petitioner/ Operational Creditor that even after alleged detection of fraud in last week of December 2021, the Corporate Debtor had continued procuring material from the petitioner and issued



Letters of Credit on the petitioner, accepted bills payable on 28.12.2021 under the said LC and paid value of bills in March 2022. (Reply to Notice - Annexure-5, pages 82-83)

(vi) As regards the allegation that the persons named in the FIR by the Corporate Debtor are absconding, the petitioner submitted that the Hon'ble High Court of Telangana has granted anticipatory bail in favour of the persons named in the FIR and as such they are not absconding. Besides, Quashing Petition being Writ Petition No.42528 of 2022 filed before the Hon'ble High Court of Telangana is pending adjudication.

(vii) As regards the contention of the respondent/ Corporate Debtor that mere payment of GST does not amount to supply of goods to the Corporate Debtor, the petitioner/ Operational Creditor submits that when such payments are made the same visible on the account of the Corporate Debtor on GST Portal by way of GSRT2 by 15th day of the month, viz. five days. In the event of any dispute the Corporate Debtor ought to have filed rejection of GSRT 3B to be statutorily filed by 20th day, viz. 9-10 days from GSTR 1 or 5 days of GSRT 2. The Corporate Debtor chose not to do so. From the above it is apparent that having received Demand



Notice in Form-4 the respondent/ Corporate Debtor had cooked up a story of non-receipt of supplies post 21.12.2021.

(viii) As regards the contention raised by the Corporate Debtor that quantity of goods was far in excess of capacity of vehicles (page 15 of the Counter), the Operational Creditor submitted that as per e-way bill and invoices, the quantity was within the carrying capacity of vehicles or slightly higher than the capacity, which is normal in transport industry.

(ix) It is submitted that the Corporate Debtor has submitted in para 6 (page 23) of its Counter that a criminal case is pending at the applicant and its Director. It is submitted by the petitioner said criminal case was filed on 30.06.2022, only after receipt of Demand Notice from the petitioner on 31.05.2022.

(x) As regards the contention raised by the Corporate Debtor that the Corporate Debtor is a profit making company having turnover of Rs.300 crore for the last five financial years and it is a solvency company and that default a mere Rs.1.31 crores cannot be a ground to initiate CIRP, the petitioner/ Operational Creditor relied on the judgement dated 09.08.2021 of the Hon'ble NCLAT in Mahesh Hardware & Pipes Pvt Ltd Vs. Jains & Alliance Palm Ventures Pvt Ltd. In the said judgment, the Hon'ble



NCLAT, New Delhi has referred to judgment of its Coordinate Bench dated 16.08.2020 in Monotrone Leasing Pvt Ltd. Vs. P.M. Cold Storage Pvt Ltd [Company Appeal (AT)(Ins.) No.99 of 2020, wherein it was held that:

*“22. We are bound to emphasize that a **presumption cannot be drawn merely on the basis that a company, being solvent, cannot commit any default.** As observed in financial and economic parlance, the inability to pay- off debts and committing default are two different aspects which are required to be adjudged on equally different parameters. Inability to pay debt has no relevance for admitting or rejecting an application for initiation of CIRP under the IBC.”*

VI. The respondent/ Corporate Debtor has filed WRITTEN SUBMISSIONS dated 12.06.2023 submitting that:

(i) In support of its contention that the IBC is enacted to ensure that unconfirmed operational debts do not enable the Operational Creditor to prematurely push the Corporate Debtor into CIRP, the respondent/ Corporate Debtor relied on Rajratan Babulal Agarwal Vs. Solartex India (P) Ltd., (2023) 1 SCC 115, paras 73-75. The ratio laid down by the Hon’ble Supreme Court squarely applies to the facts of the present case inasmuch as the present petition suffers from mala fide intent, suppression of material facts, perpetuating fraud and making averments unsubstantiated in law or fact.



(ii) Respondent/ Corporate Debtor has reiterated its submission that the petitioner/ Operational Creditor had colluded with the employees of the Corporate Debtor to fabricate invoices and claimed that the supply of goods is an illusion rather than a reality.

A CONFESSION :

(iii) Even the respondent divulged the fact, in para 7 of this Written Submissions dated 12.06.2023, that there was a large scale fraud within the respondent/ company wherein Allu Nagesh and Madhu Mohan Reddy, who were responsible for the day to day management of the company had colluded with various suppliers including the petitioner herein and fabricated a number of invoices for purchase of goods and made payments even though complete goods were not delivered to the respondent/ company.

(iv) Respondent/ Corporate Debtor has given details of each Invoice raised by the petitioner/ Operational Creditor. It is contended that Invoices Nos.78, 92 and 124 dated 09.07.2021, 26.07.2022 and 28.08.2021 (Annexures R1, R2 and R3 of this Written Submission) have been paid fully. Whereas, Invoices No.114, 115 and 116 are duplicates of Invoices No.181, 182 NS 183 as demonstrated in Table-1, page 6 of this Written



Submission. The same can be found at page 40 of the petition. As regards Invoices shown in Table-2 (Page 6 of this Written Submission), the same were adjusted against payment to be made by the petitioner to the respondent as shown in the tabula statement at pages 6 and 7 of this Written Submission.

(v) As regards Invoices No.196 dated 20.10.2021, 197 dated 20.10.2021, 201 dated 21.10.2021, the respondent submitted that there is no evidence of any goods being delivered to the petitioner and that e-way Bills (Annexures R5, R6 and R7 of this Written Submissions) of the petitioner are contradictory to Government records.

(vi) The respondent submitted that Invoices No.227, 228 and 229 relate to the goods rejected and returned. Invoice Nos.196, 197, 198, 201 and 202 are the fabricated ones.

(vii) In support of its plea that e-way bills were fabricated, the respondent/ Corporate Debtor had furnished details of invoices, vehicle numbers, vehicle capacity and the quantity shown to have carried in the table at pages 10 and 11 of this Written Submission. It is claimed that the goods alleged to have delivered was 2-3 times excess of the carriage capacity.



(viii) In support of its plea that movement of the vehicles in question does not match with government records, respondent/ Corporate Debtor had furnished details of waybill number, date and remarks at pages 11-13 of this Written Submission.

THRIVING COMPANY CANNOT BE PLUNGED INTO CIRP:

(ix) While reiterating that criminal proceedings and quashing petition are pending decision, the respondent/ Corporate Debtor submitted that a thriving company cannot be plunged into CIRP at the instance of fraudulent actors.

VII. This Tribunal vide order dated 26.05.2023 in IA No.731 of 2023 and IA No.732 of 2023 in CP (IB) No.263/9/HDB/2022 has allowed the Corporate Debtor to produce the following documents:

(i) It is submitted by the Corporate Debtor that on receipt of audit report, the Corporate Debtor came to know that the following persons had joined hands with the Operational Creditor, VVR Industries Ltd and Suprabha Protective Products Limited to come with false claims under fabricated invoices without, in fact, supply raw material.

- Allu Nagesh
- Kanakamedala Siva Krishna



- Madhu Mohan Reddy
- Morisetty Jagadish
- K. Suresh Babu.

The Corporate Debtor / company filed FIR No.539 of 2022 with SHO, Jeedimetla under sections 420 & 406 (of IPC). The case was transferred to Economic Offence Wing, Cyberabad.

(ii) During the course of investigation the authorities filed a petition filed by Economic Offence Wing, Cyberabad seeking permission from the learned VIII Additional Metropolitan Magistrate to add sections 409, 468, 471, 467, 381, 120B r/w 109 of IPC in above said FIR in addition to section 406 and 420. Said petition filed by Economic Offence Wing, Cyberabad is stated to have been produced at Annexure-I of the IA. However, copy of such petition is not found attached to the IA. Even marking of enclosures as Annexures 'I', 'II' and so on, as was claimed in the pleadings of the IA, is not in place. We are therefore, constrained to go by page numbers.

(iii) It is submitted that during the pendency of Writ Petition, ACP, Economic Offence Wing, Cyberabad had filed Additional Counter stating that during the course of investigation they have identified fraud by the Operational Creditor. A copy of the Additional Counter filed by ACP,



Economic Offence Wing, Cyberabad in W.P. No.42528 of 2022 pending on the file of Hon'ble High Court of Telangana is at pages 25-36.

(iv) The writ petitioner has filed Additional Reply dated 30.03.2023 in W.P. No.42528 of 2022 before the Hon'ble High Court of Telangana, to the Additional Counter Affidavit filed by ACP, Economic Offence Wing, Cyberabad. A copy of the said Additional Reply is at pages 37-47.

(v) The Corporate Debtor has filed Affidavit in W.P. No.42528 of 2022 before the Hon'ble High Court of Telangana narrating the facts and fraud committed by the Operational Creditor. A copy of said Affidavit dated 12.04.2023 filed by the Corporate Debtor is at pages 48-54 of this IA.

(vi) The respondent Corporate Debtor has filed Affidavit dated 23.01.2023 in W.P. No.42485 of 2022 before the Hon'ble High Court of Telangana explaining the alleged fraud committed by the Operational Creditor. The said Affidavit is at pages 55-74 of this IA.

(vii) The Operational Creditor has filed Reply Affidavit dated 06.02.2023 to the Counter Affidavit filed by the Corporate Debtor in W.P. No.42485 of 2022 pending on the file of Hon'ble High Court of



Telangana. In para 10 of the said reply the Operational Creditor admitted that the alleged material supplied under Invoice No.GST/21-22/0181 dated 07.10.2021, the quantity loaded is marginally in excess of the prescribed quantity. A copy of the said reply dated 06.02.2023 is at pages 75-86 of this IA.

(viii) The petitioner/ Operational Creditor, viz. M/s AS Met Corp Limited has filed a cross-complaint being FIR No.171 of 2023 dated 04.03.2023 with SHO, Jeedimetla under sections 420, 403, 422 read with sections 34 and 156(3) of the IPC. A copy of the said cross-complaint is at pages 87-92 of this IA.

VIII. The facts pleaded and the documents produced by the Corporate Debtor by way of the above IA are perused and will be taken into consideration albeit they are outside the purview of the Insolvency & Bankruptcy Code, 2016, to determine whether the proceedings before this Tribunal and the proceedings pleaded in the IA are interwoven and whether they are important as to be controlling on the questions of law that may be framed hereafter.



IX. REVISED WRITTEN SUBMISSIONS DATED 16.06.2023 ARE FILED BY THE PETITIONER/ OPERATIONAL CREDITOR.

(i) Said Written Submissions are filed in pursuance of order dated 08.06.2023 (granting time) read with order dated 15.06.2023 (condoning the delay in filing this Written Submission) of this Tribunal.

(ii) The petitioner/ Operational Creditor has furnished the precise chronology ranging from inception of business relationship between the Operational Creditor and Corporate Debtor, supply of goods, upto service of Demand Notice on the Corporate Debtor and reply thereto by Corporate Debtor. More emphasis is laid on the contentious issue of the amount of operational debt having been acknowledged by the Director of the Corporate Debtor, who was in-charge for procurement of raw material by way of Affidavit dated 15.03.2022 (Page 28 of the application), and the fact that he had admitted that an amount of Rs.2,88,79,417/- as due and payable to the Operational Creditor in lieu of the supplies made by the Operational Creditor to the Corporate Debtor, besides interest towards delayed payment and penal charges.

(iii) Following are the contentions raised by the respondent/ Corporate Debtor and reply thereto by the petitioner/ Operational Creditor:



Contentions raised by the respondent/ Corporate Debtor.	Defence by the petitioner/ Operational Creditor
<p>The respondent/ Corporate Debtor has filed FIR against the petitioner and criminal case is pending against the applicant/ Directors. Said Directors are absconding. Police is searching for them. (Para 5 of the Counter).</p>	<p>It is true that FIR is lodged on 30.06.2022, after issuance of Demand Notice dated 31.05.2022. The Directors were granted anticipatory bail by the Hon'ble High Court of Telangana and they are not absconding. Besides, a petition is filed for quashing the above FIR before the Hon'ble High Court of Telangana, which is pending decision. The petitioner relied on judgment dated 11.05.2023 (ANNEXURE-of this Written Submission) in Subhash Chand Gupta Vs. Bhavesh Texo Fab Pvt. Ltd., Company Appeal (AT) (Ins.) No.816 of 2022. One cannot take benefit of criminal proceedings and application u/s 9 of IB be considered and decided on its own merits.</p>



Regarding arbitration case.	Corporate Debtor has admitted that there is no pending suits/ arbitration proceedings between the Operational Creditor and Corporate Debtor. (para 6, page 23 of the Counter).
Mere payment of GST by the Operational Creditor does not amount to supply of goods to the Corporate Debtor. (Para 6 of the Counter of the Corporate Debtor)	When the applicant made GST payments to the Department in respect of tax invoices and filed GSRT1 Returns, the Corporate Debtor can find the same in GST Portal; and also avail input credit for the said GST payments made by the oc.
Quantities supplied were far in excess and beyond the carrying capacity of the vehicles. (Para 15 of the Counter of the Corporate Debtor).	Consignments were within the carrying capacity of the vehicles, except in one case, where goods loaded was 33.66 tons against carrying capacity of 33.00 tons.



<p>The Corporate Debtor is a profit making concern with turnover of Rs.300 crore, whereas default is merely Rs.2.72 crores.</p>	<p>That cannot be a ground against initiation of CIRP. Even otherwise, Corporate Debtor is on the verge of bankruptcy for the reasons:</p> <p>(i)Income tax Department, DLC-CC/42(2) has passed order dated 17.09.2021 demanding Rs.63,57,40,176/-.</p> <p>(ii) Income Tax Department vide Notice No.ITBA/ RCV/S/226(3)1/ 2022-2023/ 1043906697(1) dated 18.07.2022 u/s 226(3) had attached Bank Accounts of the Corporate Debtor.</p> <p>(iii) Suppliers to the Corporate Debtor, M/s Electrosteel Castings Ltd. had invoked eleven Bank Guarantees worth Rs.18 crores on 16th and 18th May 2022, for default in payment of dues.</p> <p>(iv) Union Bank of India vide e-mail dated 08.06.2022 designated the Corporate Debtor as a Stressed Asset.</p>
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	<p>The above facts were stated by the Corporate Debtor on oath vide Affidavit dated 26.07.2022 before the Hon'ble High Court of Telangana in Writ Petition No.30656 of 2022. Copy of said Writ Petition is at Annexure-2.</p> <p>The petitioner has re-laid its reliance on judgment on Hon'ble NCLAT, New Delhi dated 16.08.2020 in Monotrone Leasing Pvt Ltd. Vs. P.M. Cold Storage Pvt Ltd [Company Appeal (AT)(Ins.) No.99 of 2020 as was referred by the Operational Creditor in their Written Submissions dated 28.04.2023.</p>
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X. In the light of the contest as aforementioned, the points that emerge for our consideration are:

1. Whether the documentary evidence furnished with the application shows that the *operational debt* of a sum over rupees one crore *due and payable* by the respondent exists? If so, whether the respondent *defaulted* in payment of the same?
2. Whether there is existence of dispute between the parties or record of pendency of suit or arbitration proceedings filed before



the receipt of the Demand Notice of the unpaid operational debt in relation such dispute?

XI. We have heard Shri Shaik Ghouse, learned PCS, Shri Mahadev Tirunagari, and Shri Venka Reddy Bathina, Advocates for the petitioner; and Shri Vivek Reddy, Senior Counsel along with Ms. Manasa, learned advocate for the respondent. Perused the record, the written submissions and the case law

XII. At the outset, it may be stated that the present company petition being one under section 9 of IB Code, in order to succeed in this petition, the Petitioner shall establish that an operational debt of sum exceeding rupees one crore is due and payable by the respondent to the petitioner and that the respondent *defaulted* in repayment of the same. However, if the Respondent is able to show that a *pre-existing* dispute as to the operational debt exists prior to the receipt of the demand notice issued under section 8(2) of IB Code, notwithstanding the presence of operational debt and its default, the Petition is liable to be rejected.

XIII. In this regard, reliance can be placed on the decision of the Hon'ble Supreme Court in Innoventive Industries Vs. ICICI Bank &



another, CIVIL APPEAL NOs. 8337-8338 OF 2017, *wherein it was held that:*

“30. 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.”

XIV. In the light of above *legal frame* and the *factual matrix* of this case, we proceed to decide the points as above.

Point.1.

Whether the documentary evidence furnished with the application shows that the *operational debt* of a sum over rupees one crore *due and payable* by the respondent exists? If so, whether the respondent *defaulted* in payment of the same?

Shri Shaik Ghouse, learned PCS for the petitioner, contends that in the year 2019 at the request of the respondent, the petitioner had supplied goods, viz. C.R.F.H. Strips, C.R.F.H. Coils, Steel Strapping Seals, etc under various invoices which are exhibited at pages 33-80 of the application and the same were duly acknowledged by the respondent. Ld. PCS, further submitted that the petitioner paid GST in respect of the said supplies and the said GST payment receipts are exhibited at pages 138



and 148 of the application. In so far as the payment of price for the goods supplied in concerned, Ld. PCS submitted that the respondent agreed to make payments against the goods supplied by issuing Letter of Credit and on few occasions made cash payment.

XV. Ld. PCS further contends that in respect of the amount of Rs.3,38,47,540/- payable under the invoices raised during the period between 09.07.2021 and 01.12.2021, on 20.12.2021 the respondent paid Rs.92,01,161/- against Invoice No.GST/21-22/ 0250, and also acknowledged the debt vide letter dated 31.03.2022, and has undertaken to pay outstanding dues of Rs.2,88,79,417/- together with the mutually agreed interest by way of Affidavit dated 15.03.2022. The said affidavit has been filed as Annexure-1. The communications by the petitioner requesting the respondent to clear outstanding dues are filed as Annexure-2. Ld. PCS, also referred to the statement of invoices pending payment which were filed under Annexure-9, and the bank statement which is Annexure-10 and contended that the said amount has not been paid despite acknowledgement of debt by way of Affidavit dated 15.03.2022.



XVI. Ld. PCS, further submits that, since the attempts as above for payment of the balance amount did not fructify, on 31.05.2022 the petitioner has issued Demand Notice in Form-4 in terms of Rule 5 of Insolvency and Bankruptcy (AAA) Rule, 2016, by Speed Post, field as Annexure-3, followed by an e-mail dated 14.06.2022 filed as Annexure-4, demanding in all the sum of Rs. 3,79.06,143 which the respondent replied on 15.06.2022,raising untenable pleas.

XVII. Thus, the Ld. PCS, strongly contended that, the above record clearly establishes existence of an operational debt of a sum over rupees one crore and also its default by the respondent hence the present application is deserves to be admitted.

XVIII. Shri. Vivek Reddy, Ld. Sr. Counsel for the respondent while vehemently refuting the above submissions of the Ld. PCS, contended that, the respondent is not an insolvent Company and is having an average annual turnover of over Rs.300,00,00,000 (Rupees three hundred crores) and the Company is making continuous profits for the last five financial years, the figures of which are furnished in page 2 of the Counter. Ld. Sr. Counsel further submitted that the respondent had engaged the



services of one Mr. Allu Nagesh, a former employee of Axis Bank and a classmate of the Managing Director of the *respondent* to advise the *respondent* in its financial matters and also as independent Director of the *respondent*. Ld. Sr. Counsel vehemently contended that, the contention that 14 invoices and a debt note for Letter of Credit usage charges were pending for payment amongst invoices raised between 09.07.2021 and 01.12.2021 for an amount of Rs.3,38,47,540/- however, against few invoices the *respondent* has made part payment, hence the balance of Rs.2,72,29,416/- is due and payable by the *respondent* is absolutely false. According to the learned senior counsel on issuance of Purchase Order, supplier would raise proforma invoice and on being forwarded of the same, the *Corporate Debtor* would request its banker to issue Letter of Credit which will be forwarded to the suppliers. Ld. Sr. Counsel submits that; the *respondent* had issued Letters of Credit in respect of the invoices raised between July 2021 and December 2021, invoices mentioned at pages 12-14 of the Counter were raised by the *petitioner* and were paid by discounting of Letters of Credit.

XIX. According to the Ld. Sr. Counsel during December 2021, it was observed by the management of the *respondent* that the payments made



against the payables is getting higher than the amounts receivable from the activity of steel strapping, hence the management was prompted to direct its accounting team to take a look at the receivables of the unit in the said month, and huge outstanding of about Rs.16,86,80,746/- was shown as receivables, which includes a sum of Rs.11,97,86,978/- from RINL, Visakhapatnam. Ld. Sr. Counsel further submitted that during audit, it was noticed that in respect of the invoices mentioned at page 15-17 of the Counter, though payments were made stocks were not received by the *respondent and* the quantities purported to have been supplied by the petitioner were far in excess, besides beyond the carrying capacity of the vehicles. Therefore, an F.I.R. in crime No.539 of 2022 dated 30.06.2022 has been lodged against Mr. Allu Nagesh and others with Jeedimetla Police Station and the police investigation is on. It is further submitted that the authorised person, Piyush Mehta of the *petitioner* is absconding. In support of this submission Ld. Sr. Counsel relied on the F.I.R. No.539 of 2022 dated 30.06.2022 with Jeedimetla Police Station, Case Diary Part-11, Remand Report, and the Remand Case Diary.

XX. Strongly refuting the above submission of the Ld. Sr. Counsel, Ld. PCS has submitted that the FIR has been lodged almost after lapse of one month after the receipt of the demand notice and the FIR has



been challenged before Telangana High Court which is pending. Ld. PCS further submitted that the submission that the Authorised person of the petitioner has been absconding pursuant to the FIR, is false as the said person along with Allu Nagesh were granted Anticipatory Bail.

XXI. Ld. PCS further contends that the plea of alleged detection of fraud in the month of December 2021 in respect of the supplies made, is falsified by the fact that for the supplies made in the month of December 2021 the respondent issued Letters of Credit on the petitioner, accepted bills payable on 28.12.2021 under the said LC and also paid in part in March 2022, which fact was also admitted in the reply notice, vide, Annexure-5. In this context Ld. PCS also referred to the letter of acknowledgement of debt on behalf of the respondent, besides the undertaking Affidavit dated 15.03.2022 (Page 28 of the application) undertaking to pay the outstanding dues of Rs.2,88,79,417/- plus mutually agreed interest by way of Affidavit dated 15.03.2022 **Annexure-1**.

Finding:

XXII. Having heard the Ld. PCS for Petitioner and the Ld. Sr. Counsel for the respondent, and on careful perusal of the record, at the



very outset, we wish to state that the jurisdiction of the Adjudicating Authority while adjudicating a petition under section 9 of IB Code being summary, requiring enquiry as the contentions put forth by the respective parties herein, is neither contemplated nor called for under law, suffice it, from the record placed before us, we are able to find that:

- (a) the application made under sub-section (2) is complete;*
- (b) there is no 3 [payment] of the unpaid operational debt;*
- (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*
- (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*
- (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.*

admit the application and communicate such decision to the operational creditor and the corporate debtor,

and

reject the application and communicate such decision to the operational creditor and the corporate debtor, if –

- (a) the application made under sub-section (2) is incomplete;*
- (b) there has been 4 [payment] of the unpaid operational debt;*
- (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;*
- (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or*



(e) any disciplinary proceeding is pending against any proposed resolution professional:

XXIII. Indisputably, in respect of the invoices under which payment has been claimed by the petitioner/operational creditor, the receipt of which has been acknowledged by the respondent, GST has been paid by the petitioner on all these invoices. That apart, part payment in respect of some of these invoices has even been made by the respondent through pre-arrangement of LCs, post claim of audit of the records by the respondent. The Petitioner also enclosed e way bills in respect the goods supplied under the said invoices. The contention of the Petitioner that the respondent had claimed credit input pursuant to filing GST R1 by the Petitioner/operational creditor, is not disputed by the respondent.

XXIV It is strange that, when it is the case of the Petitioner that the supplies under the invoices were genuinely made after making paying GST, accompanied by e-way bills and the delivery challans, the least that is expected from the respondent which is disputing these invoices is to exercise its statutory right of raising a dispute before the Authorities under the GST, Act stating that the said invoices are fake by submitting GST R-3, so that, the genuineness or otherwise of the subject invoices would have been decided.



XXV We are of the firm view that it is not proper to place reliance on the FIR, which was admittedly lodged post receipt of demand notice and which is under challenge before Hon'ble High Court, in preference to the invoices, delivery challans, e-way bills, GST payment, part payment post December 2021, debt acknowledgement letter dated 15.03.2022 and the affidavit of undertaking to pay the outstanding debt, which remain undisputed until the reply notice dated 15.06.2022.

XXVI. Therefore, in view of our discussion as above, we are of the firm view that the Petitioner has established clearly the existence of an operational debt of a sum over rupees one crore due and payable by the respondent and that the same is not paid.

The point is answered accordingly.

Point 2.

Whether there is existence of dispute between the parties or record of pendency of suit or arbitration proceedings filed before the receipt of the Demand Notice of the unpaid operational debt in relation such dispute?

XXVII. According to the Id. Sr. Counsel for the Corporate Debtor the Corporate Debtor has raised a dispute under its reply dated 15.06.2022, contending that:



“In the month of December, 2021, our company came to know that fraud has happened at our factory amounting to crores of rupees by vendors/ clients of steel scrapping material by colluding without employees. Hence, the company started detailed investigation on the activity and a detailed audit is going on 20/12/2021 onwards by holding the entire process at factory.”

“As per our records, there are no invoices which are due to be paid by you earlier to December, 2021. The Letter of Credits (LCs), which were issued by us were utilized by you against your invoices of December, 2021”.

“At prima facie, we found that your company along with other companies like Bengal Cold Rollers Pvt Ltd., VVR Industries, Suprabaha Protective Products Ltd., etc., are involved in this fraud by colluding with some of our employees working for our factory. There are several instances where we found that no goods were delivered under the invoices and we will furnish complete details as and when needed at an appropriate time. Therefore, the amount which was claimed by you in your notice is not legitimate, hence the charges mentioned by you does not arise and are not valid. The invoices whatever enclosed along with this notice are fraud and raised without supply of material by colluding with our employees.”

and the same is not *spurious, frivolous or vexatious* but real.

XXVIII. Ld. Senior counsel further contends that police investigation vide FIR in crime No. 539 of 2022 dated 30/06/2022 which has been lodged against the employees of the petitioner and also against the employees of the respondent revealed collusion and fraud committed by these persons in submitting fake invoices without supplying any material.



In support of this plea, the ld. Senior Counsel relied on the Case Diary- Part II, Remand Report and the Remand Case Diary, etc. Placing heavy reliance on the above documents, besides the pleas put forth in the reply to the Demand Notice. The learned senior counsel thus, contended that as per the applicable law, a genuine pre-existing dispute as the operational debt claimed by the petitioner exists, hence the petition is liable to be rejected as these matters require investigation.

XXIX. The learned senior counsel placed reliance in this regard on the ruling of the Hon'ble Supreme Court in the case Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, which is as under:

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the Information Utility.”

Raja Ratan Babulal Agarwal Vs. Solartex India Pvt Ltd. and others, Civil Appeal No.2199 of 2021, wherein it was held as below:

“It is clear that on the one hand, the court does not need to be satisfied that there is a good claim or even that it is a claim which is prima facie like to succeed.”



XXX. *Per contra*, the Id. PCS vehemently contended that raising a dispute for the first time in the reply notice is impermissible and cannot be construed as a pre-existing dispute, as such, on this ground alone the defence as put forth by the respondent for the first time in the reply, is liable to be rejected.

XXXI According to the Id. PCS, the respondent, until receipt of Demand Notice, issued under section 8(2) of the I&B Code, had never raised any dispute either with regard to the quality of the goods supplied or the amount claimed or in respect of any other matter. In fact, the respondent had made part payments for the goods supplied and availed the benefit of GST input, besides, acknowledged the outstanding liability as on 31/03/2022. In this regard, the Id. PCS referred to the 14 invoices covering the period between 9th July, 2021 and 1st December, 2021 narrated at page 20 of the Company Petition and submitted that, as against a total due amount of Rs.2,72,29,416/-, the petitioner received Rs. 92,01,161/- on 20/12/2021 in respect of the outstanding invoice bearing invoice Nos. 250, 251 and 252 dated 20.12.2021. Therefore, according to the Id. PCS, even post (alleged) initiation of audit by the respondent as contended in the reply dated 15.06.2022, the respondent made part payments as aforementioned without demur, so much so, the argument



that under in genuine invoices and without effecting the supply the operational creditor had made the claim shall invariably fail.

XXXII Nextly, the Id. PCS contended that invoices under which the supplies were made were accompanied by e-way bills and GST payment receipts to the department, as is evident from the invoices e-way bills and tax invoices which are enclosed to the demand notice and filed along with the petition and in respect of the tax invoices the petitioner filed returns in GST – R1 and the Corporate Debtor has benefited by availing input credit for the GST payments made by the operational creditor.

XXXIII The Id. PCS further contends that as per the GST Act, R-1 returns are necessarily to be filed within 10 to 11 days of each subsequent month of sale. Therefore, in respect of the supplies made during the calendar month of January, GST – R1 should be filed by 10th or 11th day of February month. Learned PCS further contended that the returns submitted in respect of the subject supplies by the petitioner can be verified in the GST Portal within five days of filing GST R-1 Returns. According to the learned PCS since GST law allows for disputing the invoices filed under GST-R returns, the respondent ought to have asked for rejection, if it is really sure that the invoices are fake, which can be by



20th day from GST-R-1 or five days from GST R-2. However, the Corporate Debtor has not chosen to raise any dispute as regards the GST returns that were filed in respect of the supplies made by the petitioner under the invoices referred (*supra*).

XXXIV. So much so the plea that the petitioner raised all the above invoices without effecting any supply amount has been claimed fraudulently in collusion with some of the employees of the Corporate Debtor is absolutely false and baseless, besides an afterthought to evade the legitimate dues of the operational creditor.

XXXV Having heard the Ld. PCS for Petitioner and the Ld. Sr. Counsel for the respondent, and on careful perusal of the record, at the outset, we state that there is no bar under the law that merely because the Corporate Debtor failed to raise the dispute before the receipt of the demand notice, he shall not raise such dispute in the reply/ counter. Reliance, in this regard, can be placed on the ruling of the Hon'ble NCLAT, in the matter of M/s Brand Realty Services Limited Vs. Sir John



Bakeries India Pvt Ltd., in CA (AT) (Insolvency) No. 958 of 2020,
wherein it has been held as follows:

“The statutory scheme under Section 8 and 9 does not indicate that in an event Reply to Notice is not filed within 10 days by Corporate Debtor or no Reply to Notice under Section 8(1) have been given, the Corporate Debtor is precluded from raising the question of dispute.”

“Further in Reply to Section 9 Corporate Debtor can bring the material to indicate that there are pre-existing disputes in existence prior to issuance of demand notice under Section 8. We thus are of the considered opinion that mere fact that Reply to notice under Section 8 (1) having not been given within 10 days or no reply to demand notice having been filed by the Corporate Debtor does not preclude the Corporate Debtor to bring relevant materials before the Adjudicating Authority to establish that there are pre-existing dispute which may lead to the rejection of Section 9 application. In the above context, we may refer to Judgement of this Tribunal in “Neeraj Jain Vs. Cloudwalker Streaming Techno-logies Private Limited” (Company Appeal (AT) Ins. No. 1354 of 2019) decided on 24th February, 2020 in paragraph 50 following observations have been made by this Tribunal: “...Even otherwise, mere failure to reply to the demand notice does not extinguish the rights of the Operational Creditor to show the existence of a preexisting dispute...” We thus set aside the Impugned Order and remit the matter back to the Adjudicating Authority to consider the Application afresh.”

XXXVI Therefore, we are not inclined to entertain the submission of the Id. PCS that Corporate Debtor herein is prevented from raising the plea of existence of a pre-existing dispute in its reply/ counter.

XXXVII However, merely because the Corporate Debtor is allowed to raise the plea of existence of pre-existing dispute in the reply/Counter the pre-existing dispute so raised, shall be the one that should existed prior to receipt of demand notice.



XXXVIII In this regard reliance can be placed on the ruling of the Hon'ble Supreme Court of India in Mobilox, wherein it is held that:

“Pre-existing Dispute: The Hon'ble Supreme Court held that the existence of the dispute and/or suit or arbitration proceeding necessarily be "pre-existing", that is to say, it should exist prior to receipt of the Demand Notice.”

XXXIX Therefore, on the above touchstone of well settled law, we proceed to examine the defence of pre-existing dispute put forth by the respondent is tenable or not.

XL We are also conscious of the fact that in our endeavour to separate grain from chaff in order to unearth spurious defence if any, we need not go into the question whether the disputes are *bona fide*, and whether they are likely to succeed or not. Reliance can be placed in this regard in re. Rajaratan Babulal Agarwal (*supra*) relied on by the respondent.

XLI The petitioner had filed GST R-1 and contended that the Corporate Debtor had also claimed credit input pursuant to filing GST R-1 by the operational creditor. It is pertinent to note that when it is the case of the petitioner that the supplies under the invoices were genuinely made



after making GST payments accompanied by e-way bills and delivery challans the least that is expected from the Corporate Debtor which is vehemently disputing the invoices is raising a dispute before GST Authorities by submitting GST R-3 to the authorities, so that the genuineness or otherwise of the subject invoices would have been decided by the competent authority under the GST Act. Instead, the respondent lodged an FIR post receipt of Demand Notice, and by placing reliance on the FIR as well as the investigation officer's report, has been contending that there is a pre-existing dispute, which in our considered view cannot be accepted in preference to the record submitted by the Petitioner, which record has not been disputed until the reply to the demand notice.

XLII In so far as, placing reliance on the FIRs and police reports in the proceedings under section 9 of IB Code are concerned, Hon'ble NCLAT, in Subhash Chand Gupta vs Bhavesh Texo Fab Inita Limited & Anr (Company Appeal (AT) Insolvency No. 816 of 2022) which is as below,

“13. We are of the view that Appellant cannot take any benefit of Criminal Proceedings initiated by the Appellant by filing an Application under Section 156 of the Cr. PC which proceedings were initiated subsequent to receipt of Demand Notice. Application under Section 9 was to be considered and decided on the basis of material which was brought by the Operational Creditor with regard to its debt and default and the Adjudicating Authority being satisfied that



there is debt which remained unpaid, no error has been committed by the Adjudicating Authority in admitting Section 9 Application.”

Therefore, from discussions afore-mentioned, it is clear that, de hors the FIR dated 30.06.2022 and the police investigation reports, the only other material available to trace the plea of “pre-existing dispute” is the reply notice dated 15.06.2022 to the demand notice. In our discussion in the preceding paragraphs we have clearly held that the plea of pre-existing dispute which the Respondent is trying to callout from reply notice dated 15.06.2022 is a feeble contention, in as much as having taken the stand in the said reply notice that audit of the subject invoices has been ordered by December 2021 regarding the subject invoices, the Respondent admittedly made part payments in respect of some of the invoices, without any demur which are now being termed as fake, post December 2021.

XLIII Therefore, viewed from all angles, we are of the firm view that the plea of pre-existing dispute is spurious, hypothetical, illusory, non-existing and an assertion of fact unsupported by any evidence. We therefore, hereby reject the same.

The Point is answered accordingly.



In so far as the other contention of the Ld. Senior Counsel for the Respondent that the Respondent is a profit making company having an annual turnover of Rs.300,00,00,000 (Rupees three hundred crores), hence cannot be plunged into Corporate Insolvency Resolution Process on the basis of spurious plea of existence of debt and its default in the light of the ruling of Hon'ble NCLAT in Mahesh Hardware (supra), which is as below:

"23. Ld. Adjudicating Authority also held that "no case has been made out that the Corporate Debtor has become insolvent and has lost its substratum such that it is unable to pay its debts or run its business". We would like to refer the Judgment of this Appellate Tribunal in the case of Monotrone Leasing Pvt. Ltd. (Supra) coordinate Bench of this Tribunal held that:

"We are bound to emphasize that a presumption cannot be drawn merely on the basis that a company, being solvent, cannot commit any default. As observed in financial and economic parlance, the inability to pay-off debts and committing default are two different aspects which required to be adjudged on equally different parameters. Inability to pay debt has no relevance for admitting or rejecting an Application for initiation of CIRP under the IBC"

cannot be acceded to.

XLIV Therefore in the light of our discussion as above and considering the submissions made by the learned PCS for the petitioner and the learned senior counsel for the respondent, we are satisfied that the petitioner has established existence of operational debt of a sum over Rs. One crore due and payable by the respondent and its non-payment. We



are also fully satisfied that the plea of pre-existing dispute as to the operational debt is spurious and moonshine defence.

XLV We also found that the petition is in order. Hence we hereby allow the Company Petition.

XLVI 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 following directions:-

(A) Corporate Debtor, **M/s K L S R Infratech Limited** is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,

(B) 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;



(C) 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.

(D) 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.

(E) 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.

(F) 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.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.



(H) That this Bench hereby appoints **Shri Manjeet Buch**, having Registration No.IBBI/IPA-002/IP-N00808/2019–2020/12551, as Interim Resolution Professional, whose contact details are:

e-mail ID: manjeetbucha[at]gmail[dot]com

Address: 5-9-91 93, D.No-204,02nd Floor, Shakti Sai Complex, Beside Udai Omni Clinic, Chapel Road, Abids, Telangana-500001.

Phone No.: 9346955001.

He shall carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) Proposed IRP has filed Form-2 dated 24th August 2022. His Authorisation for Assignment is valid till 21.11.2023. This information is available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(J) The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.

(K) The petitioner is directed to communicate this order to the proposed Interim Resolution Professional.

XLVII Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.



CP IB No.263/9/HDB/2022. AS Met Corp Vs. KLSR Infratech. Order dated 14.07.2023.

XLVII Accordingly, this Petition is admitted.

SD/-
CHARAN SINGH
MEMBER (TECHNICAL)

SD/-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

karim

SD/-

SD/-