

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 167/IBC/MB/2022**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 6 of the Insolvency  
and Bankruptcy (Application to Adjudication Authority)  
Rule 2016)

*In the matter of*

**IGAWARA INDIA PRIVATE LIMITED**

Having registered office at: Prince Towers, Door No. 25 &  
26, Unit No. 202, 2<sup>nd</sup> Floor, Collage Road, Nungambakkam,  
Chennai- 600006

*.....Operational Creditor*

**Vs**

**EMIRERRI STEEL MANUFACTURER PVT LTD**

(CIN: U74999MH2017PTC299984)

Registered office at: Office No. 23, 3<sup>rd</sup> Floor, Anand  
Bhavan, 290 Shahid Bhagat Singh Road, Fort, Mumbai-  
400001

*.....Corporate Debtor*

Reserved for order on: **04.08.2022**

Order pronounced on: **10.08.2022**

**Coram:**

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

**For the Applicant:** Ms. Prapti Mehta.

**For the Respondent:** None appeared.

**Per: Shri H.V. Subba Rao, Member (Judicial)**

1. The above Company Petition is filed by M/s. Igawara India Private Limited hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against M/s. Emirerri Steel Manufacturer Private Limited called as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 1,06,70,027.02/-.

**BRIEF FACTS OF THE CASE**

2. The Operational Creditor submits that the Operational Creditor is engaged in trading of steel products, equipment, tools and spare parts and was incorporated on 04.09.2012 with its Registered Office at "Prince Tower", II Floor, No.25 & 26, Unit No.202, College Road, Nungambakkam, Chennai - 600 006.
3. The Operational Creditor further submit that the Corporate Debtor herein is M/s. Emirerri Steel Manufacturing Private Limited and is engaged in manufacturing and allied activities relating to Steel products. The Corporate Debtor was incorporated on 21.09.2017 and has its Registered Office address at Office No.23, 3rd Floor, Anand Bhavan, Shahid Bhagat Singh Road, Fort, Mumbai-400 001.
4. The Operational Creditor was introduced to the Corporate Debtor herein via a company named M/s. Diamond Engineering Private Limited, which is engaged majorly in manufacturing of Steel Fabrication work in the Steel Industry. M/s. Diamond Engineering Private Limited and the Corporate Debtor herein entered into a Joint Venture Agreement and incorporated the same on 09.11.2020 with its Registered address at No.23, 3rd Floor, Anand Bhavan, Shahid Bhagat Singh Road, Fort, Mumbai - 400 001. The Joint Venture entered into by the Diamond Engineering and the Corporate Debtor herein approached the Operational Creditor to supply steel products to the tune of approximately Rs. 2 crores. It was further requested by the Corporate Debtor that the credit period of 45 days be

maintained for payments and that though the Invoices will be raised by the Corporate Debtor, the delivery be made to the Joint Venture Unit in Chennai at Door No. 564, Kelambakkam, Vandalur Road, Pudupakkam Post, Chennai-603103.

5. The Operational Creditor further submit that, it was mutually understood between the parties that the terms of the Corporate Debtor would be accepted, subject to a payment of Rs.50 lakhs being done in advance to the Operational Creditor and the subsequent payments being done later; the same was agreed to by the Corporate Debtor. As committed, the Operational Creditor received a payment of Rs.50 lakhs and thereafter, supply of goods took place between 12.10.2020 & 20.10.2020. Supporting GST Invoices were also raised.
6. The Operational Creditor further submit that, as per the request of the Corporate Debtor, the deliveries were made and acknowledgement for material delivery was also received, indicating that the delivery of goods was complete and the same were as per the requirement of the Corporate Debtor herein. The relevant delivery acknowledgements received by the Operational Creditor on 13.10.2020, 14.10.2020, 15.10.2020, 17.10.2020 are attached in the petition. As per the Agreement between the parties, the material was delivered and well received by the Corporate Debtor and payments were also forth-coming until 14.06.2021. It is pertinent to note that the Purchase Order and Agreement between the parties envisaged a credit period of only 45 days from the date of Invoice. After several follow-ups via email and otherwise, the Corporate Debtor released payment in bits and pieces, however, after 14.06.2021, payments were very erratic and till date the entire due remains unpaid, owing to which the Operational Creditor also halted supply of goods.
7. The Operational Creditor further submit that numerous email communications between the parties reveal that the Corporate Debtor only kept giving assurances that the payments will be

released, however made no efforts to ensure that the payments are received by the Operational Creditor herein. Through several emails it has been specifically admitted by the Corporate Debtor that payments are due and the same would be paid to the Operational Creditor in due course of time; however, they demanded that the interest component be waived off by the Operational Creditor, subsequent to which they would release the payments.

8. The Operational Creditor further submit that, despite continuous attempts and talks between the parties, no payments have been received by the Operational Creditor till date. Owing to the default in payment by the Corporate Debtor, the Operational Creditor issued a Demand Notice under Form 3 & Form 4 dated 15.11.2021 to the Corporate Debtor herein which was duly received by them on 22.11.2021. The Demand Notice and Delivery Reports are attached as Annexure 1. The Demand notice was also issued via email on 24.11.2021. A copy of the same is attached as Annexure 2. It is pertinent to point out that the email address upon which the service has been done, is the email address of the Corporate Debtor which has been used regularly for communications even as late as 12.11.2021. Despite receipt of the said notice via post and email, no reply payment had been forth-coming from the Corporate Debtor herein. The statutory period of 10 days prescribed under Section 8(2) of the Insolvency and Bankruptcy Code, 2016 has elapsed since the receipt of the notices by the Corporate Debtor vide post as well as email. Owing to the fact that no payments have been received nor is there any pre-existing dispute between the parties, the Operational Creditor is well within its right to file the present Petition.
9. In light of the above facts it is stated that the Corporate Debtor has failed to make payments against SIN-CHE-FY 12210038 dated 14.10.2020 and subsequent invoices. The date of default is on 14.06.2021 when the Corporate Debtor stopped making payments. The total debt due to be paid by the Corporate Debtor is Rs.1,06,70,027.02/- (Rupees One Crore Six Lakhs Seventy

Thousand and Twenty Seven and Paise Two only) as on 25.10.2021, i.e., Principal amount of Rs.86,62,939.60/- + interest @ 21% which is Rs.20,07,087.41/- as on 25.10.2021. Therefore, the Corporate Debtor is liable to make the payment of a sum Rs.1,06,70,027.02/- as on 25.10.2021 along with interest @ 21% till date of receipt of payment by the Operational Creditor.

### **FINDINGS**

1. The Corporate Debtor did not choose to file any reply contesting the above Company Petition despite taking adjournments and also not complied the conditional order dated 05.04.2022 by filing reply within time as directed by the Bench. Therefore, the corporate debtor's right to file reply was forfeited on 29.04.2022. On 16.06.2022, Ld. Counsel appearing for the Corporate debtor, Mr. Suryakant Chaudhari made a statement that his client is willing to settle the matter and therefore the matter was posted from 16.06.2022 to today i.e. on 04.08.2022. However no settlement is reported by either of the parties.
2. Heard the counsel appearing for the Operational Creditor. The Ld. Counsel appearing for the Operational Creditor invited the attention of this Bench to the various purchase orders, invoices and E-Way Bills annexed to the Company Petition basing on which the above Company Petition was filed. He has also invited the attention of this Bench to the Demand Notice dated 15.11.2021 and the proof of delivery of demand notice on the Corporate Debtor. The Corporate Debtor having received the Demand Notice did not send any reply nor paid the amount to Operational Creditor.
3. After hearing the submissions and upon perusing the material available on record, this Bench feels that the Petitioner has successfully demonstrated the existence of "debt" and "default" committed by the Corporate Debtor in this case. Since the Corporate Debtor did not file any reply, the claim of Operational Creditor

remained unchallenged. Since the date of default is on 14.06.2021, the above Company Petition being filed on 22.02.2022 is well within limitation. Thus, Company Petition satisfies all legal requirements for admission.

4. Accordingly, the above Company Petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) 167 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Emirerri Steel Manufacturer Private Limited.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Suresh Chandra Jena (suresh.jena58@gmail.com)**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01540/2019-2020/12473 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- d. That this 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

--Rajeev--

**Sd/-**

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**