


**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATHI BENCH**

**PRESENT: HON'BLE JANAB MOHAMMED AJMAL - MEMBER JUDICIAL**

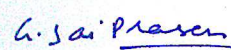
**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 12.02.2020 AT 10.30 AM**

TRANSFER PETITION NO.	TCP NO. 111/9/AMR/TP/2019
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 412/9/HDB/2019
NAME OF THE COMPANY	KVR Industries Pvt Ltd
NAME OF THE PETITIONER(S)	Eshwar Enterprises
NAME OF THE RESPONDENT(S)	KVR Industries Pvt Ltd
UNDER SECTION	9 OF IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
K. KIRAN For M. Ramana P.S. Rao & Associates	Advocate	psrmr2017@gmail.com 9849550579	

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
G. Sai Prasen	Advocate	9951402522	

**ORDER**

Counsel for both the sides are present. Order pronounced vide separate sheets.  
The Company petition is admitted. CIRP ordered.

  
**MEMBER JUDICIAL**

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**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT HYDERABAD**

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**TCP (IB) No. 111/9/AMR/TP/2019  
CP (IB) No. 412/9/HDB/2019**

**In the matter of M/S KVR INDUSTRIES PRIVATE LIMITED**

**&**

*In the matter of Section 9 of the Insolvency and Bankruptcy Code, 2016 read  
with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016*

**Between**

M/s Eshwar Enterprises  
Sole Proprietorship Firm,  
Shop No. 227/Sai Krupa Market,  
Mahaboob Mansion,  
Malakpet, Hyderabad-500 036,  
Telangana, India.

**... Petitioner**

**and**

M/s KVR Industries Private Limited,  
CIN: U17119TG1999PTC032640,  
H. No. 47-11-3, Dwarakanagar,  
Visakhapatnam-530 016,  
Andhra Pradesh, India.

**... Respondent**

**Date of Order: 12.02.2020**

**CORAM**

**Hon'ble Janab Mohammed Ajmal, Member Judicial**

**Appearance:**

**For the Petitioner** : Mr. M. Ramana Reddy, PCS & Mr. Y.  
Suryanarayana, Advocate.

**For Respondent** : Mr. G. Sai Prasen, Advocate.

**ORDER**

This is an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code for short) by an Operational Creditor seeking initiation of Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor alleging default in payment of an operational debt.

2. Briefly stated the facts leading to the Petition would be as follows. The Respondent is engaged in the business of manufacturing paper and newsprint. The Petitioner, a Sole Proprietorship concern was a supplier of old and waste paper, which is the raw material for manufacturing paper. It supplied old and used paper aggregating to worth of Rs. 32,10,541/- to the Respondent between 05.08.2017 and 25.08.2017. The Petitioner raised invoices from time to time as and when the materials were supplied seeking payment. Having failed to elicit any payment it issued a demand notice on 26.03.2019 under section 8 of the Code. The Respondent in reply there to under its letter dated 04.04.2019 intimated that it was not obliged to make any payment. It is stated therein that the Proprietor of the Petitioner was one of the four (4) persons to whom the management and day to day working/business of the Respondent Company had been handed over. It was the Petitioner who managed the Company and received the goods during the period when the supply is alleged. Accordingly the Respondent was not liable to make any payment. The Petitioner there upon came up with the present Petition on 13.06.2019.
3. The Respondent after appearance contested the Petition by filing a counter. It is contended that the Petitioner is not an Operational Creditor and there was no privity of contract between the Petitioner and the Respondent. The Respondent accordingly doesn't owe any operational debt to the Petitioner. Besides a dispute existed between the parties even prior to the issue of the notice dated 26.03.2019. One Dr. K. V. Rao is the founder and Chairman of the Respondent Company. He knew one Mr. Chevuri Lakshmi Narayana for one and half decades and has been dealing with his Chevuri Enterprises. The Sole Proprietor of the present Petitioner is the son of Mr. Lakshmi Narayana. The latter introduced him to Dr. Rao and sought assistance in promoting him

and his business. He also introduced his son-in-law one Mr. Bala Anil Parswam, a Software Engineer and one Mr. Sambasiva Rao, Father-in-law of the Sole Proprietor of the Petitioner. Mr. Bala looked after the operations of his (Lakshmi Narayana) Proprietorship concern, M/s Chevuri Enterprises. During mid 2017 the paper industry was passing through hardship and existential issues. At that juncture Lakshmi Narayana expressed his desire to take the factory on lease and control its operations. He had the intention of entering into the manufacturing field, which could ultimately lead him to set up a paper mill. Management of the Respondent's factory could give him the hands on experience and expertise in getting his desire fulfilled. He thus offered to manage the affairs of the Respondent on a trial basis for a period of 4 to 6 months at his town cost and risk, in association with the Proprietor of the present Petitioner and two others above named and take further decision thereafter. Dr. Rao in view of his long standing relationship with Lakshmi Narayana agreed to the arrangement. Consequently, Lakshmi Narayana, his son the Proprietor of the present Petitioner the above two others took over the Management of Company. The Petitioner therefore could not be regarded as a creditor of the Respondent. In addition Mr. Bala was added as a signatory along with Dr. K. V. Rao to the bank account for gaining the access to the accounts of the Respondent Company. In view of such arrangement the Sole Proprietor of the Petitioner and Mr. Anil Parswam drew salaries from the Respondent Company from September, 2017 to November, 2017. The Petitioner had actually become a part of the Company to which it allegedly supplied raw materials. Since the Petitioner's Proprietor was at the helm of the Respondent Company, the invoices raised by it were actually received by him. Thus the Petitioner played fraud upon the Respondent by creating fraudulent transactions against the Respondent and favouring itself.

4. The Respondent had raised disputes in these lines in its reply dated 04.04.2019 to the notice dated 26.03.2019. The Respondent accordingly did not owe any amount whatsoever to the Petitioner. The Petition accordingly deserves to be dismissed.
5. Basing on the rival pleadings the following issue emerged for determination.

- I. Whether the Petitioner is an Operational Creditor of the Respondent?
- II. Whether the Respondent owed an Operational Debt to the Petitioner?
- III. To what relief, the Petitioner is entitled?

**Issue Nos. I & II:**

6. Both the issues being interlinked are taken up together for the purpose of brevity and convenience. It is not in dispute that the Petitioner is a supplier of waste paper and old paper, which are used as raw materials for production of newsprint and paper. The Petitioner has filed acknowledgements of the Respondent under the signatures of the Authorized Signatory, Commercial Manager and the quality control official, while receiving the waste paper and other raw material. The Acknowledgements are respectively dated 09.08.2017, 13.08.2017, 15.08.2017, 21.08.2017, 24.08.2017, 26.08.2017, 28.08.2017 and 29.08.2017. They indicate that Respondent Company has accepted a specific quality of raw material conforming to the required quality standard. The materials not conforming to the quality have been excluded from the final tonnage. The corresponding invoices are dated between 10.08.2017 and 28.08.2017. The invoices relate to the tonnage of the raw material accepted by the Respondent. There is no material on record to show that the Petitioner or for that matter its Sole Proprietor was in any manner involved in the day to day affairs and functioning of the management of the Company.
7. The Reply dated 04.04.2019 of the Respondent may be referred to in that regard. Para 6 thereof may profitably be quoted.

“Though these arrangements were not documented in view of relationship between the parties viz. you and Dr. K. V. Rao, fact remains that a separate Bank account was opened with Axis Bank Limited, Rajam Branchon 28.08.2017 with you as a signatory to the Bank Account. There are emails to show that daily reports of production were sent by the Company to No. 3 of you who was monitoring progress of the production on daily basis.”
8. The above admission would go to show that Dr. K. V. Rao reportedly handed over the management of the Respondent Company basing to the said

Lakshmi Narayana and his associates including Proprietor of the Petitioner in good faith There is however no material on record to show that the Petitioner Company was in any way involved with the day to day affairs and functioning of the Respondent Company. The acknowledgements of the supply of the raw material is evident from the receipts referred to supra. An Operational Creditor *inter alia* means a person to whom an operational debt is owed. The Operational debt *inter alia* means a claim in respect of the provision of goods and services. The Petitioner under the above acknowledgements had supplied raw materials (goods) to the Respondent. The cost thereof accordingly became an operational debt. The Petitioner thus is an Operational Debtor of the Respondent. Issue no. 1 is answered in the affirmative.

9. It is evident from the invoices as well as the acknowledgements that the Petitioner had supplied raw material worth of Rs. 32,10,541/- to the Respondent. No material is placed on record to show that the Petitioner paid the charges accruing out of the receipt of the raw materials. The Respondent accordingly owed Rs. 32,10,541/- as an operational debt to the Petitioner. The Respondent in reply to the notice dated 26.03.2019 contended that since the management of the Respondent Company was with the Petitioner or its Sole Proprietor there existed a dispute as to the materials received. It also denied to have received the materials shown according to the acknowledgements. The Respondent has failed to show that the Petitioner or its Sole Proprietor was in any way involved in the day to day affairs and functioning of the management of the Respondent Company. Therefore the so called dispute raised by the Respondent has no basis and would not qualify as a 'dispute' in terms of section 8(2) of the Code. The plea in that regard cannot be accepted. Issue no. II is answered in the affirmative.

**Issue No. III:**

10. In view of the foregoing findings it is clear that the Respondent owed an operational debt to the Petitioner and has defaulted in payment thereof, despite receipt of the notice dated 26.03.2019. The Petition is in time and is complete. The conditions available in section 9(5)(i) having been satisfied,

the Petition deserves to be admitted. The petitioner has proposed Mr. Nandkishor Vishnupant Deshpande, as the Insolvency Resolution Professional (IRP). He has filed his consent in Form-2. Hence ordered.

**ORDER**

The Company Petition be and the same is admitted on contest.

- i. The Corporate Insolvency Resolution Process of the respondent shall commence from this date and shall be completed within 180 days hence.
- ii. Mr. Nandkishor Vishnupant Deshpande, [Registration No. IBBI/IPA-001/IP-P01399/2018-19/12181], having office at B802 Building No. 6, Sukhvilla CHSL, Siddharth Nagar, Near Vivek College, Goregaon (W), Mumbai-400 062, E-mail ID: [nvdeshpande.ip@gmail.com](mailto:nvdeshpande.ip@gmail.com) Mobile No. 7718844197 is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending/proposed against him as per the information available in the IBBI website.
- iii. He is directed to take charge of the Respondent/Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of the Code and Rules made there under.
- iv. Moratorium in respect of the Respondent is hereby declared under Section 14 of the Code.
- v. The Directors, Promoters or any other person(s) associated with the management of Respondent/Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for effectively discharging his functions under the Code.
- vi. The Registry is directed to communicate the order to the Petitioner/Operational Creditor and the Respondent/Corporate Debtor forthwith.
- vii. The petitioner/OC and the Registry are also directed to send the copy of this order to IRP for necessary compliance.

- viii. The Registry shall send a copy of this order to the Registrar of Companies, Andhra Pradesh for effecting necessary alterations in the status of the Respondent/Corporate Debtor in relevant records for general information.
- ix. There would however be no order as to costs.

Sd/-

**MOHAMMED AJMAL**  
**MEMBER JUDICIAL**