

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Video Conference

**CORAM: HON'BLE BHASKARA PANTULA MOHAN-MEMBER JUDICIAL
CORAM: HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 30.06.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/320/2021
NAME OF THE COMPANY	Srikanth International Pvt Ltd
NAME OF THE PETITIONER(S)	Pattabi Enterprises
NAME OF THE RESPONDENT(S)	Srikanth International Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Company Petition IB/320/2021- Order pronounced vide separate sheets.

CP(IB)/320/2021 is hereby admitted.

-Sdt

MEMBER (T)

Ajay

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MEMBER (J)

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

C.P. (IB) No.320/9/HDB/2021
Under Section 9 of the IB Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M/S Srikanth International Private Limited

Between:

M/S Pattabi Enterprises,
70-71, Hootagally Industrial Area,
Hootagally, Mysore,
Karnataka – 570018.

... Petitioner/
Operational Creditor

A N D

M/S Srikanth International Private Limited,
1-30-238/163, Telecom Colony,
Kanajiguda, Hyderabad,
Telangana – 500015.

... Respondent/
Corporate Debtor

Date of Order: 30.06.2022

**Coram: Shri Bhaskara Pantula Mohan, Member, Judicial
Dr. Binod Kumar Sinha, Member, Technical**

Parties/Counsels present:

For the Operational Creditor: Mr. Anirudh Suresh, Counsel

For the Corporate Debtor: Mr. Ch. Srinivasulu, Counsel

Per: Bench

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ORDER

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1. Under consideration is an Application filed by M/S Pattabi Enterprises, a partnership firm (hereinafter referred to as “the Petitioner/Operational Creditor”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code, 2016”), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against M/S Srikanth International Private Limited (hereinafter referred to as “the Respondent/Corporate Debtor”), bearing CIN: U74999TG2018PTC123028.
2. The reliefs sought for, in the instant Application is to admit the Application and pass an order to initiate Corporate Insolvency Resolution Process upon M/S Srikanth International Private Limited.
3. Brief facts of the case as submitted by the Operational Creditor are as follows:
 - a) That the Petitioner is a partnership firm engaged in the business of printing boxes, lamination boxes, packaging material and other allied activities.
 - b) That the Respondent is a private limited company, incorporated under the provisions of the Companies Act, 2013, and is engaged in the wholesale business of seafood products.
 - c) That to export seafood products, the Corporate Debtor availed services of the Operational Creditor for packaging materials. The commercial understanding between the parties was as per the quotation provided by the Operational Creditor, after which goods were supplied and invoices were raised.
 - d) That every invoice raised till date has been accepted by the Corporate Debtor, without any dispute.
 - e) That the Operational Creditor credited GST in the account of the Corporate Debtor in a timely manner and kept communicating the copy of the account statement. The Corporate Debtor also

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acknowledged the balance and communicated the ledger, to the Operational Creditor, clarifying the GST credit.

- f) Several requests were made by the Operational Creditor to the Corporate Debtor, to make the payment, but to no avail.
- g) That the Operational Creditor levied an interest rate of 9% per annum, after giving credit period of 30 days, as agreed between the parties.
- h) That the Operational Creditor, through its authorized representative, issued a statutory demand notice, dated 10.11.2021, directing the Corporate Debtor to clear the outstanding dues amounting to Rs. 2,90,30,715/- (Rupees Two Crore Ninety Lakhs Thirty Thousand Seven Hundred and Fifteen), within 10 days of the receipt of the demand notice, but to no avail. The said amount is inclusive of the principal amount of Rs. 2,36,39,065 and interest of Rs. 53,91,650/-, calculated at 9% per annum, from 27.04.2019 to 06.11.2021, after giving a 30-day credit period.
- i) That the statement of the ledger account of the Operational Creditor, in the books of the Corporate Debtor, from 01.04.2019 to 31.08.2020, is attached as Annexure II-E, at page no. 61-B of the Application.
- j) A total of 9 invoices, that were issued from 20.03.2019 to 27.03.2019, and under which the claim is being made, have been filed from Page Nos. 26 to 38 of the Application.

Reiterating the above, learned counsel for the Petitioner prayed that the instant Application be admitted.

4. Learned counsel for the Corporate Debtor filed a counter, denying all the averments made by the Operational Creditor, *inter-alia*, stating as under:
 - a) That the Corporate Debtor is engaged in the business of export of prawns to the international market.

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- b) That the Application is not maintainable either on law or on merits and is liable to be rejected. The claims and averments made by the Petitioner are denied as illegal and untenable.
- c) That the Petitioner has suppressed several facts and approached this Tribunal with unclean hands by concocting and fabricating falsehood, with the oblique motive of coercing the Corporate Debtor.
- d) That the Petitioner has not placed all the purchase orders for supply of the material, which is said to be supplied with the aforementioned invoices and the Petitioner is claiming large sums of money, raising fictitious invoices, without the supply of goods.
- e) That the claim of the Petitioner is on 9 invoices of 5 ply printed corrugated boxes and laminated boxes, the list of invoices for which, is as under:

Sl. No.	Date	Invoice No.	Amount Claimed	For supply of following items
01	27.03.2019	3013	36,38,320/-	73,000 Nos. 5 ply printed corrugated boxes
02	20.03.2019	2925	32,64,735/-	4,25,650 Nos. laminated printed duplex boxes
03	21.03.2019	2947	31,87,268/-	4,15,550 Nos. laminated printed duplex boxes
04	23.03.2019	2962	42,08,375/-	5,48,680 Nos. laminated printed duplex boxes
05	25.03.2019	2972	17,15,165/-	2,23,620 Nos. laminated printed duplex boxes
06	21.03.2019	2945	29,33,492/-	32,680 Nos. 5 ply corrugated boxes and 5 ply white corrugated boxes 29,870 Nos. 5 ply white corrugated boxes
07	25.03.2019	2978	36,43,102/-	38,960 -do-

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				38,950 -do-
08	26.03.2019	2995	39,02,494/-	42,140 -do- 41,260 -do-
09	27.0.2019	3012	21,46,110/-	21,220 -do- 24,920 -do-

- f) That there is a pre-existing dispute with regard to the quantity and quality of the goods supplied. The goods supplied were made using poor quality paper, which are not useful for the purpose of export packaging.
- g) The goods that were sent to foreign countries were sent back or not allowed to be shipped, because of which the Corporate Debtor suffered business losses, that are attributable to the poor quality of the boxes supplied by the Petitioner.
- h) That the material was lying in godowns, without being of any use and the Corporate Debtor informed the Petitioner, several times, to lift the goods and vacate the premises, because it became a herculean task to store the finished and semi-finished goods.
- i) That the Petitioner sent fictitious invoices, without paying GST or wrongly claiming GST, without the supply of goods or supplying such goods that were deficient in quality and quantity.
- j) That the Corporate Debtor replied to the demand notice issued by the Petitioner, vide letter dated 20.11.2021, intimating that there is a pre-existing dispute, with regard to the quality and quantity of goods supplied.
- k) That the Petitioner initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881, bearing Registration No. P.C.R./135/2021, on the file of the V Judicial Magistrate of First Class, Mysuru.
- l) That the signatures of one Mr. Nerella Mohan Rao were forged on fabricated cheques, supposedly of the Corporate Debtor, though Mr. Nerella Mohan Rao is not a director of the Corporate Debtor.

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m) That the matter aforementioned, which is sub-judice, amounts to a pre-existing dispute between the parties.

Reiterating the above, the learned counsel for the Corporate Debtor prayed that the instant Application be dismissed.

5. Heard the learned counsel and perused the record.
6. The ledger account of the Corporate Debtor, in the books of account of the Operational Creditor, pertaining to a period from 01.04.2019 to 31.03.2020, exhibits an amount of Rs. 2,36,39,065/- as being due to the Operational Creditor, from the Corporate Debtor. Further, the payment of Rs. 50,00,000/- that the Corporate Debtor claims to have made, is recorded in the said ledger account.
7. The Corporate Debtor claims that the Petitioner has raised fictitious invoices, without supplying the goods, as mentioned therein. However, the numbered and dated invoices that have been listed out by the Corporate Debtor tally with those filed by the Petitioner, and are identical. Further, even assuming that the said invoices are fictitious, the Corporate Debtor has not stated the details of the purported invoices under which supply has been made and payment effected, as is claimed by it.
8. Secondly, the Corporate Debtor, in its reply to the statutory demand notice of the Petitioner, stated that the goods supplied were made using poor quality paper and are not useful for the purpose of export packaging. There is nothing on record to suggest that the Corporate Debtor had communicated the same to the Petitioner, prior to the issuance of the demand notice. It appears that such a complaint about the quality of goods, possibly raised for the first time at such a stage, is a façade taken to avoid making the payments that are due to the Petitioner.

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9. Thirdly, the Corporate Debtor claims that the material had been lying in its godowns, without being of any use and the Petitioner was asked several times to lift the goods and vacate the premises. While such an averment finds a place in the reply of the Corporate Debtor to the statutory demand notice of the Petitioner, no prior correspondence to that effect has been placed on record by the Corporate Debtor, in order to substantiate the claim, thereby hollowing the same.
10. Fourthly, with regard to the next defense employed by the Corporate Debtor, citing the filing of a complaint under Section 138 of the Negotiable Instruments Act, 1881, in the Court of the V Judicial Magistrate of First Class, Mysuru, it is settled that proceedings under Section 138 of the Negotiable Instruments Act, 1881, do not amount to a pre-existing dispute, and are, therefore, not an impediment to proceedings under Section 9 of the Code, 2016. We derive support from the ruling of the Hon'ble NCLAT in *Sudhi Sachdev v. Appl Industries* (Company Appeal (AT) (Insolvency) No. 623/2018), in which it was held that pendency of a case under Section 138 of the Negotiable Instruments Act, 1881, actually amounts to admission of debt and not an existence of dispute.
11. The Hon'ble Supreme Court, in *Mobilox Innovative Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* ((2018) 1 SCC 353), held that the dispute must not be a patently feeble argument or an assertion of fact that is unsupported by evidence. While this Tribunal does not need to go into the merits, it is important to separate the wheat from the chaff and reject a bogus defense that is nothing more than mere bluster, as held by the Hon'ble Apex Court.
12. When tested against the above ruling of the Hon'ble Supreme Court, it becomes clear that the defense taken by the Corporate Debtor is feeble and the chaff is blown away by the reasoning, as elaborated above, with no substantial evidence being presented to point to the existence of a genuine dispute between the parties.

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13. Accordingly, the Application is hereby admitted and this Tribunal orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.
14. The Petitioner, vide Memo, dated 15.06.2022, proposed the name of Mr. Mayur Rajendrakumar Popat as Interim Resolution Professional (hereinafter referred to as the "IRP") and he has filed his written consent in Form 2, dated 15.06.2022. Accordingly, this Tribunal appoints Mr. Mayur Rajendrakumar Popat, bearing Registration No.: IBBI/IPA-001/IP-P-01918/2020-2021/13046, E-mail ID: mayurpopat@jnmaandco.com, as the Interim Resolution Professional. The IRP is directed to file Authorization for Assignment within three days from the date of this order.
15. The IRP is directed to take charge of the management of the Corporate Debtor immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claim in the manner as prescribed.
16. We direct the Petitioner to pay a sum of Rs. 2,00,000/- towards the advance fee of the IRP and the expenses towards the CIRP, which shall be ratified later on by the Committee of Creditors.
17. Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:
 - i. 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 or law, tribunal arbitration panel or other authority;

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- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;
 - iii. 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 (54 of 2002);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
 - v. 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.
18. The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.
19. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code, 2016. The Directors, Promoters or any other person associated with the management of the Corporate Debtor are directed to extend all assistance and co-operation to the IRP, as stipulated under Section 19 and for discharging his functions under Section 20 of the Code, 2016.

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20. The Petitioner and the Registry are directed to send the copy of this order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016..
21. The Registry is directed to communicate this order to the Petitioner and to the Corporate Debtor.
22. The Registry shall also communicate this order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.
23. Accordingly, this Application is admitted.


Dr. Binod Kumar Sinha
Member, Technical


Bhaskara Pantula Mohan
Member, Judicial