

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

CP (IB) No. 463/9/HDB/2018

Under section 9 of IBC, 2016

Read with Rule 6 of I & B (AAA) Rules, 2016

In the matter of

Messrs Padmavathi Steel Traders

Represented by its partner

Mr. Venu Velineni

H. No.16-2-227/ 32 29, 30, 32/40, 41

Shop No.1, Near Community Hall

Sardar Patel Nagar, Kukatpally

Hyderabad.

... Petitioner/Operational Creditor

Versus

Messrs Mark Infrastructure Private Limited

S-25, Srila Park Pride, Hyder Nagar

Near Chaitanya Boys Junior College

Kukatpally, Hyderabad TG 500072.

... Respondent/Corporate Debtor

Date of order: 28.11.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narendra Kumar Bholra, Member (Technical)

Parties / counsels present:

For the Petitioner: Mr. Sharad Sanghi, Advocate.

For the Respondent: Mr. A.Venkatesh, Advocate.

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Ms.Sahithi Nomula

Mr.Pramod M.

Per: Hon'ble Shri Narender Kumar Bholra, Member (Technical)

Heard on: 18.09.2019, 19.09.2019 and 15.10.2019.

ORDER

This petition is filed by Messrs Sri Padmavathi Steel Traders, who is the Operational Creditor, stating that principal amount of **Rs.86,50,758/-** plus interest amount of **Rs.20,47,346/-**, aggregating to **Rs.1,06,98,104/-** is due and payable to Messrs Sri Padmavathi Steel Traders by the corporate debtor. Hence this 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, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments made in the petition are as follows:

2.1 Pursuant to the understanding between the petitioner- operational creditor and the respondent- corporate debtor, the petitioner company has delivered goods to various destinations instructed by the respondent- corporate debtor. The petitioner- company has raised various invoices (ANNEXURE 'C') upon the respondent- corporate debtor for payment in respect thereof. The petitioner-company normally grants 30 days credit only to make payment of the outstanding amount. However, having regard to the long standing relations with the respondent-corporate debtor, the petitioner had given dispensation upto 90 days credit. Despite such concession given by the petitioner- company, the respondent- corporate debtor has failed and neglected to pay various invoices of the petitioner-company.

2.2 The petitioner- company had served Form-3 dated 08.05.2018 (ANNEXURE 'F'), enclosing therewith copies of invoices along with

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statements, demanding payment under those notice, upon the respondent-corporate debtor. The respondent- corporate debtor sent reply dated 14.05.2018 (ANNEXURE 'G').

3. The respondent-corporate debtor has filed counter dated 10.12.2018 disputing the claims made by the petitioner- operational creditor. The averments made in the counter are as follows:

(i) That the claim of the petitioner-company is based on fraudulent documents engineered by Managing Partner of the respondent- corporate debtor, namely, Shri Velineni Uma Maheswara Rao.

(ii) Form 3-CD, viz. statement of particulars filed by the petitioner-company before the Income Tax authorities shows that Shri Velineni Uma Maheswara Rao is a 50% shareholder in the petitioner-company, whereas the documents filed by the respondent- corporate debtor, viz. DIR-12 dated 01.11.2014 (ANNEXURE R-3) along with consent letter dated 20.10.2014 addressed by said Shri Velineni Uma Maheswara Rao (ANNEXURE R-2) would show that said Shri Rao was appointed as a director of the respondent- corporate debtor with effect from 01.11.2014.

(iii) When the illegalities committed by Shri Velineni Uma Maheswara Rao came to light, he has tendered resignation on 04.05.2017 which has been accepted by the respondent- corporate debtor and he ceased to be a director of the respondent- corporate debtor with effect from 14.07.2017.

(iv) Said Shri Velineni Uma Maheswara Rao while acting in dual capacity as a director of the respondent- company effective from 01.11.2014 and also as project in-charge, has opened a bank account with HDFC Bank, Kukatpally Branch, for which he was made authorised signatory to operate the bank account by virtue of Board Resolutions dated 05.11.2014 and 04.12.2015 (ANNEXURE R-5). Thus, all the transactions of the respondent- corporate debtor have been carried out under the signature of Shri Velineni Uma Maheswara Rao.

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(v) It is alleged in the counter that Shri Velineni Uma Maheswara Rao acting as Managing Partner of the applicant used to supply to the respondent- company sub standard material in lesser quantity and compelled the engineers to use such substandard material in the project.

(vi) It is alleged that some of the invoices raised by the petitioner- operational creditor relate to the material which were never supplied to the respondent- corporate debtor.

(vii) That neither lorry (truck) receipts nor weigh bridge slips are furnished before this Hon'ble Tribunal. Even excise invoices relating to the material purported to have been transported to other states from Kukatpally, Hyderabad have not been placed before this Hon'ble Tribunal. Even the tax invoices filed by the petitioner do not bear stamp or signature of the respondent.

(viii) That the purchase orders filed by the petitioner do not match with the material supplied.

(ix) That confirmation balances filed by the petitioner at page 76 are allegedly created subsequent to resignation of Shri Velineni Uma Maheswara Rao with intent to manipulate the records. Said Shri Velineni Uma Maheswara Rao acting in collusion with an erstwhile employee, Shri Y. Ram Mohan Rao had created and manipulated documents. When his misdeeds are exposed he has tendered resignation letter dated 04.05.2017.

(x) It is further alleged in the counter that the material supplied by the petitioner to his brother in law, Shri Jugal Kishor shown in the account of the respondent to be outstanding amount of the respondent.

(xi) It is alleged by the respondent that said Shri Velineni Uma Maheswara Rao acting in the capacity of Director and Project Manager of the respondent-company had indulged in misappropriation of amount of the respondent-company.

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4. The petitioner has filed rejoinder dated 31.01.2019 in response to the counter dated 10.12.2018 filed by the respondent and made the following submissions:-

(i) The petitioner contended that besides the claim amount, the respondent-company is due and liable to pay an amount of **Rs.93,70,130/-** to Shri Uma Maheswara Rao towards principal outstanding amount.

(ii) It is submitted by the petitioner that supply of lesser quantity has never been the issue till filing of the present petition. In fact, the petitioner had **never supplied the goods inferior in quality or lesser in quantity.**

5. The respondent- corporate debtor has filed Additional Counter dated 16.03.2019 to the petition making the following averments:

(i) It is alleged that the Managing Partner of the petitioner-company was also the Director of the respondent-company. Acting in dual capacity he has manipulated and fabricated the documents including the ledgers, in connivance with some of the employees. **The respondent-company has made three-fold submissions in para 4 of the Additional Counter, viz.**

(a) **The amount outstanding is supposed to be Rs.21,91,670/-.**

(b) **No amount is due or liable to be paid.**

And

(c) **As per the ledgers maintained in respect of four sites would show that the alleged outstanding amount is only Rs.21,91,670/-, and not Rs.1,06,98,104/-.** Such copies of ledger accounts for the period 2014-17 are annexed by the respondent at **ANNEXURE-R/6 to the Additional Counter.**

(ii) The respondent-company has enumerated various amounts due for different periods and concluded in his last paragraph of the Additional Counter that in case the respondent- company is liable to

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pay any amount, then it is only an amount of **Rs.21,91,670/-**, not an amount of **Rs.1,06,98,104/-**.

6. The petitioner has filed rejoinder to the Additional Counter dated 16.03.2019 filed by the respondent contending:

6.1 That the ledger has not been filed before Registrar of Companies, Hyderabad or any other statutory authorities at any point of time.

6.2 That the respondent- corporate debtor has filed its balance sheet along with annual report for the financial years 2016-17 and 2017-18 showing a balance of Rs.90,71,851/- payable to the petitioner- operational creditor towards the purchase of steel as on 31.03.2017. Similarly, for financial year 2015-16 balance sheet is filed by the respondent showing balance of Rs.70,75,175/- payable to the petitioner-company. Both the balance sheets are annexed to the rejoinder.

6.3 The petitioner has strongly refuted the contention of the respondent that an amount of Rs.21,91,670/- is payable by the respondent-corporate debtor to the petitioner and described such statement to be mutually destructive to the stand taken by the respondent. The petitioner reiterated that total amount due and payable by the respondent-corporate debtor is Rs.1,06,98,104/-.

7. The petitioner has submitted Written Arguments dated 19th July 2019, In para 2(u) it is submitted that the following judgments relied on by the respondent are in no way related to the present case. The decisions and the petitioner's arguments are as under:

- (i) 2018 SCC Online NCLAT 411 – In the said case there were exchange of e-mails between the parties and there were negotiations going on with respect to the payments and there was a dispute with respect to the actual amount payable therefore in those circumstances, the NCLAT held that there is existence of dispute.
- (ii) 2018 SCC Online NCLAT 218 – In this case there was exchange of emails between the parties and there is also a certificate given by

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the corporate debtor company with respect to the quality workmanship and specifications consistently maintained by the operational creditor throughout the period of construction and that there was an existence of dispute prior to issuance of the demand notice under section 8(i) and that even the corporate debtor having imposed penalty on the operational creditor. However, the said facts are totally different in the present case.

(iii) 2018 SCC Online NCLAT 719. In the said case also in para 4 it has been specifically mentioned that the communication by emails have been made prior to the issuance of notice.

8. The petitioner has relied on the following decision:

(i) Mobilex Innovations reported in 2018 (1) SCC 354= IV (2017) BC 445 (SC).

9. The petitioner has also filed a compilation of additional documents on 25.11.2019 submitting copies of documents of tax invoices, copies of way bills, copies of lorry receipts and copies of C-Forms in respect of various invoices raised by it against the corporate debtor during the period from 2014 to 2017.

10. Heard the Counsel for Operational Creditor and Counsel for Corporate Debtor.

11. The Petitioner is Operational Creditor. The Petitioner filed the present petition under Section 9 of IBC, 2016.

12. It is the case of the petitioner herein that it has supplied TMT Steel Bars and other such material to the corporate debtor against various invoices amounting to Rs.86,50,758/- during the period 2015-17. The amount due against those invoices, being unpaid has become Rs.1,06,98,104/- as on 06.05.2018. It is contended by the learned counsel that the corporate debtor has not paid the said amount despite repeated requests. It is also the case of the operational creditor that he being associated with the corporate debtor as Director and the owner of the operational creditor (Messrs Padmavathi Steel Traders), at the same time

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has nothing to do with the liability of the corporate debtor towards the supplies made by it, for which proper invoices were raised against the corporate debtor. The learned counsel for the operational creditor states that the corporate debtor is unnecessarily raising the issue of dual capacity of Shri Vellineni Uma Maheswara Rao being partner of Messrs Padmavathi Steel Traders only to escape its liability and the same cannot be accepted. The learned counsel for the operational creditor also contends that it has already filed copies of tax invoices, copies of way bills, copies of lorry receipts and copies of C-Forms etc. to support the claim of the operational creditor that the material supplied by it has been actually received by the corporate debtor at its various locations. He contends that in view of the said evidence, the corporate debtor cannot escape its liability towards the operational creditor.

13. The learned counsel for the corporate debtor on the other hand states that the Managing Partner- Shri Vellineni Uma Maheswara Rao of the operational creditor, being Director in the corporate debtor while acting in dual capacity has manipulated and fabricated the documents in connivance with some of the employees. It is also contended by him that balance confirmation relied upon by the operational creditor is obtained by the operational creditor while acting in collusion with one of the erstwhile employees. He further submits that the purchase orders filed as Annexure 'B' to the petition are fabricated for the purpose of making false claims. It is submitted by the learned counsel for the corporate debtor that the claim made by the operational creditor is illegal and the invoices have been raised by the petitioner misusing his dual capacity.

14. We have gone through the petition filed by the operational creditor, counter of the corporate debtor and further documents and oral submissions of the learned counsels. As stated above the operational creditor has also filed copies of various documents including third party evidence in the shape of copies of way bills, copies of lorry receipts and copies of C-Forms to substantiate its claim against 15 invoices (out of 23 invoices) involving the total amount of Rs.65,07,795/-. The scrutiny of the said evidence indicates that the quantity of TMT Steel Bars/ other material as covered by the said invoices have been actually received by the corporate

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debtor as is evident from the said documents. The corporate debtor has not been able to bring on record the fact of any pre-existing dispute prior to the date of filing of the present petition. The amount of claim covered by the said invoices which are properly supported by third party evidence with regard to the receipt of materials by the corporate debtor and the same is well above the threshold limit of Rs.1 lac. Accordingly, we are of the opinion that the present petition needs to be admitted under section 9 of the IB Code.

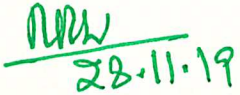
15. The counsel for the operational creditor has filed Written Arguments dated 19th July 2019 along with Form-2 proposing the name of Interim Resolution Professional.

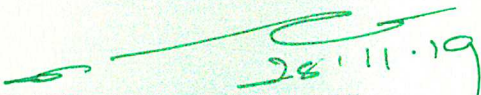
16. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

- (a) 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;
- (b) 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.

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- (c) 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.
- (d) That the order of moratorium shall have effect from **28th November 2019** 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.
- (e) 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.
- (f) That this Bench hereby appoints Shri Ritesh Mittal, Sanjay Kumar Kothari & Co., 205, Doshi Chambers, Basheerbagh, Hyderabad, Telangana- 500029, IBBI Registration No. IBBI/ IPA-001/ IP-P00888/ 2017-2018/ 11485, as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.
- (g) Accordingly, this Petition is admitted.
- (h) Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.


NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)


RATAKONDA MURALI
MEMBER (JUDICIAL)