

S.No.108

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
30-12-2021 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

**Company Petition IB/14/2021**  
U/s 9 of IBC, 2016

**IN THE MATTER OF:**

Padmavathi Steel Traders

**...Operational Creditor**

Vs

Mark Infrastructure Pvt Ltd

**...Corporate Debtor**

**CORAM:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Orders pronounced in Company Petitioner IB/14/2021 vide separate sheets.

In the result, this Company Petitioner IB/14/2021 is allowed and Corporate Insolvency Resolution Process(CIRP) is ordered against the Corporate Debtor.

  
**MEMBER (T)**

*Srinivas*

  
**MEMBER (J)**

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

**CP(IB) No. 14/9/HDB/2021  
U/s. 9 of Insolvency & Bankruptcy Code, 2016  
R/w Rule 6 of I & B (AAA) Rules, 2016**

**In the matter of:**

M/s. Sri Padmavathi Steel Traders  
Represented by its Partner, Mr. Venu Velineni  
S/o. Venkateswarlu Velineni  
Aged about 32 years  
H.No.16-2-227/32/29, 30, 32/40, 41  
Shop No.1, Near Community Hall  
Sardarpatel Nagar, Kukatpally  
Hyderabad – 500 085

.... Operational Creditor

**Vs.**

M/s. Mark Infrastructure Private Limited  
S-25, Srila Park Pride, Hyder Nagar  
Near Chaitanya Boys Junior College  
Kukatpally, Hyderabad – 500 072

... Corporate Debtor

**Date of Order: 30.12.2021**

Hon'ble Dr. N.V.Rama Krishna Badarinath, Member (Judicial)  
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

**Parties / Counsels present:**

For the Petitioner : Mr. Sharad Sanghi, Mr. G. Jagadish,  
Advocates

For the Respondent : Mr. S. Raja Shekar Rao, Ms. S. Hemantha  
Lakshmi, Mr. M.N. Agastya, Mr. Kartikeya  
Tiwari, Mr. Harsh Chowdhary, Mr.  
T.V. Giridhar Rao



Date of Order: 30.12.2021

[ Per: Bench ]

**ORDER**

1. This Petition is filed by **Operational Creditor / M/s. Sri Padmavathi Steel Traders** under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w 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 against the **Corporate Debtor / M/s. Mark Infrastructure Private Limited. The Operational Creditor / M/s. Sri Padmavathi Steel Traders**, inter alia, alleging that the **Corporate Debtor / M/s. Mark Infrastructure Private Limited** had defaulted an amount of **Rs.1,08,87,755/- (Rupees One Crore Eight Lakhs Eighty Seven Thousand Seven Hundred and Fifty Five only)** which includes Principal amount of Rs.1,06,79,959/-, and interest of Rs.2,07,796/- @ 1% per month from 16.12.2019 to 31.08.2020.
2. At the outset, it may be stated herein that this petition for initiation of CIRP against the Corporate Debtor is the off shoot of breach of the Memorandum of Understanding (for short '**MOU**') dated 16.12.2019 admittedly entered into between the Operational Creditor and the Corporate Debtor herein whereby the CIRP process triggered by the very same Operational Creditor against the same Corporate Debtor, vide CP (IB) No.463/9/HDB/2018 already



Date of Order: 30.12.2021

admitted, has been allowed to be withdrawn, vide order of this Tribunal dated 20.12.2019.

3. Here, it is important to refer to Clause 'e' of the undisputed MOU dated 16.12.2019 that was entered between the parties which is as follows:

***Clause 'e' of the MOU supra states as follows:***

*"That, in the event of any default of any instalment or dishonour of the cheques the Party of First Part is entitled to initiate both civil and criminal proceedings against the Party of First Part including the reopening of the CP(IB) No.463/9/HDB/2018 before the NCLT or filing of the fresh CP as the case may be".*

4. According to the Learned Counsel for Operational Creditor the breach of the terms of the above MOU is not in dispute, consequentially the above clause has become operational and the debt that has already been upheld by this Adjudicating Authority remain payable by the Corporate Debtor herein.
5. The Corporate Debtor in its Counter while admitting entering of MOU dated 16.12.2019 besides allowing the IA No.1162/2019 filed under Section 12A r/w Regulation 30A (1)(a) of IBBI (CIRP) Regulations, 2016 contended that since this Adjudicating Authority while allowing the said IA, did not expressly grant liberty to revive the pending Company Petition or file a new Petition in case of any default by the Corporate Debtor, the present Company Petition is not sustainable in Law and is liable to be dismissed.



Date of Order: 30.12.2021

6. It is further contended that the Operational Creditor in order to get over the barrier of the pecuniary limit under Section 4 of the Code had inflated the outstanding amount and filed the petition as such the petition is liable to be dismissed.
7. In the light of the aforesaid contest, the point that remains for consideration by this Adjudicating Authority is –
  - i. Whether the present Petition for initiation of CIRP proceedings against the Corporate Debtor is not maintainable in the absence of grant of leave by this Tribunal while disposing of IA 1162/2019?

At the outset, it may be stated that the findings of this Tribunal regarding existence of the debt between the parties herein and default on the part of the Corporate Debtor have unquestionably attained finality. That apart, the default in complying the terms of MOU dated 16.12.2019 by the Corporate Debtor also is not in dispute. Therefore, the only question that remains to be answered is whether the present claim is not maintainable as the Order of this Tribunal in IA 1162/2019 dated 20.12.2019 does not expressly provide for any leave to the Operational Creditor to file fresh petition or petition to reopen CIRP initiated under CP(IB) 463/9/HDB/2018 in the event of default in complying the terms of MOU by the Corporate Debtor.



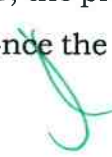
Date of Order: 30.12.2021

8. It is to be stated that since the genesis for filing IA 1162/2019 in CP(IB) 463/9/HDB/2018 is settlement of dues vide MOU dated 16.12.2019. The Order in IA 1162/2019 specifically refers to the MOU dated 16.12.2019. Clause 'e' of the MOU dated 16.12.2019 is as follows:

*"That, in the event of any default of any instalment or dishonour of the cheques the Party of First Part is entitled to initiate both civil and criminal proceedings against the Party of First Part including the reopening of the CP(IB) No.463/9/HDB/2018 before the NCLT or filing of the fresh CP as the case may be".*

Here it appears that there is a typographical error while referring the parties as instead of stating the '*Party of the Second Part is entitled to*' it has been stated in the second line of the above clause as '*Party of the First Part is entitled to*'.

9. Execution of this MOU besides part compliance of the terms of this MOU since not in dispute, the MOU indisputably binds both the parties. When the Corporate Debtor under the above MOU had categorically agreed that in the event of any default in payment of any instalment by the Corporate Debtor, the Operational Creditor is entitled to initiate both civil and criminal proceedings against the Corporate Debtor *including the reopening of the CP(IB) No.463/9/HDB/2018 before the NCLT or filing of the fresh CP as the case may be*", the Corporate Debtor is precluded under law from contending that as under the order in IA 1162/2019 this Tribunal did not expressly grant leave to the Operational Creditor, the present application is not maintainable. It may be stated that once the MOU



Date of Order: 30.12.2021

is made a part of the Order it does not matter whether leave, if any, is expressly granted or not.

10. In so far as the other plea of the Corporate Debtor that the Operational Creditor has inflated the claim so as to contract the pecuniary jurisdiction of this Tribunal is concerned, it may be stated that since the existence of the debt and default on the part of the Corporate Debtor are already been adjudicated vide CP(IB) 463/9/HDB/2018 and the said finding has attained finality it is not required to deal with the said aspect once again.
11. Since the Operational Creditor has satisfied this Tribunal as to the existence of default and has been ensured that the present application is complete and no disciplinary proceedings are pending against the Proposed Interim Resolution Professional (IRP), the application is liable to be admitted.
12. 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 the following directions: -
  - i. 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



Date of Order: 30.12.2021

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.

- ii. 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.
- iii. 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.
- iv. 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.



Date of Order: 30.12.2021

- v. 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.
- vi. The Operational Creditor vide Memo dated 21.12.2021 proposed the name of Mr.Ritesh Mittal as Interim Resolution Professional and he has given his consent in Form-2. As per the Insolvency and Bankruptcy Board of India (IBBI) Website, Mr. Ritesh Mittal's Authorisation for Assignment is valid upto 25.10.2022. Accordingly, this Tribunal appoints Mr. Ritesh Mittal as Interim Resolution Professional, having Registration No. IBBI/IPA-001/IP-P00888/2017-18/11485.
- vii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- viii. Accordingly, this Petition is admitted.
- ix. 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.

  
**VEERA BRAHMA RAO AREKAPUDI** **Dr.N.V.RAMA KRISHNA BADARINATH**  
**MEMBER (TECHNICAL)** **MEMBER (JUDICIAL)**

Syamala