NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 22.02.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 815/9/HDB/2019
NAME OF THE COMPANY	Sneha Engineering Equipment Pvt Ltd
NAME OF THE PETITIONER(S)	M J R Equipment Pvt Ltd
NAME OF THE RESPONDENT(S)	Sneha Engineering Equipment Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Counsel for Petitioner is appeared via video.

Petition is admitted. Orders pronounced vide separate orders.

MEMBER (T) **MEMBER(J)**

Syamala

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) No.815/9/HDB/ 2019

UNDER SECTION 9 OF IBC, 2016 READ WITH RULE 6 OF I&B (AAA) RULES, 2016

<u>In the matter of</u>

M/s MJR Equipments Pvt Ltd
81/7B, Melapatchakudi
Fathima Nagar, Madurai Road
Tiruchy-600012.

.. **Petitioner/ Operational Creditor**

Versus

1. Sneha Engineering Equipment Pvt Ltd
   Reg. Office: D-12, Phase-IV
   Extn. IDA, Jeedimetia, RR Dist.
   Hyderabad – 500055.

2. Union of India
   Ministry of Corporate Affairs
   Represented by the Secretary
   Shastri Bhawan
   Dr. Rajendra Prasad Road
   New Delhi – 110001.

.. **Respondents (No.1: Corporate Debtor)**

<u>Date of order: 22.02.2021</u>

<u>Coram</u>:

HON'BLE SHRI BHASKARA PANTULA MOHAN,

MEMBER (JUDICIAL)

and

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI

MEMBER (TECHNICAL)

Parties / counsels present:

For the Petitioner : Eshwars House of Corporate & IPR Laws

For the Respondent :

Per: SHRI BHASKARA PANTULA MOHAN,
MEMBER (JUDICIAL)

Heard on:
03.03.2020, 27.11.2020, 22.12.2020 and 11.01.2021.

AVERMENTS

This petition is filed by Operational Creditor/ Messrs MJR Equipments Private limited, stating that principal amount of **Rs.36,47,470.00** and interest amount of **Rs.16,24,951.37** as on 30.07.2019, are due and payable to the OC 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 There are two transactions in the present case, the details of which broadly are as under:-

TRANSACTION-1 :

2.1 (i) A purchase order bearing Reference No.MJR/001/ 2016-17 dated 01.07.2016 (ANNEXURE-II (3), page 33) was issued on the CD by the OC for supply of 300 tonnes of MS structural shed of dimensions 100M L x 30 M W x 18.385 M height, including 30 tonnes EOT crane and accessories as provided therein. Price of the aforesaid goods were to be supplied was agreed at Rs.90,00,000/- (Rupees ninety lacs only).

(ii) It is submitted that pursuant to the said purchase order, additional work was assigned to the CD, viz. to carry out certain structural dismantling and loading services for an agreed amount of

Rs.35,00,000/-. The above amount has been transferred as advance in full by the OC to the CD. However, said services have not been rendered till the date of filing of the petition.

(iii) It is averred that aggregate value of goods to be sold and services to be rendered by the CD amounted to Rs.1.25 crores. The OC has paid an advance amount by way of PO. The CD has acknowledged receipt of **Rs.1.2 crore** vide Cash Receipt dated 15.09.2017 (ANNEXURE-II (4), PAGE 34).

<u>TRANSACTION-2</u> :

2.2 On request made by the CD, the OC had paid outstanding electricity bill to the extent of Rs.1,47,560/-.

<u>OUTSTANDING DUES</u> :

3. The outstanding dues payable by the CD to the OC, as on 30.07.2019 are as under:

- Principal amount .. 36,47,470.00
- Interest .. 16,24,951.37

4. Demand Notice dated 06.08.2019 had been sent to the registered address of the CD as well as to the residential address of one of the Directors demanding the above amounts. Said notice addressed to the CD was returned back to the OC. However, the notice addressed to the Director has duly been served on 10.08.2019.

5. The Demand Notice had also been sent through e-mail of the CD on 05.09.2019, which has been received by the CD. However, there is no response.

6. The Adjudicating Authority has issued notice to the respondent/ CD on 23.12.2019 returnable on 21.01.2020. The OC has filed Memo dated 11.02.2020, stating that notice sent by Speed Post has been returned with remarks "**Addressee left**". The returned "**Speed Post envelop**" is enclosed to the Memo.

7. The OC had also sent e-mail to the CD. The same has been returned with remark that the **message couldn't be delivered to the addressee as inbox is full** or it is getting too much mail right now. A copy of said remarks is enclosed to the Memo.

8. The Tribunal, on 12.02.2020, had recorded that the notice issued by the Tribunal was returned with endorsement **'left'** and directed the learned counsel to collect addresses of the Managing Director and other Directors to enable the Registry to issue notice to them. The Tribunal had issued notice to the Managing Director and Director of the CD on 03.03.2020 returnable on 24.03.2020. Finding no representation on behalf of the CD, the Tribunal, vide order dated 27.11.2020, had directed issuance of newspaper publication. Vide order dated 22.12.2020, in absence of representation on behalf of the CD, the Tribunal has treated the CD **ex-parte**. Even on 11.01.2021 and 15.01.2021, there was no representation for the CD.

9. The case of the OC is that a Purchase Order bearing Reference No.MJR/001/ 2016-17 dated 01.07.2016 (ANNEXURE-II (3), page 33) was issued on the CD by the OC for supply of goods explained in the preceding paras at the price of Rs.90,00,000/- (Rupees ninety lacs only). Besides, additional work too was assigned to the CD for an amount of Rs.35,00,000/-. The OC had paid an amount of Rs.1.20 crores vide Cash Receipt dated 15.09.2017 issued by the CD (ANNEXURE-II (4), PAGE 34). However, goods and services were not provided as agreed upon.

10. Heard the learned counsel for Operational Creditor through videoconference. The respondent/ CD is treated as **ex-parte** by the Adjudicating Authority vide order dated 22.12.2020. Perused the documentary evidence produced with the petition by the OC. We are deprived of the benefit of representation on behalf of the CD, even after adequate opportunities provided to it and are constrained to take up the matter for adjudication ex-parte.

11. We have perused the record of the case and examined the evidence adduced by the OC including, Purchase Order (page 33), Cash Receipt dated 15.09.2017 (ANNEXURE-II (4), PAGE 34). In view of the said evidence, we

are of the opinion that the corporate debtor cannot escape its liability towards the operational creditor, by remaining absent.

12. Accordingly, we are of the opinion that the present petition needs to be admitted under section 9 of the IB Code.

13. 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.

(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 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.

(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) The OC failed to name any one as IRP and has requested the Tribunal to appoint one for the CIRP. The IBBI has recommended a panel of IRPs for appointment as IRP. In compliance with section 16(3)(a) of the Code and in order to avoid delay, this Tribunal appoints Shri Satyanarayana Veera Venkata Chebrolu having registration No.IBBI/ IPA-003/ IPA-ICAI-N-00224/ 2019-2020/ 12677, residing at Flat No.201,Chandana Residency, M I G 512 and 513, near Temple Bus Stop KPHB Colony, Kukatpally, Hyderabad – 500072, email: chvvsniob@yahoo.co.in as IRP. The aforesaid IRP has no disciplinary proceedings pending against him. His Authorisation for Assignment (AFA) is valid upto 24.11.2021. This information is available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with subject to condition (g) below.

(g) Shri Satyanarayana Veera Venkata Chebrolu **shall file Form-B** issued by the Institute of Insolvency Professionals, **within two days** from the date of receipt of this order.

(h) The Operational Creditor is directed **to deposit** a sum of **Rs.2,00,000/-** (Rupees two lacs only) with the IRP to meet with cost of initial CIRP process including IRP fee until the CoC is constituted.

(i) Accordingly, this Petition is admitted.

(j) The 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 website of Ministry of Corporate Affairs.

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL) 22-10-24

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Karim