

SL No. 123

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON 03.11.2021 AT 10:30 AM
THROUGH VIDEO CONFERENCE

Company Petition IB/81/2021

Under Section 9 of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

Tata Hitachi Construction Machinery Company Pvt Ltd

...Operational Creditor

vs.

C L Engineering Equipment (India) Pvt Ltd

... Corporate Debtor

CORAM:

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

ORDER

Order is pronounced. The Company Petition is admitted vide separate order.


MEMBER (T)

karim


MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 81/9/HDB/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016
Read with Section 11 of NCLT Rules, 2016

In the matter of

M/s. Tata Hitachi Construction Machinery Company Pvt Ltd.
Registered Office at:
No.45, Jubilee Building, Museum Road,
Bengaluru -560025.

... Operational Creditor

AND

M/s. C L Engineering Equipment (India) Pvt Ltd.
Registered Office at:
No.1-11-220/A,
Gurumurthy Lane, Begumpet,
Hyderabad-500 016.

... Corporate Debtor

Date of Order: 03.11.2021

Coram:

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

Appearance:

For Petitioner: Shri. P.Mohit Reddy, Shri. M.Saketh, and other
Counsels.

Heard on: 22.10.2021.



PER: BENCH

1. The present petition is filed by the operational creditor claiming an amount of Rs. 6,39,66,782.29/- out of which the Principle amount is Rs.3,80,96,589.82 and interest @9% per Annum amounting to Rs.2,58,70,193.25 to be the operational debt as on 16.10.2019 Hence this petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of Insolvency and 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 in the petition are as follows:
 - 2.1 Operational creditor is a Company duly incorporated under the Companies Act, and inter-alia engaged in the business of assembling, marketing, distribution and sale of construction heavy machinery and its spare parts.
 - 2.2 It is averred that corporate debtor had approached the Operational creditor for the distribution and sale of the Heavy Machinery and its spares in the Andhra Pradesh. Thus operational creditor appointed the corporate debtor as a dealer vide agreement dated 29.06.2008.
 - 2.3 In pursuant to that operational creditor had issued machinery and spares to the Corporate debtor to the tune of Rs.3,80,96,589.82 which has been acknowledged by the corporate debtor on 18.04.2014. Since the amount was not paid the operational creditor had invoked the Arbitration Clause, and subsequently Arbitration proceeding initiated vide case No.WTP/THCMCPL/001/2015 and thus an award was passed by the learned Arbitrator on 15.06.2016.
 - 2.4 It is averred that as per the said award, the corporate debtor was ordered to pay Rs.3,82,96,589.82/- @9% per annum from 31.03.2014 till realization. Therefore the total amount of Rs.6,39,66,782.29 is payable by the corporate debtor.

- 2.5 The operational creditor had issued Demand Notice under Form 3 of the I&B Code, 2016 to the corporate debtor on 12.03.2019 which has returned with an endorsement "ADDRESSE LEFT". Further the counsel for operational creditor had served the demand notice vide an email dated 27.03.2019 to the official email id of the corporate debtor which is available on the database of the Ministry of the Corporate affairs website.
- 2.6 The operational creditor has filed Memo of Service of Notice dated 03.08.2021. In spite of notice there is no representation on behalf of the corporate debtor. Vide order dated 24.09.2021, the corporate debtor has been treated as ex-parte.
3. We are of the opinion that consistent absence of the corporate debtor amounts to tacit admission of debt and default. We have, therefore, no option but to adjudicate the matter without assistance of the corporate debtor.
4. Heard the Learned counsel for the operational creditor and perused the documents produced on record. As stated above the operational creditor has filed copies of various documents. In the present case it is clear that there is default in payment occurred under each of the supplies made by the operational creditor and there is failure of the corporate debtor in making the payments of the said amounts.

The present petition is supported with the following documents.

- The copy of Board resolution appointing the deponent as the Authorized signatory is annexed to the petition as Annexure-A.
 - The copy of Agreement of Dealership, undertaking of general conditions, agreement of customer support and confirmation of balance payment is annexed to the petition as Annexure-C.
 - The Copy of Award of the sole Arbitrator is annexed to the petition as Annexure-E.
 - The copy of the Form-3 and a copy of email are annexed to the petition as annexure-G.
5. The learned counsel for the operational creditor requested the Tribunal to appoint the IRP who is deemed to be fit.

6. 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) Corporate debtor, M/s. C L Engineering Equipment (India) PVT.LTD is admitted in Corporate Insolvency Resolution Process under Section 9 of the I&B Code, 2016.
- (b) 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;
- (c) 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.
- (d) 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.



- (e) 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.
- (f) 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.
- (g) 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.
- (h) That this Bench hereby appoints Mr.K. Vatsa Kumar, having IBBI Registration No. IBBI/IPA-002/IP-N00922/2019-2020/12980, & email-id kallatvatsakumar@gmail.com as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code. Registration is valid till as per the information 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.
- (i) Accordingly, this Petition is admitted.
- (j) 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
Member Technical


Dr. N.V. Ramakrishna Badarinath
Member Judicial