S.No. 10

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **01.07.2022** AT 10:30 AM THROUGH VIDEO CONFERENCE

CP (IB) No. 39/10/HDB/2022
U/s. 10 of IBC, 2016.

IN THE MATTER OF:

Enaar Steel & Alloy Pvt Ltd **… Corporate Applicant**

CORAM:
DR. VENKATA RAMAKRISHNA BADRINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders passed vide separate sheets. In the result, Company Petition is allowed and Corporate Debtor is put into CIRP as per the terms mentioned in the order.

Sd/- Sd/-

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

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1

CP (IB) No. 39/10/HDB/2022
U/s. 10 of Insolvency & Bankruptcy Code, 2016
R/w. Rule 7 of I&B (AAA) Rules, 2016

In the matter of:

M/s Enaar Steel and Alloy Private Limited
3-6-122, 2nd Floor, Street No. 18, Himayat Nagar
Hyderabad- 500029

...Petitioner/Corporate Applicant

Versus

Southern Power Distribution Company of Telangana Limited
Authorised by its Superintending Engineer, Operation,
Rajendranagar Nanal Nagar X Road, Mehadipatnam
Hyderabad-500028, Telangana

...Respondent/Operational Creditor

Date of Order: 01.07.2022

Coram:

Dr. Venkata Ramakrishna Badrinath Nandula, Hon'ble Member (Judicial)
Sh. Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Parties/Counsels present:

For the Applicant/RP: Mr. V. Ravi Kumar, Advocate

For the Respondent: Mr. G. Venu Gopal, Advocate

PER BENCH

1. This Application is filed by M/s Enaar Steel and Alloy Private Limited (*Hereinafter referred as Corporate Applicant)* under Section 10 of Insolvency and Bankruptcy Code (*Hereinafter referred as "IBC, 2016"*), read with Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process and further stating that it has committed default in paying the debt to the tune of Rs. 15,25,46,280/- to Southern Power Distribution Company of Telangana Limited, (*Hereinafter referred as Operational Creditor/Respondent*).

2. **The Contentions as put-forth by the Corporate Applicant are:**

2.1. It is submitted that the Corporate Applicant is a Private Limited Company incorporated under the Companies Act, 1956 having CIN No. U27109TG1985PTC029524. The Corporate Applicant further submitted that it is engaged in the business of establishment and manufacturing, processing melting, developing, designing, improving and import and export of forgings etc. Its authorised share capital and paid up capital is Rs. 50,00,000/- and Rs.38,10,500/- respectively.

2.2. It is submitted that pursuant to Section 10 (3) (a) of the IBC, 2016 the Corporate Applicant has filed Financial Statements for preceding 2 years (2019-2020) and (2020-2021) and also Provisional Balance sheet for the current year. The same is enclosed with the petition.

2.3. It is submitted that pursuant to Section 10 (3) (b) of the IBC, 2016 the Corporate Applicant has proposed the name of Mr. Pavan Kankani as Interim Resolution Professional having Registration No. IBBI/IPA-002/IP-N00368/2017-2018/11062. The IRP has submitted his written consent in Form-2 and the same is enclosed with the petition.

2.4. It is submitted that pursuant to Section 10 (3) (c) of the IBC, 2016 the shareholders of the Corporate Applicant passed a Special Resolution in its Extraordinary General Meeting held on 01.11.2021 for initiating Corporate Insolvency Resolution process under Section 10 of the IBC, 2016 and the same is enclosed with the petition.

2.5. It is submitted that as per part III of Form-6 the Corporate Applicant has one Operational Creditor which has extended operational facilities. It is further stated that due to acute financial constraints, the Corporate Applicant could not maintain the accounts regularly and as a result the total amount in default is Rs. 15,25,46,280/-. Hence this present Petition is filed under Section 10 of the IBC, 2016.

3. **The Contentions as put-forth by the Operational Creditor/Respondent in its Counter are:**

3.1. It is submitted that the Government of India enacted the Electricity Act, 2003 thereby repealing the Indian Electricity Act, 1910 and the Electricity Act, 1948. As per the reforms the Central Power Distribution Company of Andhra Pradesh Limited (*Hereinafter referred as APCPDCL*) was registered under the Companies Act, 1956 vide registered number 01-34116 on 30th March 2000 to cater the area of operation of 7 districts in erstwhile Andhra Pradesh. On formation of Telangana State, APCPDCL in so far as covering the area in the state of Telangana, became the Southern Power Distribution Company of Telangana Limited (*Hereinafter referred as TSSPDCL*) to cater to 5 districts in Telangana State. The Distribution Company has distribution licensee under the Electricity Act, 2003. The Andhra Pradesh Electricity Regulatory Commission (Present Telangana Electricity Regulatory Commission) passed Regulations and approved the General Terms and Conditions of the Licenses regarding sale of power and other matters.

3.2. It is submitted that the Corporate Applicant applied for new electricity service connection for the purpose of manufacture of M.S. Billets and ingots and concluded the HT Agreement on 25.02.1987. Consequently the Andhra Pradesh State Electricity Board (present TSSPDCL) released the service connection on 31.03.1987 as per the Section 43 of Electricity Act 2003 and APERC Regulation 4 of 2013 in the name of Corporate Applicant, bearing Service Connection No. MBN372 (present RJN1894) at Mahbubnagar Circle (present Rajendra Nagar Circle) with a contracted maximum load of 2000KVA at 33KV voltage level under Cat-I (Industrial category) located at Survey No. 92, 97 & 98, Jahangirpir Darga Road, Kothur village, Mandal Kothur, Rangareddy District.

3.3. It is submitted that subsequently load was enhanced up to 3300KVA and thereafter in the month of October, 2013 Corporate Applicant requested for load deration from 3300KVA to 70KVA and accorded the approval from corporate office of Respondent, at that time of load deration the service was under disconnection due to non-payment of dues.

3.4. It is submitted that the service was transferred to Rajendra Nagar Circle during Circle Bifurcation in the month of April, 2017 and service connection No. modified to RNJ1894 from MBN372 since then the service existing in Rajendra Nagar Circle.

3.5. It is further submitted that the Service was disconnected on 30.11.2013 due to non-payment of CC dues up to October, 2013 of Rs. 2,10,89,392/- as per Section 56 of Electricity Act, 2003. Further one month notice issued to the Corporate Applicant as per Clause 5.9.4.3 of General Terms and Conditions of supply and same was communicated vide Lr No. SE/OP/MBRN/SAO/HT/D.No.198/14 Dated 24.03.2014 for Rs. 3,10,78,516/-, but Corporate Applicant has not come forward to pay the amount. After the notice period as per the above clause the HT Agreement was terminated with effect from 30.03.2014 duly adjusting the available Security Deposit amount of Rs. 1,30,08,396/- and the same was communicated to Corporate Applicant vide no. SE/OP/MBNR/ SAO/HT/ D.No.474/14 Dated 02.07.2014. Corporate Applicant has not come forward to pay the dues.

3.6. It is submitted that Form-A and B notices were issued to the Corporate Applicant under The Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 (Presently, The Telangana State Electricity Board (Recovery of Dues) Act, 1984) and rules made thereunder, vide Notice No. SE/OP/RJN/SAO/JAO/HT/D.No.228/2018 Dated 19.09.2018 for Rs.6,44,39,329/- and Notice No. SE/OP/RJN/SAO/JAO/HT/Form-B/ D.No.241(a)/2018 Dated 30.10.2019 for Rs.7,26,38,083/- respectively. Due to non-receipt of Form-B dues, and for recovery of revenue arrears under The Andhra Pradesh Revenue Recovery Act, 1864 (Presently The Telangana Revenue Recovery Act, 1864) the Respondent submitted the Form-C to the District Collector (Ranga Reddy District) vide Lr No.SE/OP/RJN/SAO/JAO/HT D.No.383/19 Dated 09.12.2019 for Rs.7,26,38,083/- but no action had been initiated on Form-C, subsequently one more reminder was submitted to the District Collector (Ranga Reddy District) and requested to direct the concerned MRO to initiate the action vide Lr No.SE/OP/RJN/SAO/JAO/HT/D.No.223 Dated 02.09.2021, but still no action had been initiated on the said Revenue Recovery Act.

3.7. It is submitted that the officers of Respondent personally inspected the premises of Corporate Applicant and pasted the Red notice on 16.03.2021 and at the time of inspection it was observed that, both the gates were closed as no one was available the total area was around 3-4 acres of land, 4 pole structures were visible from the road and machineries were not available nor activities were found.

3.8. It is submitted that due to non-receipt of the dues, Respondent communicated the dues vide notice to Mr. Divesh Kumar Agarwal Director of Corporate Applicant and requested to arrange the payment, if not the residential service of Mr. Divesh Kumar Agarwal will be disconnected as per clause 4.8.1 of APERC Electricity code Regulation No.7 of 2013 (Second Amendment of the Regulation No. 5 of 2004).

3.9. It is submitted that on 04.03.2021, the Corporate Applicant had approached corporate office of Respondent and requested for restoration of power supply under sick unit revival scheme and the same was approved by the corporate office of Respondent vide Memo No. CGM (Comml)/SE(C)/DE(C)/ADE-III/D.No.828/2021-22 Dated 25.05.2021. Accordingly, Corporate Applicant had to pay the amount of Rs. 3,17,73,967/- along with four monthly minimum charges and fresh deposit and development charges for derated load 70KVA, the same was communicated to Corporate Applicant to pay the amount for restoration of supply under sick unit revival scheme vide LR No. SE/OP/RJNR/SAO/JAO(HT) D.No.95/2021 Dated 23.06.2021, but Petitioner did not pay the dues, as such the supply was not restored.

3.10. It is submitted that due to default in payment of Current consumption charges the supply was disconnected in the month of November, 2013 as per the Section 56 of Electricity Act. 2003. Subsequently, the Agreement was terminated in the month of March, 2014 as per the GTCS clause 5.9.4.3 with terminated dues of Rs. 2,84,14,974 after adjustment of existed Security Deposit as on date of termination Rs. 1,30,08,396.00. Further, the wheeling charges of Rs. 3,83,89,516 are liable to be paid as per the Hon'ble Supreme Court in *Transmission Corporation of Andhra Pradesh Limited v. M/s Rain Calcining Limited & Others*[1] and the Incentive Dispute amount finalised the Hon'ble High Court of Telangana in *M/s Enaar Steels Alloys Private Limited v. The Central Power Distribution Company of Andhra Pradesh Limited*[2] for Rs. 31,15,337. In addition to this Fuel Surcharge Adjustment which is to be paid amounting to Rs. 3,08,13,146, the GPCL Surplus power pending before Hon'ble High Court of Telangana vide *Vinayaka Steels Limited, Secunderabad v. Transmission Corporation of Andhra Pradesh Limited*

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[1] Civil Appeal No. 4569 of 2003
[2] WP No. 10301 of 2009

and Others[3] batch case for Rs. 94,29,787 and the R & C penalties pending before Hon'ble High Court *WP No. 11368 of 1987* for Rs.2,19,875. Delay Payment of Surcharge on Current consumption charges from the termination of Agreement up to date of submission of petition before this Adjudicating Authority works out for Rs. 4,14,85,862. From above all amounts put together, amount due from the Corporate Applicant is Rs. 15,18,68,497.

3.11. It is submitted that the Corporate Applicant itself came forward to resolve the issue on outstanding dues, and as such Respondent does not have any objection for the initiation of Corporate Insolvency Resolution Process of the Corporate Applicant.

4. In light of the pleadings as above the following point emerges for consideration by this Adjudicating Authority

i. "Whether the Corporate Applicant is able to prove that it is unable pay the Debt claimed in the Application, hence the present Application is filed for initiation of Corporate Insolvency Resolution Process against it?

5. We have heard Shri. V.K. Sajith, Learned Counsel for Corporate Applicant and Shri. Venugopal, Learned Counsel for Operational Creditor, and perused the record.

POINT (i)

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[3] WA No. 2158 of 2004

6. **"Whether the Corporate Applicant is able to prove that it is unable pay the Debt claimed in the Application, hence the present Application is filed for initiation of Corporate Insolvency Resolution Process against it?**

6.1. This Application is filed by the Corporate Applicant namely M/s Enaar Steel and Alloy Private Limited under Section 10 of the IBC, 2016 for initiation of Corporate Insolvency Resolution Process, as the Corporate Applicant is not in the position to meet its obligations and has further committed default in meeting its obligations.

6.2. The Corporate Applicant has filed along with its application its financial statements for the year ending on 31st March, 2020 which is showing loss, and has long term borrowings to the tune of Rs. 1,05,61,504 and other liabilities including short term provisions to the tune of Rs. 2,04,82,836. The Financial Statements further reflects that the asset base of the Corporate Applicant is so low as on 31.03.2020. The current assets show only Rs 30,508.85 and non-current assets show Rs. 6,31,597. The Corporate Applicant has also enclosed along with its application the notice of Extra Ordinary General Meeting of the Company dated 10.10.2021 for approval of filing application under Section 10 of the IBC, 2016 which was held on 01.11.2021 and 05.11.2021, wherein the resolution was approved in the Extra Ordinary General Meeting authorising Mr. Devesh Kumar Agarwal/Mr. Jitesh Kumar Agarwal, Directors of the Company, to make, file an application before Adjudicating Authority for initiation of Corporate Insolvency Resolution Process and further proposed to appoint Mr. Pavan Kankani, Insolvency Professional to act as Interim Resolution Professional at a remuneration of 1,50,000/- per month plus applicable taxes and reimbursements.

6.3. One of the important Operational Creditors of Corporate Applicant, the Southern Power Distribution Company of Telangana Limited (TSSPDCL) have also filed their Affidavit conveying their No objection for initiation of Corporate Insolvency Resolution Process as pleaded. We are satisfied with Resolutions passed by Corporate Applicant and gone through latest Financial Statements filed by Corporate Applicant, which clearly depicts the poor financial health of the Corporate Applicant. We also agree with the contentions made by the Corporate Applicant, that the Company requires quick resolution in view of its poor performance as depicted in the financial statements.

6.4. We, therefore, admit this Application and order initiation of Corporate Insolvency Resolution Process as prayed for by the Corporate Applicant.

6.5. Accordingly, the following Order is passed.

7. Hence, the Adjudicating Authority admits this Application under Section 10 of IBC, 2016 declaring moratorium for the purposes referred to in Section 14 of the IBC, 2016 with following directions: -

(a) The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Applicant 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 Applicant 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 Applicant 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 Applicant;

(b) That the supply of essential goods or services to the Corporate Applicant, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) That the provisions of sub-section (1) of Section 14 of IBC, 2016 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 the 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 Applicant 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 IBC, 2016.

(f) That this Bench hereby appoints Mr. Pavan Kankani, # 302, 3rd Floor, City Center, 3-6-140/A, above bata, Himayat Nagar, Hyderabad, having registration number IBBI/IPA-002/IP-N00368/2017-2018/11062, as Interim Resolution Professional to carry the functions as mentioned under the IBC, 2016.

(g) Accordingly, this Application is admitted.

(h) Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Applicant herein on the MCA-21 site of Ministry of Corporate Affairs.

Sd/-	Sd/-
VEERA BRAHMA RAO AREKAPUDI	**DR. N V RAMAKRISHNA BADARINATH**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Rohit (LRA)