



**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI SPECIAL BENCH**

**Note: At the request physical hearing permitted at NCLT, Hyderabad**

**PRESENT: Dr. Venkata Ramakrishna Badarinath Nandula, Member (Judicial)  
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 17.02.2023 AT 02.30 PM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB)No.64/9/AMR/2021		9 of IBC	Srikanya Steel Building Systems Pvt Ltd VS North-East Infrastructure Pvt Ltd

**ORDER**

Ld. Counsel Ms.K.Sandhya Rani for the Corporate Debtor present.

Orders in CP(IB)/64/9/AMR/2021 is pronounced and recorded, vide separate sheets. In the light of my findings on point, I hereby reject the Company Petition and I further direct that the Operational Creditor to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as cost to the Corporate Debtor within 30 days from the date of this order. Accordingly, CP(IB)No.64/9/AMR/2021 is disposed of.

Sd/- Dated 17.02.2023

**MEMBER JUDICIAL**

RSN



**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI SPECIAL BENCH AT HYDERABAD**

**CP (IB) No. 64/9/AMR/2021**

**In the matter of a Petition under Section 9 of  
the Insolvency and Bankruptcy Code, 2016  
Read with Rule 6 of the Insolvency and  
Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016**

**AND**

**In the matter of**

**M/s. NORTH EAST INFRASTRUCTURE PRIVATE LIMITED**

**BETWEEN:**

M/s. Srikanya Steel Building Systems Private Limited,  
Registered office at Sy.No.311 & 317,  
Backside plot of K.J.R. Weight Bridge,  
Cocacola Junction,  
Miyapur, Bollaram Road,  
Bachupally, Hyderabad - 500090.

**.. Operational Creditor**

**AND**

M/s. North East Infrastructure Private Limited,  
Registered office at 55-14-87,  
Satya Saraswathi APSEB Colony,  
Seethammadhara, Visakhapatnam,  
Andhra Pradesh – 530013.

**.. Corporate Debtor**



**Date of pronouncement of Order: 17<sup>th</sup> February 2023**

**CORAM:**

**Dr.Venkata Ramakrishna Badarinath Nandula  
Member Judicial.**

Appearance:

For Operational Creditor : Mr. D. Narendar Naik & Ambati Varun\  
Advocates.

For Corporate Debtor : Mr.G. Sethu Rama Rao &  
Ms. Sandhya Rani, Advocates.

**ORDER**

This petition is filed by M/s. Srikanya Steel Building Systems Private Limited i.e., the Operational Creditor against M/s. North East Infrastructure Private Limited i.e., the Corporate Debtor seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor alleging default in discharging the debt of a sum of over Rupees one crore, allegedly due and payable by the Corporate Debtor to the petitioner.

2. Briefly the facts are as follows:

- a) The Corporate Debtor approached the Operational Creditor through its associate, its sister concern for supply of pre-engineered steel structure and erection of two buildings i.e., a production unit and a warehouse building for the Corporate Debtor's food park at Chipurupally. Accordingly, the Operational Creditor made an offer to complete the said project and quoted a sum of Rs.3,82,52,800/-, for completion of the



said Project-1. The Operational Creditor's offer was accepted by the Corporate Debtor and the Corporate Debtor initiated the works.

- b) The Operational Creditor constructed Project -1 and during the course of works in Project-1, the Corporate Debtor requested the Operational Creditor to construct another building between the production unit and the warehouse building. The Operational Creditor submitted drawings for the third building for approval for the said Project-2 to the Corporate Debtor and the same was approved by the Corporate Debtor. Project-1 & Project-2 are collectively referred to as Project for the sake of convenience.
- c) From the date of commencement of the work, the Operational Creditor raised monthly invoices totalling to Rs.5,76,63,886/- against which the Corporate Debtor has paid an amount of Rs.3,85,42,526/- and the outstanding amount is for Rs.1,91,21,360/-.
- d) From the month of November, 2017, the Corporate Debtor started defaulting on payment of invoices and started making delayed payments. The Operational Creditor made several communications to the Corporate Debtor. The Operational Creditor successfully completed all the erection and supply works in the month of August, 2018 to the satisfaction of the Corporate Debtor. There was no dispute regarding the completion and quality of work.



- e) The Corporate Debtor illegally retained the Goods and Services Tax input and the same is not being reimbursed to the Operational Creditor. The Corporate Debtor made a final payment to the Operational Creditor on 12.06.2018 which is an acknowledgement of all the previous invoices raised by the Operational Creditor.
- f) A demand notice was issued in Form 3 on 31.05.2021 demanding Rs.1,91,21,360/- with interest @18% per annum totalling to Rs.2,91,60,075/-. No reply was issued by the Corporate Debtor, hence this Company Petition seeking to initiate CIRP against the Corporate Debtor.

3. The Corporate Debtor filed counter, denying the contents of the Petition and contending that the Company Petition is well professed concealing material facts and documents. The contentions which are as follows:

- i. The Operational Creditor suppressed the undertaking executed by the authorised signatory and Managing Director of Operational Creditor on 30.10.2018 along with statement of A/c, confirming that the balance payment as Rs.24,30,718/- and extra rate arrived mutually is Rs.22,27,890/- totalling to Rs.46,58,608/-. Written undertaking was executed by the authorised signatory on 18.04.2019, expressing inconvenience caused by him and he undertook to complete the transactions within 2 weeks for agreed amount of Rs.46,58,000/- and also



agreed to cancel the bills so as to close the transactions with mutual consent.

- ii. The Managing Director of the Operational Creditor, instead of typing credit note, deliberately typed as debit note and issued the same on 13<sup>th</sup>, 14<sup>th</sup> & 15<sup>th</sup> for various amounts. It is clear from the reading of the contents referred in particular columns “being debit note raised towards cancellation of invoices wrongly raised in the name of the North East Infrastructure Private Limited on material cost instead of rising on fabrication charges”.
- iii. In the exchanged email correspondence dated 02.11.2019, 28.02.2020, 05.03.2020, 01.04.2020, 25.06.2020, 06.07.2020 & 07.10.2020 by the Managing Director of Operational Creditor, the Operational Creditor allegedly claims as per his books of accounts the balance amount payable by Corporate Debtor is Rs.45,41,677/-.
- iv. The invoices enclosed at Page Nos.115 to 135 to of the Company Petition were acknowledged by the Corporate Debtor as token of receipt. However, the invoices enclosed from Page No.136 to 156 were not acknowledged by the Corporate Debtor. Suppressing the above documents, contrary to his own stand, with an afterthought as part of extortion, the Operational Creditor attached selective email correspondence exchanged with Sri.N.V.Rama Raju on 14.04.2021, 19.03.2021, 05.01.2021, 17.11.2020 wherein the Operational Creditor



allegedly claims as per ledger statement of the Corporate Debtor maintained in Operational Creditor books of accounts as on 31.03.2019, that the Corporate Debtor is liable to pay Rs.1,91,21,358/-. The demand notice depicts that the documents required to be enclosed are not attached. As such the demand notice is incomplete.

- v. The pecuniary jurisdiction of threshold amount for application to file U/s.9 of IBC is Rs.1 Crore with effect from 24.03.2020. In order to overcome the said threshold limit the Operational Creditor created false invoices. The invoices were never submitted to the Corporate Debtor. Hence, the Operational Creditor is liable for penalty.
- vi. The Respondent, during the course of its business took up a job work “PEB Structure” for erection of two sheds at North Coastal Integrated Food Park on mutually agreed rates. As per the terms of understanding the Corporate Debtor purchased raw material from TATA Blue Scope Steel Limited and INCOR Steel Private Ltd totally aggregating to 406 Tons of steel amounting to Rs.2,65,27,906.59 paise with a specific understanding to supply the same at the petitioner’s place. The Corporate Debtor paid steel cost along with GST to its suppliers.
- vii. As per the understanding, the Operational Creditor is to develop “PEB Structure” at business place of Corporate Debtor and he is entitled only to receive fabrication charges as service charges



from the Corporate Debtor. The Operational Creditor, besides receiving the steel supplied by the Corporate Debtor also purchased 254 tons of steel. Thus, it is understood that the Operational Creditor acquired totally 660 Tons of steel for executing contractual job work. On verification, however it was found that the Operational Creditor consumed only 636 tons of steel, including the wastage and thereby illegally holding 24 tons of steel and the scrap which approximately is worth of Rs.15 to 20 Lakhs. As things stood thus, the Managing Director of the Operational Creditor, to show high turnover in his Company books allegedly raised invoices under two heads such as Raw Material Cost and Fabrication Charges along with GST and also added raw material cost supplied by the Corporate Debtor in the alleged invoices. After coming to know about the same the Corporate Debtor took serious objection, as such the Managing Director of the Operational Creditor agreed to raise credit note to the extent of raw material cost and agreed to complete the job work as per schedule.

- viii. The Operational Creditor flouted the terms of job work and left the job incomplete. The Corporate Debtor requested umpteen number of times to complete the work, which proved futile. The Corporate Debtor, keeping in note that the Operational Creditor engaged services of local personnel to attend urgent job work, informed the Operational Creditor that the amount incurred to complete the urgent job will be deducted from its payment. Consequent to the same, the Managing Director of the Operational Creditor executed undertaking. The Corporate



Debtor is not under any obligations to pay the claimed amount hence the Company Petition is liable to be dismissed.

4. Rejoinder is filed by the Operational Creditor, denying the contents of the counter and contending that the undertaking dated 30.10.2018 was issued to the Corporate Debtor in view of an oral settlement between the parties in which the Operational Creditor agreed to settle for an amount of Rs.46,58,000/- as opposed to the original claim amount of Rs.1,91,21,360/-. It was a conditional undertaking executed by both the parties in the presence of the elders. A part payment of Rs.24,30,718/- was agreed to be released and the same was not paid and hence the undertaking stands vitiated. The debit notes are indeed correctly typed as debit notes. As per the documents filed by the Operational Creditor under Annexure-C & Annexure-D, the Corporate Debtor has retained the Goods and Services Tax Input. In case any debit note is issued to a party, the party must upload the said debit notes into the Goods and Services Tax portal and get the invoices cancelled. After the Corporate Debtor received the above-mentioned debit notes, the Corporate Debtor has not uploaded the same in the GST portal and get the invoices cancelled, as such the debit notes do not have any legal sanctity. The Corporate Debtor has indeed received the invoices which are not acknowledged by them and there are delivery challans evidencing the same. It is also stated that the delivery challans are annexed to the counter. Based on the above grounds, the Operational Creditor seeks to admit the Company Petition.

5. In light of the contest as above the point that arises for consideration of this Tribunal is:



Whether an operational debt of a sum over Rupees one crore due and payable by the Corporate Debtor exists, if so whether the corporate debtor has defaulted in payment of the said debt?

6. We have heard Shri Ambati Varun, learned advocate for the Operational Creditor and Shri G. Sethu Rama Rao and Ms. Sandhya Rani, learned advocates for the Corporate Debtor. Perused the record and the Written Submissions.

7. Point.

Whether an operational debt of a sum over Rupees one crore due and payable by the Corporate Debtor exists, if so, whether the corporate debtor has defaulted in payment of the said debt?

8. At the outset, I wish to say that a perusal of the averments in present application *de hors*, the counter and the annexures thereto filed by the Corporate Debtor made one feel that the claim as made by the Operational Creditor meets the threshold limit envisaged under section 4 of the I&B Code, 2016, which is *Rs. One crore* and above. However, a perusal of the counter especially the annexures to the counter filed by the Corporate Debtor astonished me, as not only the threshold limit for maintaining the present application before this Adjudicating Authority *fell in serious doubt* but it came light that the applicant had indulged in *suppression of*



*material facts which were well within its knowledge, while issuing Demand Notice as well as while filing this application.*

9. The present application which is one under section 9 of IB Code, is filed for initiation of Corporate Insolvency Resolution process against the corporate debtor, alleging that the cooperate debtor *defaulted* in payment of a sum of Rs.2,91,60,075/- (comprising of a sum of Rs.1,91,21,360/- as principal and a sum of Rs.10,038,715/- towards interest), being the amount due and payable under various invoices filed along with the application. The Demand Notice dated 31.05.2021 issued by the applicant before instituting the present application also refers to the same amount as “debt” due and payable and defaulted by the Corporate Debtor. However, the e-mail communications dated 02.11.2019, 28.02.2020, 05.03.2020, 01.04.2020, 25.06.2020. 06.07.2020 and 07.10.2020 exchanged between the Operational Creditor and the Corporate Debtor, filed along with the counter by the Corporate Debtor, which correspondence is not disputed by the Operational Creditor, unequivocally discloses that as on 18.04.2019, only an amount of Rs.45,41,677/- was due and payable by the Corporate Debtor to the Applicant/ Operational Creditor, in respect of the subject contract.



**10.** Insofar as the invoices filed by the applicant in respect of the subject operational debt claimed as due and payable in the application is concerned, though the corporate debtor has admitted the invoices at page nos.115 to 135 of the Company Petition, the invoices at page nos.136 to 156 of the Company Petition are neither admitted nor acknowledged by the Corporate Debtor. Even according to the learned counsel for the Operational Creditor proof of acknowledgement of these invoices could not be placed before this Tribunal, however the Ld. Counsel contends that GST paid by the Corporate debtor on these invoices amounts to acknowledgement of the invoices.

**11.** In this backdrop, I have carefully examined the correspondence filed along with the counter filed by the Corporate Debtor, in particular, the letter dated 30.10.2018 from the Operational Creditor to the Corporate Debtor, which discloses that,

*“ .. .. the Operational Creditor reviewed the account of the works executed in favour of the Corporate Debtor and “agreed for amount mutually agreed for settlement””.*

*In the same letter the Operational Creditor admitted that the Corporate Debtor supplied finished products on various dates along with GST and the Corporate Debtor has also supplied raw material to the Corporate Debtor by raising invoices. Thus, it is clear from the said letter dated*



30.10.2018, the parties herein have agreed to mutually settle their respective claims in respect of the supplies made by each other.

12. Nextly, a bare perusal of the undisputed handwritten letter dated 18.04.2019, from the Operational Creditor to the Corporate Debtor, *inter alia*, discloses that:

“ .. .. We will close the transactions within 2 weeks as mutually agreed amount to Rs.46,58,000/-. The bills raised will be cancelled so as to close the transaction with mutual consent.”

As already stated this letter is one among the other correspondence that failed to find place in the Demand Notice as well as in the present application. The letter reveals that the parties have mutually agreed to limit the claim to Rs.46,58,000/- and to close all other transactions.

Though it is claimed by the Ld. Counsel for the Corporate Debtor that, in furtherance of the same certain Debit Notes were issued by the Operational Creditor, as a result the sum of Rs.46,58,000/- got reduced further, I am not inclined to go into those aspects inasmuch as it is *as clear as crystal* that the mutually agreed amount of Rs.46,58,000/- itself will not meet the threshold limit as envisaged under section 4 of the I&B Code, 2016, for maintaining the present application before this Tribunal.



**13.** Here, I wish to mention that it is not the case of the applicant that the agreement arrived at under the dated 18.04.2019, supra, whereunder it was mutually agreed between the parties herein that an amount of Rs.46,58,000/- only is payable, has later been *rescinded* by the parties. Therefore, the amount that the parties have mutually agreed as payable by the corporate debtor being Rs.46,58,000/- the application fails in meeting the threshold limit envisaged under section 4 of the I&B Code, hence the same is liable to be rejected.

**14.** I, hereby make it clear that am not expressing any opinion on the merits of various other contentions put forth by the parties as this Application is disposed of only on finding that the operational debt claimed as due , payable and defaulted by the corporate failed to meet the threshold limit envisaged under section 4 of IB Code.

The Point is answered accordingly.

**15.** Having thus held, I must say that the facts of this case necessitated me to quote the following *dictum*, of Hon'ble Supreme Court of India, *in re*, Ramjas Foundation & Ors vs Union of India & Ors,

*'The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief*



*is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums” (Emphasis is ours)*

Undoubtedly, the applicant’s approached this Tribunal suppressing the material facts which were well within its knowledge and but for the documents filed by the Corporate Debtor, this Tribunal would have come to a different conclusion. I, therefore, following the ruling *supra* and considering the facts and the circumstances of this case, opine that it is a fit case not only to reject but also to impose costs on the Operational Creditor.

**16.** Accordingly, basing on my finding on Point above, I hereby reject the above company petition, and I further direct the Operational Creditor to pay a sum of Rs.50,000/- (Rupees fifty thousand only) as costs, to the Corporate Debtor within 30 (thirty) days from the date of this order.

Sd/- Dated 17.02.2023

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA  
MEMBER (JUDICIAL)**

*Swamy Naidu/ karim*