IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No.106/7/HDB/2021
Under section 7 of the IB Code, 2016
Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M /s PVK ENGINEERS PRIVATE LIMITED

Between:

M/s. Abhirama Steels Limited
Sy. No. 272/1, Chityal (V)
Pargi (Md), Vikarabad (Dt) – 501501,
Telangana State.
Represented by its Managing Director,
Shri Abhishek Palaparthy.

...Petitioner/
Financial Creditor

And

M/s. PVK Engineers Private Limited
Having its Registered Office situated
8-3-293/B2/A/270/R/A/1 Plot No.270 E/A,
Jubilee Hills Hyderabad – 500033,
Telangana State.

...Respondent/
Corporate Debtor

Date of Order: 29.10.2021

Coram: Dr.Venkata Ramakrishna Badarinath Nandula,Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsels present:

For the Financial Creditor: Mr. Saurabh Agarwal, Counsel.

For the Corporate Debtor: Mr. G. Bhupesh, Counsel.

Per: Bench

ORDER

1) Under consideration is a Company Application filed by M/s Abhirama Steels Limited (in short "*Petitioner/Financial Creditor*") under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. PVK Engineers Private Limited (in short, "*Respondent/Corporate Debtor*").

2) Brief facts of the case as submitted by the Financial Creditor are as follows:

a) That the Financial Creditor was incorporated in the year 2008, under Companies Act, 1956. The main objective of the company is to manufacture TMT Bars of various sizes. The Company has set up a rolling mill plant at Chityal (V) of Pargi (Md) in Ranga Reddy (Dt) and started its commercial operation by supplying its material to various big corporate clients like L&T, Mahindra and Mahindra, Birla, GMR, Lodha, JSW Cements, Reliance Cements etc. The Company has also supplied material to SEZ units and Government organizations like APHMEL, APSRTC and various railway projects. With the success of the product, the management thought of expansion of business and proposed to set up a forward integration plant i.e., Cut and Bend plant which is unique in its kind of product.

b) That the Company approached Corporate Debtor to erect a Cut and Bend plant at its site in Chityal. After finalization of the commercial terms, Financial Creditor awarded a turnkey project of setting up 60000 TPA capacity Cut and Bend Plant at Chityal to Corporate Debtor on 30.11.2015 for a contract value of Rs.25,75,00,000/- (Rupees Twenty Five Crores Seventy Five Lacs only). The contract period was for 3 months from the date of signing the contract.

c) That even after 4 months, due to lot of pressure from Corporate Debtor to arrange the advance, Financial Creditor requested the foreign investor to invest the money for making payment to Corporate Debtor.

d) That by 11.05.2016, Financial Creditor has paid a cumulative advance of Rs.22,20,02,008/- to Corporate Debtor. But for unknown reasons, Corporate Debtor has not taken up a single work till that date even after receiving the advance. That the Financial Creditor was of strong belief that Corporate Debtor might not have utilized the funds for the purpose for which it has been paid. Even after so many reminders from Financial Creditor to start the work or return the advance, there was no response from Corporate Debtor. Finally, Corporate Debtor made a proposal to convert the advance into a loan which would be repaid in 12 equated monthly installments and on 10.10.2017, Corporate Debtor entered into a loan agreement with Financial

Creditor to return the amount in 12 equal monthly installments from Nov, 2017 to Oct, 2018. Corporate Debtor failed to honour this loan agreement also and not a single instalment was paid during the agreed period.

e) That upon failure to comply with the loan agreement entered between the Financial Creditor and the Corporate Debtor, the Financial Creditor filed a Section 7 application before the Adjudicating Authority which was numbered as CP(IB) No.672/7/HDB/2019. Upon various occasions the Adjudicating Authority granted time to the Corporate Debtor to settle the matter. However, upon failure to do the same finally the Adjudicating Authority admitted the Corporate Debtor for the Corporate Insolvency Resolution Process by its order dated 21.09.2020.

f) That upon admission of the company an Insolvency Resolution Professional Mr. K. Vamshi was also appointed for the CIRP period. However, after the order was passed the Corporate Debtor again approached to the Financial Creditor showing his incapability in paying the amount, however, offered to pay 25% of the total due amount. As the Corporate Debtor does not have any assets of its own, the Financial Creditor agreed for the settlement with the Corporate Debtor with the 25% of the total due amount.

g) That after the settlement the Financial Creditor along with the Corporate Debtor entered into a Settlement Agreement dated 24.09.2020, and the Corporate Debtor also paid an advance amount of Rs.5,00,000/- (Rupees Five Lakhs Only) to the Financial Creditor. Based upon which the Interim Resolution Professional Mr. K. Vamshi filed an IA No.862 of 2020 under section 12A of the Insolvency and Bankruptcy Code. The Adjudicating Authority by its order dated 13.10.2020 allowed the said IA and held that the CIRP stands closed. The moratorium order passed was also ceased to have effect from the date of the said order.

h) That the Corporate Debtor failed to make subsequent payments to the Financial Creditor though the Financial Creditor complied with the settlement agreement.

i) Hence, the Corporate Debtor is due Rs.28,55,23,186/- (Rupees Twenty Two Crores Fifty Five Lakhs Twenty Three Thousand One

Hundred and Eighty six Only) including principal amount of Rs.22,20,02,008/- (Rupees Twenty Two Crores Twenty Lakhs Two Thousand and Eight Only) and interest @ 12% per annum amounting to Rs.6,35,21,178/- (Rupees Six Crores Thirty Five Lakhs Twenty One Thousand One Hundred and Seventy Eight only) from their respective dates till 31.03.2021.

j) Reiterating the above, learned counsel for the Financial Creditor prayed to admit the instant Application.

3) Learned counsel for the Corporate Debtor filed counter inter-alia stating as under:-

a) That the present Company Petition, *ab initio,* is devoid of merits as the Financial Creditor filed the present Company Petition for the purpose other than the object of maximization of value of assets of the Corporate Debtor and failed to make out any case for initiation of Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016.

b) That the Financial Creditor approached the Corporate Debtor to erect a Cut and Bend plant and awarded a turnkey project of setting up 60000 TPA capacity Cut and Bend plant on 30-11-2015 at Chityal to Corporate Debtor for a contract period of 3 months and a value of Rs.25,75,00,000/-. The Contract between the parties mandated the Financial Creditor for timely payment of amounts to the Corporate Debtor and to enable the Corporate Debtor for timely completion of Works as mandated under the Contract. However, the Financial Creditor had failed to make payments to the Corporate Debtor even after expiry of the contract period. Subsequent to numerous communications and requisitions addressed by the Corporate Debtor, on 11.05.2016, the Financial Creditor had paid an amount of Rs.22,30,02,008/- (Rupees Twenty Two Crore Thirty Lakh Two thousand Eight only) to the Corporate Debtor. The said delay in payment of advances to the Corporate Debtor led to delay in completion of Works as agreed between the parties.

c) There being fault on part of the Financial Creditor, the Financial Creditor pressurized the Corporate Debtor either for instant completion of the contractual works or for instant repayment of amounts. While the completion of contractual works were effected due to delay in payment of advance amount, the parties agreed to convert the advance amounts into a Loan to be repaid by the Corporate Debtor in timely installments. Accordingly, a Loan Agreement dated 10-10-2017 was entered into between the parties, mandating the Corporate Debtor to repay an amount in 12 equal monthly instalments starting from November 2017 and ending in October 2018.

d) However, the Corporate Debtor having not been in a position to repay the loan amounts, as had been facing financial crunch, approached the Financial Creditor and requested to grant some more time to honor the timely repayments.

e) That upon settlement between the parties through Settlement Agreement dated 24.09.2020 the IRP filed an Interim Application under section 12A of the Insolvency and Bankruptcy Code, 2016 seeking to set aside the Order dated 21.09.2020 passed by the Adjudicating Authority admitting the CIRP in respect of the Corporate Debtor. Accordingly, this Adjudicating Authority vide its Orders dated 13.10.2020 allowed the Interlocutory Application filed by the IRP. Hence, the said Company Petition was withdrawn as per Section 12A of the Insolvency and Bankruptcy code, 2016 and the CIRP stood closed by this Adjudicating Authority. Further, Moratorium order was also ceased to have effect from the date of the said order.

f) That the Settlement Agreement dated 24.09.2020 mandated the Corporate Debtor to return the Loan amounts in scheduled installments. Accordingly, the Corporate Debtor repaid an amount of Rs.5,00,000/- to the Financial Creditor and later defaulted in payment of the remaining amounts.

g) That despite the said pandemic situation, there have been multiple efforts made by the Corporate Debtor in negotiating with respect to the amounts that are due on various occasions and requested time from the Financial Creditor to repay the outstanding amounts as the Corporate Debtor is facing financial crunch.

h) That the fault lies on part of the Financial Creditor in not granting reasonable time to the Corporate Debtor in repaying the Loan Amounts subsequent to Loan Agreement dated 10.10.2017.

i) That the Financial Creditor without acknowledging the requests of the Corporate Debtor has initiated the present Company Petition only to recover monies from the Corporate Debtor which is very much against the preamble of the Insolvency and Bankruptcy Code, 2016.

j) That the delay in repayment of outstanding loan amounts due to the Financial Creditor cannot be attributed to the Corporate Debtor. Further, the Corporate Debtor is in search of potential investors to restart its business. The Corporate Debtor, in furtherance of the same, had requested the Financial Creditor some more time, to repay its loan amounts. However, the Financial Creditor had preferred the present Company Petition before this Adjudicating Authority. The same is not maintainable and sustainable either in law and or on facts.

k) That the Financial Creditor had failed to evidence that the default is only at the behest of the Corporate Debtor for the same to be admitted under the provisions of the Insolvency and Bankruptcy Code, 2016. Further, the Financial Creditor has also failed to prove its claim, as such, the present application is liable to be dismissed upon exemplary cost.

l) That any admission of the present Company Petition under the Insolvency and Bankruptcy Code, 2016, will have far reaching repercussions and will cause irreparable loss and hardship to the Corporate Debtor which is even against the object of the Code which being maximization of the value of the assets of the Corporate Debtor. In view of the aforesaid, this Adjudicating Authority may be pleased to consider and dismiss the present Company Petition.

4) Heard and perused the record.

5) After hearing both sides and perusing record, we are of the view that in the instant case there is a financial debt and there has been a default in repayment of the same and that this Adjudicating Authority is satisfied that the Financial Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. Hence, the contentions of the Corporate Debtor are overruled. Further, it is pertinent herein to note that the Hon'ble Supreme Court, while deciding the matter in the case of INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017, held as under:

"............The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the

applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

6) Further the Financial Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the Petitioner/Financial Creditor, this Adjudicating Authority is inclined to admit the instant Application.

7) Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.

8) The Financial Creditor proposed the name of Mrs. Mummaneni Vazra Laxmi, as Interim Resolution Professional and she has given her written consent in Form 2. Accordingly, this Tribunal appoints Mrs. Mummaneni Vazra Laxmi, having Registration No. IBBI/IPA-001/IPO0919/2017-2018/11526 e-mail id: emailtolak@gmail.com, as Interim Resolution Professional. She is directed to file Authorization for Assignment within three days from the date of this order.

9) The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. She is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

10) We direct the Financial Creditor/Petitioner to pay sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.

11) The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-

   i. *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 or law, tribunal arbitration panel or other authority;*

ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*

iii. *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

v. *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.*

12) The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

13) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

14) The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

15) The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

16) The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.

17) Accordingly, this Petition is admitted.

Dr. Binod Kumar Sinha	**Dr.Venkata Ramakrishna Badarinath Nandula**
Member Technical	**Member Judicial**

Santi/SKRathi