

Sl. No. 1

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH  
(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)  
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.04.2024 AT 01:00 P.M.**

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/24/9/AMR/2021		9 of IBC	RDC Concrete (India) Pvt Ltd Vs RDC Energy Systems Ltd

**ORDER**

Ms. Revathi Manivannan, Ld. Counsel for the OC and Mr.S.V.S.Chowdary, Ld. Counsel for the CD present. Orders pronounced. CP(IB)/24/9/AMR/2021 is admitted into CIRP and IRP is appointed, vide separate sheets.

Sd/-

**SANJAY PURI  
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ  
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH**

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**CP (IB)/24/9/AMR/2021**

[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. BGR ENERGY SYSTEMS LIMITED**

**BETWEEN:**

RDC Concrete India Private Limited

**CIN: U74999MH1993PTC172842**

Having its Registered Office at: DIL Complex,  
701, 7<sup>th</sup> Floor, Thane One, Ghodbunder Road,  
Majiwade, Thane, Maharashtra – 400610

... Operational Creditor

**AND**

M/s. BGR Energy Systems Limited,  
(CIN No. L40106AP1985PLC005318)  
Plot No. A5, Pannamgadu Industrial Estate,  
Ramapuram Post, Sullurpet (T),  
Nellore District, Andhra Pradesh – 524401

... Corporate Debtor

**Orders pronounced on : 03 .04.2024**

**CORAM:**

**SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)**

**SHRI SANJAY PURI, MEMBER (TECHNICAL)**

**Appearance:**

For Operational Creditor : Mrs. Revathi Manivannan, Advocate.

For Corporate Debtor : Mr. Sankaranarayanan Gopalan, Advocate.

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**ORDER**  
**(Per: Bench)**

1. This Company Petition is filed by the Petitioner, RDC Concrete India Private Limited, i.e., the Operational Creditor (“in short **OC**”) against the Respondent M/s. BGR Energy Systems Limited i.e., the Corporate Debtor (“in short **CD**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against the CD for the default committed by the CD in discharging the debt of Rs.7,15,21,249/- (Principle amount of Rs.6,39,21,113/- + Interest of Rs.77,03,454/- @18% P.A) which is due to the OC.
  
2. The facts as stated in the synopsis of the application are that:
  - a) The OC is a Private Limited Company incorporated under the provisions of the Companies Act, 2013 and to carry on the business of manufacture and supply of Ready – Mix Concrete (“RMC”).
  
  - b) The CD is a limited company incorporated on 18.02.1985 under the Companies Act, 1956 registered in the state of Andhra Pradesh and the CD is in the business of construction & other allied activities.
  
  - c) The CD approached the OC for sub-contracting the work of installation and operation of an RMC batching plant, for the production and supply of RMC and other allied building materials at Ghatampur, UP. The CD has issued various purchase orders (PO) / Work Orders (WO) / Service Orders (SO) (“Orders”) were placed by

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CD, from time to time, to the OC for the supply of Goods & Services.

- d) The OC has supplied goods and rendered services viz. Ready-mix/Site Mix Concrete, trade mixers, slurry, aggregates, sand etc. at the premises of CD, on different dates in accordance with purchase/service orders issued by the CD from time to time and issued several invoices amounting to Rs.6,39,21,113/- in the name of the CD. But the CD has failed to make payments against outstanding invoices amounting to Rs.6,39,21,113/-.
  - e) The OC had sent several reminders to the CD Company requesting to make payments for the outstanding amount due. But the CD failed to clear the outstanding due amount raised by the OC. Hence, the OC has issued a demand notice dated 27.03.2021 to the CD for demanding to pay the total outstanding amount of Rs.7,15,21,249/- which includes principal and interest. In response to the demand notice, the CD addressed a reply letter dated 05.04.2021, simply denying the interest amount claimed by the OC. Hence, this Petition, seeking to initiate CIRP against the CD Company.
3. We have heard the Learned Counsels for both the parties and have also gone through the entire records.
  4. At the outset, it is to be noted from the record that, the present CP was filed on 19.04.2021 and first listed on 19.06.2021 and subsequently, the Ld. Counsel for CD took several adjournments for filing counter. But the

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CD has failed to file counter and therefore vide order dated 17.06.2022, the right to file counter was forfeited.

5. The Ld. Counsel for the OC alone filed written arguments, reiterated the facts almost same as in the petition and rejected the oral contention of the CD that the interest claim does not arise in this case. She also relied on the judgment of Hon'ble NCLAT in the matter of *Mr. Prashant Agarwal vs. Vikash Parasrampurua in Company Appeal (AT) (Ins) No.699/2020*.
6. It is contended by the Ld. Counsel for the OC is that the CD has admitted the debt and that the ledger account shows the outstanding debt to the OC. Her main reliance was on the reply notice dated 05.04.2021 sent by the CD, where only the interest amount is denied. It was argued that even if the interest amount is not included, the principal amount itself, which is due to the OC, is more than Rs.1 Crore and more than the threshold limit.
7. The CD has admitted the transactions between the parties but contended the payments were made against the impugned invoices and that the interest amount was disputed. While the dispute over the interest amount is few lakhs, the CD has clearly admitted the pending due to be more than threshold limit of Rs 1 Crore. The petition is therefore maintainable.
8. Coming to the issue of the interest amount that is charged by the OC, we may refer to a judgment of Hon'ble Supreme Court in *Gurpreet Singh vs. Union of India in Appeal (Civil) 4570 of 2006 dated 19.10.2006* rendered by the Constitutional Bench, wherein the it was held that when there is no direction by the debtor with regard to the appropriation of the amounts

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paid by him, the creditor would first appropriate towards the interest that becomes due, as was done in this case.

9. In "*Company Appeal (AT) (Ins.) No. 690 of 2022 between Prashant Agarwal vs. Vikash Parasrampuria & Anr.*", Hon'ble NCLAT has also held that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which is stipulated in the invoice has to be added. We may refer to Para 9 (vi) of the judgment, which is to the following effect:

*"9(vi) It is, therefore, clear from these facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It is noted that the total principal debt amount of Rs. 97,87,220/- along with interest the total debt makes total outstanding as Rs. 1,60,87,838/-. Thus, the total debt outstanding of OC is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O 1205 (E) dated 24.3.2020 (Supra), and meets the criteria of Rs.1 crore as per Section 4 of IBC and Application is therefore maintainable in present case. We concur with the orders of Adjudicating Authority on this issue also."*

10. In the present petition, the OC has claimed unpaid operational debt of Rs 6,39,21,113 towards principal amount and Rs 81,64,603 as interest thereon, taking the total unpaid debt to **Rs 7,20,85,716**. The debt is clearly

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established and default remains uncontested. We are of the considered view that it is a fit case to admit and order initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

**ORDER**

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days. Following is ordered:

- i. Mr. **P.V.B. Sudhakararao**, (Registration No. IBBI/IPA-002/IP-N00795/2019-2020/12547), having office at 8-3-677/8, Divya Collections, 2<sup>nd</sup> Floor, Near Ganapathi Complex, SKD Nagar, Yellareddyguda, Hyderabad, Andhra Pradesh-500073; e-mail: **pasalasudhakar3@gmail.com**; is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website. He is directed to file his written consent forthwith.
- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and

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cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.

- v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.
- vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

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**SANJAY PURI  
MEMBER (TECHNICAL)**

*Sd/-*

**RAJEEV BHARDWAJ  
MEMBER (JUDICIAL)**

*Swamy Naidu (PS)*