



S.No.6

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
**30-05-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE

**Company Petition IB/103/2021**  
U/s 9 of IBC, 2016

**IN THE MATTER OF:**

Thermo Systems Pvt Ltd                      **...Operational Creditor**

Vs

Madhucon Projects Ltd                      **...Corporate Debtor**

**C O R A M:-**

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

**O R D E R**

Orders passed vide separate sheets in CP IB No.103/2021.

In the result the petition is allowed and the Corporate Debtor is put under CIRP as per the terms and conditions mentioned therein.

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**

*Pavani*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

**CP (IB) No.103/9/HDB/2021**

In the Matter of

**M/s Thermo Systems Pvt Ltd**

(A company registered under the Companies Act, 1956)

Rep by its Dy General Manager – F&A

K. Srinivasulu

Regd office: 28, Nagarjuna Hills

Punjagutta

Hyderabad – 500082

Telangana.

**.. Applicant/  
Operational Creditor**

**VERSUS**

**M/s Madhucon Projects Limited**

(A company registered under the Companies Act, 1956)

Rep by its Deputy General Manager

(Accounts & Finance)

N.M. Roohullah

Having its registered office at

Madhucon House, 1129/A

Road No.36, Jubilee Hills

Hyderabad – 500033.

**.. Respondent/  
Corporate Debtor**

UNDER SECTION 9 OF INSOLVENCY AND  
BANKRUPTCY CODE, 2016 READ WITH RULE 6 OF THE  
INSOLVENCY AND BANKRUPTCY (APPLICATION TO  
ADJUDICATING AUTHORITY) RULES, 2016.



**Date of order: 30<sup>th</sup> May 2022**

**Coram:**

**HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH  
NANDULA, MEMBER (JUDICIAL)  
and  
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI  
MEMBER (TECHNICAL)**

Parties / Counsels Present:

For Financial Creditor : Shri K. Rajendran, Advocate.

For Corporate Debtor : Shri Sujith Jaiswal, Advocate assisted by  
Ms. Bhakti Turakhia, Advocate.

**ORDER**

This application is filed by M/s Thermo Systems Pvt Ltd, (hereinafter referred to as 'Operational Creditor') under section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against M/s Madhucon Projects Limited (hereinafter referred to as 'Corporate Debtor') for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, alleging that an amount of Rs.5,92,65,932/- (Rupees five crore ninety two lacs sixty five thousand nine hundred and thirty two only) is due and payable by the corporate



debtor under the decree of the Civil Court dated 22.12.2020, and that the corporate debtor had defaulted in payment of the same.

2. The averments made in the petition are as follows:

- (i) The Operational Creditor is engaged in business of engineering, procurement, construction and commissioning of various projects (turnkey basis). The Corporate Debtor is engaged in varied businesses of construction, civil engineering, etc.
- (ii) The Corporate Debtor has placed orders/ contracts dated 27.11.2009, 25.06.2010 for supplies and services. The Operational Creditor had successfully completed the supplies and services, viz. commissioning of systems against the aforesaid two contracts as per Work Completion Certificates dated 22.04.2012 and 07.09.2013 respectively.
- (iii) Consequently, Performance Warranty period for both the projects expired on 30.10.2013 and 23.03.2014.
- (iv) A sum of Rs.327.59 lacs towards principal amount outstanding and payable by Corporate Debtor to the Operational Creditor was recorded in Minutes of Meeting dated 23.12.2014, subject to settlement of debits and recoveries.



- (v) After disagreements by Corporate Debtor for debits & recoveries, as per Minutes of Meeting dated 23.12.2014 and Memorandum of Understanding dated 04.03.2015 (ANNEXURE II-B) the principal outstanding amount payable by the Corporate Debtor to the Operational Creditor stood at Rs.372.11 lacs.
- (vi) The Operational Creditor applied interest at 18% per annum on the outstanding amount from 10.06.2015 and issued notice 10.06.2015 for Rs.482.15 lacs.
- (vii) On Corporate Debtor failing to make payment, the Operational Creditor filed Recovery Suit in OS No.714 of 2015, renumbered as COS No.138 of 2018, claiming Rs.499.03 lacs in City Civil Court, Hyderabad, besides Company Petition No.20 of 2016 before Hon'ble High Court at Hyderabad. The Hon'ble High Court admitted the petition vide order dated 12.12.2017 (ANNEXURE II/C). The Corporate Debtor entered into Settlement Agreement dated 09.01.2018 (ANNEXURE II/D) for a sum of Rs.362 lacs payable to Operational Creditor in 12 instalments on or before 20.10.2018.



(viii) The Corporate Debtor paid 9 instalments and discontinued thereafter and violated Settlement Agreement dated 09.01.2018.

(ix) In the meantime, Civil Suit has been decreed on 22.12.2020 (ANNEXURE II/E), whereby the Corporate Debtor was directed to pay:

	Rupees in lacs
• Principal amount	.. 499.03
• Interest @ 18% per annum	.. 372.11
• Costs	.. Rs.20,00,468

(x) The Operational Creditor issued Demand Notice dated 05.02.2021 (ANNEXURE-I) in Forms 3 & 4 of I&B Rules demanding Rs.5,92,65,932/-, inclusive of principal and interest calculated till 05.02.2021 as per the decree by Speed Post on 11.02.2021 and it was received by Corporate Debtor on 13.02.2021 and 12.02.2021.

(xi) Since the Corporate Debtor failed to honour the Demand Notice and failed to make payment, default occurred on 24.02.2021.

3. The Operational Creditor has filed Index to Written Arguments dated 25.03.2022 giving chronology



4. By order dated 17.09.2021 the Tribunal directed the respondent to file reply within three days. However, the respondent-corporate debtor has filed Counter-Affidavit dated 03.01.2022/ 07.01.2022 and Counter dated 11.02.2022 disputing the claims made by the petitioner- operational creditor. Hence there was delay in filing counter. The Corporate Debtor has filed IA No.138 of 2022 to set aside order dated 17.09.2021 and to receive counter affidavit dated 03.01.2022/ 07.01.2022. Said I.A. No.138 of 2022 is allowed by this Adjudicating Authority vide order dated 23.03.2022, recalling order dated 17.09.2021 and condoning the delay occurred in filing Counter Affidavit.

5. The averments made in the counter are summarised as under:

- (i) Order dated 22.12.2020 passed in OS No.714 of 2015, renumbered as COS No.138 of 2018 by the City Civil Court, Hyderabad has been carried in appeal by the Corporate Debtor before the Hon'ble High Court being COMCA No.48 of 2021 under section 13(1) of Commercial Courts Act. Thus, the decree against the Corporate Debtor has not yet attained finality. Therefore, the Company Petition filed by the Operational Creditor based on decree of Civil Court is



premature. This Company Petition before this Tribunal is not maintainable.

- (ii) Based on a decree of commercial court CIRP cannot be initiated as held by the Hon'ble Supreme Court in Dena Bank Vs. C. Shivakumar Reddy, (2021) 10 SCC 330. The Operational Creditor did not file COS No.138 of 2017 before the Civil Court in time. The claim is time barred as per Law of Limitation.
- (iii) Original invoices are not produced. Allegations of recording MoU dated 04.03.2015 are false. The claim of the Operational Creditor is fluctuating and contradictory to its own stand.
- (iv) The Corporate Debtor has admitted in para 5 of the Counter that out of 12 instalments the Corporate Debtor has paid 9 instalments making upto Rs.288.80 lacs leaving balance of Rs.73.20 lacs. It is also said that 80% of dues paid and 20% could not be paid. Apparently the Corporate Debtor was referring to Settlement Agreement dated 09.01.2018 (ANNEXURE II/D) entered into pursuant to order



dated 12.12.2017 passed in Company Petition No.20 of 2016 by the Hon'ble High Court at Hyderabad.

- (v) The Corporate Debtor denies having received notice under Forms-3 and 4 of I&B Rules from the Operational Creditor and alleges non-compliance of statutory requirements.

6. In the light of the contest as aforesaid, the point that emerges for consideration is:

**POINT:**

Whether documentary evidence furnished by the applicant shows that an operational debt as claimed is due and payable by the Corporate Debtor and has been defaulted by the Corporate debtor?

7. We have heard Shri K. Rajendran, learned counsel for the Operational Creditor and Shri Sujith Jaiswal, learned counsel assisted by Ms. Bhakti Turakhia, learned counsel for the Corporate Debtor. Perused the pleadings and the written submission.

8. At the outset it may be stated that in the undisputed back drop of pendency of the money recovery suit COS 138/2017 for the sum of Rs. 499.03lacks said to be due and payable by the corporate debtor in respect



of the afore stated two work orders claimed to have been duly executed by the operational creditor besides the Company Petition No 20/16 against the Corporate Debtor, the corporate debtor has admittedly entered in to a Settlement Agreement dated 09.01.2018, *inter alia*, agreeing to pay a sum of Rs.362 lacs to the Applicant/Operational Creditor in 12 instalments on or before 20.10.2018. The Corporate Debtor having paid only 9 instalments, breached the terms of Settlement Agreement dated 09.01.2018. In the meantime, on 22.12.2020, the Civil Suit COS 138/2017 has been decreed in favour of the Applicant, directing the Corporate Debtor to pay principal amount of Rs.499.03 lacs and Rs.372.11 lacs towards interest besides costs. As the sum due as above was not paid by the corporate debtor the Operational Creditor under its Demand Notice dated 05.02.2021 demanded payment of a sum of Rs. 5,92,65,932. 00 claiming that the same is due and payable in terms of the decree in COS No.138 of 2018. As the Corporate Debtor has not complied with the terms and conditions of the said notice, the present application has been filed.

9. The Corporate Debtor, in its counter did not deny the execution of work under the above stated two Work Orders by the Operational Creditor, besides entering into a Settlement Agreement dated 09.01.2018, and



committing default in complying the terms and conditions of the said Settlement Agreement. According to the learned counsel for the Corporate Debtor, the Corporate Debtor had paid 80% of the dues and was unable to pay balance 20% due to various reasons which were said to have been informed to the Operational Creditor orally.

10. Therefore, from the above undisputed *factual matrix*, it is overwhelmingly clear that an operational debt of a sum of over Rs.1,00,00,000/- and default in discharging the said debt by the corporate debtor stands established unequivocally.

11. The so-called resistance put forth by the Corporate Debtor to the claim of the applicant is nothing but moonshine and has no force whatsoever. It is trite to say that when a competent civil court has passed decree in favour of the applicant against the Corporate Debtor for realisation of money and the said decree has not been satisfied, it is well within the right of the decree holder to file an application under section 9 of the Insolvency & Bankruptcy Code, 2016, notwithstanding its right of execution of the said decree before competent court.

12. The argument of the learned counsel for the Corporate Debtor that the decree against the Corporate Debtor has not yet attained finality as an



appeal against the said decree has been pending, hence the present application is not maintainable is absolutely baseless and unsustainable. Needless to say, that in the absence of any stay of execution of a decree any decree is fully executable. The argument of the Ld. Counsel for the Corporate Debtor that the ruling in Dena Bank Vs. C. Shivakumar Reddy, (2021) 10 SCC 330, lends support to his above argument is nothing but a misnomer, as the said ruling does not contain any such finding.

13. The contention of the Corporate Debtor that the debt claimed as due is barred by limitation is concerned the same is yet another frivolous plea in as much as in the ruling, *supra*, it has been categorically held that a fresh period of limitation of three years shall accrue to the decree holder from the date of the decree. The decree having been passed on 23/12/2020 and present application having been filed on 26/03/2021 is well within the prescribed period of limitation. So much so, there is absolutely no force whatsoever in any of the contentions of the Corporate Debtor.

14. Therefore, in light of our discussion as above, we are completely satisfied that the Operational Creditor has established existence of an operational debt of a sum of over Rs.1,00,00,000/-, besides default on the part of the Corporate Debtor in payment of the same. Hence it is a fit case



to order initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

15. We, therefore, admit this Application under Section 9 of I&B Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

- (A) The Corporate Debtor, M/s Madhucon Projects Limited is admitted in Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy 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) The Operational Creditor failed to name any one as IRP and has requested the Tribunal to appoint one for the CIRP. The IBBI has recommended a panel of IRPs for appointment as IRP. In compliance with section 16(3)(a) of the Code in order to avoid delay, this Tribunal appoints **Shri Venugopal Kaspa**, having registration No. IBBI/IPA-001/IP-P-01661/2019 -2020/12580, e mail: kaspavenugopal[at]gmail[dot]com having address: 201, Vamshi Nivas, KPHB Phase-5, Backside Malaysian Township, Kukatpally, Telangana- 500072, as IRP. His Authorization For Assignment (AFA) is valid upto 21.11.2022. The proposed IRP shall file Form-B issued by the IBBI within three days hereafter. 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) The petitioner is directed to pay a sum of Rs.1,00,000/- (Rupees one lac only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

16. Accordingly, this Petition is admitted.

17. 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.

**Sd/-**

VEERA BRAHMA RAO AREKAPUDI  
MEMBER (TECHNICAL)

**Sd/-**

DR. N.V. RAMAKRISHNA BADARINATH  
MEMBER (JUDICIAL)

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