

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

CP (IB) No.110/9/HDB/2019

Under section 9 of the IB Code, 2016
Read with rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of: **M/s. Indira Priyadarshini Hydro Power Pvt. Ltd**

Between:

Andritz Hydro Private Limited
D-17, MPAKVN Industrial Area,
Mandideep, District Raisen – 462 046
Near Bhopal (M.P.) INDIA.

**...Petitioner/
Operational Creditor**

AND

Indira Priyadarshini Hydro Power Pvt. Ltd.
Registered Office:
Sanpras Corporate Capital,
#115/1&115/29, 6th Floor Sheraton Towers,
Financial Dist, Nanakramguda,
Gachibowli, Hyderabad,
Rangareddi, Telangana – 500032.

**...Respondent/
Corporate Debtor**

Date of Order: 12.12.2019.



**Coram: K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.**

Counsels/Parties are present:

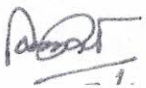
For the Petitioner: Mr. D. Narendar Naik, Advocate
M. Srinivas Gowd, Advocate

For the Respondent: Mr. Raja Shekar Salvaji, Advocate

Per: Dr. Binod Kumar Sinha, Member Technical.

ORDER

1. Under consideration is a Company Petition bearing CP (IB)
No.110/9/HDB/2019 filed by Andritz Hydro Private Limited (in short,


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Petitioner/Operational Creditor) against Indira Priyadarshini Hydro Power Pvt. Ltd. (in short, **Respondent/Corporate Debtor**) under section 9 of the Insolvency and Bankruptcy Code, 2016 (in short **IB Code**) read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short, **IB Rules, 2016**).

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition which are as under:

- a. That a Contract Agreement dated 30.03.2012 was executed between the Petitioners/Operational Creditor and Corporate Debtor for design, manufacture, testing at manufacturing plant before dispatch, packing, forwarding and supply on Ex-Work basis of Electro-Mechanical Plant and Equipment for 2x3 MW+10% COL for Manuni II Hydro Electric Project.
- b. That the Corporate Debtor failed to take the delivery of the equipment and no constructive instructions was given by the Corporate Debtor regarding the delivery time line therefore, in terms of Clause 4.4 of the Contract the Operational Creditor had suspended the work.
- c. That in 2013, the Corporate Debtor agreed to take the delivery of the equipment and had requested to extend of date of supply of the materials and had specified that the supply should start not earlier than 01.02.2014.
- d. That since the Corporate Debtor was unable to take the delivery of the material/equipment and as the Corporate Debtor had suspended the work, therefore, MOU dated 24.10.2013 was entered between the parties. At para 5 of the said MOU it was agreed between the parties that the delivery of the balance material was to be deferred as much as possible beyond 31.12.2014. It was also recorded that material worth Rs.6 crores was ready to be dispatched. In Para 8 of the said

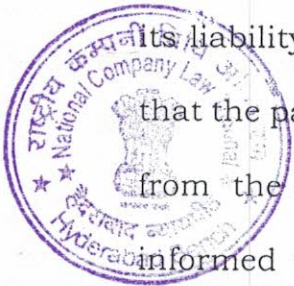


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MOU it is specifically stated that the Operational Creditor's notice of suspension stands withdrawn.

- e. That the Operational Creditor kept performing its part of obligations by importing the equipment as required for the project and raised the invoices accordingly to the Corporate Debtor, however the payments were not being made by the Corporate Debtor and only part payments were made from time to time.
- f. That the Corporate Debtor vide letter dated 09.08.2016 admitted its liability to make the payments towards the pending outstanding as well as entry tax payments. No objection was ever raised to the invoices/ bills and the additional expenditure incurred by the Operational Creditor. The Corporate Debtor further promised to arrange part payment starting September, 2016 and requested the Operational Creditor to bear with them. The Operational Creditor requested the Corporate Debtor to release the overdue payments including additional expenses and the Corporate Debtor was informed that payment outstanding was Rs.3.20 Crores and additional expenses till December, 2015 was Rs.2.67Crores.
- g. That the Corporate Debtor vide its letter dated 29.12.2016 admitted its liability to pay the outstanding pending payments and informed that the payments would be cleared as soon as they get the clearance from the lender/private venture capitalists. It was specifically informed that the clearance was expected by the end of January, 2017.
- h. That the Corporate Debtor had also availed the concessional CST/Sales Tax on the promises of providing "C" Form to Operational Creditor in compliance with the applicable rules (CST rules). However, the Corporate Debtor has failed to provide the "C" Form. The Operational Creditor received an assessment order for financial



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year 2013-14 vide notice of demand dated nil received on 30.03.2017 from the office of Taxing Authority, District Palwal, whereby the sales tax department has raised the demand for differential tax due to non-submission of C from for Manuni-II HEP.

- i. That by letter dated 12.04.2017 the Operational Creditor again demanded an amount of Rs. 86,92,911/- towards the debit note issued against the C Forms.
 - j. That by letter dated 04.04.2018 the Operational Creditor gave a detailed demand notice regarding the payment of the outstanding amounts of Rs.9,32,93,528.82/- along with the enclosure regarding additional expenses which were incurred by the Operational Creditor from January, 2016 to March, 2018.
 - k. That the Demand Notice dated 07.05.2018 was issued under Section 8 and 9 of the I&B Code, 2016. The Corporate Debtor vide its email and letter dated 18.05.2018 has given a reply.
 - l. That the total amount of debt is Rs.9,32,93,528.82 along with interest @12% p.a from April, 2018 till realisation.
3. Counsel for the Respondent filed counter and written submissions inter-alia stating as under:

That the term "default" under Section 3(12) of the I&B Code, 2016 is defined as *non-payment* of debt when either whole or any part of the debt has not only become due and payable but the same has not been repaid by the debtor or corporate debtor as the case may be. It is significant to note that, in the present case at hand, the debt has neither become due nor payable apart from there being a mere allegation made by the Petitioner that the Respondent has to pay an amount to the tune of Rs.9,32,93,528.82 crores. There has also not been any mention as to the manner or procedure adopted for arriving at the same. Hence, the claim of any non-crystallized debt,



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merely because a party alleges that another party is in breach of a contract, it does not mean that the party alleging breach has any amount due to him from the party alleged to be in breach of a contract. Therefore, till an appropriate forum conclusively decides on the breach there is no liability cast upon the party alleged to be in breach of a contract.

(Hon'ble Supreme Court in the precedents of "Union of India v. Raman Iron Foundry, (1974)2 SCC 231"

"Gangotri Enterprises Limited v. Union of India, (2016) 11 SCC 720")

- ii. That the Operational Creditor has filed an affidavit claiming false claim amount, therefore, this Petition filed under Section 9 of the Insolvency and Bankruptcy Code is liable to be dismissed.
- iii. That the Respondent herein has already paid an amount of Rs.4,25,00,000/- in spite of non-fulfilment of the obligations undertaken by the Petitioner. The figure arrived at by the Operational Creditor is imaginary, false and does not provide details/breakup of the amount claims, rather the Operational Creditor mentions an amount without any sufficient and cogent proof of pending dues from the Respondent. Hence, the above petition is liable to be dismissed in view of the falsity of the claim made by the Operational Creditor.

4. Heard both the sides and perused the record.

5. It is the case of the petitioner that a Contract Agreement dated 30.03.2012 was executed between the parties for design, manufacture, testing at manufacturing plant before dispatch, packing, forwarding and supply on Ex-Work basis of Electro-Mechanical Plant and Equipment for 2x3 MW+10% COL for Manuni II Hydro Electric Project for which an amount of Rs. Rs.9,32,93,528.82/- was due and liable from the Corporate Debtor. Corporate Debtor in its rebuttal has raised a point



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with regard to the quantum of claim and further stated that the debt has not become due and liable to be paid.

6. From perusal of the documents placed on record, it is observed that Respondent had made a part payment of an amount of Rs. 4,25,00,000/- and further it is observed that the Respondent in its reply to the demand notice sent U/s.8 of the Code has stated as under:

".... Suitable land was not available at the dharamshala to store the Equipments safe.....

.....that the alleged claim raised by you are barred by limitation. Though the claims are barred by limitation the proper authority for adjudication of disputes is Arbitration."

7. From perusal of the Demand notice and e-mail correspondence between the parties it is seen that there does not exist any pre-existing dispute regarding quality or standard of equipment supplied between the parties. Further there exists no arbitration or any other proceedings between the parties. Therefore this Adjudicating Authority is of the view that there is no pre-existing dispute between the parties.

8. With regard to the dispute now raised as to the quantum of debt amount, this Adjudicating Authority is of the view that dispute as to the quantum

of amount of debt does not alter the situation so long as there is any default on the part of the Corporate Debtor and the same is for more than Rs. 1,00,000/-. It is seen from reply filed by Corporate Debtor that according to Corporate Debtor itself total value of contract was of Rs.7.2 Crores out of which a sum of Rs.4.25 Crores only has been paid.

9. Further letter dated 29.12.2016 placed at Page No. 144 of the instant Application, addressed by the Corporate Debtor to the Operational Creditor clearly indicates the admission of debt on the part of the Corporate Debtor. The relevant portion of the said letter is extracted as under:



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Dear Sir,

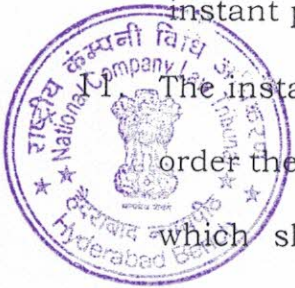
Sub:- Andritz – pending payments of Manuni HEP Reg-

Ref; - Contract No. MHEP-11-12/01 dated 30.03.2012

Further to the discussions we had with you on pending payments for the Equipments supplies to Manuni Hydro Project vide contract cited this is to reiterate that all the relevant pending payments will be cleared as soon as we get the clearance from our lender/private venture capitalists

This clearance is expected by end of Jan – 2017.”

10. The aforesaid letter clearly establishes admission of debt on part of the Corporate Debtor. That there is a default on the part of the Corporate Debtor is also clear from a perusal of the correspondence between the Operational Creditor and Corporate Debtor including the MoU dated 24.10.2013 and the two letters of the Corporate Debtor, dated 09.08.2016 & 29.12.2016. Since the letters dated 09.08.2016 and 29.12.2016 establish a clear acknowledgement of debt on the part of the Corporate Debtor, Sec.18 of the Limitation Act will be applicable in this case and the instant application is held to have been filed within limitation. Therefore this Adjudicating Authority is inclined to admit the instant petition.



The instant petition is hereby admitted and this Adjudicating Authority order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within the timelines provided U/s.12 of the IBC, 2016, reckoning from the day this order is passed.

12. Since no name of IRP is proposed by the Operational Creditor, this Adjudicating Authority hereby appoint Mr. Nethi Mallikarjuna Setty, [Regn. No. IBBI/IPA-001/IP-P01251/2018-2019/11958] as IRP, from the list provided by IBBI. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also

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directed to cause public announcement as prescribed under Section 15 of I&B 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.

13. We declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely:

- a) *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;*
- b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- c) *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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

14. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

15. 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 cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.



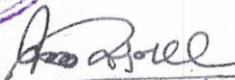
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16. IRP is directed to file his written consent in Form-AA, within three days from the date of the order.
17. The Petitioner as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
18. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
19. The Registry shall also communicate this Order to the RoC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
20. The address details of the IRP are as follows:-

Mr.Nethi Mallikarjuna Setty
Regn. No. IBBI/IPA-001/IP-P01251/2018-2019/11958
Flat No. 101, Laurel Residency,
Road no. 18, Panchavati colony,
Manikonda, Hyderabad,
Telangana, 500089.
Email: malliknethi@gmail.com

The present petition bearing CP (IB) No.110/9/HDB/2019 is hereby admitted.


12.12.19
Dr. Binod Kumar Sinha
Member Technical

SKRathi/Alekhyia


K. Anantha Padmanabha Swamy
Member Judicial


Dv. Regr./Asst. Regr/Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER... (CP (IB) No. 110/9/HDB/2019)
निर्णय का तारीख
DATE OF JUDGEMENT... 12/12/19
नियार किया गया तारीख
MADE READY ON... 16/12/19