

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
23-03-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

Company Petition IB/157/2021
U/s 9 of IBC, 2016

IN THE MATTER OF:

Aeruva Naga Mallikarjuna **...Operational Creditor**

Vs

Icoat Projects Pvt Ltd & 2 others **...Corporate Debtor**

CORAM:-

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

ORDER

Order is pronounced. For the reasons recorded vide separate order the petition is allowed and the Corporate Debtor is put under CIRP as per the conditions mentioned in the order.



MEMBER (T)

Karim



MEMBER (J)

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

CP (IB) No.157/9/HDB/2021

Application under section 9 of IBC, 2016
read with Rule 6 of I&B (AAA) Rules,
2016

In the matter of

Aeruva Naga Mallikarjuna

S/o Ananthaiah, aged about 35 years

Contractor having Regd Office at:

1/205/G/2

Behind Indo Factory

Tariupadu Road, Markapur

Prakasam District. A.P. 523316.

.. **Petitioner**
(Operational Creditor)

Versus

1. **M/s ICOAT Projects Pvt Ltd**
Represented by its Director
Devnuri Vishnuvardhan Reddy
Head Office : 1-9-1113/29/1/4
1st Floor, VST Road, Vidyanagar
Hyderabad – 500 044
2. **Devnuri Vishnuvardhan Reddy**
Director
Head Office : 1-9-1113/29/1/4
1st Floor, VST Road, Vidyanagar
Hyderabad – 500 044.



3. **Devupalli Pranitha**
Director
Head Office : 1-9-1113/29/1/4
1st Floor, VST Road, Vidyanagar
Hyderabad – 500 044.

.. Respondents
Corporate Debtor

Date of order: 23.03.2022

Coram:

**HON'BLE SHRI VENKATA RAMAKRISHNA BADARINATH
NANDULA, MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Parties / counsels present:

For the Petitioner : Shri Sujith Jaiswal, Advocate.

For the Respondent : --

PER BENCH

ORDER

1. This petition is filed by M/s Aeruva Naga Mallikarjuna, Operational Creditor, stating that principal amount of **Rs.1,21,52,012/-** (Rupees one crore twenty one lacs fifty two thousand and twelve only) as on 02.01.2021, plus interest at the rate of 24% per annum till realisation, is due and payable to the Operational Creditor by the corporate debtor. Hence this petition is filed under section 9 of Insolvency and Bankruptcy



Code, 2016, read with Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

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

- (i) The petitioner/ Operational Creditor is a contractor having his registered office at the place described in the cause title. Respondent no.1 is the Corporate Debtor/ company represented by one of its Directors. Respondents no.2 and 3 are other Directors of the Corporate Debtor/ company. Addresses of the respondents are described in the cause title.
- (ii) The Operational Creditor has executed the following work at the site of respondent no.1/ Corporate Debtor:

Package-I. Providing Central and High Mast LED lighting, Construction of Major Drains, Modern Market, Auditorium & Mini Auditoriums, Development of Dumping Yard & Parks in Dornakal Municipality.

The Operational Creditor has raised the following invoices towards the above work:



Invoice No.	Dated	Amount Rs.	Page no. of the petition
30	20.03.2020	0,42,82,829	22
37	20.09.2020	0,41,99,719	23
39	08.11.2020	0,20,03,253	24
Balance Sheet/ Ledger statements		0,34,52,145	25

(iii) Date of default is claimed to be 20.03.2020, viz. the date of first Invoice.

(iv) The petitioner stated to have convened a meeting on 06.02.2021 with the respondent no.1/ company and demanded the amount in default, but is of no avail.

3. Heard the learned counsel for the petitioner, who appeared through videoconference on 16.02.2022. Perused the record.

4. **Demand Notice unclaimed:**

It is seen that the petitioner had issued Demand Notice dated 08.04.2021 (Page 9) to respondents no.1 to 3, through Registered Post. However, the same could not be served and all the three notices were returned with Postman's remarks, "Unclaimed. Returned to sender". Such original



Registered Post envelopes containing the Demand Notice (Form-3) returned by India Post are enclosed at (Pages 16).

5. Notice issued by this Tribunal unclaimed:

This Tribunal has issued notices on the following dates:

- Initial notice .. 23.07.2021
- Fresh notice .. 10.11.2021
- Another notice .. 09.12.2021

None of the above notices could be served on the Corporate Debtor. The Operational Creditor has filed Memo dated 07.01.2022 to the effect that notice were returned with endorsement, "Unclaimed. Returned to sender".

6. This Court vide order dated 16.02.2022 has observed that,

" Address mentioned in the notice is not in dispute and it is unclaimed under section 27 of the General Provisions (sic.) Act. Consequently, service is deemed to have been effected and Corporate Debtor is called absent. Hence, set ex parte."

7. Here, it would be useful to refer Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which is as follows:

*"5. Demand notice by operational creditor.—
(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely.-*

AR

J

- (a) a demand notice in Form 3; or
- (b) a copy of an invoice attached with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,

- (a) at the registered office by hand, registered post or speed post with acknowledgement due; or
- (b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.

(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any."

8. The Operational Creditor had sent Demand Notice through Registered Post Acknowledgement Due as per the record filed before this Tribunal. Therefore, there is sufficient compliance of the above Rule insofar as it relates to sending Demand Notice to the Corporate Debtor is concerned. However, the said Demand Notice has been returned by the Postal authorities with a remark, "Unclaimed. Returned to sender".

9. On the facts and in the circumstances of the case it is apt to refer to Section 27 of the General Clauses Act, 1897, which reads as under:

"27. Meaning of service by post.- Where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, where the expression "serve" or either of the expressions "give" or "send" or any other expression in used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected



at the time at which the letter would be delivered in the ordinary course of post.”

10. The Hon'ble Supreme Court while dealing with a case relating to service of notice under Sec.138 of N.I.Act, viz. K. Bhaskaran vs. Sankaran VaidhyanBalan and another (1999) 7 SCC 510 observed as under:

"The principle incorporated in Sec.27 therein could profitably be imported in a case where the sender had dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the addressee, unless he proves that it was not really served and that he was not responsible for such non-service. But that would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address."

Whereas, in the instant case, the respondent/ Corporate Debtor does not appear before us much less to contend that it was not really served on him or that he is not responsible for such non-service.

11. In the above backdrop the following points emerge for consideration before us:

(1) Whether in view of Section 27 of if the General Clauses Act, 1897 and in light of the decision of the Hon'ble Supreme Court the respondent/ Corporate Debtor could be deemed to have been served with the impugned Demand Notice?



- (2) Whether there is an 'operational debt' as defined exceeding Rs.1,00,00,000/-?
- (3) Whether documentary evidence furnished with application shows that the aforesaid debt is due and payable and has not yet been paid?
- (4) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of demand notice of the unpaid operational debt in relation to such dispute?

12. Since the consignments have been returned by the Postal authorities as 'unclaimed' such service could be treated as sufficient service in view of Section 27 of the General Clauses Act, 1897 and in light of the decision of the Hon'ble Supreme Court in the matter of K. Bhaskaran vs. Sankaran Vaidhyan Balan (supra). Hence point no.1 is answered accordingly.

13. Operational debt as claimed by the Operational Creditor is more than Rs.1 crore. point no.2 is answered accordingly.



14. Copies of balance sheet, ledger and invoices prima facies establishes the debt due and payable and has not yet been paid. Point no.3 is answered accordingly.

15. No evidence is coming forth on record to show existence of any dispute between the parties or pendency of a suit or arbitration proceeding filed before the receipt of demand notice of the unpaid operational debt in relation to such dispute. Hence point no.4 is answered accordingly.

16. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

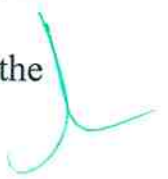
(A) Corporate Debtor, M/s M/s ICOAT Projects Pvt Ltd is admitted in Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016,

(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 for the period from 01.01.2022 to 30.06.2022, in compliance with section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Shri Murali Mohan Chevuturi having registration



No. IBBI/IPA-003/00307/2020-2021/13464 Residing at: 1-2-59719, Flat No. 201, Dream Home Vasista Aapts, Plot 9, Baraf Bagh Colony, Lower Tank Bund, Hyderabad, Telangana ,500029, email: mohan.chevuturi@gmail.com as IRP. The aforesaid IRP has no disciplinary proceedings pending against him. Proposed IRP. His Authorisation for Assignment is valid till 05.07.2022. This information is also available in IBBI Website. 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) **Shri Murali Mohan Chevuturi** shall file Form-2 within three days from the date of this order.
- (J) 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.

17. Accordingly, this Petition is admitted.

18. 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.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


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

Karim