

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Video Conference

CORAM: HON'BLE BHASKARA PANTULA MOHAN, -MEMBER (J)
CORAM: HON'BLE VEERA BRAHMA RAO AREKAPUDI-MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 19.04.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.260/9/HDB/2020
NAME OF THE COMPANY	Jeevan Polymers Pvt Ltd
NAME OF THE PETITIONER(S)	Shruti Impex
NAME OF THE RESPONDENT(S)	Jeevan Polymers Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

CP (IB) No.260/9/HDB/2020 is listed for orders today. Orders pronounced vide separate sheets. Petition is admitted.



MEMBER (T)

Syamala



MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

CP(IB) No. 260/9/HDB/2020

[U/s. 9 of I&B Code, 2016 r/w Rule 6 of I & B (AAA) Rules, 2016]

In the matter of:

M/s. Shruti Impex

having its Office at

H.No.11-6-465

Nampally Market

Hyderabad

Rep. by its Proprietrix

Smt. Kavita Harish Raney

.... Operational Creditor

Vs.

M/s. Jeevan Polymers Pvt. Ltd.

Having its Registered Office at

12/C, CIE Balanagar

Hyderabad – 500 037

Rep. by its Managing Director

... Corporate Debtor

Date of Order: 19.04.2022

Coram:

Hon'ble Sri Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Sri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels Present:

For the Petitioner : Mr. Ch. Srinivasulu, Advocate

For the Respondent : Mr. C. Jainendra, Director of Corporate Debtor

Heard on : 08.03.2022, 09.03.2022



[PER : BENCH]

ORDER

- I. This is a Petition filed by the Operational Creditor under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the application, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon against the Corporate Debtor, alleging that the Corporate Debtor had failed in discharging the debt amount of Rs.15,50,890/- (Rupees Fifteen Lakhs Fifty Thousand Eight Hundred and Ninety only) plus future interest for the material supplied as per the invoices till the date of realisation.

- II. M/s. Shruti Impex, hereinafter referred to as 'Petitioner/Operational Creditor' is engaged in the business of importing and trading of Polymer Granules. M/s. Jeevan Polymers Private Limited, hereinafter referred to as 'Respondent/Corporate Debtor' is engaged in the business of manufacture of PET Preforms and Blowing of PET Bottles. The Corporate Debtor



approached the Operational Creditor and placed Purchase Orders for supply of the material. In turn, the Operational Creditor supplied the material and raised various invoices. Despite receipt of material, the Corporate Debtor failed and neglected to pay the outstanding debt amount of Rs.40,63,877/-. The Corporate Debtor, vide its MOU dated 03.09.2018 admitted the liability towards its debt.

- III. As the due amount was not paid by the Corporate Debtor despite continuous follow up, the Operational Creditor got issued the Demand Notice in Form-3, demanding the Corporate Debtor to pay the total outstanding debt amount. Since the demand notice, did not evoke any response from the Respondent, the Operational Creditor has filed an application bearing C.P.No.123/9/HDB/2018 against the Corporate Debtor before the Hon'ble NCLT, Hyderabad Bench-I, which was admitted by the Adjudicating Authority on 24.08.2018.
- IV. Subsequently, both the parties entered into an MOU wherein the Corporate Debtor issued a cheque No.001977, dated 03.09.208 for Rs.54,00,000/- towards



discharge of its debt and Operational Creditor agreed to withdraw the C.P.No.123/9/HDB/2018.

- V. In the light of the above settlement, the Operational Creditor had filed an IA 360/2018 and the Resolution Professional had filed a Joint Compromise Application vide IA 401/2018 for withdrawing the CP No.123/9/HDB/2018, which were allowed and disposed of on 19.09.2018 and 25.09.2018 respectively.
- VI. The Operational Creditor was once again constrained to file a fresh CP(IB) No.260/9/HDB/2020, as the Corporate Debtor breached the terms of MOU dated 03.09.2018, as an amount of Rs.30,80,000/- was only paid on different dates, out of the total amount of Rs.54,00,000/-.
- VII. When the due amount was not paid by the Corporate Debtor despite continuous follow up, the Operational Creditor got issued the Demand Notice dated 10.07.2019 in Form-3, demanding the Corporate Debtor to pay the total outstanding debt amount of Rs.24,03,520/-. After receiving the demand notice, the corporate debtor came forward and accepted to pay the admitted amount and both the parties entered into an



MOU dated 25.07.2019 and issued two post dated cheques, cheque No.056415, dated 03.08.2019, for Rs.10,00,000/- and cheque no.056417, dated 12.08.2019, for Rs.14,03,520/-. The first cheque was honoured and when the second cheque No.056417, dated 12.08.2019, for Rs.14,03,520/- was present, the same got dishonoured on 17.08.2019 with an endorsement "Funds Insufficient".

VIII. The Operational Creditor got issued statutory notice dated 11.09.2019 under 138 Negotiable Instrument Act to the Corporate Debtor. In spite of receipt of the notice, the Corporate Debtor neither replied nor made the payment, the *Operational Creditor has filed the instant application* against the Corporate Debtor.

IX. It is observed from the record placed before us that Mr. M. Viswaraj, appeared on behalf of the Corporate Debtor during the hearings, but he has not even filed his vakalat. However, in the interest of justice, even though the right was forfeited to file the counter by this Adjudicating Authority vide order dated 16.07.2021, the counter filed by Mr.Jainendra Choraria, Director-cum-Authorised Signatory of the Corporate Debtor on



17.11.2021 was taken into consideration while arriving at the decision in the instant application.

- X. Per contra, the Corporate Debtor filed a reply dated 17.11.2021 stating that the application filed by the Operational Creditor is not maintainable either in law or on merits and is liable to be rejected as the operational creditor has suppressed several material facts and approached this Tribunal with unclean hands by concocting and fabricating utter falsehood with the sole oblique motive of coercing the Corporate Debtor herein to cough up the sums as demanded in the application. The operational creditor is seeking to invoke the provisions of IBC only to harass and threaten the Corporate Debtor.
- XI. It is averred that the present application was filed for an alleged default amount of Rs.15,50,890/- which is less than the Rs.1.00 crore as prescribed by the Ministry of Corporate Affairs vide notification dated 24.03.2020.
- XII. It is averred that the present Company Application is filed basing on Memorandum of Understanding entered between both the parties for revival of CIRP against the Corporate Debtor. The Hon'ble Tribunal vide order



dated 19.09.2018 allowed withdrawal of CIRP against the Corporate Debtor, but no permission/liberty was granted to the operational creditor for revival of CIRP against the corporate debtor for the same debt.

XIII. The corporate debtor relied on the order of this Hon'ble Tribunal in the matter of M/s.Omega Elevators vs. Prajay Properties Private Limited in CP(IB) No.691/9/HDB/2019, dated 18.01.2021, and the order of Hon'ble NCLT, Allahabad Bench in CP(IB) No.343/ALD/2018 in the matter of M/s. Delhi Control Devices (P) Ltd. vs. M/s. Fedders Electric and Engineering Ltd. held that,

“unpaid instalment as per the settlement agreement cannot be treated as operational debt as per section 5(21) of the Code, the failure or breach of settlement agreement cannot be a ground to trigger CIRP against corporate debtor”

XIV. The present application is filed without mentioning the date of default in Form-5 or anywhere in the application as contemplated under Section 9 and the operational creditor has not served a copy of the same to IBBI. On these grounds, the application is liable to be rejected as incomplete.



- XV. The Operational Creditor filed bank statement dated 12.08.2020 at page nos. 32 and 33 that means the Application filed after amendment dated 24.03.2020. Hence, the application is filed for the alleged default amount of less than Rs.1.00 crore, the application liable to be dismissed at the threshold.
- XVI. We have heard the Learned Counsel for Operational Creditor and Learned Counsel for Corporate Debtor. The Operational Creditor has filed various documents in proof of claim and default. The demand notice is shown at page nos.23 to 28 of the petition. The demand notice was served on Corporate Debtor and received by them.
- XVII. It is observed that in the MOU dated 25.07.2019, both the parties in hand written stated as follows:
- “This MOU is subject to realisation of cheque No.056415, dated 03.08.2019 and Cheque No.056417, dated 12.08.2019 on dates mentioned. Reserve the right to proceed legally if dishonoured.”
- XVIII. Further, it is observed that the petition is filed on 17.03.2020 which is before the notification issued by the Ministry of Corporate Affairs vide notification dated 24.03.2020 increasing the threshold limit for default. As such, the threshold limit at the time of filing is only

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Rs.1.00 lakh. Therefore, the contention of the corporate debtor appears to be not based on facts. As such, we have no hesitation to admit the present application.

XIX. We have thoroughly perused the records and heard the submissions made by the Counsel for Petitioner and Counsel for Respondent. Relying on the documents filed by both the parties, we are of the view that the petition deserves to be admitted. Accordingly, this petition is admitted.

XX. The Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one for the Insolvency Resolution Professionals as IRP. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period from January 1, 2022 to June 30, 2022 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr.Gullapalli Kishore Babu, having Registration No. IBBI/IPA-003/IP-N00384/2021-2022/13926, e-mail: gkishorebabu@gmail.com as Interim Resolution Professional. As per the IBBI website, his AFA is valid



upto 13.12.2022. The aforesaid IRP has no disciplinary proceedings pending against him. He shall file his written communication and all relevant papers immediately before the Registrar of this Adjudicating Authority but not later than three days.

XXI. 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 the following directions: -

- i. 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.

- ii. 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.
- iii. 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.




- iv. 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.
- v. 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.
- vi. The Petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional within three days from the date of this Order to meet out the expenses and his fee to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The initial expenditure incurred by IRP shall, however, be subject to the approval by the Committee of Creditors, in its first meeting.



- vii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- viii. Accordingly, this Petition is admitted.
- ix. 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)


BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Syamala