

SL.No.2

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

**PHYSICAL HEARING**

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)  
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 25.04.2023 AT 02:30 PM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>CP (IB) No. 52/9/HDB/2020</b>
<b>NAME OF THE COMPANY</b>	<b>Srichaitanya Chloridest Pvt Ltd (Valanties Laboratories Pvt Ltd)</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Alex Constructions Pvt Ltd</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Srichaitanya Chloridest Pvt Ltd (Valanties Laboratories Pvt Ltd)</b>
<b>UNDER SECTION</b>	<b>9 of IBC</b>

**ORDER**

Orders pronounced vide separate order. Application is dismissed.

**Sd/-  
MEMBER (T)**

**Sd/-  
MEMBER (J)**

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

**CP(IB) No.52/09/HDB/2020**  
**U/s. 9 of IB Code, 2016**

**In the matter of:**

M/s. Alex Constructions Private Limited,  
Flat No.A-202, Fribzi Residency,  
Engineers Colony, Yellareddyguda,  
Hyderabad – 500 073.

...Operational Creditor

Vs

M/s. Valentis Laboratories Private Limited,  
Plot No.31 & 32, 39 & 40,  
Phase 2, IDA, Pashamylaram,

...Corporate Debtor

**Date of order: 25.04.2023**

**CORAM:**

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

**Counsels present:**

For the Operational Creditor : Mr. P. Vikram, Advocate

For the Corporate Debtor : Mr. V. Pandu Ranga Reddy, Advocate  
Mr. Parameswara Reddy, Advocate

Heard on : 19.04.2023

**[PER: BENCH]**  
**ORDER**

1. This is an application filed by the Petitioner M/s. Alex Constructions Private Limited, Operational Creditor (OC) against the Respondent M/s. Valentis Laboratories Private Limited, Corporate Debtor (CD), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor for the default committed by the Corporate Debtor in discharging the debt that is due to the Operational Creditor.
  
2. The facts in brief, as laid in the synopsis filed along with the application, are as follows:
  - a. The OC's Company is engaged in the business of construction of buildings. The CD is engaged in the manufacture of products such as Tri Cholo Acetyl Chloride, Tetralone etc.
  
  - b. In the course of business, CD approached the OC for availing the OC's specialized services for construction of Intermediate Block. The OC completed the aforesaid services and issued Bill No.1 dated 26.06.2017 for Rs.64,77,862/- which was paid partially

and outstanding debt is Rs.18,56,158/-. The CD is liable to pay the said amount along with an interest @ 24% per annum.

- c. The OC requested the CD to clear the outstanding debt on several occasions, but in vain. A Demand Notice was sent on 29.09.2019 in Form 4. A reply Notice was issued, by denying the contents of the Demand Notice.
  - d. Hence, this application seeking the above mentioned relief.
3. The CD filed Counter denying the contents of the application and further, contending that the Notice dated 29.09.2019 was received by the CD on 10.10.2019 issued by Sri Narendar Naik, Varuna Law Associates LLP on behalf of the OC. The OC was not in existence as on the date of the issuance of the Notice and it was under strike off. It is a known fact that when the OC is under strike off, the Directors will automatically become defunct and strike off means removing the name of the Company from the Register of Companies maintained by the Registrar of Companies. It is more like a closure of the Company and the Company will not be in existence after being Struck Off. That being the case, in the absence of the Board, any authorization to

deal with any of the cases, documents etc., will not be valid and the present application is not maintainable.

- a. The Notice sent on behalf of the OC was in a running Word printed format, without following the specified forms as prescribed under the Insolvency and Bankruptcy Code, 2016 and without Form-3 and Form-4 and without all details of Purchase Orders/Work Orders etc. The said Notice was issued by an Advocate, when the Company itself was not in existence and the name of the person who authorized the Advocate is not mentioned.
- b. The CD never asked for any quotations and kept paying amounts into the bank account of the OC as per their requirement, even without going through the progress of the work, with a good intention that the work will be completed.
- c. In addition to the payments already made, the CD also provided raw material for the said construction. Since, one Mr. Venkata Reddy requested that the OC is unable to procure the said material, the CD took the risk of paying the said amount which is Rs.3,57,036/- for the said material, to the supplier, which has to be deducted from the total invoice.

- d. The Invoice dated 25.06.2017 submitted by the OC along with the Petition lacks the essentials. The CD never acknowledged the same. The advances paid by the CD shall be refunded to the CD. The TDS was also paid by the CD which is liable for refund.
- e. One fine morning, in the month of September 2017, Mr. Venkata Reddy, the Director of the OC approached the CD stating that the OC M/s. Alex Constructions Pvt. Ltd. (OC) is not in compliance with the provisions of the Companies Act, 2013 and the Company has not conducted any meetings and that it was struck off. He informed that he would continue the remaining work in the name of a proprietorship firm owned by him under the name and style of M/s. Ven Infra Projects and the balance payments can be made into the account of the new firm. The CD had paid an amount of Rs.15.0 lakhs into the bank account of M/s. Ven Infra Projects.
- f. The OC has cheated the CD by not constructing the said clean rooms and other blocks in a proper manner and are totally defective. The Telangana State Industrial Infrastructure Corporation (TSIIC) issued an Inspection Report dated 20.06.2019 wherein, it was categorically stated that the

construction is defective and violates the relevant industrial building codes. The Statutory Authority has also recommended for verification of the structure by a Chartered Engineer and licensed Structural Engineer to test and certify the quality of construction. The inspection was conducted and a certificate was issued opining that the structure is no way with the prescribed standards. The CD expressed displeasure with regard to the non-progress of the work.

- g. Apart from the above, when the OC has submitted his Invoice in the year 2017 and while continuing the activities in the name of M/s. Ven Infra Projects till the year 2019, how has the OC forgotten to raise the subject issue with the CD until receipt of email from the CD with regard to the defects?
  
- h. An email was sent by the CD on 28.09.2019 regarding the incompleteness of the work. The CD was bound to depend on some other contractor to get the work done. It clearly shows that there is a dispute existing between the parties. As a counter blast to the said email, this application is filed. Hence, this application is liable to be dismissed.

4. A rejoinder is filed by the Petitioner, admitting that the OC was under strike off, but contending that an application for revival of the Company was allowed by NCLT, Hyderabad and before strike off of the Company, work was performed and invoice was raised accordingly.
  - a. The OC and Ven Infra Projects shared and exchanged machinery, equipment and other necessary goods. After due construction of Intermediate Block, the OC has raised Invoice for payment of the amount and the CD has released the amount from time to time. The CD had never communicated to the OC that the constructions were defective.
  - b. In order to evade the balance amount, the CD is relying on the report submitted in the year 2019. The invoice was raised in the year 2017, whereas the CD inspected the said construction in the year 2019.
5. Heard both the Counsel. It is an admitted fact that the Petitioner M/s. Alex Constructions Private Limited was struck off and was not in existence as on the date of filing this application. But, the contention of the petitioner's counsel is that this agreement with

the CD is entered into by the Petitioner before the Company was struck off.

6. It is also an accepted fact that it is not any one individual of the Petitioner Company that has under taken to perform the works, but it is the Company itself.
7. Before going into, whether there is any debt due to the Petitioner from the CD and whether the petition is maintainable due to the company being struck off, the first objection raised by the Respondent's Counsel with regard to the Demand Notice can be discussed. The contention of the Respondent's Counsel is that, the Demand Notice, in the first place is not sent in Form-3 as mandated by the IBC and secondly it does not show that there was any authorization given by the Company to any person to instruct the Counsel who issued the Demand Notice. Both the contentions are not refuted by the Petitioner's Counsel.
8. The Counsel for the Respondent relies on the judgement of the *Hon'ble NCLAT, New Delhi in Company Appeal (AT) (Insolvency) No.184 of 2017 between Goa Antibiotics & Pharmaceuticals Ltd. and Ors. Vs. Lark Chemicals Pvt. Ltd.* wherein, it was observed that the Demand Notice has been issued by a legal firm which

does not hold any position or relation with the Respondent and the Demand Notice has not been issued in the mandatory Form-3 or Form 4 as stipulated under Rule 5 of Insolvency & Bankruptcy Code (Application for Adjudicating Authority) Rules, 2016. In the above circumstances, the Hon'ble NCLAT held that initiation of the resolution process at the instance of the Respondent cannot be upheld.

9. The judgement of the *Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.39 of 2017 between Uttam Galva Steels Vs. DF Deutsche Forfait AG and Ors.* is also relied upon, wherein, it was held that before filing an application under Section 9 of Insolvency & Bankruptcy Code, 2016 the requirements under Section 8 of Insolvency & Bankruptcy Code, 2016 are required to be fulfilled. Section 8 of IBC, 2016 is extracted hereunder:

**“Section 8 - Insolvency resolution by operational creditor:-**

*(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed. Persons who may initiate corporate insolvency resolution process. Initiation of corporate insolvency resolution process by financial creditor. Insolvency resolution by operational creditor. (2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor - (a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute; (b) the repayment of unpaid operational debt-*

*(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

*Explanation:- For the purposes of this Section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.”*

10. In this case, the notice was nevertheless sent as mandated by Section 8, but it is not in the prescribed format.
11. In the same judgement, it was held that an Advocate/Lawyer or Chartered Accountant or Company Secretary in the absence of any authority of the Board of Directors, and holding no position with or in relation to the Operational Creditor cannot issue any notice under Section 8 of the I&B Code.
12. Since the Petitioner’s Company is not in existence on the date of issuing the Notice, it is obvious that no authority could have been given to any of the Directors of the Company, to give instructions to the Lawyer, to send the Notice. Hence, on that ground, the application has to fail.
13. Apart from that, the Counsel for the Respondent contends that there is a pre-existing dispute with regard to the quality of the material supplied by the Petitioner’s Company. An email was

sent as reply to the Demand Notice on 13.10.2019 mentioning that there is a pre-existing dispute.

14. The Counsel for the Respondent draws our attention to the Certificate of Recognition as Competent person, dated 25.10.2018, which shows that one Mr. B. Eshwara Reddy was certified to be a Competent person for the purpose of carrying out the test examination inspection and issuing Certificates for Certification of stability with respect to buildings as stipulated under Section 6 and Section 112.
15. The Counsel for the Respondent also draws our attention to a Proceeding dated 20.06.2019 of Telangana State Industrial Infrastructure Corporation Ltd. which shows that the expansion project currently undertaken at M/s. Rantus Pharma Pvt. Ltd. for the proposed expansion is severely lacking. The quality of construction is poor and has workmanship defects.
16. The Counsel for the Petitioner submits that the said proceeding is not in respect of the Petitioner's Company and that is in respect of the works undertaken at M/s. Rantus Pharma Pvt. Ltd. which does not have any nexus with the works entrusted to the Petitioner. Even if the said contention is accepted as true,

which in fact seems to be true, the application fails due to the Company being under strike off during the relevant period and there being no authorization to any person to file this case and to issue Demand Notice.

17. Hence, in view of the above, we dismiss the application.

**Sd/-**

**(CHARAN SINGH)  
MEMBER (TECHNICAL)**

**Sd/-**

**(JUSTICE TELAPROLU RAJANI)  
MEMBER (JUDICIAL)**

**VL**