



**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH  
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL  
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 28.11.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.51/9/AMR/2021		9 of IBC	Quality Steel and Wire Products Vs Vantage Machine Tools Pvt Ltd

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

CP(IB) No.51/9/AMR/2021 is admitted, vide separate orders.

Sd/-  
**JUSTICE TELAPROLU RAJANI  
MEMBER JUDICIAL**



**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT MANGALAGIRI**

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**CP (IB) No. 51/9/AMR/2021**

**In the matter of a Petition under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and  
Bankruptcy (Application to Adjudicating Authority) Rules, 2016  
AND**

**In the matter of  
M/s. VANTAGE MACHINE TOOLS PRIVATE LIMITED**

**Between:**

M/s. Quality Steels and Wire Products,  
Registered office at Survey No.118,  
Duvvada Station Road,  
Kurmannapalem, Visakhapatnam.

**... Operational Creditor**

AND

M/s. Vantage Machine Tools Private Limited,  
Registered office at D.No.2-48,  
Gollapalli, Nujivedu Mandal,  
Krishna District - 521111.

**... Corporate Debtor**

**Date of pronouncement of Order: 28.11.2022**

**CORAM:**

**Justice Telaprolu Rajani, Member Judicial.**

**Appearance:**

For Operational Creditor : Mr. V.S.R.Avadhani & Ms.Prabha Prasad,  
Advocates.

For Corporate Debtor : Mr.G.Sethu Rama Rao, Advocate.



**ORDER**

1. This petition is filed by M/s. Quality Steels and Wire Products i.e., the Operational Creditor (in short OC) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Vantage Machine Tools Private Limited i.e., the Corporate Debtor (in short CD) for the default committed by the CD in discharging the debt that is due to the OC, which is Rs.3,04,76,004/-.
2. The facts of the case briefly are as follows:

The OC is a registered partnership firm. The CD is a limited company and does business in supply and manufacturing of heavy machine tools. The CD purchased structural steel from the OC on credit basis from 20.09.2017 till 24.10.2017. The OC raised invoices to that effect. The invoices indicate that the creditor has supplied the total structural steel worth Rs.1,83,16,611/- out of which the Debtor paid Rs.10,00,000/- on 03.10.2017 and Rs.20,00,000/- on 13.12.2017-. The Debtor is liable to pay a balance amount of Rs.1,53,16,611/- along with interest @ 24% p.a. which was confirmed by the Debtor to the OC by email dated 02.11.2017. The OC sent invoices and made repeated requests for payment of the outstanding amount which accumulated to Rs. 3,04,76,004/-. Since, the CD did not discharge the amount, a demand notice was sent in Form-3, for which no reply was issued. Hence, this Application.

3. The CD filed counter. The CD Company is a Micro Small and Medium Enterprise (MSME) and is involved in the manufacture of



special purpose machinery. It secured Sub-contractors from BGR Energy System Private Limited for supply of 300 MT fabricated structural as per BGRESL technical specifications which is executing contractual works to APGENCO. The Managing partner of the OC firm, after coming to know that this CD has secured work orders from BGRESL, met the CD and appraised that his firm is involved in supply of structural steel and it is known for supply of good quality of structural steel and do provide test certificates which will meet the technical specifications of any entity and requested the CD to purchase raw material from its firm. Believing the version of the OC, the CD finally agreed to purchase the raw material. Consequently, the OC supplied structural steel on credit basis under 18 invoices from 20.09.2017 to 24.10.2017 for Rs.1,83,16,611/- with an assurance that he will share test certificates in due course of time. On 26.09.2017 and 04.10.2017 the CD requested the OC to send test certificates. But the CD has been dodging the same. The OC enclosed test certificates only to two invoices No. 2192 and 2207 dated 20.09.2017 and 21.09.2017. The CD, in order to maintain cordial relationships, paid Rs.10,00,000/- and Rs.20,00,000/- on 03.10.2017 and 13.12.2017 respectively. With the raw material supplied by the OC, the CD manufactured the fabricated structural as per specifications of BGRESL. The BGRESL lifted only 85 MT and paid part amounts against the same and did not lift the remaining material as the Respondent failed to produce the test certificates. The OC was silent for more than 18 months for producing test certificates. In the



3<sup>rd</sup> week of March, 2019, the OC approached the CD with the same request that they are finalizing the firm accounts for the FY 2018-2019 and that there is a change in the constitution of firm and thereby requested the CD to issue post-dated cheque for Rs.50,00,000/- in order to convince their partners. Believing the same the CD issued the cheque on specific condition that the said cheque will not be presented for realization till the OC forwards test certificates. By letter dated 19.04.2019, the CD communicated to the OC that due to inferior quality of raw material supplied by him, the BGRESL has rejected the finished goods. It is also informed that on account of the same the CD incurred loss of Rs.82,60,000/-. The BGRESL has black listed the Company. The CD communicated to the Chairman and the Managing Director, Director Finance of APGENCO that the BGRESL failed to settle the bills. The invoices enclosed to the Company Petition are printed and standard form and are not counter signed by the CD and not covered by the condition of interest. On the above grounds the CD seeks to dismiss the Petition.

4. A rejoinder is filed by the OC, refuting the contents of the counter and further contending that the OC had never given any assurance to the CD to issue test certificates and it was never a pre-condition. The fact that the CD made a part payment confirming the balance due without mentioning or otherwise referring its demur to the issue of test certificate is positive proof of the fact that test certificate was never the subject matter of the transaction. Document No.2 filed along with the reply clearly indicates that the



test certificates are sent from Shine Steels and this mail is dated 08.03.2022, which is long after initiation of the present proceedings. It is not shown how Shine Steel is involved in the subject transaction. The mail dated 04.10.2017 does not indicate that test certificate was agreed to be part of the contract of sale of goods between the parties. It is not shown that the part payments are made under protest. It is not known to the OC whether BGRESL has lifted only 85 MT and paid part of the amounts and did not lift the remaining material on the pretext that the test certificates are not provided. The OC filed a criminal prosecution for the dishonour of the cheque, which is pending. The cheque issued by the CD serves as an acknowledgement of its liability. The non-supply of test certificates cannot be projected as a pre-existing dispute at this stage. The CD did not deny that the email address to which the balance confirmation is originated. Hence, his contention that it has no chief executive on its pay roll and there is no authentic confirmation of balance as such cannot be accepted. On the above grounds the OC once again seeks to allow the Petition.

5. Heard both the Counsel.
6. It can be seen that the Petition is filed on 28.09.2022. A demand notice was sent by the OC for which no reply was issued. The Counsel for the CD submits that the notice was served on the watchmen of the CD and they did not know about the notice, which does not at all seem to be cogent. The account statement of the OC shows that an amount of Rs.10,00,000/- was transferred to the CD



on 03.10.2017 and Rs.20,00,000/- was transferred on 13.12.2017. There is no denial of the fact that there was a contract between the parties for supply of structural steel by the OC.

7. The Counsel for the CD submits that with the steel they purchased from the OC, they supply finished goods to BGRESL. The only contention raised on behalf of the CD is that the material supplied by the OC is defective and hence, the BGRESL did not lift the material supplied by the CD due to which they sustained loss and consequently they are not liable to pay the amount to the OC. But he does not succeed in showing that there was any condition imposed at the time of entering into the contract that test certificates are to be supplied by the OC for the material supplied by them. It is true that there was a request to send the test certificates on 04.10.2017 and there is a letter dated 19.04.2019 issued to the OC that they have prepared and supplied material as per the request of BGRESL; however, due to inferior quality of raw materials supplied by the OC, the BGRESL rejected the materials and they are not lifting the balance of materials, due to which they incurred a loss of Rs.82,60,000/- and that they are also black listed by the MNC Company. Except mentioning all these facts in the letter addressed to the OC, the CD did not furnish any material to the Tribunal with regard to their black listing and with regard to the BGRESL rejecting the materials on the ground that the quality of raw materials is of inferior quality.



8. The Counsel for the OC contends that the rejection if any might also be due to the defectiveness in the making of goods by the CD, which is possible. Hence, unless any concrete evidence is produced with regard to the BGRESL rejecting the materials in the first place and rejecting the material on the ground of the defective raw material in the second place, it cannot be said that the quality of the material was the reason for the BGRESL not lifting the material from the CD. Apart from that, a letter addressed by the CD to the Chairman and Managing Director APGENCO does not anywhere spell that the BGRESL has refused to lift the material on the ground of defective raw material. Moreover, it says that the CD executed works as a sub-contractor to M/s.BGR Energy Systems Limited for the works allotted by APGENCO. It is stated that the CD has to receive an amount of Rs.4.25 Lakhs towards settlement of bills for executed and completed works and that they have contacted M/s.BGR Energy Systems Limited, but there was no positive response. It is mentioned that they are facing severe liquidity crises as most of the funds were stuck up in the bills. It is only mentioned that material worth Rs.40 tonnes for which they have completed the allotted works is waiting for lifting from the end to M/s.BGR Energy Systems Limited. It is requested that the APGENCO advises and directs the officials of M/s.BGR Energy Systems Limited to lift the same and settle their bills immediately. Nowhere in the said letter is it indicated that the BGR Energy Systems Limited did not lift the material due to defective raw material.



9. A letter dated 18.10.2019 issued to the APGENCO also does not spell anything about the defect in the raw material. Except saying that the BGRESL is not responding with regard to the settlement of amount, nothing is stated about the defect in the raw material. Though, the Counsel for the CD contends that the BGRESL did not lift the material on the ground of defective raw material, he does not place on record any correspondence by the BGRESL to that effect. Hence, without any supporting material for the contentions of the Counsel for the CD that the material was defective, no finding can be given on the same. With help of the fact that the CD has acknowledged the debt by virtue of the mail dated 02.11.2017 in which the payment schedule is given in three instalments admitting their liability with regard to the amounts mentioned therein, it can be held that there is a clear acknowledgement of debt by the CD. The mails calling upon the OC to furnish test certificates is dated 04.10.2017. But a part payment was made just one day prior to the said mail for Rs.10,00,000/- and even after the said mail for Rs.20,00,000/- which is on 13.12.2017. If really the quality issue was there by then, he would not have paid the amounts just for the sake of good relations.
10. The contention of the Counsel for the CD that the cheque was issued with a condition not to present it also does not have any basis and support. The cheque is dated 04.04.2019 which is much after the last invoice. The contention that the cheque was issued to maintain good relations with the OC is not at all tenable. Moreover,



the cheque was dishonoured on the ground of insufficient funds and not because of the instructions given by the CD to the Bank not to honour the cheque as submitted by the Counsel for the CD. In the light of the part payments made under the invoices the contention that they do not bear the signature does not stand to merit, so also in the light of the mail dated 03.11.2017 acknowledging the debt. Hence, in view of the above there need not be any demur in concluding that the CD acknowledged the debt and has failed to discharge the debt. In the result the Company Petition Admitted.

### **ORDER**

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

- i. **Mr. Immaneni Eswara Rao**, (Registration No. IBBI/IPA-001/IP-P01224/2018-2019/11943), having office at 40-26-22, Mohiddin Street, Opp. BSNL Exchange, Labbipeta, MG Road, Vijayawada, Krishna, Andhra Pradesh-520010, Mobile:9248123333; e-mail:**ier\_ca@outlook.com**; is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.
- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.



- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.
- v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.
- vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

**Sd/-**

**JUSTICE TELAPROLU RAJANI  
MEMBER JUDICIAL**

*Swamy Naidu*