

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07-02-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

Company Petition IB/85/2021
U/s 9 of IBC, 2016

IN THE MATTER OF:

R.K. Steel Udyog

...Operational Creditor

Vs

KSR Properties Pvt Ltd

...Corporate Debtor

CORAM:-

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

ORDER

Orders in Company Petition IB/85/2021 pronounced vide separate sheets.

In the result, the company petition is allowed and Corporate Debtor is put in Corporate Insolvency Resolution Process (CIRP) in terms of the directions in this order.

SD/

MEMBER (T)

Srinivas

SD/

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 85/9/HDB/2021

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

R.K. STEEL UDYOG
10, 3rd Floors,
Narang Chambers,
N R Road, Bangalore,
Karnataka – 560 002.

... Operational Creditor

AND

KSR PROPERTIES PRIVATE LIMITED
H.No.16/19, Flat No.301,
Mahalakshmi Nivas,
Sagar Society, Road No.2,
Banjara Hills,
Hyderabad,
Telangana-500 034.

... Corporate Debtor

Date of Order: 07.02.2022

Coram:

Hon'ble Dr. N.V.Ramakrishna Badarinath, Hon'ble Member (Judicial)

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





Appearance:

For Petitioner: Shri Ritesh Mittal, PCA and

Shri.Abhay Kumar Jain, Chartered Accountant.

For Respondent: Shri Sivaraju Srinivas, Counsel.

PER: BENCH

This is a petition filed *under Section 9 of Insolvency and Bankruptcy Code (hereinafter to be referred as "Code"), read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent defaulted in the payment of alleged debt of Rs1,83,08,765.40/- (*includes principal amount being Rs.74,34,778/- and interest amounting to Rs.1,08,73,987.40*).

1. The gist of the Petitioners' case is:

- a). M/s. R K Steel Udyog, herein after referred to as operational creditor, had supplied TMT Steels of various dimensions to KSR Properties Private Limited (herein after referred to as

Corporate Debtor). Thus, the total amount payable by the corporate debtor is Rs.1,83,08,765.40 which includes principal amount of Rs.74,34,778/- and interest @18% amounting to Rs.1,08,73,987.40/-. The details are sated in Annexure-A.

- b) Despite several reminders, when the Corporate Debtor failed to discharge the outstanding amount, hence the Operational Creditor on 06.03.2020 sent a demand notice as per Rule 5 of I&B Code on the Corporate Debtor, demanding payment within 10 days of receipt of the notice.
- c) It is averred that though the notice was served, the corporate debtor neither or any of its directors have responded to the notice and no payment has been received.
- d) It is further averred that the corporate debtor has not raised any dispute regarding the services rendered by the operational creditor in favour of the corporate debtor.
- e) It is further stated that as it was agreed to receive an amount of Rs.70,00,000/- by way of settlement, hence the corporate debtor has issued post-dated cheques to the tune of Rs. 70 lakhs, which were dishonoured. However, an amount of Rs.20,00,000/- was

paid on different dates by the corporate debtor through RTGS. Copy of the bank statement reflecting the payments enclosed as Annexure-2 to this memo. It is further stated that the Operational Creditor issued demand notice when the settlement failed and cheques issued towards settlement amount were bounced.

- f) Hence the present company petition under Section 9 of IBC, 2016 is filed praying for an order of initiation of CIRP against the corporate debtor.

2. The gist of the Respondent's case is:

- a) Thus, as can be seen from the reply notice dated 16.03.2020 to the Demand Notice dated 04.03.2020, the Corporate Debtor despite contending that there are certain quality complaints regarding the supplies of steel made by the Operational Creditor to the Corporate Debtor which resulted in stopping the further business, submitted that, as against the total turnover of business that the Corporate Debtor had done with the Operational Creditor being Rs. 7,000,1648/-, a sum of Rs. 6,26,93,008/- has already been settled, leaving a

balance of Rs. 70 lakhs only and it is further contended that towards the discharge of the said sum of Rs. 70 lakhs, the Corporate Debtor on 12.07.2019 issued seven cheques.

- b) The Corporate Debtor, further contended that as against the seven cheques, only two cheques were encashed on 16.09.2019 and 27.11.2019. Further, the remaining five cheques were not presented. Therefore, there is no liability on the part of the Corporate Debtor to discharge any amount. Hence, the application is liable to be dismissed.

3. In the light of contest as afore-stated, since the operational debt between the parties herein has been admitted, the point that require consideration by this Adjudicating Authority is :

Whether the documentary evidence furnished with application shows that the aforesaid debt which is due and payable and has not yet been paid?

4. We have heard the Learned Counsel for Operational Creditor, Learned Counsel for the Corporate Debtor and perused the records and case law.

Point

Whether the documentary evidence furnished with application shows that the aforesaid debt which is due and payable and has not yet been paid?

5. According to the Learned Counsel for the Corporate Debtor, the Corporate Debtor in discharge of the operational debt of an amount of Rs. 70 lakhs, arose on account of the supplies received from the operational creditor, the corporate debtor had issued the following seven cheques in discharge of the said amount: -

Date	Cheque No	Amount	Reason for Dishonour
16.07.2019	081210	10,00,000/ -	Insufficient funds
18.08.2019	081211	10,00,000/ -	Insufficient funds
18.09.2019	081212	10,00,000/ -	Insufficient funds
18.10.2019	081213	10,00,000/ -	Insufficient funds
18.11.2019	081214	10,00,000/ -	Insufficient funds
18.12.2019	081215	10,00,000/ -	Drawer's signature differs
18.01.2020	081216	10,00,000/ -	Drawer's signature differs

6. It is stated that, barring the first two cheques above, the Operational Creditor failed to present the rest of the cheques for reasons best known to them and in fact two cheques bearing Nos. 081215 dated 08.12.2019 and 081216 dated 08.01.2020 though are valid even by the date of the reply notice sent by the corporate debtor to the demand notice issued by the operational creditor, the Operational Creditor failed to present them, as such there is no default on the part of the Corporate Debtor and the operational debt stood discharged.
7. The Learned Counsel for the operational creditor however, strongly refuted the above submission of the corporate debtor that that the Operational Creditor has not presented the cheques given in discharge of the operational debt and in such situation, it cannot be claimed that operational debt is not discharged by the Corporate Debtor. Ld. Counsel, referred to the Annexures to the memo dated 03.01.2022 namely, Annexure-1, photo copy of seven cheques given by the

Corporate Debtor are also enclosed, Annexure-2, which is the statement of account of the Corporate Debtor maintained by the Operational Creditor and submitted that all the seven cheques were in fact presented and were dishonoured as per the dates mentioned the statement.

8. We have carefully perused the annexures. Annexure II which is a statement of account for the period between 01.07.2019 to 31.07.2019, clearly disclose that all these cheques were presented by 27.01.2020 as per the endorsement mentioned thereunder. As can be seen at page 13 of the bank statement, two cheques bearing 081215 dated 08.12.2019 and 08.01.2020, respectively, claimed as not presented were in fact presented and stood returned with an endorsement *signature not tallied*, vide Banker's endorsement dated 18.12.2019 and 18.01.2020 respectively. Since the demand notice has been issued on 06.03.2020 it is evident that dishonour of the above cheques necessitated the operational creditor to issue the demand notice.

9. We are therefore satisfied from the record produced before us that the Corporate Debtor failed in discharging the operational debt. When default of operational debt is explicitly clear, it is sufficient enough for the Tribunal to order initiation of CIRP against the Corporate Debtor. This legal position can be traced from the ruling of Hon'ble Supreme Court of India, in Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, , wherein it was held that;

“Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act) (ii) **Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?** and (iii) 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 the demand notice of the unpaid operational debt in relation to such dispute?” **“If any one of the aforesaid conditions is lacking, the application would have to be rejected.”** (Emphasis is ours).

10. The Operational Creditor has not suggested the name of Interim Resolution Professional and requested the Tribunal to appoint from the panel of Insolvency Professionals issued by IBBI.

11. Therefore, we admit this Petition under Section 9 of IBC, 2016, and order initiation of corporate insolvency resolution process against the corporate debtor herein, with following directions: -

(A) Corporate debtor, M/s. KSR Properties Private Limited, is admitted in CIRP under Section 9 of the I&B 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) The operational creditor failed to name any one as IRP ad has requested the Tribunal to appoint one for the CIRP. The IBBI has recommended a panel of IRP's for appointment as IRP. In compliance with Section 16(3) (a) of the Code in order to avoid delay, this Tribunal hereby appoints Shri Mr. Niranjan Miriyala having registration no. IBBI/IPA-001/IP-P00642/2017-2018/11094as Interim Resolution Professional with e-mail: caniranjan@yahoo.com, as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code. Proposed IRP shall file Form-B issued by the IBBI within three days hereafter. This information is also available in IBBI Website. Authorisation for Assignment is valid to 12.12.2022. 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.
- (H) 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.
- (I) The Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad

for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

- (J) The petitioner is directed to pay a sum of Rs.1,00,000/- to the interim resolution professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI regulation, 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.
- (K) Accordingly petition is admitted.
- (L) The Operational Creditor is directed to communicate this order to the IRP appointed in this case.



Veera Brahma Rao Arekapudi
Member Technical



Dr. N.V. Ramakrishna Badarinath
Member Judicial

Pavani