

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

**SPECIAL BENCH (Video Conference)**

**CORAM: HON'BLE DR.VENKATA RAMAKRISHNA BADARINATH NANDULA-MEMBER JUDICIAL**  
**CORAM: HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 03.12.2021 AT 12:00 PM THROUGH VIDEO CONFERENCE**

|                                         |                                      |
|-----------------------------------------|--------------------------------------|
| <b>TRANSFER PETITION NO.</b>            |                                      |
| <b>COMPANY PETITION/APPLICATION NO.</b> | CP (IB) No.124/9/HDB/2020            |
| <b>NAME OF THE COMPANY</b>              | Techno Unique Infratech Pvt Ltd      |
| <b>NAME OF THE PETITIONER(S)</b>        | Janssica Equipment and Marketing Co. |
| <b>NAME OF THE RESPONDENT(S)</b>        | Techno Unique Infratech Pvt Ltd      |
| <b>UNDER SECTION</b>                    | 9 of IBC                             |

**Counsel for Petitioner(s):**

| <b>Name of the Counsel(s)</b> | <b>Designation</b> | <b>E-mail &amp; Telephone No.</b> | <b>Signature</b> |
|-------------------------------|--------------------|-----------------------------------|------------------|
|                               |                    |                                   |                  |

**Counsel for Respondent(s):**

| <b>Name of the Counsel(s)</b> | <b>Designation</b> | <b>E-mail &amp; Telephone No.</b> | <b>Signature</b> |
|-------------------------------|--------------------|-----------------------------------|------------------|
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**ORDER**

**CP (IB) No.124/9/HDB/2020** is listed for orders. CP admitted. Orders pronounced vide separate Orders.

  
**MEMBER (T)**

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**MEMBER(J)**

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

CP (IB) No.124/9/HDB/2020  
Under section 9 of the IB Code, 2016  
Under rule 6 of the Insolvency and Bankruptcy  
(Application Adjudicating Authority) Rules, 2016.

In the matter of  
**M/s TECHNO UNIQUE INFRATECH PRIVATE LIMITED**

Between:

M/s Janssica Equipment and Marketing Co.,  
A-3/229, 3<sup>rd</sup> Floor, Paschim Vihar,  
New Delhi-110063.

...Petitioner/  
Operational Creditor

And

M/s Techno Unique Infratech Private Limited,  
HIG-30, Phase-5, KPHB Colony,  
Hyderabad – 500072.

...Respondent/  
Corporate Debtor

**Date of Order: 03.12.2021**

**Coram:**

**Dr.Venkata Ramakrishna Badarinath Nandula, Member Judicial  
Dr. Binod Kumar Sinha, Member Technical.**

**Parties/Counsels present:**

For the Operational Creditor: Mr. L. Aravind Reddy, Counsel

For the Corporate Debtor: Mr. V. Allu, Counsel

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**Per: Bench**

**ORDER**

- 1) Under consideration is a Company Application filed by M/s Janssica Equipment and Marketing Co., (in short "*Petitioner/Operational Creditor*") under section 9 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Techno Unique Infratech Private Limited (in short, "*Respondent/Corporate Debtor*").
- 2) Brief facts of the case as submitted by the Operational Creditor are as follows:
  - a) That the Corporate Debtor herein, in view of their project requirement at Madhya Pradesh had approached the Operational Creditor herein for the equipment named "BOOM PLACER 36 METER (PUTZMEISTER)" for a negotiated and agreed amount of Rs. 4,50,000/- per month excluding taxes which included 300 hours of equipment availability per month and providing operator, repairs and maintenance at site.
  - b) That the said terms and conditions were communicated and accepted by way of a Work Order issued by the Corporate Debtor dated 30.08.2017, initially for a limited period of 6 months. It was further agreed that either termination or extension of the said contract shall be with a notice of 30 days in writing.

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- c) That the Operational Creditor herein had offered the said Equipment on hire basis from 06.09.2017 to 31.10.2018. It is pertinent to mention that all the while, except the mobilization charges, no payments were received on time though it was specifically agreed in the work order that the payments would be made within 20 days from the date of invoice.
- d) The Corporate Debtor had all together paid an amount of Rs. 42,14,600/- as miscellaneous amounts towards the raised invoices. That as on date an amount of Rs. 37,83,400/- (Rupees Thirty-Seven Lakhs Eighty-Three Thousand Four Hundred only) is due towards the hire charges.
- e) That at no point of time, any disputes in relation to the services provided by the Operational Creditor have been raised, more particularly to hold the payments due to the Operational Creditor herein.
- f) The Operational Creditor hereby confirms that there is no dispute of whatsoever nature pending between the parties with respect to the operational debt amount.
- g) Reiterating the above, learned counsel for the Operational Creditor prayed to admit the instant Application.
- 3) Learned counsel for the Respondent filed counter inter-alia denying all the allegations made by the Petitioner except those which are specifically admitted hereunder:

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- a) The Operational Creditor filed 15 invoices vide 17-18/014 dated 01.10.2017, 17-18/020 dated 01.11.2017, 17-18/026 dated 01.12.2017, 17-18/030 dated 01.01.2018, 17-18/037 dated 01.02.2018, 17-18/041 dated 01.03.2018, 18-19/046 dated 01.04.2018, 18-19/054 dated 01.05.2018, 18-19/061 dated 01.06.2018, 18-19/067 dated 01.07.2018, 18-19/074 dated 01.08.2018, 18-19/086 dated 01.09.2018, 18-19/089 dated 01.10.2018, 18-19/096 dated 01.11.2018 and 18-19/101 dated 01.12.2018.
- b) The Operational Creditor mentioned in all these invoices that the invoice is as per the Log Sheet attached, but the same is not filed by it and as per Clause 2 of the work order, the Logbook and Log Slips shall be treated as final documents for time calculations, which in turn will be the basis for calculating the amount payable. But the Operational Creditor did not submit authentic logbook and raised invoices as it pleased without any factual basis. There is a big difference between the claim amount of Operational Creditor and the books maintained by the Corporate Debtor because the number of invoices are not matching.
- c) That the Operational Creditor did not submit the correct ledger details. The payments started from 06.09.2017 whereas the ledger is submitted from 19.09.2017 without showing the payment of mobilization amount. The payment can be seen in the exhibits in

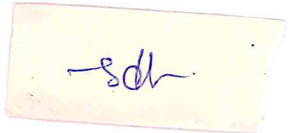
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the petition and the same did not reflect in the ledger of Operational Creditor.

- d) That the Operational Creditor submitted two invoices dated 01.10.2018 and 01.11.2018 without giving the log sheets and without obtaining the signature of authorized technical person of the Corporate Debtor.
- e) That as per Corporate Debtor's books, the amount payable to Operational Creditor is Rs.23,52,645/- (Rupees Twenty Three Lakhs Fifty Two Thousand Six Hundred and Forty Five Only) as against the claim of Rs.37,83,400/- (Rupees Thirty Seven Lakhs Eighty Three Thousand Four Hundred Only).
- f) That in view of the above difference and the bleak current financial situation of the Corporate Debtor, the Corporate Debtor attempted to come to an amicable settlement with the Operational Creditor and have offered to pay 50% of the dues as per due ledger amount of Rs. 23,52,645/- (Rupees Twenty Three Lakhs Fifty Two Thousand Six Hundred and Forty Five Only) i.e. Rs. 11,76,500/- (Rupees Eleven Lakh Seventy Six Thousand and Five Hundred Only) as full and final settlement within 45 days of entering into the agreement for One Time Settlement with the Operational Creditor.
- g) That this Adjudicating Authority may be pleased to grant time to the Corporate Debtor to pay Rs. 11,76,500/- (Rupees Eleven Lakh Seventy Six Thousand and Five Hundred Only) as full and final

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settlement, within 45 days of the Operational Creditor willing to enter into an One-time full and final settlement.

- 4) Heard and perused the record.
- 5) On a consideration of the facts, averments and documents placed by both sides, it is observed as under:-
  - a) Demand notice under Section 8(1) of the IB Code, 2016 has been issued by the Operational Creditor on 03.01.2020 and the same was duly delivered to the Corporate Debtor on 10.01.2020.
  - b) However, the Corporate Debtor did not avail the opportunity to reply to the said Demand notice in terms of provisions of S.8(2).
  - c) The Operational Creditor has proved its case by placing evidence of existence of debt and occurrence of default for which the Corporate Debtor was liable to pay.
  - d) In fact, the Corporate Debtor has also not denied the liability towards the Operational Creditor, but has only raised the issue of the amount of admitted debt as reflected in their own books of accounts being Rs.23,52,645/- being significantly less than the amount of debt to the tune of Rs.37,83,400/- as claimed by the Operational Creditor.
  - e) The Corporate Debtor has thus, categorically admitted the liability to the tune of Rs. 23,52,645/- which is much above threshold amount notified under Section 4 of IB Code,2016.
  - f) Again, by making an offer to settle the admitted liability of Rs.23,52,645/- by payment of 50% of the said amount as one time settlement, the Corporate Debtor has itself admitted the default also.

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- 6) The only defense taken by the Corporate Debtor is on account of difference in the amount of debt as reflected in the Books of accounts of the Operational Creditor being significantly higher than the amount of debt reflected in their own Books of accounts. However, this Adjudicating Authority is not required to decide the quantum of amount in default but, only to decide whether there is default in terms of provisions under S. 3 (12) of the Code or not? If the application is admitted and a Resolution Professional is appointed, it would be his duty to verify and determine the quantum of claim amount.
- 7) It is pertinent to note here that difference in amounts reflected in the respective books of accounts of the Operational Creditor and Corporate Debtor will not constitute a pre-existing dispute.
- 8) As already observed, the Corporate Debtor itself has admitted the default on their part by offering to make payment of 50% of the admitted liability and asking this Authority to grant 45 days' time for making such payment. Since the provisions of Section 9 do not empower this Authority to pass an order granting time for settlement as prayed for but either to admit or reject an application filed by the Operational Creditor, the contentions of the Corporate Debtor are overruled.
- 9) Further the Operational Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the

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Petitioner/Operational Creditor, this Adjudicating Authority is inclined to admit the instant Application.

- 10) Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day this order is passed.
- 11) The Operational Creditor has not proposed the name of Interim Resolution Professional. Accordingly, this Adjudicating Authority hereby appoints Mr. Medi Yadaiah, having Registration No. IBBI/IPA-002/IP-N01039/2020-2021/13334 e-mail id: yadmedi@gmail.com as Interim Resolution Professional, as his name is reflected in the list of IPs for appointment as proposed by IBBI. He is directed to file Authorization for Assignment within three days from the date of this order.
- 12) The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
- 13) We direct the Operational Creditor/Petitioner to pay sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified and reimbursed later on by CoC.
- 14) The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in

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section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-

- i. *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 or law, tribunal arbitration panel or other authority;*
  - ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*
  - iii. *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
  - iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
  - v. *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.*
- 15) The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of

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Section 14 shall not apply to such transactions, agreements. or other arrangement as may be notified by the Central Government in consultation with any operational sector regulator or any other authority.

- 16) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
- 17) The Petitioner/Operational Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
- 18) The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
- 19) The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
- 20) Accordingly, this Petition is admitted.

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**Dr. Binod Kumar Sinha**  
Member Technical

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**Dr.Venkata Ramakrishna Badarinath Nandula**  
Member Judicial