

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No.494/9/HDB/2019

Under section 9 of the IB Code, 2016

Read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of M/s. APITCO Limited:

M/s.Singer India Limited.
Regd. Office at: A 26/4, 2nd Floor,
Mohan Cooperative Industrial Estate,
New Delhi - 110 044.

...Petitioner/
Operational Creditor

Versus

M/s. APITCO Limited
(Formerly Andhra Pradesh Industrial & Technical Consultancy
Organization Limited),
Regd. Office: 8th Floor,
Parisrama Bhavan,
5-9-58/B, Basheerbagh,
Hyderabad, Telangana - 500 004.

...Respondent/
Corporate Debtor

Order delivered on:28.11.2019

Coram: Shri.K.ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL

Dr.BINOD KUMAR SINHA, MEMBER TECHNICAL

Parties/Counsel Present:

For the Petitioner/Operational Creditor:

Shri. M.L.Narasimham, Counsel.

For the Respondent/Corporate Debtor:

Shri. V.Ravi Kumar, Counsel.

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PER: K.ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL**ORDER**

1. Under consideration is a Company Petition filed by M/s. Singer India Limited (in short, 'Petitioner/Operational Creditor') against M/s. APITCO Limited (Formerly Andhra Pradesh Industrial & Technical Consultancy Organization Limited) (in short, 'Respondent/Corporate Debtor') under section 9 of the Insolvency and Bankruptcy Code 2016 (in short, I & B Code 2016) Read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, 'IB Rules 2016').
2. The Petitioner/Operational Creditor is having its Registered Office at A 26/4, 2nd Floor, Mohan Cooperative Industrial Estate, New Delhi. The Respondent/Corporate Debtor is an Unlisted Public Limited Company which is classified as State Govt. Company having its Registered Office at 8th Floor, Parisrama Bhavan, 5-9-58/B, Basheerbagh, Hyderabad, Telangana and is engaged in providing skill development and training to the youth of India, besides other consultancy activities to the Government Departments/Agencies and Private Enterprises and individuals.

The learned counsel appearing on behalf of the Petitioner/OC submitted as under:

- a) The Petitioner/Operational Creditor has supplied 3334 Sewing machines to the Respondent/Corporate Debtor under various tax invoices from the period 11.08.2016 to 30.08.2017 against the purchase orders made by the Corporate Debtor on different dates. For the said supplies of Sewing Machines an amount of Rs.33,16,230/- was due to be paid to the petitioner on various invoices and also an amount of Rs. 8,59,131/- was due towards interest from 01.06.2018 till 30.06.2018
- b) That the Petitioner/OC has furnished the details of invoices through which supplies were made to the Corporate Debtor against their purchase orders and the date of debt with due amount and interest thereon as under:

Sl. No.	Date of Invoice	Invoice No.	Due Date	Amount due Rs.
01	28/2/2017	SI/VJW/1617/0727	14/4/2017	10,23,831
02	23/6/2017	SI/VJW/1718/0256	23/6/2017	1,97,800

03	23/6/2017	SI/VJW/1718/0257	23/6/2017	1,28,800
04	23/6/2017	SI/VJW/1718/0258	23/6/2017	3,91,000
05	24/6/2017	SI/VJW/1718/0259	24/6/2017	4,32,400
06	30/8/2017	SI/VJW/1718/00116	29/9/2017	3,74,400
07	30/8/2017	SI/VJW/1718/00117	29/9/2017	3,84,001
08	30/8/2017	SI/VJW/1718/00118	29/9/2017	3,84,001
09		Debit and Credit adjustment of Rs.1 and Rs.3 in the Corporate Debtor Ledger account resulting in credit of Rs.3		-3
				33,16,230
	Interest due	On Rs.33,16,230 at 24%	From 1/6/2018 till 30/6/2019	8,62,220
		Total		41,78,450

c) The Respondent/Corporate Debtor has acknowledged the receiving of 3,334 Sewing Machines supplied by the Petitioner/OC herein, and also the amount of debt due for the said supplies, through the letter dated 11.10.2017 in (Annexure XIX). The Respondent/Corporate Debtor herein failed to pay the said due amount of Rs. 33,16,230/- and also the interest claimed on 24% as agreed. The Petitioner/OC has caused Notice of Form No. 3 and 4 dated 23.10.2018, and the same was received by Respondent who in turn sent reply through an e-mail on 09.11.2018 to the Petitioner.

d) That the Respondent/CD herein has never raised any dispute at any point of time in relation to the supply of 3334 Sewing machines made by the Petitioner/OC and also debt due as claimed. Further the Respondent/CD has not given any reply to the notice disputing the supply of goods or its value at any point of time.

4. In proof of the existence of debt and default on the part of the Respondent/CD, the Petitioner/Operational Creditor has submitted copies of several documents as stated below:

- Copy of Reply sent by Corporate Debtor.
- Copy of Statement of Amount due.
- Copy of Purchase order dated 9/8/2016.
- Copy of Purchase order dated 31/8/2016.
- Copy of Purchase order dated 26/10/2016.

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- f. Copy of Invoice No.727 dated 28/2/2017.
- g. Copy of Invoice No.256 dated 23/6/2017.
- h. Copy of Invoice No.257 dated 23/6/2017.
- i. Copy of Invoice No.258 dated 23/6/2017.
- j. Copy of Invoice No.259 dated 24/6/2017.
- k. Copy of Invoice No.116 dated 30/8/2017.
- l. Copy of Invoice No.117 dated 30/8/2017.
- m. Copy of Invoice No.118 dated 30/8/2017.
- n. Copy of Ledger extract of account of Corporate Debtor in the books of Operational Creditor.
- o. Copy of Statement of Bank Account of Operational creditor where the amounts received from the Corporate Debtor are usually reflected.
- p. Copy of Letter of admission of debt due by the Corporate Debtor dated 11/10/2017.
- q. Copy of Letter issued by Operational creditor seeking payment of debt due dated 22/1/2018.
- r. Copy of Letter of Corporate Debtor dated 24/1/2018 seeking time for clearing dues.
- s. Copy of Email dated 2/7/2018 sent by the Operational Creditor to the Corporate Debtor seeking payment against amounts due.
- t. Copy of Email dated 27/7/2018 sent by the Operational Creditor to the Corporate Debtor seeking payment against amounts due.
- u. Copy of Letter of Debt acknowledgement by the Corporate Debtor dated 26/9/2018.
- v. Copy of Memorandum and Articles of Association of Corporate Debtor.
- w. Copy of Memorandum and Articles of Association of Operational Creditor.
- x. Copy of Board Resolution dated 22/5/2019 of Operational Creditor.
- y. Copy of Special Power of Attorney dated 13/6/2019.



5. The learned Counsel for the Petitioner/Operational Creditor while reiterating the above averments submitted that the Respondent/Corporate Debtor is unable to pay its debts and therefore he has no other option except approaching this Adjudicating Authority under I & B Code seeking an order for commencing the Corporate Insolvency Resolution Process and prayed for an appointment of IRP to take over the affairs of the Respondent/Corporate Debtor.

6. The Respondent/Corporate Debtor filed counter affidavit inter-alia stating as under:

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- i. That the Corporate Debtor Company is an unlisted Public Limited Company which was incorporated on 27th day of August 1976. It is classified as State Govt. Company and is registered at Registrar of Companies, Hyderabad. The Corporate Debtor Company was involved in providing Skill Development and training to the youth of India, besides other consultancy activities to the Government departments/Agencies and Private Enterprises & Individuals.
- ii. The Corporate Debtor Company have placed order to Operational Creditor herein for supply of 3334 sewing machines and the said supply was accepted.
- iii. The Respondent/CD has disputed the outstanding Operational Debt of Rs.41,78,450/- claimed by the Petitioner/OC.
- iv. It is further stated that there is no agreement between the parties to pay the interest on delayed payment and also there is no any binding statute under which the Operational creditor is entitled to make such a claim.
- v. That the corporate debtor is not disputing the principal claim amount which was claimed by the operational creditor. However, it being intimated to the Corporate debtor that the end beneficiaries of the scheme have lodged certain deficit / defect in the sewing machines supplied by the Operational creditor. This was disclosed lately when the operational creditor followed up for payment from the Government of Andhra Pradesh who has floated scheme for the benefit of the members of the weaker section of the Society. It is further submitted that it is true that the operational creditor herein had supplied Marritt Popular Foot Machines (Sewing Machines) with stand as per the purchase order raised by this Corporate Debtor. It is further submitted that the total machines ordered by this corporate debtor is valuing Rs.1,53,84,030/- during the period 11.08.2016 to 30.08.2017 against the Purchase Order made by this Corporate Debtor on different dates.
- vi. That the CD had already paid an amount of Rs.1,20,67,800/- (Rupees One Crore Twenty Lakhs Sixty Seven Thousand Eight Hundred only) to the Operational creditor herein against the principal amount. The Respondent/CD is making payment as and when the amounts are released from the Government of Andhra Pradesh.
- vii. The Due and Payable to the Petitioner/OC is an amount of Rs.33,16,200/-. The details are as follows:

S.No	Machin es Request ed	Machin es Suppli ed	Rate per machi ne	Total Amount	Amount Released to Vendor So far	Amount to be Released
1	387	387	4600	1780200	1780200	0
2	1412	1412	4600	6495200	6495200	0
3	1027	1027	4600	4724200	1500000	3224200

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4	20	20	4600	92000	0	92000
7	250	250	4600	1150000	1150000	0
8	238	238	4800	1142400	1142400	0
	3334	3334	27800	15384000	12067800	3316200

viii. It is further submitted that the material ordered from the Petitioner/OC is also not for the sake and use of the Respondent/CD, that the sewing machines ordered from the Petitioner/OC is for the purpose of distribution to the poor and needy among the Society. It is further submitted that the Respondent/CD after receipt of the machines from the Petitioner/OC sent the same to MEPMA (Mission for Elimination of Poverty in Municipal Areas, Government of Andhra Pradesh) as per the Memorandum of Understanding and that the Respondent/CD is yet to receive the amounts from the above MEPMA which was controlled by the Government of Andhra Pradesh. There is an understanding by and between the parties that payment shall be effected, only on receipt of the Payment from the Government.

ix. That Respondent/CD vide its Letter dated 26.09.2018 in response to the Mail dated 25.09.2018 sent by the Petitioner/OC confirmed that a sum of Rs.33,16,200/- (Rupees Thirty Three Lakhs Sixteen Thousand and Two Hundred only) was due and payable by this Respondent/CD as on 26.09.2018 and also stated that the Respondent/CD would clear all the dues as and when they received money from MEPMA (Mission for Elimination of Poverty in Municipal Areas, Government of Andhra Pradesh). It is further submitted that the payment release file has been already processed and at present the file is in Finance Department for release. The Respondent/CD is anticipating the release from MEPMA (Mission for Elimination of Poverty in Municipal Areas, Government of Andhra Pradesh) at any moment.



That by virtue of this reply the Respondent/CD is not disputing the Principal claim amount claimed by the Petitioner/OC. That the amount was due and payable to the Petitioner/OC and this Respondent/CD is disputing the same only to the extent of interest being charged by the Petitioner/OC as well as the complaints lodged by the end beneficiaries of the MEMPA programme.

7. The Respondent/CD has raised the following disputes in its counter;

"a. The Operational creditor herein was claiming the principal along with Interest is illegal and arbitrary and against the law of contract and provision of the Insolvency and Bankruptcy Code, 2016 and hence the present application need to be dismissed with respect to the wrong claim as the Terms of engagement executed by and

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between the parties it is specifically agreed that Interest is not payable for belated payment.

- b. The Application filed by the operational creditor was incomplete. It is further submitted that under Rule 34(4) of the National Company Law Tribunal (Adjudicating Authority) rules, 2016 "every petition or application including interlocutory application shall be verified by an affidavit inform No. NCLT.6. In the present application filed by the Operational Creditor the Verified Affidavit was not filed."
8. The present petition was filed on 12.07.2019 and after scrutiny by the registry, the same was first listed on 30.07.2019, when the counsel for the petitioner was directed to send notice to the Respondent for appearance and file proof of service on the next date of hearing i.e. on 27.08.2019. Between 27.08.2019 to 03.10.2019 hearings were conducted and adjourned several times at the request of counsels for both the parties for filing counter, and rejoinder, if any, and the matter was finally heard and reserved for orders on 21.10.2019.
9. Heard both the parties. Perused the record and submissions.
10. It is the case of the Petitioner that it has supplied a total number of 3,334 sewing machines to the CD and raised various invoices amounting to Rs. 1,53,84,030/- and the CD has paid an amount of Rs. 1,20,67,800/- and an amount of Rs. 41,78,450/- (principal 33,16,230/- and interest @24% amounting to Rs. 8,62,220/-) is due and liable to be paid by the Corporate Debtor
- Corporate Debtor nowhere in its counter denied its liability but has raised two contentions for rejection of the instant Application which are as under:
- i. That the Applicant is claiming the principal along with interest which is a wrong claim. Both the parties in the terms of engagement specifically agreed that no interest shall be payable for belated payment.
 - ii. That the Application is incomplete as the Verified Affidavit as envisaged under Rule 34(4) of NCLT Rules has not been filed along with the Application.
11. With regard to the contention of the Corporate Debtor regarding claim of interest, this Adjudicating Authority holds that, this Adjudicating Authority is not required to decide the quantum of the amount, but only required to decide if there is any default on the part of the Corporate Debtor and whether the amount in default is more than Rs. 1 lakh. Since the admitted debit is of more than Rs.1 lakh, the objection regarding



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quantum of claim raised by the Corporate Debtor does not form proper ground for rejection of the instant Application.

12. With regard to the contention of the Corporate Debtor regarding the Application being incomplete in view of Verifying Affidavit not being filed along with the Application, on perusal of documents placed at Page No. 192-197 of the Company Petition, this Adjudicating Authority finds that the Applicant has enclosed a duly stamped, signed and notarized 'Verifying Affidavit' and thus finds no infirmity in the Application and holds that the Application is complete.
13. This Adjudicating Authority further observes that the Corporate Debtor in its counter, has duly acknowledged its debt and default on its part.
14. After hearing submissions of the counsel for the Petitioner/Operational Creditor and having perused the record, this Adjudicating Authority is satisfied that the Petitioner by placing evidence has proved the existence of operational debt in excess of Rs,1,00,000/- in respect of which default as stated in the petition has occurred, for which the Corporate Debtor was liable to pay. The Petitioner has also placed on record, proof of sending notices and other material papers. The Petitioner has complied with all the requirements as stipulated under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, this Adjudicating Authority is inclined to admit the instant Petition.
15. The instant petition is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within the timelines stipulated in Section 12 of the IB Code, 2016 (as amended), reckoning from the day this order is passed.
16. This Adjudicating Authority here by Appoint Ms.Padmasri Appana, IBBI/IPA-002/IP-N00220/2017-18/10672 as IRP. 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 Insolvency and Bankruptcy 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.
17. The moratorium is hereby declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process,



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for the purposes referred to in Section 14 of the I & B Code, 2016. It is hereby ordered to prohibit all of the following, namely:-

- a) *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.*
- b) *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
- c) *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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*

18. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provision of Sub-section (1) of Section 14 shall not apply to such transaction, as notified by the Central Government.



19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17, & 18 of the Code. The directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor is expected to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his function under Section 20 of the I & B Code, 2016.

20. The Operational Creditor and the Registry are 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.

21. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

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22. The Registry shall also communicate this order to ROC, Hyderabad for updating the status of Corporate Debtor in MCA Website.

23. The detailed address of the IRP is as follows:-

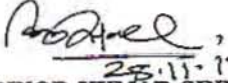
Ms.Padmasri Appana

IBBI/IPA-002/IP-N00220/2017-18/10672.

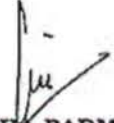
Mail: padmaappana@yahoo.co.in

Mobile: +91-9441477444.

24.The present Petition bearing CP(IB) No.494/9/HDB/2019 is hereby admitted.




Dr.BINOD KUMAR SINHA
MEMBER TECHNICAL



K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

SRAVAN & SANTI




Dy Regt. Asst. Regd Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
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केस नं. CP(IB) No. 494/9/HDB/2019
CASE NUMBER
निर्णय का तारीख 28/12/19
DATE OF JUDGEMENT
प्रति वैधता विद्यमान तारीख
COPY MADE READY ON 2/12/19