SL. No. 102

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

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.164/9/HDB/2020
NAME OF THE COMPANY	Lahari Infra Projects (India) Pvt Ltd
NAME OF THE PETITIONER(S)	Arham Iron & Steel Industries
NAME OF THE RESPONDENT(S)	Lahari Infra Projects (India) Pvt Ltd
UNDER SECTION	9 of IBC

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.164/9/HDB/2020 is listed for orders today. CP admitted. Orders pronounced vide separate Order.

MEMBER (T)

MEMBER(J)

Syamala

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No.164/9/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 LAHARI INFRA PROJECTS (INDIA) PRIVATE LIMITED

Between:

M/s Arham Iron & Steel Industries,
3rd floor, 309, Diamond Towers,
Main Guard Road,
S.D. Road, Secunderabad,
Telangana 500003.

...Petitioner/
Corporate Debtor

And

M/s Lahari Infra Projects (India) Private Limited,
Registered Office: 6-3-904, 3rd Floor,
Behind Yashoda Hospital,
Somajiguda, Hyderabad,
Telangana- 500082.

...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. Ritesh Mittal, PCS

For the Corporate Debtor: Mr. V.B Raju, Advocate

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Per: Bench

ORDER

1) Under consideration is a Company Application filed by M/s Arham Iron & Steel Industries (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 Lahari Infra Projects (India) Private Limited (in short, *"Respondent/Corporate Debtor"*).

2) Brief facts of the case as stated by the Operational Creditor are as under:

a) The Operational Creditor is carrying on the Business of various kinds of Iron & Steel Manufacture, Trade, Hire & Lease etc.,.

b) That the Operational Creditor supplied Iron & Steel in the form of TMT Rebar of Various dimensions i.e., 8MM, 10MM, 16MM, 20MM, 25MM etc. to Lahari Infra Projects (India) Private Limited and that the following is the detail of amount due along with interest:

Principal amount being	Rs. 73,79,129.20/-
Total Interest amounts	Rs. 4,50,439.86/-
Total amount due from Corporate Debtor	Rs. 79,10,648.23/-

c) That when the Operational Creditor failed to receive amount for the outstanding due from Corporate Debtor, on 21.01.2020 the Operation Creditor issue a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code 2016 read with Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor at its registered office and the same was delivered on 22.01.2020.

d) That certain post-dated cheques were issued, for which Corporate Debtor has failed to pay the amounts. Details of issued cheques and amounts due are as under:-

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Date	Cheque No.	Amount (Rs.)
04.10.2019	001724	12,51,980.00
13.10.2019	001780	12,87,380.00
14.10.2019	001781	12,94,460.00
18.10.2019	001786	6,44,280.00
22.11.2019	001980	12,53,340.00
29.11.2019	001988	4,60,329.00

e) The Operational Creditor hereby confirms that there is no dispute of whatsoever nature pending between the client with respect to the operational debt amount.

f) 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,* stating as under:-

a) That the Corporate Debtor herein deny that it is liable to pay a sum of Rs.79,10,648.23ps (Rs.73,79,129.20ps towards principal amount plus Rs.4,50,439.86ps towards interest) as claimed by the petitioner herein. The respondent herein is not liable to pay any such amount to the Petitioner herein.

b) That the Petitioner herein supplied material which is inferior in quality and the same was brought to the notice of the Petitioner herein by the Respondent herein during telephonic as well as personal discussions with the Petitioner herein.

c) That the Respondent herein has requested the Petitioner herein to give appropriate discount/credit in relation to the poor/inferior quality of material and reconcile the accounts.

d) Further, the Respondent herein was negotiating with the Petitioner herein for settling the issue amicably by arriving the actual amount (after discounting the bills with respect to poor/inferior quality of material) after reconciling the accounts. In the meanwhile, the Petitioner herein, instead of reconciling their accounts by giving appropriate discount/credit in relation to the poor/inferior quality

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of material, filed the present petition only to threaten the Respondent herein under the guise of the Insolvency and Bankruptcy Code, 2016 by abusing the process of law in order to gain undue advantage.

e) In view of the above facts and circumstances, it is prayed that this Adjudicating Authority may be pleased to dismiss the present insolvency petition.

4) Heard and perused the record.

5) After hearing both sides and perusing record, it is observed that in the instant case Statutory Demand Notice U/s 8 of the IB Code 2016 was issued on 21.01.2020 which was duly delivered on 22.01.2020. However, the Corporate Debtor did not send any reply to the same. Neither payment was made nor any notice of dispute was sent by the Corporate Debtor.

6) It is also observed that the facts regarding transactions of supply, delivery and acceptance of goods and dishonoring of cheques issued by the Corporate Debtor for making payments therefor leading to arisal of the operational debt are not disputed. In its counter affidavit, the Corporate Debtor has adduced the argument that there was a dispute between parties regarding quality of goods supplied, however, no evidence to establish the same has been placed on record except making an unverifiable statement that the issue of inferior quality of goods was informed on telephone and in person to the Operational Creditor.

7) Further, the statement by the Corporate Debtor that they initiated negotiations for amicable settlement with the Operational Creditor coupled with the fact that the Corporate Debtor issued a cheque for Rs.73,74,812/- on 29.02.2020 in favour of the Operational Creditor clearly indicates admission of liability on the part of the Corporate Debtor. However the said cheque was dishonoured by the Bank due to insufficient funds and the default continued.

8) On a careful consideration of the facts as emerge from the aforesaid discussion, we are of the view that in the instant case there is existence

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of an operational debt and there has been a default in repayment of the same on the part of the Corporate Debtor. This Adjudicating Authority is satisfied that the Operational Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. Hence, 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 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 of this order is passed.

11) The Operational Creditor has not proposed the name of Interim Resolution Professional. Accordingly, this Tribunal appoints Mr. Gopinath Surey, having Registration No. IBBI/IPA-002/IP-N01017/2020-2021/13332, e-mail id: gopinath_surey@yahoo.com as Interim Resolution Professional, as his name is reflected in the list of IP's for appointment as issued 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.

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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 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 Section 14 shall not apply to such transactions, agreements. or other

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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