

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

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 01.04.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
TCP(IB) No.65/9/AMR/2019		9 of IBC	ITS Technodue India Pvt Ltd Vs UPI Polymers Pvt Ltd

Counsel for Petitioner(s):

<small>Ries</small>			
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

<small>Ries</small>			
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

TCP(IB) No.65/9/AMR/2019 is admitted, vide separate orders.

7/4/22
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

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

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TCP (IB) No. 65/9/AMR/2019

**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. ITS TECNODUE INDIA PRIVATE LIMITED**

Between:

M/s. ITS Tecnodue India Pvt Ltd.,
942/2, Hanuman Junction Road,
Nuzividu, Krishna District – 521201,
Andhra Pradesh.

...Operational Creditor

AND

M/s.UPI Polymers Private Limited,
Survey No.2508, Industrial Park,
Survepalli Village,
Venkatachalam Mandal, SPSR Nellore – 524320,
Andhra Pradesh.

...Corporate Debtor

Date of Order: 01.04.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Mr. Ch.Pushyam Kiran &
Ms.Divya Datla, Advocates.

For Corporate Debtor : Mr. P.Vikram, Advocate.

Handwritten signature in green ink.

ORDER

1. This Application is filed by M/s. ITS Tecnodue India Pvt Ltd., (“hereinafter referred to as Operational Creditor”) seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s. UPI Polymers Private Limited (“hereinafter referred to as Corporate Debtor”).
2. The facts, briefly, as reflected in the Petition are as follows:

The Corporate Debtor is engaged in the business of manufacturing, producing, buying, selling, exchanging etc., of all types of High Density Polyethylene(HDPE), Poly Propylene (PP), Poly Propylene Random Copolymer (PPR) and Poly Vinyl Chloride (PVC) pipes and tube products etc., It also has business relating to extrusion, welding, stretch, reducing, forging, forming, pressing machining of HDPE, PP, PPR, PVC. Job works, importing and exporting all kinds of HDPE, PP, PPR, PVC, including production and manufacture of those items. The Corporate Debtor placed various purchase orders, service orders and also job work orders on the Operational Creditor for purchase and supply of HDPE Helo Bar, HDPE pipes, End Plugs, 225mm Flange etc., for reprocessing of HDPE scrap. The Corporate Debtor also placed various service orders on the Operational Creditor. Pursuant to issuance of the purchase orders, invoices have been raised by the Operational Creditor. Thereafter, the Operational Creditor placed orders on the

7/10/19

Corporate Debtor for job works. The Corporate Debtor never made payments to the Operational Creditor as per the invoices and made payments only on ad hoc basis. The Operational Creditor issued a demand notice calling upon the Corporate Debtor to discharge the outstanding amount of Rs.1,93,44,700/-. The Corporate Debtor issued a reply notice stating that there is no due to the Operational Creditor. Hence, this Petition seeking to initiate Corporate Insolvency Resolution Process (CIRP).

3. The Corporate Debtor filed counter raising the following objections:

The Company Petition is incomplete and has to be dismissed as the proposed Interim Resolution Professional (IRP) in Form-2 did not enclose the certificates confirming his eligibility. The affidavit as contemplated under Section 9(3) (b) of IBC, 2016 is not filed. The reply notice issued by the Corporate Debtor Company states that the Corporate Debtor is not liable for any amounts and one of the Ex-Directors of Respondent Mr.M.V.Bhushanam is liable for the payments to be made to the Operational Creditor. That there is no debt due to the Operational Creditor and in the Board meeting held on 10.06.2017 it was discussed that there were liabilities caused by said Mr.M.V.Bhushanam and his associates due to which the Corporate Debtor incurred losses and that the same would be recovered from said Mr.M.V.Bhushanam. The Operational Creditor suppressed the Board minutes, wherein liabilities caused to Corporate Debtor by MV Bhushanam were discussed and his cheque

7/10

authorization was cancelled. The claim is barred by limitation. The dispute is between the Operational Creditor, Mr.M.V.Bhushanam & Corporate Debtor in relation to alleged payment of claim for goods and services. The dispute is with respect to the payment of alleged dues payable to the Operational Creditor and other disputes with respect to mismanagement caused by Mr.M.V.Bhushanam, who is the former director of Corporate Debtor and present Director of Operational Creditor. The same is acknowledged in the Board meeting held on 10.06.2017 before issuing reply notice. In spite of the pre-existing dispute, the Operational Creditor issued a demand notice. The Board of Directors of Corporate Debtor had delegated the powers and appointed Mr.M.V.Bhushanam as a Vice-Chairman for the Corporate Debtor Company. In a meeting held on 28.03.2016, a decision was taken by the Board of Directors of the Corporate Debtor that the payment to all the directors be withheld till final decision in that regard is taken by the Board to which Mr.M.V.Bhushanam was also a party. Therefore, the present dispute is with respect to affairs of the Mismanagement of Mr.M.V.Bhushanam. After receiving detailed reply from the Corporate Debtor, the Operational Creditor filed the present Petition, which is an abuse of process of law. Out of five Directors of the Operational Creditor Company, three Directors i.e., Mr.M.V.Bhushanam, Mutheswara Rao Meka and Pathuri Nagabhushanam were partners of M/s.MAP Industrial Projects LLP, except two members Meka Manjula and Janardhana Rao Saggurti, who are wife and father-in-law of Mr.M.V.Bhushanam. M/s. MAP

How

Industrial Projects LLP is the promoter and 60% shareholder in Corporate Debtor under joint venture with foreign Company M/s. Union Pipes Industry LLC, Abu Dhabi, UAE which is having 40% share in Corporate Debtor. Mr.M.V.Bhushanam and Mr.Pathuri Naga Bhushanam were main Directors in M/s.UPI Polymers Private Limited, who were appointed as Vice-Chairman & Director and Managing Director respectively and they were delegated powers with respect to running and dealing with all the activities of the Corporate Debtor since beginning. The present operational debt raised by the Operational Creditor pertains to the said period. Mr.M.V.Bhushanam, along with other partners, alienated their shares in favour of New Indian Promoters in MAP Industries Projects LLP which is a joint venture with Union Pipes Industry LLC. Mr.M.V.Bhushanam and his group have submitted resignations to the Corporate Debtor and were accepted. Subsequently Mr.M.V.Bhushanam issued demand notice. Mr.Bhushanam is the one who placed orders on the Operational Creditor. Huge quantities are still lying in the factory as non-movable items. The orders are to favour the Company in which Mr.M.V.Bhushanam is a Director, without considering whether the accessories are actually required or movable. This has resulted in piling up huge material kept in the factory of the Corporate Debtor as non-movable items. In the meeting held on 10.06.2017 at Abu Dhabi, the Board of Corporate Debtor discussed about huge sundry debts extended by Mr.M.V.Bhushanam as he was in-charge of the affairs of the

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Corporate Debtor. As per the norms of the Company Mr.M.V.Bhushanam was supposed to take BG/LC before effecting supplies to any firms, but he violated the said norms and mis-utilized the powers delegated to him. Due to actions of not safeguarding the interest of the Corporate Debtor, the Corporate Debtor was left with no Working Capital for procurement of Raw Materials to run the factory. Since, Mr.M.V.Bhushanam mismanaged the affairs, several payments are due which are to a tune of Rs.3,35,04,000/-. The Corporate Debtor Company has been incurring heavy interest on the borrowings taken from the Bank, for working capital, on account of non-realization of dues extended by Mr.M.V.Bhushanam. In view of the above, in the Board meeting held on 10.06.2017, it was resolved to withhold all the payments of Mr.M.V.Bhushanam and his associates till realization of all the dues to the Corporate Debtor extended by Mr.M.V.Bhushanam are recovered. Mr.M.V.Bhushanam on various occasions assured that he would take the responsibility to realise the above due amounts, but there was no progress. Out of the five Companies from whom a total amount of more than Rs.3 Cores is to be realized, Mr.M.V.Bhushanam is a partner and Director of the two Companies. Mr.M.V.Bhushanam is deliberately creating hindrance for the functioning of the Corporate Debtor Company. If the Operational Creditor receives any notice of dispute from Corporate Debtor as contemplated under Section 8(2)(a) of IBC, the Operational Creditor's right to initiate CIRP ceases to exist. The disputes between the parties cannot be

7/11/19

adjudicated by this Tribunal, hence, the Petition is liable to be dismissed.

4. The Operational Creditor filed rejoinder contending that the issue in the current Company Petition is with regard to payments which are due against the invoices issued to the Corporate Debtor. The Interim Resolution professional (IRP) has been enrolled as an Insolvency Professional under Regulation 7 read with Regulation 9 of the IBBI (Insolvency Professionals) Regulations, 2016. The payments which were to be given to the Operational Creditor along with the other long pending debtors are withheld by the Corporate Debtor. It has not been discussed in any of the Board meetings that the payments to the Operational Creditor should be withheld. There is not an iota of evidence to show that disputes existed between the parties. As far as the payment of the present claim amount is concerned, it is against the invoices to be paid by the Corporate Debtor. Minutes of the Board meeting dated 10.06.2017 would establish that the dues with respect to the Operational Creditor were not disputed. The Operational Creditor merely states that the debts extended by the Corporate Debtor and also the payments to be made to the Corporate Debtor and his associates shall be withheld. Subsequent to the meeting dated 10.06.2017, the Corporate Debtor never communicated any reasons for withholding the amount. A mere glance at the Balance Sheets of the Operational Creditor makes it clear that the Corporate Debtor was in profits and Section 197 of Companies Act, 2013 would not be

7 Nov

applicable to the Corporate Debtor. The Operational Creditor was only responsible for marketing and development of the Corporate Debtor's Business. The complete operation of the Corporate Debtor was with the Managing Director, Directors and Finance Manager. The Abu Dhabi Management always had control on accepting or rejecting any order. Only upon the approval from the Abu Dhabi Management, the Operational Creditor executed transactions on behalf of the Corporate Debtor. The Abu Dhabi Management has never rejected or requested the Operational Creditor to refrain from any transaction. The Corporate Debtor never requested for any bank guarantees or letter of credit for any transaction. It was agreed in the Memorandum of Understanding (MoU) dated 20.01.2017 that the remuneration of the Operational Creditor would be cleared within a period of four months. The Operational Creditor has no right over the Management of the Corporate Debtor. The dispute herein is only regarding the payment of remuneration which is due to the Operational Creditor.

5. Heard the arguments of both sides and perused the written submissions. From the arguments and the pleadings the points that emerged for consideration are as follows:
 - I. Whether there is any pre-existing dispute with regard to the claim amount.
 - II. Whether there is any debt due to the Operational Creditor and whether the same is not discharged by the Corporate Debtor.

7/12/19

III. To what result.

I. **Whether there is any pre-existing dispute with regard to the claim amount.**

AND

II. **Whether there is any debt due to the Operational Creditor and whether the same is not discharged by the Corporate Debtor.**

For the sake of convenience both the points are taken up for discussion together. In the rejoinder, it is mentioned that the dispute herein is only with regard to the payment of remuneration, which is due to the Operational Creditor. But in the claim application, the claim is mentioned as relating to the supplies made by the Operational Creditor to the Corporate Debtor. Considering the said contentions of the rejoinder as having been made by oversight, I shall proceed with deciding the points. A demand notice was issued by the Operational Creditor as required under Section 8 of IBC, for which a reply was issued by the Corporate Debtor. In the said reply it is stated that Mr.M.V.Bhushanam, who is an Ex-Director of the Corporate Debtor has conducted the affairs suiting to his self-interest and has placed orders for huge quantities, which are lying in the factory as non-movable items and that the order placed by him on M/s. ITS Technodue India Private Limited i.e., the Operational Creditor herein is to favour it, without considering whether the accessories are actually required or are

11/10/19

movable. The same has resulted in piling up huge material in the factory. It is also stated that due to the said reasons the Corporate Debtor has been incurring heavy interest, including penal interest, on the borrowings taken from the Bank for the working capital, on account of non-realization of dues extended by Mr.M.V.Bhushanam. It is further stated that after taking over the charge of the Company by the new Management in the month of June 2017, all efforts are being made by the new management, by infusing additional share capital from the promoters as working capital, to improve the business of the Company, to bring out the Company from loss making into profit making. But it needs further time of one more year to improve its financial status. Saying so it is however stated that the claim made in the demand notice is false and frivolous and is an abuse of process of law made by Mr.M.V.Bhushanam.

As can be understood from the reply notice, Mr.M.V.Bhushanam against whom the allegations of mismanagement of the Corporate Debtor are made is one of the Directors of the Operational Creditor and he is a partner of M/s.MAP Industrial Projects LLP, and is a promoter of the Corporate Debtor with 60% shareholding. It can be seen that Mr.M.V.Bhushanam has interest in both the Operational Creditor and the Corporate Debtor. The allegation is that said Mr.M.V.Bhushanam has placed orders on behalf of the

7/10/19

Corporate Debtor in order to favour the Operational Creditor and mismanaged the affairs of the Corporate Debtor. By virtue of the minutes of the meeting of the Board of Directors dated 28.03.2016, the day to day operations are entrusted to Mr.M.V.Bhushanam, who is the Vice-Chairman of the Company, for a period of one year. In the same meeting, payments to all the Directors were kept under hold till final decision. It did not hold that the payments due to Mr.M.V.Bhushanam are to be withheld. By virtue of the minutes of the meeting of the Board of Directors dated 10.06.2017, it is shown that Mr.M.V.Bhushanam was granted leave of absence. One of the agenda items was change of authorized signatories for banking operations in the ICICI Bank and closure of banking account with Federal Bank. In place of Mr.M.V.Bhushanam one Mr.T.Venkatappayya was appointed to act as an Authorised Signatory. Hence, it can be understood that the Board of Directors has resolved to keep Mr.M.V.Bhushanam away from signing the cheques jointly with Mr.P.Naga Bhushanam, who is the Managing Director. An element of distrust on Mr.M.V.Bhushanam gets reflected from the said action taken by the Board of Directors. But whether on the basis of such expression of distrust, the amounts which are due to the Operational Creditor can be withheld is the question that has to be decided.

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It can be noted that the minutes, by virtue of which Mr.M.V.Bhushanam was removed as an Authorised Signatory, is dated 10.06.2017. The contention of the operational Creditor is that all the decisions taken by the Corporate Debtor are to be approved by the Management at Abu Dhabi and hence, when the Management at Abu Dhabi does not instruct anything with regard to the dues of the Operational Creditor, the same cannot be withheld. The dispute as can be seen from the reply notice is with Mr.M.V.Bhushanam, who was allegedly responsible for the financial loss of the Corporate Debtor. It also can be noted from the reply notice that the Corporate Debtor is not doing well and is in the state of losses and that endeavours to bring out the company from the loss making to profit making are being done. The invoices pertaining to the supplies are filed and the same are not denied. There is acknowledgment of the debt by way of acknowledging the letter with the subject “confirmation of accounts” which is dated 11.12.2017. As per the said account statement the credit amount is Rs.2,24,27,544/-. There is an acknowledgment on the part of the Corporate Debtor by way of signing on the said statement. The said statement is subsequent to the removal of Mr.M.V.Bhushanam as an Authorised Signatory, which clearly implies, if not shows, that the transactions between the Operational Creditor and the Corporate Debtor were not disputed even after Mr.M.V.Bhushanam was removed from the key position of the



Corporate Debtor. The pre-existing dispute which is taken as a defence by the Corporate Debtor should relate to the claim made by the Operational Creditor. The dispute, which is for the first time stated in the reply notice, is only with regard to Mr.M.V.Bhushanam. Even after Mr.M.V.Bhushanam was removed as an Authorised Signatory the liability of the Corporate Debtor is acknowledged. Payments were being made till 16.04.2016. No action was taken with regard to the alleged mismanagement of Mr.M.V.Bhushanam prior to 16.04.2016 and the due amount was also confirmed on 11.12.2017. There is no protest made while acknowledging the said accounts. The order of this Tribunal in TCP (IB) No.57/9/AMR/2019 rejected the application which was filed by Mr.M.V.Bhushanam for his remuneration. In the scenario that Mr.M.V.Bhushanam was removed, the Tribunal rejected the Application. There seems to be no action taken before any court of law or any forum, with regard to the alleged mismanagement of Mr.M.V.Bhushanam. When no action is initiated in respect of the said mismanagement, projecting the mismanagement as the pre-existing dispute, only when a demand is raised by the Operational Creditor, cannot be considered as a pre-existing dispute. When the amount due is not disputed and when it is not disputed that the goods under the invoices were delivered to the Corporate Debtor, the contention that they are lying idle on their site cannot be given weight. Two years have elapsed from the



supply of the material till the filing of this application, during which period there was no action taken by the Corporate Debtor with regard to the said material. Hence, all the defences raised by the Corporate Debtor get marginalized from the fact that the supply of material is not denied and that the statement of account was confirmed on 11.12.2017. Mere mentioning in the reply notice, that there is a pre-existing dispute does not deprive the Tribunal of its power to order CIRP. If the dispute is found to be not genuine and not related to the claim, the same can be ignored. Hence, it is clear that the Corporate Debtor has fallen due the amount that is claimed by the Operational Creditor.

Hence I am of the considered view that it is a fit case to admit and order initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Operational Creditor suggested Dr. Govindarajula Venkata Narasimha Rao as Insolvency Resolution Professional (IRP) and sought the Tribunal to appoint an IRP.

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. Dr. Govindarajula Venkata Narasimha Rao, (Reg No: IBBI/IPA-003/IP-N00093/2017-2018/10893), 301, Alekya

7/10/19

Raindrops, Gautami Enclave, Kondapur, Hyderabad, Telangana –500068, Mobile No: 9823039766, E-mail: raogvn@gmail.com, is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website. He is directed to file his written consent in Form No. 2 forthwith.

- 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.

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**