

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
27-04-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP(IB) No.11/9/HDB/2020
U/s 9 of IBC, 2016

IN THE MATTER OF:

NITCO Ltd

...Operational Creditor

Vs

Pridepoint Constructions Pvt Ltd

...Corporate Debtor

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)


SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Order is recorded vide separate sheet in CP No.11/09/HDB/2020. In the result, the petition is admitted. The Corporate Debtor is put in CIRP as per the terms and conditions mentioned in the order.


MEMBER (T)

Pavani


MEMBER (J)

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

CP (IB) NO. 11/9/HDB/2020

APPLICATION UNDER SECTION 9 OF IBC, 2016, R/W RULE 6 OF I & B (AAA) RULES, 2016

In the Matter of

M/s.NITCO Limited

Registered office: Nitco House,
Sheth Govindram Jolly Marg,
Kanjur Marg(E), Mumbai-400042.

**... Petitioner/
Operational Creditor**

Versus

- 1. M/s.Pridepoint Constructions Private Limited&Ors.**
8-2-334/30, Road No.3, Banjara Hills,
Hyderabad.
- 2. Rohit Reddy Muthu, Director.**
- 3. Pratima Reddy Muthu, Director.**

**...Respondent/
Corporate Debtor**

Date of order: 27.04.2022

Coram:

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

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

Appearance

For Applicant: Shri Som Sinha and Associates.

For Respondent: Shri Ram Murthy, Counsels.



[PER BENCH]

O R D E R

1. This Petition is filed by M/s.NITCO Limited under Section 9 of *Insolvency and Bankruptcy Code (hereinafter to be referred as "Code")*, read with Rule 6 of *Insolvency and Bankruptcy* admission of the petition, seeking 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 Rs 23,95,910/- as on 15th November, 2017.
2. The averments in brief are: -
 - (1) The operational creditor is in the business of manufacturer and distributor of tiles, marbles and mosaico. Corporate debtor placed orders for various kinds of marbles.
 - (2) It is averred that some of the marbles which has been supplied by the operational creditor had been rejected by the corporate debtor and thus operational creditor had issued credit notes against the rejection of marbles.
 - (3) It is averred that out of total supply of the goods, operational creditor raised bill of Rs.2,37,19,875/- and deducted an amount of Rs.13,23,965/- towards goods rejected by the corporate debtor and issued credit notes. The amount after deducting stood at Rs.2,23,95,910/- wherein corporate debtor





had paid an amount of Rs.2,00,00,000/- out of the total debt. The last payment was made for an amount of Rs.10,00,000/- on 14th November, 2017.

- (4) It is averred that inspite of repeated requests corporate debtor failed to pay the remaining amount of Rs.23,95,910/- and thus issued demand notice on 15th November, 2018, but the notices were returned with remark” not claimed”.
- (5) Thus operational creditor filed the present application before this Hon’ble Tribunal to initiate CIRP against the corporate debtor.

3. Gist of the counter filed by Respondent No.1-3:

- a. The respondents filed counter, inter-alia contending that the facts and contents of the application are devoid of merits.
- b. It is averred that out of total outstanding amount bill raised for goods is Rs. 2,37,19,875/- an amount of Rs.2,00,00,000/- is paid and remaining goods worth of Rs.37,19,875/- has been rejected and thus operational creditor issued only credit note for Rs.13,23,965/- and a balance of Rs.23,95,910/- has to be issued by the operational creditor.
- c. It is averred that respondents had not received any notice for the demand of alleged amount. Demand notice was not delivered to any of the directors of the respondent company.



d. It is averred that the present application is nothing but abuse of process of law. Hence prayed the Hon'ble Tribunal to dismiss the application with costs.

4. Rejoinder filed by the operational creditor:

a. Operational creditor while reiterating the facts further submitted that credit notes worth Rs.13,23,965/- issued towards the goods rejected has been already adjusted vide invoice of Rs.2,37,19,875/-thereby the outstanding amount is Rs.2,23,95,910/-.

b. It is averred that the last invoice raised in the month of March, 2015 and thereafter there was no complaints raised by the corporate debtor.

c. It is averred that the demand notice was served on Respondent No.3 on 13.09.2019, the delivery report has been annexed to the application at page no.47.

d. It is averred that corporate debtor has not filed any record to substantiate their claim. Further, the emails referred at para 5 of the reply are addressed at a belated stage with a clear intention to avoid the payment that is defaulted.

e. Thus operational creditor prayed the Hon'ble Tribunal to allow the application and initiate CIRP against the corporate debtor.

5. In the light of the contest as mentioned above, the point for consideration by this Adjudicating Authority is:



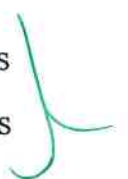
Whether the documentary evidence furnished with application shows that the aforesaid operational debt is due and payable and has not yet been paid by the corporate debtor?

6. We have heard Ld Counsel Shri Som Sinha, for operational creditor, Ld Counsel Shri Ram Murthy, for the Corporate Debtor. Perused the records. The applicant is a manufacturer and distributor of tiles and marble and mosaic. Respondent approached the Applicant for different kinds of marbles for their projects. The applicant herein has supplied the material and raised 13 invoices during 31.05.2014 to 03.03.2015.
7. The total amount of Rs.2,37,19,875/- is due by the corporate debtor and thus the applicant raised invoices out of which Rs. 13,23,965/- was deducted towards the goods rejected by the respondents and credit notes towards the same were issued in favour of the respondent. Final amount to be payable is Rs.2,23,95,910/- out of which Rs.2,00,00,000/- was paid by the respondents. The last payment of Rs.10,00,000/- was paid by the respondent on 14.11.2017. Though repeated requests were made payments were not made by the corporate debtor.
8. On 15.11.2018, Applicant herein issued demand notice for the balance due of Rs.23,95,910/- . However, the same notice returned with remark “ *Not claimed*”. Copy of the notice is annexed to the application at **Annexure-E**. Thereafter, on 11.09.2019, the applicant herein issued demand notice through its counsels. However, the same was served on Respondent No.3 , whereas notice served on the other



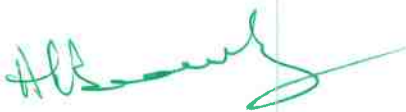
respondents returned with remarks “ *Item returned addressee left without instructions*” and “ *Addressee absent door locked*” on 13.09.2019. Once again on 24.09.2019, applicant herein issued demand notice on the Company and Respondent No.2. However, the same was returned on 27.09.2019 with remarks “ *Item returned no such person in the address*”.

9. Therefore, the applicant herein has filed an application under Section 9 of IBC for recovery of Rs.23,95,910/- with a prayer to initiate CIRP against the corporate debtor.
10. In response to the above submissions made by the Ld Counsel for Applicant, the respondent has stated that the applicant is suppressing the facts to damage the reputation of the corporate debtor. Further stated that the goods supplied by the applicant was rejected and thus the operational creditor was supposed to issue credit note to that extent. However, in spite of issuing credit notes, the applicant herein has filed this Application for recovery of the alleged dues under Section 9 of IBC.
11. Ld Counsel for Respondent No.1-3 also claimed that they have not received any demand notice which is supposed to have been sent by the Applicant herein. As they have not received the demand notice the provisions of IBC doesn't apply as there was no support of claim made by the applicant.
12. Ld Counsel for Respondent has admitted that applicant herein has raised a total bill of Rs.2,37,19,875/- out of which respondent has

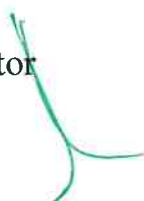


paid Rs.20,00,000/- and goods worth Rs.37,19,875/- has been rejected. Further respondent received credit note worth Rs.13,23,965/- and balance credit note of Rs.23,95,910/- has to be issued. In spite of that the Applicant seeks for payment of outstanding due.


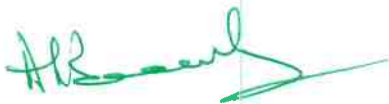
13. This application is filed by the operational creditor to damage the reputation of the corporate debtor company and also stated that they have not violated any provisions of IBC. Respondent also alleged that due to inferior quality of goods corporate debtor incurred loss and the same has been communicated to the respondents vide email dated 29.12.2017, 30.12.2017 and 03.01.2018. However, respondent had never responded to the queries and issues raised by the respondent.
14. Ld Counsel for Respondent herein also claimed that the alleged demand notice dated 11.09.2019 under Section 9 of IBC was not delivered to any of the Directors of the Company as such they have no opportunity to refute the claims made by the operational creditor. In the light of the above submissions they have prayed for dismissal of the application filed by the operational creditor.
15. In response to the counter affidavit filed by the corporate debtor the applicant has filed rejoinder reiterating the facts mentioned in the application. However, no new points has been placed before us. No additional points were raised by the operational creditor.



16. We have gone through the record and verified the correspondence placed before us. We are satisfied with the reasons stated herein. It is admitted fact that the applicant herein has submitted that material to the tune of Rs.2,37,19,875/- was supplied to the corporate debtor, out of which Rs.2,00,00,000/- has been paid. The applicant also mentioned the credit notes issued for Rs.13,23,965/- due to inferior quality of material supplied to the corporate debtor.
17. Ld Counsel for applicant herein also reiterated the fact that corporate debtor has to pay out standing amount of Rs.23,95,910/- towards final payment. However, the same was not paid. However, they also confirmed that demand notice which was sent was returned as mentioned above. After thorough perusal of the records we are of the view that applicant herein could prove the claim of outstanding due from corporate debtor.
18. Further, we have listed this matter on several occasions. However, neither the corporate debtor nor the applicant has evinced any interest to make oral submissions before this Tribunal. As such we have gone through the records submitted to us by both sides. From the records we observed that there is an outstanding due from the corporate debtor, despite of several efforts made by the applicant the same was not paid by the corporate debtor.
19. We have also find that no response was given by the corporate debtor when demand notice was served and the notice sent was returned.



20. We therefore, have no option except to accept the submissions made by the operational creditor in regard to the debt and default by the corporate debtor.
21. We also find no merit in the contentions made by the corporate debtor in his counter affidavit. We therefore, hold that it is fit case to put corporate debtor into CIRP.
22. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -
- a. 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;



- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. The Operational Creditor prayed this Adjudicating Authority to appoint the IRP. This Bench hereby appoints Shri E S S Sriramachandra Murthy, having IBBI Registration No: BBI/IPA-001/IP-P01408/2018-2019/12161, with email id : murthye[at]gmail[dot]com as to carry the functions as mentioned under the Insolvency & Bankruptcy Code. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the

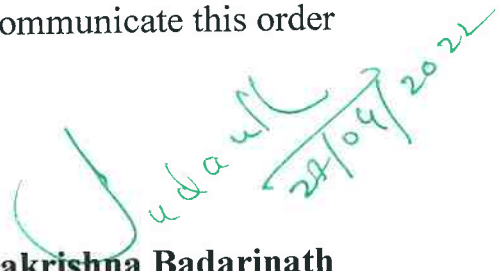


proposed IRP is fit to be appointed as IRP since the relevant provision is complied with. Proposed IRP shall file Form-B issued by the IBBI within three days hereafter. This information is also available in IBBI Website. Authorisation for Assignment is valid to 23.11.2022. Thus, there is compliance of 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.

- g. 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.
- h. 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.
- i. Accordingly petition is admitted.
- j. The Operational Creditor is directed to communicate this order to the IRP appointed in this case.


Veera Brahma Rao Arekapudi
Member Technical

Pavani


Dr. N.V. Ramakrishna Badarinath
Member Judicial