



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

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 29.09.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.44/9/AMR/2022		9 of IBC	RNJ Commodities Private Limited Vs. Supra Petro Chemicals Private Limited

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.44/9/AMR/2022 is admitted, vide separate orders.

SD/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**



*NCLT Amaravati Bench
CP (IB) No. 44/9/AMR/2022*

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

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CP (IB) No. 44/9/AMR/2022

**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. SUPRA PETRO CHEMICALS PRIVATE LIMITED**

Between:

RNJ Commodities Private Limited,
8-3-293/82/B/7, Gayathri Hills,
Jubilee Hills, Hyderabad -500033.

... Operational Creditor

AND

M/s. Supra Petro Chemicals Private Limited,
Jegurupadu Village, Kadiyam Mandal,
Kadiyam, East Godavari District,
Andhra Pradesh -533126.

... Corporate Debtor

Date of pronouncement of order: 29.09.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Mr. M.Maharshi Viswaraj, Advocate.

For Corporate Debtor : Mr.K.Devi Prasanna Kumar, Advocate.



ORDER

1. This petition is filed by M/s. RNJ Commodities Private Limited, Operational Creditor (hereinafter referred to as OC) against the M/s. Supra Petro Chemicals Private Limited, Corporate Debtor (hereinafter referred to as CD) seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD) for the default committed by the CD with regard to the debt that is due to the OC which is to an extent of Rs.1,49,50,000/- which includes interest at 18% Per Annum.
2. The facts of the case briefly are that:
 - i). The OC issued a work order (WO) to the CD on 15.12.2018 for purchase of carbon steel bright rounds sae, MS beam, Non Alloy Steel Round Bars, MS Channels (goods). The total value of WO was Rs.2,00,04,742/-.
 - ii). On 28.12.2018, the OC along with purchase order has remitted an advance of Rs.1 Crore. But the CD failed to supply goods and also has not refunded the advance amount paid by the OC. Hence, this Company Petition seeking to initiate CIRP against the CD.
3. The Corporate Debtor filed counter, admitting the payment of advance of Rs.1 Crore and also admitting the value of the purchase order as Rs.2,00,04,742/-. It is also admitted that the purchase



order was issued on 15.12.2018. But the only objection raised is that the Company Petition is not maintainable in view of the fact that the debt which arises out of advance payment made to a CD for supply goods or services is not an operational debt and an amount given as advance to the CD doesn't fall under the definition of Operational Debt as defined under Section 5 (21) of IBC, 2016. On the said ground the CD seeks to reject the present Company Petition.

4. Heard both the counsel. The Counsel for the OC submits that by virtue of a judgment of Supreme Court in *Civil Appeal No 2839 of 2020 between Consolidated Construction Consortium Limited vs. Consolidated Construction Consortium Limited* which overruled the NCLAT order dated 12.12.2019, advance given for services to be rendered is also an operational debt. The Supreme Court held at Paragraph 42 and 45 as follows:

42: It is then that we come to the core of the dispute – while the appellant has argued that the debt is in the nature of an operational debt which makes them an operational creditor, the respondent has opposed this submission. The respondent's submission, which as accepted by the NCLAT, seeks to narrowly define operational debt and operational creditors under the IBC to only include those who supply goods or services to a corporate debtor and exclude those who receive



goods or services from the corporate debtor. For reasons which shall follow, we reject this argument.

45: Similarly, in the present case, the phrase “in respect of” in Section 5(21) has to be interpreted in a broad and purposive manner in order to include all those who provide or receive operational services from the corporate debtor, which ultimately lead to an operational debt. In the present case, the appellant clearly sought an operational service from the proprietary concern when it contracted with them for the supply of light fittings. Further, when the contract was terminated but the Proprietary Concern nonetheless encashed the cheque for advance payment, it gave rise to an operational debt in favour of the appellant, which now remains unpaid. Hence, the appellant is an operational creditor under Section 5 (20) of the IBC.

The advance given by the OC is also held to be an operational debt. The CD's counsel doesn't raise any objection. She seeks this Tribunal to pass an order based on the judgment of the Supreme Court which amounts to nothing but conceding for the admission of the Petition. Hence considering that there is acknowledgment of debt and acceptance of admission of the receipt of the advance amount of Rs.1 Crore and in the light of the judgment of the Supreme Court which held that the amount given as advance would also fall within the definition of operational debt, this application



needs to be admitted and accordingly the CP (IB) No.44/9/AMR/2022 admitted.

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. **Mr. Nethi Mallikarjuna Setty**, (Registration No. IBBI/IPA-001/IP-P01251/2018-2019/11958), having office at Flat No. 101, Laurel Residency ,Road no. 18, Panchavati colony,Manikonda ,Hyderabad ,Telangana ,500089; Mobile:9963606444; e-mail: **malliknethi@gmail.com**; is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.
- 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.

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu