

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
07-02-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

**CP(IB) No.79/9/HDB/2020**

U/s 9 of IBC, 2016

**IN THE MATTER OF:**

Apex Ispat Ltd

**...Operational Creditor**

Vs

R.N. Metals Pvt Ltd & another

**...Corporate Debtor**

**CORAM:-**

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

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

**ORDER**

**Orders in CP (IB) No.79/9/HDB/2020 pronounced vide separate sheets. In the result Company Petition is dismissed.**

  
(T)

*Srinivas*

  
MEMBER (J)

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

**CP (IB) No. 79/9/HDB/2021**

U/S 9 of IBC, 2016, r/w Rule 6 of I & B(AAA) Rules, 2016

Between

M/s Apex Ispat Limited  
15/1, 2nd Floor, Asaf Ali Road  
New Delhi – 110002

...Operational Creditor

Versus

R N Metals Private Limited  
Municipal No. A-23/5 & 6, APIE  
Balanagar  
Hyderabad – 500037

...Corporate Debtor

**Date of order: 07.02.2022**

**Coram:**

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)  
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

**Appearance:**

For Petitioner: Shri Deepak Garg, Advocate  
For Respondent: Shri Amir Bavani, Advocate

SD/-

SD/-

**PER: BENCH**

**ORDER**

- I. This Petition is filed under Section 9 of Insolvency and Bankruptcy Code (hereinafter to be referred as “Code”), read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking admission of the petition, 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. 30,61,967/- (Rupees Thirty Lakhs sixty one thousand nine hundred sixty seven only).
2. The averments in brief of the Application are that;
  - (i) The Petitioner, herein after referred to as “Operational Creditor”, is a Public Limited having CIN No. U74899DL1992PLC051244 and registered office in New Delhi, is engaged in the business of trading of the metal and other allied materials viz, HR Coil and HR Plate etc.
  - (ii). The Respondent, herein after referred to as “Corporate Debtor”, is a Private Limited Company incorporated under the Companies Act, 1956, having CIN No. U74120TG2012PTC079808.
  - (iii). The Operational creditor supplied HR Coil and HR Plate and other related materials to the Corporate Debtor on credit basis and raised invoices from time to time. It is also stated that there is no dispute

# SDF

SDF

with regard to the supply of materials to the Corporate Debtor. The Operational Creditor issued a letter dated 02.09.2019 addressed to the Corporate Debtor attaching ledger account maintained by them, which indicated an amount of Rs. 30,61,967/- as on 31.08.2019 is receivable from Corporate Debtor and the same has been acknowledged by the Corporate Debtor. However, when the Corporate Debtor failed to discharge the debt due to the Operational Creditor, the latter issued Form-3 demand notice on 11.11.2019, demanding payment of the operational debt. No reply is received from the Corporate Debtor. Thus, submitting, prayed the Adjudicating Authority to allow the petition.

3. Counter filed by Corporate Debtor:-

- (i) The Corporate Debtor filed counter, inter-alia, contending that the petition is not maintainable on two technical grounds viz. (i) Union of India is arrayed as party to the Petition and (ii) Affidavit accompanied with Form-2 (consent of IRP) is verified at New Delhi but notarized at Hyderabad.
- (ii). The second contention raised by the Corporate Debtor is that the operational creditor failed to provide purchase orders against the invoices and further failed to demonstrate that the invoices were actually raised and served upon the Corporate Debtor. Furthermore, the Corporate Debtor submits that, on several occasions, albeit they received inferior quality products from the Operational Creditor but owing to the cordial relationship with the

SD/-

SD/-

Operational Creditor they refrained from instituting any litigation. Thus, submitting, prayed to dismiss the petition.

- (iii). While it was so, the 1<sup>st</sup> Respondent on 29.12.2021 filed an affidavit stating that, considering the business relations the corporate debtor approached the Operational Creditor and submitted four undated cheques amounting to Rs. 36,90,267/- being the entire amount claimed in the petition by the Operational Creditor. It is sated that at the first instance cheque for an amount of Rs. 10,00,000/- deposited on 06.12.2021 has been cleared. However, two cheques dated 07.12.2021 and 08.12.2021 for an amount of Rs. 20,61,967/- were not cleared by the Bank for the reasons not known to the Corporate Debtor. The Corporate Debtor therefore, cleared the amount of Rs. 20,61,967/- representing the above two cheques via RTGS on 25.12.2021.
- (iv) Therefore, as full claim amount together with interest has been paid to the Operational Creditor, prayed this AA to dismiss the petition.
- 4 (i) Thus, from the Additional Affidavit filed by the Corporate Debtor, it is quite clear that, apart from the principal sum of Rs. 30,61,967/- a sum of Rs. 6,28,300/- claimed towards interest also has been paid to the operational creditor by the corporate debtor. Thus, the entire sum demanded under the demand notice stood discharged completely by the Corporate Debtor.
- (ii) However, Learned Counsel for the Operational Creditor while admitting the receipt of sum of Rs. 36,90,267/- from the Corporate

SD/-

SD/-

Debtor, contended that the Operational Creditor is entitled for the litigation costs and interest *pendente lite*, which claim however is refuted strongly, by the Learned Counsel for the Corporate Debtor, contending that the Operational Creditor is not entitled for any such claim.

5. Therefore, in the above backdrop, the only point that emerges for our consideration is:

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

6. We have heard the Learned Counsel for the Operational Creditor Shri Deepak Garg and Learned Counsel for the Corporate Debtor, Shri Amir Bavani, perused the records and case laws.

**POINT**

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

- 7.1 Needless to say, that in terms of Section 8 of the I&BCode, the Operational Creditor, on occurrence of default is entitled to deliver a demand notice of unpaid operational debt/copy of an invoice, demanding payment and the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

SD/

SD/

(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) *the payment of unpaid operational debt—*

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.


7.2. In so far as the case on hand is concerned, the operational creditor under the demand notice dated 11.11.2019 claimed a sum of Rs 36,90,267/- as operational debt, which sum also includes the interest as claimed. Admittedly, the Corporate Debtor has fully discharged the said operational debt, in the manner as aforementioned.

8. Hon'ble Supreme Court of India, in *Innoventive Industries Ltd. v. ICICI Bank & Anr.* (Civil Appeal Nos.8337-8338 of 2017). held that;

“the adjudicating authority under Section 7 of the Code has to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor within 14 days. The corporate debtor is entitled to point out to the adjudicating authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim, *is not due* i.e., it is not payable in law or in fact. (Emphasis is our).


9. In the case on hand, since the entire sum of Rs. 36,90,267/-, being the operational debt demanded under the demand notice dated 11.11.2019 since paid by the corporate debtor, no part of the operational debt is due, so much so, when the amount claimed as operational debt has been fully discharged, the Operational






Creditor is not entitled for initiation of CIRP. The proceedings under Section 7 & 9 of I&B Code, are not money recovery proceedings, as the purpose behind triggering CIRP under both these sections is resolution of corporate insolvency. Therefore, the petition deserves to be dismissed.

10. Accordingly, CP (IB) No. 79/9/HDB/2021 is dismissed.

  
(Veera Brahma Rao Arekapudi)  
Member (Technical)

  
(Dr. N. Venkata Ramakrishna Badarinath)  
Member (Judicial)

*Binnu*