



S.No.11

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
06-06-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE

CP(IB)71/9/HBD/2020

U/s 9 of IBC, 2016

IN THE MATTER OF:

Dharmesh Gajjar(Proprietor of Dhanshree Impex) ...Operational Creditor

Vs

VVR Innovate Materials Pvt Ltd ...Corporate Debtor

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced in Company Petition CP(IB) No. 71/9/HDB/2020. Recorded vide separate sheets. In the result, the petition is allowed. The Corporate Debtor is put into CIRP as per the terms and conditions mentioned therein.

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

CP (IB) No. 71/9/HDB/2020

*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.*

In the matter between

M/s.Dharmesh R.Gajjar

Address: C-1, Shivkrupa Society,

Opp. Wariya Prajapati Wadi, Nadiad- 387002.

... Operational Creditor

VERSUS

M/s. VVR INNOVATE MATERIALS PRIVATE LIMITED

Registered office:

No.49 403/17/1/A Plot No.231 P,

Sai's Lakshmi Elite Padmanagar Phase 2,

Chintal Hyderabad, 500 067.

... Corporate Debtor

Date of order:06.06.2022

Coram:

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

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

Appearance:

For the Petitioner : Shri. J.Govardhan Reddy, Advocate

For the Respondent: Shri M.Viswaraj Maharshi, Advocate.

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PER: BENCH

1. Under consideration before us is the petition filed by Mr. Dharmesh R. Gajjar / Operational Creditor herein stating that M/s. VVR Innovate Materials Private Limited / Corporate Debtor committed default of Rs.14,99,688/- (including principle Rs.14,09,886/- along with interest of Rs.89,802/-@18%) . Hence, this petition is filed under Section 9 of Insolvency & Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, commencement of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. **AVERMENTS:**

- 2.1 Operational creditor is a proprietorship Company which is involved in manufacturing FRP Epoxy/polyester Pultruded Profiles like Angle, Channels Flat, tubes, Cable trays, Gratings, threaded Rods, Rods, Nut and Door Frames. The Corporate debtor Company is a private limited Company who had purchased goods from the operational creditor by giving purchase orders. The goods were received and accepted by corporate debtor and there was no dispute at the time of delivery of the goods with related to quantity or quality of goods.
- 2.2 It is averred that corporate debtor failed to make payment for the outstanding invoices dated 22.01.2019 to 26.07.2019

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amounting to Rs.14,09,886/-. The Corporate Debtor is also liable to pay an interest on the outstanding due amount of Rs.89,802/-.

- 2.3 It is averred that despite of several reminders, the aforesaid outstanding dues were not paid by the Corporate Debtor. Subsequently, Form 3 (Demand Notice) on 02.09.2019, was issued by the Operational Creditor. A copy of the Demand Notice is annexed to the Application as Exhibit-G.
- 2.4 It is averred that corporate debtor has sent its reply through an advocate Mr.Krishna Murthy Pasupula, dated 20.09.2019. The reply sent by the respondent is vague, ambiguous, and fabricated to escape the provisions of the I&B Code, 2016. The copy of reply is annexed as **Exhibit-J** to the Application.
- 2.5 It is averred that there was no credits received by the operational creditor in respect of corporate debtor debt. Thus operational creditor filed the present Application under Section 9 of the I&B Code, 2016 to initiate CIRP against the corporate debtor.

3. Counter filed by the Corporate Debtor

- 3.1 Corporate debtor denied the averments made by the operational creditor and stated that the present application is not maintainable either on law or on merits and it is liable to be rejected.
- 3.2 It is averred that the petitioner has suppressed several material facts and approached this Adjudicating Authority with unclean hands. The operational creditor is seeking to invoke the

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provisions of IBC only to harass and threaten the Corporate Debtor.

- 3.3 It is averred that there are genuine pre-existing disputes between operational creditor and corporate debtor in respect of quality of goods and delay in supply of material even before issuance of Demand notice under Section 8 of I&B Code, 2016.
- 3.4 It is averred that corporate debtor vide its reply to the demand notice stated that the goods supplied by the operational creditor is not up to the mark and they are defective. The corporate debtor raised various issues regarding quality of goods by sending several Wats App messages and Text Messages.
- 3.5 It is averred that E-Mails, and messages will reveal the poor quality and inordinate delay in supply of goods. Copy of E-Mails, Text Messages, WatsApp messages are annexed at page no.15-23.
- 3.6 It is averred that due to defective material supplied by the operational creditor, the corporate debtor sustained loss to the tune of Rs.50,00,000/- and the same was informed to the operational creditor. Further averred that corporate debtor has lost several valuable customers and business prospects.
- 3.7 It is averred that corporate debtor rejected the defective material supplied by the operational creditor and same was informed to the operational creditor along with images. Subsequently, operational creditor has admitted that he would not claim for the defective/rejected material.

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- 3.8 It is averred that as per the terms and conditions of the purchase order, the operational creditor is liable to pay the liquidated damages to the corporate debtor for delay caused in the supply of material. The relevant clause of Purchase Order is reproduced below:
LD Clause: Delay up to one week 2% of total amount, exceeding one week 5% of the total amount.
- 3.9 The corporate debtor averred that through E-mail dated 15.03.2019, 21.05.2019 informed about the delay caused by the operational creditor and claimed for liquidated damages of Rs.14,61,328/- . Instead of paying liquidated damages, operational creditor chose to file this frivolous application with an intention to harass and defame the corporate debtor.
- 3.10 It is averred that since there are several pre-existing disputes between the parties, thus the present Application is liable to be rejected.
- 3.11 It is further averred that operational creditor filed WhatsApp Messages at Pg no.46-50 of the Application without complying Section 65B of Evidence Act, 1872. As per Section 65B(4) a certificate by the person who prepared electronic record has to be issued else the electronic record is in admissible and it cannot be taken into consideration.
- 3.12 In view of the facts and circumstances, the corporate debtor averred that the present application is liable to be rejected.

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4. In the above backdrop the point that emerges for consideration by this Tribunal is:

Whether an operational debt as claimed by the applicant is due and payable by the Corporate Debtor to the applicant? If so, whether the Corporate Debtor defaulted in payment of the said operational debt?

We have heard Shri J.Govardhan Reddy , learned counsel for the operational creditor and Shri M.Viswaraj, learned counsel for Corporate Debtor. Perused the record.

5. At the outset it may be stated that the present application being one under Section 9 of the I&B Code , 2016, where under the Applicant/Operational Creditor claimed that a sum of Rs.14,99,688/- being the amount allegedly due and payable by the Corporate Debtor herein, towards the goods, supplied by the operational creditor under invoices dated 22.01.2019 to 26.07.2019 which was defaulted by the corporate debtor, , it is imperative for this Tribunal to find whether there is an operational debt in favour of the Applicant as claimed by the operational creditor and if so, whether the Corporate Debtor had defaulted in discharging the said operational debt.
6. According to learned counsel for operational creditor, various “Cable Trays”, were supplied to the corporate debtor as per the purchase order under various invoices raised from time to time. Learned Counsel further submits that the corporate debtor has not raised any dispute with regard to quality and quantity of goods at

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the time of receipt of goods. It is further argued that even though the corporate debtor has utilised the goods failed to make payment in respect of the invoices dated 22.01.2019 to 26.07.2019 amounting to Rs.14,09,886/-. According to the Ld counsel as the repeated requests were made, payments were not made by the corporate debtor, the applicant had issued the statutory demand notice in Form3 & Form 4 dated 02.09.2019, for which a reply has been received from corporate debtor through its counsel on 20.09.2019 making false and frivolous allegations.

7. Per contra the Learned Counsel for corporate debtor while denying the submissions made on behalf of the operational creditor contended that there is pre-existing dispute with regard the material supplied. According to the Ld Counsel various issues regarding quality of goods were informed to the operational creditor by way of WhatsApp messages, text messages and emails. It is further argued that due to defective material the corporate debtor was put into loss to the tune of Rs.50,00,000/- and has lost several valuable customers and business prospects.
8. Learned Counsel further contended that as per the purchase order, the operational creditor should pay the liquidated damages of Rs.14,61,328/- for delay in supplying the material. Instead of paying the same operational creditor filed the present application to harass the corporate debtor.
9. Both the Ld. Counsels for the Operational Creditor as well as Corporate Debtor in their endeavour to drive home their respective

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contentions have relied, on the e-mail correspondence, WhatsApp messages and text messages exchanged between the operational creditor and the corporate debtor. However, neither side has compiled Section 65B of Evidence Act, 1872.

10. We understand from the submissions made by the Ld Counsel for the corporate debtor that the material was not supplied in time and that the delay has resulted in monetary loss to the corporate debtor, that the operational creditor failed to honour the Clause of purchase order related to payment which resulted to liquidated damages, and thus there is a pre-existing dispute.
11. According to the corporate debtor there was delay in supplying the material and the same resulted in monetary loss to the corporate debtor. In support of the plea learned counsel for corporate debtor placed reliance on the emails dated 15.03.2019, 21.05.2019 besides WhatsApp messages purportedly exchanged between corporate debtor and operational creditor. However, this plea was totally denied by operational creditor contending, inter-alia, that no delay in supplying the material and material supplied has been utilised by the corporate debtor as such the plea that material was supplied with delay is not sustainable. The emails as well as the Whatsapp messages can be relied on only upon the due compliance of Section 65B(4) of Indian Evidence Act. Hon'ble Supreme Court of India, held that certificate under Section 65B(4) is mandatory required for production of electronic evidence in the matter between Ravinder Singh vs State of Punjab . Since neither side has complied Section

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65B(4) of Indian Evidence Act, no reliance on the WhatsApp messages can be made.

12. That apart if there is any delay in delivering the material the remedy open to the corporate debtor is to invoke the liquidated damages clause and corporate debtor can't deny the payment in respect of goods deliver to the corporate debtor.
13. It may be stated that in terms of Sub Clause 2 of Section 8 of IBC, the corporate debtor is entitled to resist the applicant for initiation of CIRP against the corporate debtor on the ground that there is a pre-existing dispute as to the goods supplied service. Here we rely on the ruling of the Hon'ble Supreme Court of India, in re, **Mobilox**, wherein it was held that,

It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application" (Emphasis is ours).

14. We, have carefully examined the records and the submissions made, on the touch stone of the above ruling and found that the plea of existence of dispute in this case is, *feeble, vague and a mere assertion of facts unsupported by any evidence*. We therefore find no force in the plea of the corporate debtor that there is a pre-

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existing dispute between the parties prior to the receipt of the demand notice.\

15. Therefore, in the light of our discussion, we are satisfied that the applicant has established an operational debt of a sum over one lakh and the corporate debtor has failed in discharging the said debt. Hence it is a fit case for initiation of CIRP against the corporate debtor.
16. The Operational Creditor has not suggested the name of Interim Resolution Professional and requested the Tribunal to appoint from the panel of Insolvency Professionals issued by IBBI.
17. 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

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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) That this Bench hereby appoints Mr. Sakhamuru Venu, having IBBI Registration No. IBBI/IPA-001/IP-P-01749/2019 - 2020/12866, with email id as sakhamuruvenu[at]gmail[dot]com as Interim Resolution Professional 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

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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 16.12.2022. 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) 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.
- (h) 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.
- (i) 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.
- (j) This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

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- (k) Accordingly petition is admitted.
- (l) The Operational Creditor is directed to communicate this order to the IRP appointed in this case.

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Veera Brahma Rao Arekapudi

Member Technical

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06.06.2022

Dr. N.V.Ramakrishna Badarinath

Member Judicial

Pavani