NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 18.01.20201 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 219/7/HDB/2020
NAME OF THE COMPANY	Agarwal Steel Structures (India) (P) Ltd
NAME OF THE PETITIONER(S)	Aryan Structions Pvt Ltd
NAME OF THE RESPONDENT(S)	Agarwal Steel Structures (India) (P) Ltd
UNDER SECTION	7 of IBC

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

The application is allowed vide separate order.

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)

Karim

NATIONAL COMPANY LAW TRIBUNAL
BENCH-1 HYDERABAD

CP (IB) NO. 219/7/HDB/2020

Petition filed under Section 7 of IBC, 2016 R/w Rule 4 of I & B (AAA) Rules, 2016

In the matter of

Aryan Structural Solutions Private Limited
(formerly known as Aster Structural Solutions (P) Ltd
H.No. 6-3-347/17/4, 4th Floor, Dwarakapuri Colony
Punjagutta – 500082
Represented by its Authorised Representative
Shri Mandha Bal Reddy, Director

...Financial Creditor
Petitioner

VERSUS

M/S Agarwal Steel Structures (India) (P) Ltd
Plot No. 48, Ground Floor, Nagarjuna Hills
Punjagutta, Hyderabad- TG 500083

...Corporate Debtor
Respondent

Date of order: 18.01.2021

Coram:

Hon'ble Shri K. Anantha Padmanabha Swamy, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance:

For Petitioner: Shri Mayur Mundra, Advocate
For Respondent: Shri G. Bhupesh, Advocate

Heard on: 05.01.2021

PER: SHRI K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)

JUDGEMENT

1. **Aryan Structural Solutions Private Limited** (hereinafter referred as Petitioner/ Financial Creditor) has filed the present petition against **M/s. Agarwal Steel Structures (India) Private Limited** (hereinafter referred as Respondent/ Corporate Guarantor) to trigger Corporate Insolvency Resolution Process ("CIRP"). It is

alleged by the Petitioner that the Corporate Guarantor had defaulted in paying of Rs. 1,13,36,885/- (Rs One Crore, Thirteen Lakhs, Thirty Six Thousand, Eight Hundred Eighty Five only) which includes interest @ 12% interest from 01.03.2018 to 30.04.2020 (Principal Rs. 89,97,528/- plus interest Rs. 23,39,357/) with further interest thereon at contractual rates. The debt arose due to failure of making payment towards principal instalments of various term Loans and interest thereon. Hence this petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, (referred to as "CODE") R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. **Facts apropos to the Petition in brief:-**

2.1 That the Financial Creditor was incorporated in the year 2010 under the Companies Act, 1956 with the main objective to trade in steel and its allied products. Similarly, the Corporate Debtor is also a company incorporated in the year 2008 under the Companies Act, 1956 with the objective of dealing in steel products.

2.2 The Financial Creditor / Petitioner herein supplied 1250 MT of MS Rebars to Corporate Debtor against the purchase order from Corporate Debtor in March 2017 under certain terms and conditions and accordingly an advance amount of Rs. 3,85,00,000/- was paid by Corporate Debtor . The worth of the goods supplies is Rs. 4,74,97,528/-. However, it is stated the balance payment was not made good by the Corporate Debtor. It is the case of Financial Creditor that having financial limits with banks and timely inflow of funds being affected with the blockage of funds, the Financial Creditor was forced to pay extra interest.

2.3 On 01.03.2018, both the parties agreed and entered into a Loan Agreement on the terms and conditions to return the money in four quarterly instalments from June, 2018 with an interest @ 12% per annum from the date of agreement till the date of repayment of the amount. However, the terms of the agreement was not adhered to by the Corporate Debtor. Hence, the petition is filed under Section 7 of IBC, 2016.

3. The Corporate Debtor/ Respondent herein filed reply and denies all the averments made in the petition and stated the same is not maintainable and lacking merits.

3.1 It is the contention of the Respondent that it is the Petitioner who approached the Corporate Debtor and expressed its intention to supply steel and related material to the Corporate Debtor and placed a purchase order in the month of March, 2017 for supply of 1250 MT of MS Rebars.

3.2 It is contended, as per the terms of the purchase order, the Corporate Debtor paid an advance amount of Rs. 3,85,00,000/- being 80% of the advance amount. However, the Respondent has admitted that it could not make good the balance 20% of the value of the purchase order owing to downfall of the market.

3.3 In the meantime several discussions / negotiation were on between the parties to settle the issue resulting in execution of a Loan Agreement dated 01.3.2018 wherein the Corporate Debtor agreed to pay the balance amount in four quarterly instalments along with interest commencing from 10.06.2018. The Corporate Debtor approached the Petitioner to waive off the remaining 20% of the balance amount due to the Petitioner. The Respondent also requested the Petitioner to take back the material supplied and to return the advance amount paid to it, which terms were not adhered to by the Petitioner.

3.4 The objection taken by the Corporate Debtor is that transaction between the financial creditor and the Corporate Debtor is not a financial transaction and that the amount due is an operational debt. As such, the instant petition filed under Section 7 is not maintainable and disputed the entire claim.

4. We heard the Counsel appearing for Petitioner and the Counsel for Corporate Debtor via video-conference. This is a petition filed under Section 7 of the IBC seeking initiation of CIRP against the

Corporate Debtor stating that an amount of Rs. 1,13,36,885/- towards a loan agreement which remain unpaid by the Corporate Debtor. In the instant case the Petitioner supplied goods to the Corporate Debtor against purchase order for supply of 1250 MT of MS Rebars. Admittedly the Corporate Debtor paid 80% of the value of the purchase order but the remaining 20% of the balance amount which has to be cleared within 30 days from the date of supply order remained unpaid which is against the terms of purchase order. It is also observed that both the parties have executed a Loan Agreement. However, the Corporate Debtor failed to adhere to the terms and conditions of the Loan Agreement.

5. Per contra, the Counsel for Respondent would contend that the petition filed under Section 7 of IBC is not maintainable as the transaction between the Financial Creditor and the Corporate Debtor is not a financial transaction but an operational transaction and as such it is an operational debt. The Learned Counsel would further contend that the request of the Corporate Debtor for waiver of the loan amount or to take back the material supplied by the Petitioner were not heeded by the Petitioner.

6. It is observed from the record before us, admittedly the Petitioner has supplied the goods as per the purchase order issued by the Corporate Debtor. However, the amount due under the purchase orders issued by the Corporate Debtor was not paid even though the goods were supplied as per the purchase order. In view of the default, both the parties have converted the due amount on account of invoices into a Loan Agreement dated 01.03.2018 repayable in four quarterly instalments starting from June, 2018, thereby converting the operational debt into financial debt. Accordingly, the Petitioner who is the supplier of the goods initially, has become the Financial Creditor as per the terms of the Loan Agreement. Accordingly, the Applicant filed the application under Section 7 of IBC subsequent to the loan agreement entered into between the parties for repayment of the due amount. Considering the subsequent development in the matter which was agreed upon for

by both the parties, the contention of the Corporate Debtor that the amount in default is only for the supply of goods is untenable and cannot be taken as stand for dismissing the application. The Petition is complete in all respects and we are of the considered view it is a fit case for admission.

7. The Petitioner had at the first instance suggested the name of Shri Madhusudhan Rao Gonugunta to act as Interim Resolution Professional. However, subsequent to filing of the Petition, the Petitioner filed interlocutory Application bearing IA No. 23 of 2021 seeking change of IRP in the present case. After hearing the submissions made by the Learned Counsel for Petition, we hereby allow the IA and appoint Mr. Ram Murthy Kommera to act as Interim Resolution Professional.

ORDER

8. As a sequel to the above, this Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

8.1 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;

8.2 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.

8.3 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.

8.4 That the order of moratorium shall have effect from **18.01.2021** 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.

8.5 This Bench hereby appoints **Mr. Ram Murthy Kommera** having IBBI Registration No. **IBBI/IPA-002/IP-N00595/2017-18/11776**, #R/o Plot No. 143, H.No. 8-19, Metro City Mega Township, Bongulooru, Post & Village: M.P. Patelguda, Ranga Reddy District as Interim Resolution Professional, who has filed Form No.2 and Form-B(Authorization for Assignment) which is valid till 24-11-2021.

8.6 That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

8.7 The Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.

8.8 Accordingly, this Petition is admitted and IA No. 23/2021 is allowed.

(Veera Brahma Rao Arekapudi)
Member (Technical) 18/01/21

(K. Anantha Padmanabha Swamy)
Member (Judicial)

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