SL. No.138

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

(Video Conference)

CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)
CORAM: SHRI VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 26.09.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/114/2022
NAME OF THE COMPANY	Ogene SystemLtd
NAME OF THE PETITIONER(S)	Platina Properties and Projects Ltd
NAME OF THE RESPONDENT(S)	Ogene SystemLtd
UNDER SECTION	7 of IBC

ORDER

Orders in **CP (IB) 114/2022** pronounced and recorded vide separate sheets. In the result, CP is admitted. Corporate Debtor is put under CIRP.

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MEMBER (T)

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MEMBER (J)

Syamala

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No.114/7/HDB/2022
Under Section 7 of the IB Code, 2016
r/w Rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M/S OGENE SYSTEMS INDIA LIMITED

Between:

M/S Platina Properties and Projects Limited,
Rep. by its Director, Mr. P.V. Ramana Reddy,
Regd. Office: H. No. 62/7 Fort, Opposite Central Library,
Kurnool - 518001.

...Applicant/Financial Creditor

A N D

M/S Oegene Systems India Limited,
Regd. Office: H. No. 8-3-191-14,
Housing Board No. 5/A, Vengal Rao Nagar,
Hyderabad – 500038.

...Respondent/Corporate Debtor

Date of Order: 26.09.2022

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Member, Judicial
Sri Veera Brahma Rao Arekapudi, Member, Technical

Counsel present:

For the Financial Creditor: Mr. V.V.S.N. Raju for Juris Prime Law

For the Corporate Debtor: Mr. Polkampally Pavan Kumar Rao

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Per : Bench

ORDER

1. Under consideration is an Application filed by M/S Platina Properties and Projects Limited (hereinafter referred to as "Applicant/Financial Creditor"), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code, 2016"), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP), against M/S Oegene Systems India Limited (hereinafter referred to as "Corporate Debtor"), alleging default of a financial debt of a sum over Rupees One Crore by the Corporate Debtor.

2. Brief facts of the case, as submitted by the Applicant, are as follows:
    a) The Applicant is a company, incorporated under the Companies Act, 1956, bearing CIN: U45100AP1976PLC002027, having its registered office at Kurnool, Andhra Pradesh. The Corporate Debtor is a company, incorporated under the Companies Act, 1956, bearing CIN: U72200TG2004PLC044250, having its registered office at Hyderabad, Telangana.
    b) In the year 2013, the Corporate Debtor approached the Applicant requesting facilities of loan to meet its working capital requirements, which was extended by the Applicant.
    c) The Corporate Debtor availed various loan facilities through a running account, receiving and repaying the loan facilities in several tranches, from time to time. However, the Corporate Debtor eventually committed default in repayment of the loans and an amount of Rs. 4,22,50,000/- was due and payable to the Applicant, as on 01.03.2019.
    d) Subsequently, an agreement, dated 01.03.2019, was entered into between the parties to crystalize the loan to a sum of Rs. 4,22,50,000/-, with an interest at 9% p.a. Under the agreement, the

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amount was to be repaid in 24 equal monthly instalments, commencing from 01.04.2019. The payment of the final instalment was to be made on 01.03.2021.

e) However, the Corporate Debtor has not paid any instalment and has committed default in servicing the debt in a timely manner.

f) The Corporate Debtor issued balance confirmation letters, dated 12.07.2020 and 20.04.2021.

g) That the total outstanding liability of the Corporate Debtor amounts to Rs. 4,22,50,000/-, with an interest at 9% p.a.

Reiterating the above, learned counsel for the Financial Creditor, prayed that the instant Application be admitted.

3. The Corporate Debtor, vide its counter, denied the allegations made by the Applicant, and stated as follows:

   a) The Corporate Debtor has no intention to evade the repayment of the loan and is investing efforts to repay the same.
   b) The business of the Corporate Debtor was faced with various problems at the time of repayment under the agreement, dated 01.03.2019. The outbreak of the COVID pandemic and the lockdowns imposed had exacerbated the distress to the business.
   c) Despite the stressed financial condition, the Corporate Debtor had, with a *bona fide*, intention to clear the dues, issued various letters, dated 28.10.2019, 03.09.2020 and 19.07.2021, seeking time for repayment of the dues, but to no avail.
   d) Though the Corporate Debtor had suffered setbacks earlier, it is currently doing well and is on the road to recovery. It is in a position to discharge its liability towards the Applicant, within a reasonable time.
   e) The object of the Code, 2016, is to revive stressed businesses but not to necessarily push a healthy and a flourishing business into the CIRP for the purpose of recovery of debt.

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Thus submitting, the learned counsel for the Corporate Debtor prayed that the instant Application be rejected.

In the light of the contest as above, the Point that emerges for consideration by this Adjudicating Authority is:

> When debt and default are not in dispute, can the Adjudicating Authority reject the Application filed under Section 7 of the Code, 2016, on the plea that the Corporate Debtor is willing to discharge the debt if reasonable time is granted?

4. We have heard Sri V.V.S.N. Raju, the learned counsel for the Applicant and Sri P. Pavan Kumar Rao, learned counsel for the Corporate Debtor. We have perused the record.

5. At the outset, it may be stated that the Corporate Debtor, while admitting that it had availed the debt as claimed by the Applicant and also its default, pleaded that the business of the Corporate Debtor was faced with various problems at the time of repayment under the agreement, dated 01.03.2019. The outbreak of the COVID-19 pandemic and the lockdowns imposed had exacerbated the distress caused to the business. However, despite the stressed financial condition, the Corporate Debtor had, with a *bona fide*, intention to clear the dues, issued various letters, dated 28.10.2019, 03.09.2020 and 19.07.2021, seeking time for repayment of the dues, but to no avail. Since currently, the Corporate Debtor is doing well and is on the road to recovery, it is in a position to discharge its liability towards the Applicant, within a reasonable time. Therefore, the object of the Code, 2016, being to revive stressed businesses but not to necessarily push a healthy and a flourishing business into the CIRP for the purpose of recovery of debt, the Tribunal may grant reasonable time to the Corporate Debtor to discharge the debt and reject the Company Petition.

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6. While we have no difficulty is accepting the submission of the Corporate Debtor that the object of the Code, 2016, is revival of the stressed businesses of the Corporate Debtor but not to necessarily push a healthy and a flourishing Corporate Debtor into the CIRP for the purpose of recovery of debt, we wish to state that it is also neither the object nor the function of this Adjudicating Authority to allow time to a Financial/Operational Creditor to recover their 'defaulted debts' from the Corporate Debtor, in case if a Corporate Debtor is willing to discharge the debt upon granting reasonable time for payment and reject the Company Petition by granting reasonable for payment.

7. It is pertinent to note that the Hon'ble Supreme Court of India, in the case of *Innoventive Industries Ltd* v. *ICICI Bank & Anr.* [(2018) 1 SCC 407], held as under:

> *"............ The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

8. We are satisfied that the Financial Creditor has fulfilled all the stipulations as required under the provisions of the Code, 2016, for the purpose of initiating the Corporate Insolvency Resolution Process. In these circumstances, this Adjudicating Authority is inclined to admit the instant Application.

9. Accordingly, the Application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.

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10. The Financial Creditor has proposed the name of Ms. Mummaneni Vazra Laxmi, as the Interim Resolution Professional (hereinafter referred to as the "IRP"). Accordingly, this Adjudicating Authority appoints Ms. Mummaneni Vazra Laxmi, bearing Registration No.: IBBI/IPA-001/IPP00919/2017-2018/11526, E-mail: emailtolak@gmail.com, R/o Flat No. 107, V.V. Vintage Residency, Somajiguda, Hyderabad - 500082, as the Interim Resolution Professional. The IRP is directed to file Authorization for Assignment within three days from the date of this order.

11. The IRP is directed to take charge of the management of the Corporate Debtor, immediately. She is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claim in the manner as prescribed.

12. We direct the Financial Creditor to pay a sum of Rs.2,00,000/- towards the advance fee of the IRP and expenses towards the CIRP, which shall be ratified later on by the Committee of Creditors, upon submission of the statement of expenditure, detailing the fee and other expenses incurred in this regard.

13. Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:

   i. *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 or law, tribunal arbitration panel or other authority;*
   ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*
   iii. *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action*

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under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

v. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

14. The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

15. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code, 2106. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging her functions under Section 20 of the Code, 2016.

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16. The Financial Creditor as well as the Registry are directed to send the copy of this Order to the IRP, to enable her to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016.

17. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

18. The Registry shall also communicate this Order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.

19. Accordingly, this Petition is admitted.

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Veera Brahma Rao Arekapudi
Member, Technical

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Dr. N.V. Ramakrishna Badarinath
Member, Judicial