SL. No.123

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 19.10.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/64/2021
NAME OF THE COMPANY	K.G.N. Deccan Engineering Industries Pvt Ltd
NAME OF THE PETITIONER(S)	Usha Enterprises
NAME OF THE RESPONDENT(S)	K.G.N. Deccan Engineering Industries Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Order pronounced Recorded vide separate Sheets.

In the result, Petition is allowed. Corporate Debtor is admitted into CIR Process.

-Sd/-
MEMBER (T)

-Sd/-
MEMBER (J)

Satya Priya

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-II, HYDERABAD

CP(IB) No.64/9/HDB/2018
Under Section 9 of the IB Code, 2016.

In the matter of
K.G.N Deccan Engineering Industries Private Limited

Between:

USHA ENTERPRISES
7-2-2/4, Near Fathenagar Railway Gate,
Fathenagar, Sanatnagar,
Hyderabad – 500 018.

...Applicant/
Operational Creditor

And

K.G.N Deccan Engineering Industries Private Limited
Plot No. 29 & 32, IDA, Balanagar,
Hyderabad – 500 037.

...Respondent

Date of Order :19.10.2022

Coram:
Dr. Venkata Ramakrishna Badarinath Nandula, Member Judicial
Shri. Veera Brahma Rao Arekapudi, Member Technical

Parties/Counsels Present:

For the Applicant : Mr. C.V. Narasimham, Advocate

For the Respondent : Mr. K. Buchi Babu, Advocate -Sd/-

-Sd/-

Per: Bench

ORDER

1. Under Consideration is an Application filed Under Section 9 of the Insolvency and Bankruptcy Code, 2016 by M/s. Usha Enterprises aginst M/s. K.G.N Deccan Engineering Industries Private Limited *inter-alia* seeking to admit the Application and refer the Corporate Debtor to Corporate Insolvency Resolution Process and appoint Interim Resolution Professional.
2. Brief facts of the case as stated by the Applicant are as under:-
   a. That the Applicant had approached this Adjudicating Authority under section 9 of IBC, 2016, since the Corporate Debtor has defaulted in payment of an amount of Rs.1,40,32,565/- (Rupees One Crore Forty Lakhs thirty Two Thousand Five Hundred and Sixty Five) being the outstanding amount due from the Respondent in respect of supplies made by the Operational Creditor during the years 2018 and 2019 and interest thereon.
   b. That the Respondent received and accepted the goods without any objection or demur. The Respondent had also availed input tax credit in respect of such supplies. After repeated reminders for payment of dues for supplies made by them and after issuance of demand notice (Form – 3) dated 14.01.2021 under Insolvency and Bankruptcy Code, 2021 the Respondent vide letter dated 21.01.2021 enclosed four post-dated cheques admitting liability and promised to honour the cheques. The Respondent Company in the past had issued post-dated cheques for the outstanding amounts overdue. However, the respondent had not honoured its promise. The Applicant on learning that respondent is attempting to dispose of the assets of the Respondent and divert the money, the applicant filed Interlocutory Application before this Adjudicating Authority. Later, the Respondent paid an amount of Rs. 1,05,21,945/- though RTGS on 21-02-2021

Sd/-

Sd/-

c. The Interlocutory Application was numbered as IA (IBC)140/2021. The Applicant agreed to reduce the rate of interest from 24% per annum to 18% annum and requested Corporate Debtor to pay the balance amount of Rs. 35,10,620 that they are entitled for interest amounting to Rs. 27,47,307/- as on that date. The respondent's counsel vide reply dated 17.03.2021 requested not to present the cheque No. 1887 dated 26.03.2021. The Applicant's counsel vide letter dated 25.03.2021 informed the Respondent to settle all pending payments along with interest. Later, the Respondents' Advocate issued letter dated 05.04.2021 stating that Respondent never promised to pay interest. The Applicant's counsel furnished reply to the notice dated 05.04.2021 and informed that Respondent did not object to payment of interest after receipt of Form – 3 notice and only after negotiations, the Applicant had agreed to reduce the rate of interest to 18% and therefore the Respondent is liable to pay principal amount along with interest.

d. That till date the respondent had not paid the balance amount of Rs.62,57,927/- (Rs. 35,10,620/- towards principal and Rs. 27,47,307/- towards interest). That vide order dated 01.04.2021 this Adjudicating Authority directed the Applicant to send notice to the Respondent/Corporate Debtor and submit proof of such service.

e. It is reliably learnt that the Respondent had already disposed of the land and realized sale proceeds notwithstanding pendency of interim application before this Adjudicating Authority and the buyer who had purchased the land had already raised a building. That there is no dispute on the liability of the Corporate Debtor to pay the amount as stated above. Hence the application under section 9 of IBC has to be admitted.

f. That on account of delay in payment of outstanding amounts in respect of supplies made in the year 2018 and 2019 caused mental agony and huge financial loss to the applicant Company. It is therefore prayed that this Adjudicating Authority may be pleased to admit the application and refer the Corporate Debtor to Corporate

Insolvency Resolution Process and appoint Insolvency Resolution Professional and pass such order or other orders as may be deemed fit and proper in the facts and circumstances.

3. Counsel for Corporate Debtor filed its Counter, *inter-alia,* stating as under:

   a. That the Corporate Debtor to the applicant notice dated 26.02.2021 has given reply notice dated 17.03.2021 stating that it is false and suppressing the real facts and the respondent is denying the claim amount of Rs. 62,57,927/- after payment of Rs. 1,05,21,945/- for which the applicant notice have mentioned that the interest amount in respect of the principal amount outstanding as on 31.12.2019 is Rs. 1,40,32,565/- for which applicant alleged notice mentioned that the claiming of the interest from 31.12.2019 upto 31.01.2021 @ 18% for which Rs. 27,47,307/- there is no any contra for claiming of interest and never agreed by the Respondent. Inspite of the lock-down due to pandemic 2019 since from March, 2020 onwards the applicant are not entitled any interest from the respondent as such the notice itself is illegal void and abnormal of the Applicant claim is illegal without any contract for interest.

   b. That the Corporate Debtor has already paid an amount of Rs. 1,05,21,945/- through RTGS on 20.02.2021, even before the issuance of notice and the respondent is in utter surprise to see notice for claim of the amount, after the receipt of the RTGS and the applicant got issued a notice dated 26.02.2021 after due adjudication of the due amount. The respondent has already made the payments for clearance of the debts and issued the post-dated cheques to the applicant with correspondence letter dated 20.02.2021 and by reference of the Respondent's letter dated 30.01.2021, to make it clear for payments, even though the respondent have issued a post-dated cheques dated 05.03.2021 and 12.03.2021. The said cheques were returned after due payment through RTGs and the applicant had return the said cheques and the remaining cheques No. 001886 dated 19.03.2021 for Rs.

-Sd/- -Sd/-

35,07,315/- is due as on 19.03.2021 for clearance. As such the applicant is knowing very well that the payments as per the schedule shall be cleared without any further extension, as such the respondent have prompt assured to the Applicant towards original due amount only. The applicant cannot be entitle for any interest for a period of Covid-19 pandemic situation as per the RBI guidelines time to time.

c. That in the wake if Covid-19, Pandemic period there was no functioning of the business, as such the applicant cannot be entitled to claim interest amount under any circumstances. The notice of the Applicant itself is illegal and the applicant have approached to the NCLT, Hyderabad as an Operational Credit on 12.02.2021. Whereas in contra of the Applicant's notice 26.02.2021 by suppressing the said facts and the applicant affidavit containing para 4 claiming an amount of Rs. 1,40,32,565/- along with interest @ 24% and all the material facts were suppressed by the applicant and in Para No. 7 in the verified affidavit as on 31.12.2019, the amount of Rs. 1,40,32,565/- towards the principal amount + interest of 24% per annum is due, which is further more than 8 years and due verification of applicant is total false.

d. That, without going into merits and demerits the respondent have issued a cheque No. 001887 dated 26.03.2021.

e. That the notices of the Operational Creditor, corresponding with dates 26.02.2021, 25.03.2021, 09.04.2021 and 12.04.2021 by suppressing all such correspondence, the respondent agreed that the payment of Rs. 35,07,315/- is only due without prejudice of legal rights for payment of 7 equal instalments commencing from 5th December 2021 onwards and further the Operational Creditor to approach this Adjudicating Authority with uncleaned hands and claim amount is false.

Reiterating above, counsel for the Corporate Debtor prayed to dismiss the petition with exemplary costs in the interest of justice.

4. Heard. Perused the record.

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5. It is the case of the Applicant that it has made various supplies to the Corporate Debtor herein in the year 2018 and 2019 for which and amount of Rs. Rs.1,40,32,565/- being outstanding became due and payable by the Corporate Debtor herein. That on 14.01.2021 a demand notice was issued to the Corporate Debtor as per the provisions of Insolvency and Bankruptcy Code, 2021 and that the Corporate Debtor vide letter dated 21.01.2021 enclosed four post-dated cheques admitting liability and promised to honour the cheques. That during the pendency of the instant Application, an amount of Rs. 1,05,21,945/- was paid through RTGS on 21-02-2021. Thus, till date the Corporate Debtor had not paid an amount of Rs.62,57,927/- (Rs. 35,10,620/- towards principal and Rs. 27,47,307/- towards interest).
6. From the above, it is amply clear that there is an amount due and payable to the Operational Creditor by the Corporate Debtor and that there has been default in repayment of the same. Further by way of part payments, it is deemed that the Corporate Debtor has fairly accepted its liability. Further, the Corporate Debtor has not placed any material document on record to show any pre-existing dispute between the parties.
7. This Adjudicating Authority is satisfied that the Operational Creditor has proved its case by placing evidence that there exists an operational debt and default has occurred for which the Corporate Debtor was liable to pay. Further, the Operational Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the Petitioner/Operational Creditor, this Adjudicating Authority is inclined to admit the instant Application.
8. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders commencement of the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor herein, which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order.

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Sd/-

9. The Operational Creditor herein has not proposed any name of Interim Resolution Professional, thus, this Adjudicating Authority hereby appoints Mr. Maruti Venkata Subba Rao Poluri, bearing IBBI Registration No. IBBI/IPA-002/IP-N00924/2019-2020/13001 and email: cssubbarao@gmail.com as the IRP, from the list as provided by the IBBI. IRP is directed to file his written consent and Authorization for Assignment within three days from date of this order.
10. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
11. We direct the Operational Creditor/Petitioner to pay a sum of Rs.2,00,000/- towards the advance fee of IRP, which shall be ratified and reimbursed later on by the CoC.
12. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP in terms of Section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-
    a. *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;*
    b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*
    c. *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
    d. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
    e. *Suspension or termination of any 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, 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.*

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13. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during 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
14. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. 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 his functions under Section 20 of the I&B Code, 2016.
15. The Petitioner/Operational Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
16. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
17. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
18. Accordingly, CP (IB) No.64/2021 is hereby admitted.

-Sd/-

Veera Brahma Rao Arekapudi
Member Technical

-Sd/-

Dr.Venkata Ramakrishna Badarinath Nandula
Member Judicial

SKRathi