

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II
SPECIAL BENCH(Video Conference)**

**CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 25.03.2021 AT 10:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.42/7/HDB/2020
NAME OF THE COMPANY	Icon Commodities Pvt Ltd & another
NAME OF THE PETITIONER(S)	BRS Enterprises & Trading Ltd
NAME OF THE RESPONDENT(S)	Icon Commodities Pvt Ltd & another
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

This case is fixed for pronouncement of order.

CP(IB)No.42/7/HDB/2020 is admitted vide separate sheets.



MEMBER TECHNICAL



MEMBER JUDICIAL

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.42/7/HDB/2020
Under Section 7 of the IB Code, 2016,
Read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of:-
M/s. ICON COMMODITIES PRIVATE LIMITED

Between:

BRS Enterprises & Trading Limited
Registered Office is situated at:-
Shop No.2, Beside Nuzen Hair Oil Police Station Road,
IDA, Bollaram, Jinnaram (Md),
Bollaram, Telangana – 502325.

...Financial Creditor

Versus

M/s. Icon Commodities Private Limited
Registered Office is situated at:-
Flat No.202/A, H.No.258/3Rt, Sarala Apartments,
Sanjeeva Reddy Nagar Colony,
Hyderabad TG – 500038.

...Corporate Debtor

Date of Order: 25.03.2021

Coram: Madan B. Gosavi, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsel(s) Presents:

For the Financial Creditor : Mr. Saurabh Agarwal, Advocate

For the Corporate Debtor : Mr. G. Bhupesh, Advocate

[Per Bench]

ORDER

1. The present Application is filed under section 7 of IBC, 2016 by M/s. BRS Enterprises & Trading Limited (The Financial Creditor) against M/s. ICON Commodities Private Limited (The Corporate Debtor) to initiate Corporate Insolvency Resolution Process of the Corporate

Debtor on the ground that the Corporate Debtor committed default on Financial Debt of Rs.17,76,74,161/-.

2. Brief facts of the case as stated by the counsel for the Financial Creditor are as under:-

- a. That the main objective of the Financial Creditor is trading of all commodities particularly in steel products. That the Corporate Debtor being a trader in steel products was approached by the Financial Creditor to supply TMT Bars.
- b. That the Financial Creditor vide purchase order no.ISPPL/2015-16/8 dated 25.06.2015 placed an order of 2000 TMT Bars. After finalization of the commercial terms, the Financial Creditor has also made a payment of Rs.9,87,68,000/- through cheque bearing no.1370 on 29.06.2015.
- c. The time period to supply the said material was 31 days from the date of purchase order. The said payment was also confirmed by the Corporate Debtor vide letter dated 30.06.2015.
- d. However, the Corporate Debtor failed to supply the said material within the time. Several reminders were sent on various dates by the Financial Creditor to return the advance as the purchase order was not fulfilled.
- e. The Corporate Debtor via letter dated 05.08.2015 assured that since the material could not be supplied, advance would be returned. The Corporate Debtor request a period of 3 months to return the advance vide its correspondence dated 13.12.2015.
- f. That even after so many reminders from the Financial Creditor, the Corporate Debtor did not return the advance. Finally,





Corporate Debtor made a proposal to convert the advance into a loan which would be repaid in 12 equated monthly installments and on 15.01.2018, a loan agreement was entered into with the Financial Creditor to return the amount from March 2018 to February 2019.

- g. The Corporate Debtor failed to honour the Loan Agreement and not a single installment was paid during the agreed period.
3. The Corporate Debtor was served with the notice of this Application.
4. Learned counsel for the Corporate Debtor filed affidavit in reply inter-alia stating as under:-
- a. That the Corporate Debtor had taken steps to arrange for the supply of 2000 MTs. Of TMT Bars to the Financial Creditor. However, it could not supply the steel within time and failed to return the advance.
 - b. That while the matter stood thus, several discussions were held between the parties and a Loan Agreement dated 15.01.2018 was entered into wherein the Corporate Debtor had agreed to pay the amounts in 12 instalments along with interest.
 - c. That the Corporate Debtor having not been in a position to pay the amounts, approached the Financial Creditor multiple times and requested to consider its situation thereby requesting to waive some part of the outstanding amount and to consider closing of the transaction.
 - d. However, the Financial Creditor not considering the waiver of at least some portion of the loan amount, approached this Adjudicating Authority by filing the present company petition.

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5. We heard learned counsel for the Financial Creditor and Learned counsel for the Corporate Debtor.
6. It is noted that though originally an amount of Rs.9,87,68,000/- was received by the Corporate Debtor as an advance against the supply of 2000 MTs of TMT Bars, neither supplies were made nor the advance was returned leading to execution of Loan Agreement dated 15.01.2018, which converted the nature of debt into a Financial Debt, delineating the rights of parties, including timelines of repayment in 12 monthly installments and default interest @ 18% per annum. However, not a single installment was paid, and the Corporate Debtor committed default of the said Financial Debt.
7. In the reply affidavit filed by Mr. Lakshman Mukka, Director of the Corporate Debtor, it is stated as under:-

“5(f) while the matter stood thus, several discussions were held between the parties and a Loan Agreement dated 15-1-2018 was entered into wherein the Corporate Debtor had agreed to pay the amounts in 12 instalments along with interest.”

“5(g) However, the Corporate Debtor having not been in a position to pay the amounts, approached the Financial Creditor multiple times and requested to consider its situation thereby requesting to waive some part of the outstanding amount and to consider closing of the transaction.”

“5(h) However, the Financial Creditor not considering the waiver of at least some portion the loan amount, approached this Adjudicating Authority by filing the present company petition.”

8. From the above paragraphs in the reply affidavit, it appears that the Corporate Debtor admitted the fact that the Financial Debt of more than Rs.1,00,000/- (as per Sec.4 of IBC, 2016) is due and payable by them to the Financial Creditor that they have committed the default in paying the same.

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9. This is the only fact involved for consideration of this Application which is proven on record.
10. Since the Corporate Debtor committed default of financial debt, we admit the Corporate Debtor in CIRP U/s.7 by following order:-
- a) The instant petition is hereby admitted and this Adjudicating Authority Orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed as per the time line stipulated in section 12 of the IB Code, 2016, reckoning from the day this order is passed.
 - b) The Financial Creditor suggested the name of Mr. K Sri Vamsi, having Registration No. IBBI/IPA-001/IP-P00664/2017-18/11141 for appointment as IRP against whom no departmental enquiry appears to be pending.
 - c) Therefore, this Adjudicating Authority hereby appoint Mr. K Sri Vamsi having Regn. No. IBBI/IPA-001/IP-P00664/2017-18/11141 (IRP) as his name is proposed by the Financial Creditor and is also reflected in IBBI website. He has also filed his written consent in Form - 2 dated 04.12.2019. The IRP is also directed to furnish a valid Authorization for Assignment issued by competent institute in the Registry within 3 days of receipt of copy of this order. 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 I&B Code, 2016 within three days from the date of receipt of this order and call for submission of claims in the manner as prescribed.





d) This Adjudicating Authority hereby declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely:

- 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 of 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 right 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 under the Securitisation 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.*

e) 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.

- f) 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 cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
- g) The Petitioner/Financial 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.
- h) The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
- i) The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
- j) The address details of the IRP are as follows:-

Mr. K Sri Vamsi
Reg.No: IBBI/IPA-001/IP-P00664/2017-18/11141
Plot No. 232, Level I, Kavuri Hills Phase – II,
Hyderabad – 500 033.
Email: casrivamsi@gmail.com



11. The present Company Application bearing CP (IB) No. 42/7/HDB/2020 is hereby admitted.



Dr. Binod Kumar Sinha
Member Technical



Madan B. Gosavi
Member Judicial

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