



SL. No.2

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)  
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 31.10.2023, At 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	Company Petition IB/162/2021
<b>NAME OF THE COMPANY</b>	Ridhima Estates Pvt Ltd
<b>NAME OF THE PETITIONER(S)</b>	PRG Buildcon India Pvt Ltd
<b>NAME OF THE RESPONDENT(S)</b>	Ridhima Estates Pvt Ltd
<b>UNDER SECTION</b>	9 of IBC

**ORDER**

Orders pronounced, recorded vide separate sheets. In the result, this Company Petition (IB) 162/09/HDB/2021 is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH – II**

**CP(IB) No.162/09/HDB/2021**  
**U/s. 9 of IB Code, 2016**

**In the matter of:**

M/s. PRG Buildcon India Pvt. Ltd.,  
Plot No.213, Prathima Building,  
First Floor, Road No.1,  
Film Nagar, Jubilee Hills,  
Hyderabad – 500 068.

....the Petitioner

Vs

M/s. Ridhima Estates Pvt. Ltd.,  
H.No.3-6-517, Flat No.302,  
Street No.6, Sai Datta Arcade,  
Himayat Nagar,  
Hyderabad – 500 029.

....the Respondent

**Date of order: 31.10.2023**

**CORAM:**

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

**Counsels present:**

For the Applicant : Mr. Avinash Desai, Senior Advocate

For the Respondent : Mr. Ch. Pushyam Kiran, Advocate

Heard on : 10.10.2023

**Per : Sanjay Puri**

**ORDER**

1. This application is filed by M/s. PRG Buildcon India Private Limited, **(the Petitioner)** seeking to initiate Corporate Insolvency Resolution



Process (CIRP) against M/s. Ridhima Estates Private Limited, (**the Respondent**), for the alleged default in discharging the debt that is due to the Petitioner.

**Brief facts of the Application:**

2. It is submitted that, the Respondent had approached the Petitioner for supply of 30 Tippers/Dumpers for a total consideration of Rs.7.70 crores and accordingly entered into a Memorandum of Understanding (**MoU**) dated 29.11.2018.<sup>1</sup>
3. It further submits that, vehicles were originally bought by the Petitioner under financing agreements<sup>2</sup> with Tata Motors Finance Limited, SREI Equipment Finance Limited & Kotak Mahindra Bank (collectively referred to as **Financers**). As the EMIs were to be paid to Financers, it was agreed under MoU that the Respondent would be disbursing Rs.4,60,78,227/- to Financers out of Rs.7.70 crores and will disburse the remaining amount of Rs.3,09,21,773/- to the Petitioner by February, 2019.
4. It is further submitted that, the Respondent defaulted on its obligations from the very beginning and after repeated requests and follow-ups, finally cleared EMIs with inordinate delay except an amount of Rs.14,87,600/- payable to Kotak Mahindra Bank. Due to delay in releasing EMIs, Financers levied delay charges and interest and the Petitioner requested Financers for concession, for which, some of the Financers agreed for a partial reduction and accordingly, the original amount of Rs.4,60,78,227/- due to the Financers, was increased to Rs.5,34,60,415/- [out of which, Rs.5,19,72,815/- was paid by the Respondent and Rs.14,87,600/- was paid by the Petitioner to Kotak Mahindra Bank, to ensure that Kotak Mahindra Bank not to take possession of the vehicles under the financing documents].

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<sup>1</sup> Pg 19-24 of the Application.

<sup>2</sup> Pg 25-78 of the Application.



5. It is submitted that, the Petitioner had requested the Respondent through several emails<sup>3</sup> and letter dated 23.10.2019 to pay Rs.4,89,65,780/- [Rs.3,09,21,773/- + pending EMIs + Interest] as per MoU, as the delay in payment of EMIs was impacting Petitioner's relationship with its lenders. In reply, the Respondent vide letter dated 04.11.2019 categorically admitted its liability towards the Petitioner under MoU and admitted that an interest @10% per annum was agreed between the parties for delayed payment and agreed to release Rs.25,00,000/- per month to the Petitioner out of Rs.2,40,68,786/- in addition to EMI payments to Financers.
6. It is submitted that, the Petitioner vide its letter dated 18.11.2019 along with summary of balance outstanding<sup>4</sup> informed to the Respondent that the liability to be paid, is Rs.2,82,58,967/- and not Rs.2,40,68,786/- and requested to release the same in installments @ Rs. 95 Lakhs per month instead of Rs.25 Lakhs proposed by the Respondent. But, the Respondent did not even adhere to its own proposal dated 04.11.2019 and the title of the vehicles still vests with the Petitioner. Hence, the Respondent failed to pay amounts to the Petitioner and there was no dispute over the quality of goods and services provided by the Petitioner and a perusal of letter dated 04.11.2019 issued by the Respondent makes it clear that the Respondent at the very least owes Rs.2,40,68,786/- to the Petitioner apart from EMIs payable to the Financers.
7. It submits that, the interest calculated till the issuance of Demand Notice comes to Rs.71,39,095/-. Therefore, the total amount of debt till the issuance of Demand Notice, is Rs.3,95,48,468/-.

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<sup>3</sup> Pg 79-128 of the Application.

<sup>4</sup> Pg 131-133 of the Application.



8. It submits that, despite sending Notice, the Respondent neither paid the amount due nor raised any dispute regarding the debt. Hence, this Application.

**Counter:**

9. The Respondent filed Counter wherein it submitted that, the Petition is not maintainable, as there was no sale of Tippers/Dumpers by the Petitioner to the Respondent and the claim made by the Petitioner does not fall within the definition of "Operational Debt" as defined under Section 5(21) of IBC 2016 and Petitioner's claim has neither accrued nor crystallized as on the date of filing of this petition.
10. It is denied that the Respondent had approached the Petitioner for supply of 30 Tippers/Dumpers and entered into a MoU dated 29-11-2018 for a total consideration of Rs.7.70 Crores with an interest @10% per annum and that the Respondent is due to pay an amount of Rs.3,89,21,561/-. Also submitted is that MOU was actually a letter addressed by the Petitioner to the Respondent and it does not make any mention of sale of Tippers/Dumpers to the Respondent or any interest to be paid by the Respondent to the Petitioner. As the Petitioner purchased the Tippers/Dumpers through financing facilities from different companies and was unable to make payment of installments to the said companies, the Petitioner approached the Respondent seeking its help in making payment of the said installments. The Respondent agreed to make payment of the same and the Petitioner agreed to give possession of the said Tippers/Dumpers to the Respondent. One of the promoters and shareholders holding substantial number of shares in the Petitioner Company (Mr. Guniganti Prabhakar Rao) is the brother of majority shareholder and promoter of the Respondent Company. Further, the two companies were engaged in the same business and carried out works for the same Principal Contractor. Pursuant to an understanding between the two brothers to help out the Petitioner



Company as it was going through certain financial difficulties, the Respondent Company agreed to clear the installments due to the finance companies and thereafter make payment of the remaining amount of the total value as and when payments are received by the Respondent from the Principal Contractor. This was true understanding between the two companies and the Petitioner Company was well aware that the substantial payments were due to be paid to the Respondent Company by Principal Contractor.

11. It is denied that, the Respondent defaulted in its obligations for payment and submits that all the installments due to be paid to the financing companies have been paid by the Respondent as on today. It is submitted that there was no agreement and no privity of contract between the financing companies and the Respondent. Hence, the Respondent is not bound by any of the terms between the Petitioner and the financing companies and it is not liable to pay any interest.
12. It is further submitted that, a detailed perusal of letter dated 4.11.2019 of the Respondent would reveal many facts which had not been stated in the petition. In the said letter, the Respondent specifically stated that the understanding between the two parties is completely different from the one that is being portrayed by the Petitioner. The true understanding between the parties was that, the Respondent would make payment of the remaining amount after clearing the dues of the Petitioner to the financing companies only after receiving the amounts that are due to be paid to the Respondent by the Principal Contractor. The said amounts have not been paid to the Respondent by the Principal Contractor and the Petitioner is well aware of the same. Therefore, the right of the Petitioner to receive the said amount from the Respondent has not accrued as on today.
13. The Respondent also states that, in the said letter there was a mention of an incident where the Petitioner had taken back possession of 14



Tippers/Dumpers without Respondent's knowledge. The Respondent was dissuaded by a mutually known third party from filing a complaint with the police. It had to incur huge expenditure to bring the 14 dumpers back into its possession, and in the process suffered substantial loss of work as well as revenue. Under these extreme circumstances the Respondent had to agree to pay interest @ 10%. No interest rate was mentioned in the letter dated 29-11- 2018 or in the subsequent letters giving possession of the Tippers/Dumpers to the Respondent. It is submitted that, interest rate having only been agreed by the Respondent under duress is not binding on the Respondent.

14. It is further stated that an amount of Rs.18,00,00,000/-is held up with Respondent's principal contractor viz. Pratima Infrastructure Limited which is also the principal contractor of the Petitioner. the Respondent executed projects for this company on 'Palamur Rangareddy Lift Irrigation Scheme' and has not yet been paid the amounts due in relation to the same. The amount of Rs.18,00,00,000/- mentioned in the letter dated 4-11-2019 is yet to be received from the principal contractor and the same is increased to Rs.25 crores and is reflected in the balance sheet of the Respondent under the head "Trade receivables" and the Petitioner is aware of this fact, as the Petitioner also carries out works for the same Principal Contractor.
15. It is submitted that, the actual amount receivable by the Petitioner from the Respondent as on today, is Rs.1,81,74,168/-. The Petitioner had agreed to reduce an amount of Rs.68,53,017/- towards the value of 20 Dumpers that stopped functioning within a week and there were substantial repairs had to be carried out by the Respondent by using its own money. Out of Rs.1,81,74,168/- that is due, an amount Rs.1,68,43,750/- is payable by the Petitioner towards GST @ 28%.<sup>5</sup> It is evident from Respondent's balance sheet for the year ending

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<sup>5</sup> Pg 12 of the Counter (Annexure R3).



31-3-2020<sup>6</sup> under the head "capital asset advances" in Note No. 10 that the sale of the said Tippers/Dumpers has not taken place and the Petitioner itself had stated that the title is still with them.

16. It is further submitted that, one of the promoters and shareholder holding substantial shares in the Petitioner Company Mr. Guniganti Prabhakar Rao is due, to make payment of an amount of Rs.3,64,03,000/- to the Respondent towards real estate marketing services provided to him and an Invoice<sup>7</sup> for the same has been sent to him by CD. Also submits that, the Petitioner and the Respondent Companies are belonging to the families of two brothers Mr. Guniganti Prabhakar Rao and Mr. Guniganti Ravinder Rao and due to certain differences that have cropped up between them, the Petitioner is attempting to misrepresent the understanding between the two companies.
17. The Respondent also submits that, the claim made by the Petitioner does not constitute an "operational debt" and the computation for balance amount made by the Petitioner is incorrect and grossly exaggerated. As per the letter dated 29-11-2018, the total value was Rs.7.70 Crores and the Respondent had admittedly paid Rs.5,19,72,815/-. Though the amount due to be paid to the financing companies is Rs.4,60,78,227/-, the Petitioner had wrongly added an interest amount of Rs.73,82,188/- even though there is no basis for the Petitioner to make the said claim against Respondent. There is no evidence to show that the above amount has been paid towards interest to the financing companies. Further, the agreements filed by the Petitioner along with the company petition have been entered into between the Petitioner and financing companies and there is no document which says that the Respondent is bound by the terms of the agreements between the Petitioner and the financing companies, hence,

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<sup>6</sup> Pg 13-25 of the Counter (Annexure R4).

<sup>7</sup> Pg 26-27 of the Counter (Annexure R5).



there is no basis for the Petitioner to claim the interest from the Respondent that has allegedly been paid to the financing companies. It is also stated that the Petitioner had increased the amount due to be paid by the Respondent by adding interest amount wrongly to the amount due to be paid to the financing companies. In addition, though there was no mention in the letters by which the possession of Tippers/Dumpers was given to Respondent, the Petitioner added interest amount.

18. It is submitted that, the Respondent had stated in its letter dated 4-11- 2019 that it had agreed to pay interest @ 10% only under extreme circumstances, therefore interest cannot be claimed from the Respondent by the Petitioner and the amount of Rs.3,89,21,561/- calculated by the Petitioner is wrong and grossly exaggerated. Hence, seeking to pass an order dismissing the Petition.

**Rejoinder:**

19. The Petitioner filed Rejoinder wherein it reiterated the contents of the Application. It is further submitted that, denying the contents of the Respondent that the claim of the Petitioner does not fall within the definition of “Operational Debt” as defined u/s 5(21) of the Code and the same is being extracted for reference:

**“Section 5(21):**

*“Operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.”*

20. It is submitted that, the Respondent had categorically agreed and acknowledged through its computation of amounts submitted as an Annexure R-3 in its Counter that, the Petitioner had provided goods



and services to the Respondent by including goods and service tax as part of its computation of the transaction.

21. It further submits that, sale of the Dumpers did not happen, because the Respondent did not make the payment. However, the Respondent continues to utilize OC's Tippers/Dumpers without making due payment for the goods and services supplied by OC.
22. It is also submitted that; the alleged principal contractor had no role whatsoever in the transaction between the Petitioner and CD. The Petitioner and the principal contractor have no privity of contract and therefore the Respondent cannot unilaterally decide that amounts due to the Petitioner would be paid only after the receipt by the principal contractor. The Petitioner also submits that, the balance sheet or the trade receivables of the Respondent are to be denied and be put to strict proof and have no bearing to the default committed by the Respondent and that the Respondent cannot default on its payment obligations towards the Petitioner by relying on their self-serving financial statements.
23. The Petitioner also denies the contention of the Respondent that the actual amount to be received by the Petitioner is Rs.1,87,74,168/- and that the Petitioner reduced the value of Tippers/Dumpers by Rs.68,53,017/- against 20 Tippers/Dumpers were in a poor condition and had developed problems and stopped functioning within a week. It is submitted that all the Tippers/Dumpers were handed over to the Respondent vide letters dated 29.11.2018, 11.12.2018 and 21.12.2018 which clearly show that the Respondent would be responsible for any risk if any, for the above-mentioned Tipper with effect from the date of the letters. It therefore shows that to evade its responsibilities the Respondent is making false statements, distorting facts, and misleading the Tribunal.



24. It is submitted that, the averments of the Respondent, regarding the amount of Rs.3,64,03,000/- due to the Respondent towards real estate marketing services provided to him, are denied. It is stated that the alleged invoice<sup>8</sup> was raised on 02.11.2021, i.e. after filing of the company petition and receipt of notice by CD, as such appears to be a document created only to distort facts and mislead this Tribunal. Further submits that Mr. Sunil Bontha, authorized signatory of the Petitioner has filed a criminal complaint dated 22.11.2021 against the fraudulent invoice dated 02.11.2021 of G. Prabhakar Rao and the same is pending investigation before the Madhapur Police Station.<sup>9</sup>
25. With the above submissions, once again the Petitioner praying for admission of the application.

**Written submissions:**

26. As directed by this Tribunal vide order dated 10.10.2023, brief synopsis submitted by the Respondent on 16.10.2023 and by the Petitioner on 17.10.2023 wherein both reiterated the contents of the Application & the Counter.

**Decision:**

27. Heard both the Counsel and perused the records of either side. Parsing through the submissions of both sides and after perusal of the relevant records, following facts can be discerned:
- Promoter of the Petitioner company Mr. Guniganti Prabhakar Rao and promoter of the Respondent company Mr. Guniganti Ravinder Rao are brothers and carry out work for the same principal contractor.

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<sup>8</sup> Pg 26-27 of the Counter (Annexure R5).

<sup>9</sup> Pg 9-13 of the Rejoinder.



- The Petitioner acquired 30 Tipper/Dumpers between May-July'2017 under a financing arrangement<sup>10</sup> with certain Financiers.
- Invoice value of these Tippers/Dumpers was Rs.10,28,61,280/- and the "Agreed Value" was Rs.7,70,00,000/-. The "balance" at the time of acquisition by the Petitioner was Rs.4,60,78,227/-.<sup>11</sup>
- On 29.11.2018, through a letter addressed to the Respondent<sup>12</sup> the Petitioner handed over 20 Tippers/Dumpers to the Respondent. Another 10 Tippers/Dumpers were handed over to the Respondent in the lots of 6 and 4 on 11.12.2018 and 21.12.2018 respectively. Only document annexed<sup>13</sup> to these letters was a "List of Tippers with RC Nos". the transaction between two parties was neither identified nor apparent from these letters of handing over of the Tippers/Dumpers.
- Subsequent conduct of the parties reveal that the Respondent had paid Rs.4,45,90,627/- as "Principle (*sic*) amount paid to Financiers" and Rs.73,82,188/- towards "Bank Interest". These amounts totaling Rs.5,19,72,815/- have been identified by the Petitioner as "Total EMI Portion Received" in the computation<sup>14</sup> conveyed through letter dated 18.11.2019 to the Respondent.
- In the same computation in Part C, the Petitioner has worked out a sum of Rs.3,89,21,561/- as receivable from the Respondent which is the subject matter of this application.

28. Factual matrix of this case suggests that in May-July' 2017 the Petitioner had purchased 30 Tippers/Dumpers for a consideration of

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<sup>10</sup> Pg 25-78 of the Application.

<sup>11</sup> Pages 21 & 22 of the Application

<sup>12</sup> Page 19 of the Application

<sup>13</sup> Page 20 of the Application

<sup>14</sup> Part B on Page 134 of the Application



Rs.7,70,00,000/-, out of which Rs.3,09,21,773/- was apparently paid by the Petitioner upfront, and the balance Rs.4,60,78,227/- was financed by the Financers as “loan” to the Petitioner.

29. There is no account of the intervening period of 17 months (ie from May-July 2017 to November 2018) in the petition or the counter, or even in the rejoinder. Be that as it may, 17 months after purchase by the Petitioner, in November 2018 these Tippers/Dumpers were “handed over” to the Respondents, with a stipulation that the Respondent will be “responsible for any risk or issue” with regard to these Tippers/Dumpers.
30. Other than the list of the RC Numbers no other document evidencing sale of the Tippers/Dumpers to the Respondent was prepared. Neither any GST was collected, nor any paid, if there was any sale purchase transaction between the Petitioner and the Respondent. Records before us also do not reveal anything about GST paid by the Petitioner at the time of purchase of Tipper/Dumpers or whether any ITC<sup>15</sup> was claimed in relation thereto.
31. While it's true that in one of their communications dated 04.11.2019, the Respondents acknowledged having "purchased" "30 Dumpers" from the Petitioner, emphasizing their importance in fulfilling their commitment to the Principal Contractor, it's important to note that there is no document, such as an invoice from the Petitioner to the Respondent, available as evidence of this sale, including details regarding consideration, payment terms, and other essential terms.
32. Both parties have made reference to the "understanding" they had on 29.11.2018, the date when the Tippers/Dumpers were “handed over” by

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<sup>15</sup> Input Tax Credit



the Petitioner to the Respondent. Notably, this "understanding" was never formalized in writing and has been depicted differently by each party. According to the Petitioner, the understanding was that the Respondent was purchasing the Dumpers for a total consideration of Rs.7.70 crores, of which Rs.4,60,78,227/- was earmarked for repaying the loan taken from the financiers, with the remaining balance of Rs.3,09,21,773/- was to be paid to the Petitioner. In contrast, the Respondent's perspective on the "understanding" is that they were to assist the Petitioner in clearing the installments owed to the finance companies and subsequently make payments for the outstanding amount of the total value as and when they received payments from the Principal Contractor.

33. In absence of any clear agreement between the parties, it is not possible to determine their respective rights and obligations in respect of the transaction they conducted amongst themselves.
34. If the transaction was of sales, then there should have been sale invoices in favor of the Respondent. But no invoices were made in respect of this 'sale'. Consequently, the ownership of the Tippers/Dumpers never got transferred from the Petitioner to the Respondent, regardless of these being in the possession of the Respondent since November-December of 2018. This is not an issue which can be termed as 'feeble' as the Petitioner has sought to project. In absence of the sale invoice on which GST was charged, it cannot be said with any kind of certainty that Dumpers were sold to the Respondents.
35. Even if we were to regard the transaction between the Petitioner and the Respondent as a 'sale' (given that the goods were transferred and partial payment was made), it is crucial to acknowledge that the terms and consideration for this sale were subject to the 'understanding' of



29.11.2018, interpretation of which by both parties has always been divergent. In their letter<sup>16</sup> dated 04.11.2019, the Respondent did acknowledge a sum of Rs.2,40,68,756/- payable as against Rs.4,89,65,780/- claimed<sup>17</sup> by the Petitioner, but the timing of the payment remained contested. The consideration as well as the payment terms were in dispute in respect of the 'Sale' transaction, if there was any. And, this dispute existed even before section 8 notice was sent to the Respondent by the Petitioner. The petition fails for this reason alone.

36. Moreover, the transaction between the Petitioner and Respondent companies, both owned by two brothers, seems to be a matter of convenience. In this arrangement, one of the brothers' companies secured a loan from financing agencies to acquire Tippers/Dumpers. These were then utilized by the other brother's company, which is "engaged in the same business and carry out works for the same Principal Contractor". Furthermore, the latter brother's company also covered the EMIs associated with the loan obtained by the former. The transaction between the Petitioner and the Respondent is of uncertain nature and give rise to an ambiguity about the debt, if any, that arose as a result thereof. Therefore, the provisions of the Insolvency and Bankruptcy Code (IBC), cannot be applied in this case.
37. Further, this appears to be a case of two brothers falling out after having an 'understanding' about the procurement and deployment of 30 Tippers/Dumpers in a project where both of them were working for the same Principal Contractor. Feeling aggrieved by the non-payment of certain sum, the Petitioner brother has sought to invoke the provisions of IBC through this application. Such grievance cannot be addressed

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<sup>16</sup> Page 121 & 122 of the Application

<sup>17</sup> Later revised to Rs 3,89,21,561 in latter dated 18.11.2019



through the initiation of insolvency proceedings against the Respondent under the IBC.

For the reasons as aforesaid, this petition is dismissed.

**Sd/-**

**(SANJAY PURI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)  
MEMBER (JUDICIAL)**

**VL**