

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) No.377/9/HDB/2019

Under section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of

M/s Rangrao Baburao Gaikwad
2813/4, Omkar, Belbag, B Ward
Magalwar Peth, Kolhapur – 416012.

FREE OF COST COPY

Operational Creditor

VERSUS

M/s Ind Barath Energies (Maharashtra) Ltd
Sanpras Corporate Capital
115/1 & 115/29
6th Floor, Sheraton Towers
Financial District
Nanakramguda, Gachiboli
Hyderabad – 500032
Ranga Reddy.



Corporate Debtor

Date of order: 13th May 2022

Coram:

HON'BLE DR. VENKATA RAMAKRISHNA
BADARINATH NANDULA, MEMBER (JUDICIAL)

and

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Parties / counsels present:

For Operational Creditor: Shri Dishit Bhattacharjee, Advocate for
M/s Mamta Binani & Associates.
For Corporate Debtor: Shri Yogesh Jagia, Advocate

ORDER

This Application is filed by M/s Rangrao Baburao Gaikwad, herein after referred to as the Operational Creditor against M/s Ind Barath Energies (Maharashtra) Ltd, herein after referred to as the Corporate Debtor, under section 9 of the Insolvency & Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process, alleging that the corporate debtor had defaulted in payment of the operational debt of Rs. 71,01,827

2. The averments made in the application are as follows:

(i) The Operational Creditor is a designated partners in RSP Energy LLP incorporated under LLP Act, 2008. It had entered into Memorandum of Understanding (MoU) dated 03.11.2016 with the Corporate Debtor (page 19-23 of Additional Affidavit dated 01.04.2022 filed by the Corporate Debtor).

(ii) Clause 1(b) of the MoU requires RSP Energy LLP to provide fuel on stated terms. Therefore, RSP Energy LLP arranged



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supply of the rice husk through Rangrao Babu Gaikwad/
Operational Creditor.

- (iii) Accordingly, the Operational Creditor / Rangro Babu Gaekwad had supplied rice husk to the Corporate Debtor on 22.02.2017, 28.02.2017 and 31.03.2017 amounting to Rs.56,55,158/-.
- (iv) Since the transaction is based on MoU, no purchase order was placed by the Corporate Debtor.
- (v) Demand Notice dated 24.10.2018 (page 34) under section 5 of the Insolvency & Bankruptcy (AAA) Rules, 2016 was served on the Corporate Debtor enclosing therewith Invoices, Ledger Account and Confirmation Letter sealed and signed by the Corporate Debtor acknowledging the debt.
- (vi) The Corporate Debtor sent reply dated 29.11.2018 (page 34 of the Reply by the Corporate Debtor) denying the debt raising untenable and unsustainable grounds.

3. The Corporate Debtor has filed Reply contending, inter alia, that that the Applicant/Operational Creditor have no relation of Operational Creditor and Corporate Debtor for the following reasons:

- (i) M/s Ind Barath Energies (Maharashtra) Limited was incorporated as a wholly owned subsidiary company by M/s Ind





Barath Power Infra Limited (IBPIL). The company has power plant in Nanded District, Maharashtra since January 2019 and it supplies power to Maharashtra State Electricity Distribution Company Limited (MSEDCL) under Power Purchase Agreement. However, for various reasons the company stopped operations from April 2014.

- (ii) On 24.10.2016, RSP Energy LLP was promoted and incorporated under the Limited Liability Partnership Act with three designated partners, one of whom is the petitioner herein. Pursuant to negotiations RSP Energy LLP and Ind Barath Power Infra Limited entered into MoU dated 03.11.2006 (Annexure-1, page 19 of the Reply 01.04.2022).
- (iii) In pursuance of the MoU dated 03.11.2016, the respondent handed over the power plant to RSP Energies LLP for operation. RSP Energies LLP generated power and supplied to MSEDCL under the existing Power Purchase Agreement.
- (iv) During April 2017 to September 2017, RSP Energies LLP generated revenue of Rs.6,45,98,929/- from MSEDCL. Said amount was utilised towards operational cost leaving behind NIL





EBITDA, which was supposed to be shared equally between the Corporate Debtor and RSP Energies LLP.

(v) In breach of MoU dated 03.11.2016, RSP Energies LLP has stopped operations of the plant of the respondent in October 2017, which led to huge losses to the respondent and the amount paid by RSP Energy LLP was forfeited.

(vi) The applicant terminated the MoU and issued Demand Notice dated 24.10.2018. The respondent sent reply dated 29.11.2018 (Annexure-2, page 34 of the Reply). The Corporate Debtor alleges that intentionally the Operational Creditor has not placed the said reply dated 29.11.2018 on record.

4. The Operational Creditor has filed Rejoinder wherein it is submitted that:

(i) Ind Barath Energies (Maharashtra) Limited fits in the shoes of the Corporate Debtor and in relation to it, an operational debt is owned to Rangaro Gaikwad as provided under section 3(8) and section 5(20) of the I&B Code, 2016.

(ii) The Corporate Debtor has acknowledged receipt of rice husk Tax Invoices dated 01.02.2017, 28.02.1017 and 31.03.2017 (page 8-19 of the Memo dated 28.02.2022). Besides the Operational

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Creditor issued Balance Confirmation Statement dated 06.10.2018 (page 20 of the Memo dated 28.02.2022).

4. The Corporate Debtor has filed Additional Affidavit enclosing therewith Counter filed by the Corporate Debtor in CP (IB) No.29/7/HDB/2019. The said petition has been disposed of by this Tribunal vide order dated 25.11.2019.

5. In the above backdrop the point that emerges for consideration by this Tribunal is;

Whether there is an operational debt as claimed by the applicant is due and payable by the Corporate Debtor to the applicant? If so, whether the Corporate Debtor defaulted in payment of the said operational debt?

We have heard Shri Dishit Bhattacharjee, learned counsel for the Operational Creditor and Shri Yogesh Jagia, learned counsel for the Corporate Debtor. Perused the record and the Written Submissions.

At the outset it may be stated that the present application being one under section 9 of the I&B Code, 2016, whereunder the Applicant/Operational Creditor claimed that a sum of Rs.56,55,158/- being the amount allegedly due and payable by the Corporate Debtor herein, towards the price of rice husk said to have been supplied under



three invoices dated 22.02.2017, 28.02.2017 and 31.03.2017, and defaulted by the corporate debtor, and as the same has been denied by the corporate debtor, it is imperative for this Tribunal to find whether there is an operational debt in favour of the applicant, claimed as due and payable by the Corporate Debtor and if so, whether the Corporate Debtor had defaulted in discharging the said operational debt.

7. According to the Ld. Counsel for the applicant, Clause 1(b) of the MoU requires RSP Energy LLP to provide fuel on stated terms. Therefore, RSP Energy LLP arranged supply of the rice husk through Rangrao Babu Gaikwad the Operational Creditor herein, who under invoices dated 22.02.2017, 28.02.2017 and 31.03.2017 supplied rice husk to the Corporate Debtor on 22.02.2017, 28.02.2017 and 31.03.2017 in all amounting to Rs.56,55,158/-.



The above invoices contain an endorsement of the corporate debtor that the goods were received. It is stated that the Corporate Debtor had consumed the said material, however, failed to pay the sale consideration. Hence the applicant had issued Demand Notice dated 24.10.2018 to the Corporate Debtor demanding payment of the said operational debt. The

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Corporate Debtor instead of complying with the terms of the Demand Notice, sent a reply dated 05.08.20219, inter alia, contending that there is no relationship of Operational Creditor and Corporate Debtor between the applicant and the Corporate Debtor herein, as such the application as filed is, per se, not maintainable and is liable to be dismissed.

9. Ld. Counsel would further submit that the above plea of the corporate debtor is untenable and unsustainable, in as much as the Corporate Debtor has acknowledged receipt of rice husk under the Tax Invoices dated 01.02.2017, 28.02.1017 and 31.03.2017 of the operational creditor besides issued Balance Confirmation Statement dated 06.10.2018. That apart, when the Tax benefit has been given in respect of the supplies made under the invoices, *supra*, to the operational creditor, it is highly preposterous for the Corporate Debtor to contend that the applicant has not supplied the rice husk to the corporate debtor under the invoices *supra*.



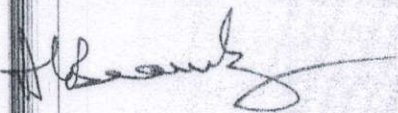
Per Contra, Ld. Counsel for the Corporate debtor would contend that, pursuant to the Memorandum of Understanding (MoU) executed between RSP Energy LLP and the Corporate Debtor, RSP Energy LLP was supposed to arrange for supply of fuel to Ind Barath Energies

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(Maharashtra) Limited including rice husk and that as per Clause-3 of the MoU proceeds from the sale of power would be first utilised for payment for fuel and other variable expenses and that as such supply of rice husk, if any, was to be made by RSP Energy LLP and not by the applicant, which are all false and invented, in order to deny the lawful operational debt. Ld. Counsel further contended that,

- (i) The invoices relied on by the Operational Creditor are fabricated and that there was no sale of rice husk during 01.01.2017 to 30.03.2017. Even the Ledger account is manipulated one.
- (ii) Operational Creditor had manipulated and fabricated Balance Confirmation Certificate as on 05.10.2018 caused to be issued through one of his employee Pushpendra Singh Patel.
- (iii) Rice husk was placed by RSP Energy LLP and supply was made on behalf of RSP Energy LLP in terms of MoU dated 03.11.2016 at the plant owned by the Corporate Debtor, which was handed over to RSP Energy for operation under the MoU.

11. Thus, contending the learned counsel for the respondent prayed the Tribunal to dismiss the application.



12. In light of the contentions as aforesaid, we have carefully examined the record before us. While there can be no dispute that under MoU dated 03.11.2016 between RSP Energy LLP and Ind Barath Energies (Maharashtra) Limited, RSP Energy LLP shall arrange supply of fuel to the Corporate Debtor, including rice husk, it is the case of the applicant that RSP Energy LLP arranged supply of the rice husk however, through Rangrao Babu Gaikwad the Operational Creditor herein, under invoices dated 22.02.2017, 28.02.2017 and 31.03.2017 to the Corporate Debtor in all amounting to Rs.56,55,158/-. A perusal of the above invoices placed before us discloses that the supplies were made under three invoices, *supra*, of a value of Rs. 56,55,158/-, by the operational creditor were acknowledged by the corporate debtor under its seal and signature.

13. Moreover, the record filed before us also reveals that the Corporate Debtor availed Tax Return benefits as observed in Form 231, viz. the Return of tax payable by the dealer under MVAT Act, 2022 read with Rules 17, 17A, 18 and 45 of the Maharashtra Value Added Tax (2nd Amendment) Rules, 2016, pertaining to the quarter commencing from 01.01.2017 to 31.03.2017 for the supplies from and to its plant in Nanded, Maharashtra. The Tax Return was filed for "within the state purchases of



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tax-free goods specified in Schedule-A of the MVAT 2002” for an amount of Rs.56,55,158 (page no.21 to 27 of document compilation dated 28.02.022). Therefore, when the Tax benefit has been given in respect of the supplies made under the invoices, *supra*, to the operational creditor, it is highly preposterous for the Corporate Debtor to contend that the applicant has not supplied the rice husk to the corporate debtor under the invoices *supra*.

14. Likewise, the allegation of the corporate debtor that the invoices are fabricated is devoid of any force, in as much as the Tax Invoices contained the TIN number besides, the Maharashtra Value Added Tax Authorities have extended TAX benefit to the corporate debtor herein.

15. The corporate debtor under its balance confirmation certificate confirmed the outstanding balance of the amount due in respect of the supplies it received under the afore stated invoices as on 05.10.2018.

16. Therefore, we are fully convinced that there is clear evidence as to supply of rice husk under the invoices referred to *supra*, by the Operational Creditor to the Corporate Debtor besides the receipt of the same by the corporate debtor. Hence, not only the relationship of operational creditor and the corporate debtor but also existence of an operational debt between




the applicant and the corporate debtor, besides its default by the corporate debtor stands established by the operational creditor.

17. We are therefore, satisfied that the petitioner had established that an operational debt of a sum over one lac is due and payable by the Corporate Debtor towards the supply of rice husk and the Corporate Debtor had failed in discharging the said debt. It is therefore, a fit case to put the Corporate Debtor under CIRP.

18. Hence, the Adjudicating Authority admits this Petition under Section 9 of Insolvency & Bankruptcy Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

(A) Corporate Debtor, M/s Ind Barath Energies (Maharashtra) Ltd is admitted in Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016,

(B) 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;

- (C) 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.
- (D) 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) 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.





(F) That the order of moratorium shall have effect from the date of this order 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.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints **Shri Kedari Narsimha Rao**, having IBBI Registration No. IBBI/IPA-001/IP-P01531/2018-2019/12397 email: kedarinarsimha@yahoo.co.in and having his address at H NO 16-2-721/3/1, Akbar Bagh, Malakpet Colony, Hyderabad, Telangana, 500036 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code. His Authorisation for Assignment is valid till 20.12.2022. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended.

Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

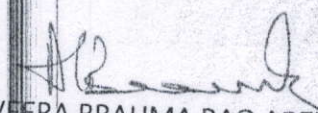
Proposed IRP shall file Form-2 within three days hereafter.

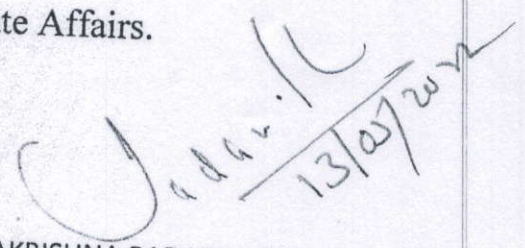


20. The petitioner is directed to communicate this order to the proposed IRP forthwith.

21. Accordingly, this Petition is admitted.

22. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


DR. N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

Karim



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केस संख्या
CASE NUMBER. CP/IB No. 377/9/HDB/2019
निर्णय का तारीख
DATE OF JUDGEMENT... 13/5/22
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 24/5/22


24/05/22
Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

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