



SL. No.3

**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**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/358/2022
NAME OF THE COMPANY	Preca Solutions India Pvt Ltd
NAME OF THE PETITIONER(S)	Nagarjuna Steel Pvt Ltd
NAME OF THE RESPONDENT(S)	Preca Solutions India Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Company Petition (IB) 358/09/HDB/2022 is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

CP(IB) No.358/09/HDB/2022
U/s. 9 of IB Code, 2016

In the matter of:

M/s. Nagarjuna Steel Private Limited,
Plot No.2, Sagar `X' Road,
L B Nagar, Hyderabad.

....the Petitioner

Vs

M/s. Preca Solutions India Private Limited,
Plot #6, D.No.2-9/5/6,
Green Land Colony, Gachibowli,
Hyderabad – 500 019.

....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. Ritesh Mittal, Advocate

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

Heard on : 10.10.2023

Per : Sanjay Puri

ORDER

1. This application is filed by the Petitioner M/s. Nagarjuna Steel Private Limited, against the Respondent M/s. Preca Solutions India Private Limited, seeking to initiate Corporate Insolvency Resolution Process



(CIRP) against the Respondent for the default committed in discharging the debt that is due to the Petitioner.

The facts mentioned in the application briefly, are as follows:

2. It is submitted that the Petitioner had supplied Iron & Steel in the form of TMT Rebar of various dimensions to the Respondent during the period from December 2021 to March 2022. As the Respondent failed to pay the total outstanding dues of Rs.1,99,87,603/- (Principal amount: Rs.1,65,58,849/-, Interest @ 24% p.a: Rs.29,05,724/- + GST @18% on Interest: Rs.5,23,030),¹ the Petitioner had served a Demand Notice² to the Respondent on 06.09.2022 through Registered Post which was delivered on 14.09.2022, but the Respondent did not reply to the same. Hence, this application, seeking for the above mentioned relief.

Counter:

3. The Respondent filed Counter denying the contents of the Petition and further contended that the petition is bereft of details of the contracts between the Petitioner and the Respondent.
4. It is submitted that the Respondent had entered into two agreements with M/s Nova's Avenues and Infrastructure Private Limited, a group company of Nova Educational Society (**NES**) to construct buildings for two educational institutions. Since Petitioner was an existing vendor of NES, NES informed the Respondent that the steel for the project would be arranged through Petitioner "in place of making part payment" by NES to the Respondent. Therefore, NES asked the Respondent to place purchase orders for the same with Petitioner. Pursuant thereto, after due negotiations and after all terms were agreed upon, NES issued a Purchase Order (**PO**) dated 19.11.2021³ to Petitioner. Thereafter, as directed by NES through its email dated 13.12.2021,⁴ the Respondent

¹ Pg 36-37 of the Application (Ledger Statement for Principal outstanding & Interest calculation statement).

² Pg 16-20 of the Application.

³ Pg 49 of the Counter (Annexure R4).

⁴ Pg 50 of the Counter (Annexure R5).



placed two POs bearing Nos.167 & 168 both dated 16.12.2021⁵ on Petitioner for supply of TMT Rebar (steel bars) for execution of the said Project with an understanding that payment to Petitioner towards two POs would be arranged by NES.

5. It is submitted that a perusal of Clause 4 in the terms of both POs 167 & 168 would show one of the condition stated by the Respondent was that the "payment shall be arranged by our client M/s. Nova Educational Society as per agreed terms". Therefore, the obligation to make payment under POs 167 & 168 was on NES, and not on the Respondent and in the event of any default by the NES, there can be no claim by Petitioner against the Respondent, and it does not constitute an "operational debt. Further, in POs 167 & 168, there was no time frame fixed for payment of the amount and no payment tenure was agreed between Petitioner and the Respondent.
6. It is further submitted that no payment was made by the Respondent to Petitioner under POs 167 and 168, as the quotation was issued by Petitioner directly in favour of NES and in line with the arrangement, Petitioner had received an amount of Rs.25,00,000/- under the said POs directly from NES. The payments that have been falsely shown in the computation statement to be received by Petitioner from the Respondent on 13-5-2022 were actually received by Petitioner from NES. The Respondent's bank statement had not shown any debit of Rs.25,00,000/- or the cheque number that was shown in the bank statement of Petitioner on 13-5-2022.⁶
7. It is submitted that later on, in the normal course of the Respondent's business, the Respondent issued PO No.34 dated 12.4.2022 against Petitioner for supply of steel of 4.10 MTs of TMT Rebar for a total value of Rs.3,74,572.03/- for which, payment was made by the Respondent to

⁵ Pg 51-60 of the Counter (Annexure R6).

⁶ Pg 64 of the Counter (Annexure R9).



Petitioner as an advance on 1-3-2022 Rs.3,25,680/- and on 28-3-2022 Rs.15,470/- and the same were reflected in the bank statements of Petitioner as per the agreed terms.⁷

8. It is further submitted that on 04.01.2023, the Respondent paid an advance payment of Rs.8,56,680/- to Petitioner against PO No. PRECA/PO/RM/2022-23/196, dated 04.01.2023 to supply steel and the fact that the Petitioner did not adjust the advance payment made by the Respondent against the alleged claim due of Petitioner, which shows that there was no amount due to be paid by the Respondent to Petitioner.⁸
9. It is also submitted that no interest was payable by the Respondent to Petitioner, as the Respondent has already paid the due amount to Petitioner as an advance under PO 34. Insofar as PO 167 and 168 are concerned, the Respondent was not liable to make any payment to Petitioner, as the same was to be paid by NES and none of the POs contain any clause towards payment of interest. Therefore, the claim for interest has no basis.
10. It is submitted that the Respondent had always communicated to Petitioner by way of POs as well as through correspondence that NES has to make payment to Petitioner under PO 167 and PO 168 and Petitioner also have direct contact with NES. Petitioner and NES are well aware of the arrangement between the parties in relation to payment exchanges between Petitioner, the Respondent and NES.⁹
11. It is further submitted that according to the documents filed along with the petition, the last invoice raised in relation to PO 167 and 168 was on 21-12-2021 and after that, there was no communication from Petitioner to the Respondent regarding payment of amounts allegedly

⁷ Pg 61-63 of the Counter (Annexure R7 & R8).

⁸ Pg 65-70 of the Counter (Annexure R10).

⁹ Pg 75-77 of the Counter (Annexure R14).



due until 16.08.2022 for almost 8 months, which shows the lack of credibility in the Petitioner's claims.

12. It is submitted that the Respondent is solvent and is a going concern having 185 employees and executing several projects across the State of Telangana and if the present petition is admitted, the business of the Respondent would be seriously impacted.¹⁰
13. It is reiterated that the Respondent had not committed default of any amounts to Petitioner and Petitioner has no claim against the Respondent, hence the present petition is not maintainable. It is further stated that the Petitioner has willfully suppressed material facts and several important documents that have a direct bearing on this case from this Tribunal as detailed above and has made false statements with the intention of misleading this Tribunal and the present petition has been filed with a malicious intent for purposes other than for resolution of insolvency and would, therefore, attract Section 65 of the IBC. Hence, praying to consider imposing penalty on Petitioner as provided under Section 65 of the IBC.

Rejoinder:

14. Petitioner filed Rejoinder wherein submitted that the goods worth Rs.1,90,52,239/- were supplied by Petitioner to the Respondent during the period from 18.12.2021 to 21.12.2021 against POs 167 & 168 both dated 16.12.2021.¹¹
15. It is further submitted that the Petitioner followed up for payments on regular basis with the Respondent as well as with the client of the Respondent and M/s. NES is not a party to this contract of sale and as per the agreed terms, it was the duty of the Respondent to ensure that it is complied with. It further submits that since the payment Clause

¹⁰ Pg 78 of the Counter (Annexure R15).

¹¹ Pg 21-35 of the Application.



was not complied as per the provisions of Sec. 55(1) of the Sale of Goods Act, 1930 by the Respondent this Petition is initiated.

16. It is submitted that in Para-4 of the Counter wherein the Respondent wrongly mentioned the client's name as Nova's Avenues and Infrastructure Pvt. Ltd. It is submitted that the Respondent had mentioned in the PO that the payment will be made by their client Nova Educational Society and not by Nova's Avenues and Infrastructure Pvt Ltd with whom they entered into an agreement. These being two different entities, shows the fraudulent intentions of the Respondent to escape the liability by transferring the liability now to a Fourth party.
17. It is stated that, the quotation and Purchase Orders mentioned in the Respondent's counter were between Nova Educational Society and Nagarjuna Steel Products. The Petitioner herein is Nagarjuna Steel Pvt Ltd and not Nagarjuna Steel Products. Hence again the Respondent's contention was that the Petitioner was an existing Vendor of Nova group/Nova Educational Society and submitting the supporting documents of Fifth Party "Nagarjuna Steel Products" is totally baseless and the Respondent understands that these are two different entities.
18. It is submitted that if NES had informed the Respondent that steel for the project would be arranged by Petitioner "in place of making Part payment" by NES to the Respondent, why the Respondent has issued PO and procured the material.
19. It is also mentioned in the rejoinder that as per the agreement between Nova's Avenues and Infrastructure Pvt Ltd and the Respondent, in the point No.5(c)(i) and 5(c)(iv) of the terms of payments:
 - a) Billing cycle period: Billing period is every 15 days, ie, twice as month and the Contractor shall accordingly submit RA bills/ claims to the Employer.



b) Payment Period: the Contractor will be paid within 7 days of submitting the RA/Final bills and claims.

20. It is further submitted that the Respondent had deducted TDS,¹² which shows that as per the agreement, the employer/Client will be making the payment to the Contractor (the Respondent) and there was no mention of direct payment to the Supplier (Petitioner) in the agreement.
21. It is submitted that as per the Payment Terms and Interest Clause of the Invoices, interest may be allowed @ 24% p.a. for delayed payment, after 14 days till the date of actual payment.

With the above submissions, the Petitioner is praying for admission of the application.

Decision:

22. Heard both the Counsels and perused the records of either side. The issue before us is, whether the Respondent, who placed purchase orders with the Petitioner for the supply of goods at the instance of and for use in a contract with a third party (NES), can be treated as a defaulter under section 9 of the IBC if the invoices issued to the Respondents in respect of the such supply of goods remain unpaid?
23. The two Purchase Orders (**POs**) in question are No. PRECA/PO/RM/2021-22/167 dated 16-12-2021 for 150 MTs of TMT Re-bars (Total value: Rs.1,13,20,920/-) ("**PO 167**") & PRECA/PO/RM/2021-22/168 dated 16-12-2021 for 102 MTs of TMT Re-bars (Total value : Rs.77,16,020/-) ("**PO 168**"). It is undisputed that,
- These POs were placed by the Respondent on the Petitioner. POs mention PAN and GSTN of the Respondent
 - Goods mentioned were supplied to the Respondent at the respective sites mentioned in the POs

¹² Pg 15-16 of the Rejoinder (Annexure III).



- Invoices against the goods supply were raised in the name of the Respondent. TCS was made against PAN of the Respondent
 - Payment against these invoices has not been made
24. Above undisputed facts establish the Petitioner as seller and the Respondent as buyer of the goods mentioned on the invoices which have remained unpaid. Also undisputed is that the goods purchased by the Respondent were on behalf of a third party viz. a company of NES group.
25. What is disputed however is that who is responsible for making payment for the goods which were supplied. According to the Petitioner, it is the buyer i.e. Respondent is responsible. The Respondent however claims that the payment was to be “arranged” by their client NES “as per the agreed terms” which was to be “released on back to back basis (after receipt of payment from client)”. This dispute about the payment, as to who will make it, the Respondent or NES, existed even before the Petitioner sent notice on 06.09.2022 under sec. 8 of IBC. This is evident from the email exchange between the parties prior to the issue of sec. 8 notice by the Petitioner.
26. In the email of 16.08.2022, the Petitioner as seller of goods wrote to the Respondent buyer

“We now bring to your kind notice that no payment has been made from your client **M/s. Nova Educational Society** nor PRECA SOLUTIONS INDIA PRIVATE LIMITED ever since the date of delivery and as per your Payment Terms. The delay is more than 7 months from the date of agreement of payment”.
(emphasis supplied)

This was followed by another mail of 22.08.2022, where the Petitioner wrote to the Respondents:

“We have not received any payment nor communication from your end with regards to the below mail sent.



Both these mails were copied to the officers in the Nova Group with email addresses 'generalmanager@nova.edu.in', Sumedhyagni@nova.edu.in¹³

27. Even after filing of the application before NCLT, on 21.10.2022, the Petitioner wrote to the Respondent:

“As you are also aware that this correspondence is involving People of **M/s. Nova Educational Society** also. Every correspondence has them in the loop, but we are getting no response from them regarding the meeting. So, we suggest a meeting between PRECA SOLUTIONS INDIAPRIVATELIMITED and NAGARJUNA STEEL PT.LTD to decide and proceed forward to recover dues from M/s. Nova Educational Society.” (*emphasis supplied*)

28. It is clear to us from the above emails that so far as the payment in respect of the invoices in question was concerned, not only NES was involved at all stages and they were “in the loop”, the Petitioner was also pursuing about them with the Respondents.

29. Therefore, it is an inescapable conclusion that the responsibility for payments against the invoices raised by the Petitioner was far from settled in this case. This uncertainty and dispute over payment terms predated the issuance of the Section 8 notice on 06.09.2022 by the Petitioner to the Respondent. Such pre-existing payment dispute serves as a disqualification for the success of this petition.

30. This petition also fails on the grounds that it does not conform to the requirement under Regulation 20 (1A) of IBBI (Information Utilities) Regulations, which required w.e.f. 14.06.2022 that

“Before filing an application to initiate corporate insolvency resolution process under section 7 or 9, as the

¹³ Page 76 and 77 of the Counter filed by the Respondent



case may be, the creditor shall file the information of default, with the information utility...”

which was not done by the Petitioner.

31. In any case, it's essential to acknowledge that the primary aim of the IBC is not to act as a recovery mechanism for contested debts, but rather to facilitate the resolution of insolvency for corporate entities. Consequently, this Adjudicating Authority is not the appropriate forum for the Petitioner to address its concern about non-payment for the goods supplied.
32. Such concerns cannot be addressed through the initiation of insolvency proceedings against the Respondent under the IBC. For payment of its dues, the Petitioner needed to knock on the doors of the competent Civil Court, having the jurisdiction to decide whether the dispute about the payment terms was valid or otherwise.
33. So far as this adjudicating authority is concerned, we are only concerned with the pre-existing dispute about the debt that has been incurred in relation to the invoices raised by the Petitioner. Upon finding that there was a dispute concerning the same, we are constrained to dismiss this Petition.

Sd/-

(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

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