

S.No.102

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
04-01-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA 160 & 161/2021 in CP(IB) No.237/9/HDB/2019
U/s 9 of IBC, 2016

IN THE MATTER OF:

I.V.Nanda Gopal

...Operational Creditor

Vs

Teja Cements Ltd

...Corporate Debtor

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**


ORDER

Order pronounced in CP (IB) No.237/9/HDB/2019 vide separate sheets.

In the result, this petition is allowed and Corporate Insolvency Resolution Process(CIRP) is ordered against the Corporate Debtor as per the terms mentioned herein.


MEMBER (T)

Srinivas


MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) No.237/9/ HDB/ 2019

**UNDER SECTION 9 OF IBC, 2016 READ WITH
RULE 6 OF I&B (AAA) RULES, 2016.**

In the matter of

I.V. Nanda Gopal

R/o Apt No.301, Aditya Castle Apartments
Plot No.141, Srinagar Colony
Hyderabad – 500073.

... **Applicant/
Operational Creditor**

Versus

M/s Teja Cement Limited

Through Mr. Srinivasula Reddy
Managing Director
R/o 2-148A, Niduzivvi Village
Yerraguntla Mandal, YSR Kadapa District
Andhra Pradesh.

... **Respondent
Corporate Debtor**

Date of order : 04.01.2022

Coram:

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

AND

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



Parties / counsels present:

For the Applicant : Mr. Mayur Mundra, Advocate for the petitioner
[Earlier represented by Mr.M.V. Pratap Kumar,
Advocate]

For the Respondent: Dr. P. Bhaskar Mohan, Senior Counsel assisted
by Mr. Rusheek Reddy K.V., Advocate.

PER BENCH

ORDER

This application is filed under section 9 of Insolvency and Bankruptcy Code, 2016, read with Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the application, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, *inter alia*, on the ground that the Corporate Debtor has defaulted in payment of a sum of Rs.7,50,00,000/- (Rupees seven crore and fifty lacs only) to the applicant.

2. The averments in the application in brief are that:

- the respondent (hereinafter referred to as 'Corporate Debtor') is a company incorporated under the Companies Act, 1956 for the purpose of establishment of cement plant. It is stated that Mr. Srinivasula Reddy is its Managing Director. It has its registered office at Hyderabad.
- According to the applicant a Demand Notice dated 05.12.2018 (ANNEXURE-2) has been issued by the Operational Creditor to

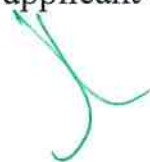


the Corporate Debtor stating that an amount of Rs.7,50,00,000/- (Rupees seven crores and fifty lacs only) is due from Corporate Debtor towards the services rendered by the Operational Creditor in connection with the establishment of a cement factory by the company in Andhra Pradesh. The Operational Creditor in paras 2 to 5 of the said notice has stated the circumstances under which the applicant had agreed to work for the respondent/ company on consultancy basis, besides that the salary agreed to be paid and the offer made by the respondent that the applicant will be entitled to Rs.7.50 crores as sweat equity shares in the form of remuneration have been explained. It is stated in para 8 of the Notice that the Corporate Debtor despite receipt of the Demand Notice had failed to remunerate the applicant for the services that he had rendered from 01.04.2010 to 31.12.2016.

3. In support of the pleas, the Operational Creditor relied on the following documents purported to have been issued by the respondent/ company, besides the communications that the applicant purportedly entered with the respondent as well as some third parties.

- (A) Letter dated 25.07.2011 (ANNEXURE-5 of the application), wherein it was stated that:
- (i) The applicant had started working with the respondent/ company from 01.04.2010 onwards and the applicant was offered Rs.5,00,000/- as monthly salary.
 - (ii) An amount of Rs.80,00,000/- will be paid through shares of Teja Cement Ltd for the work rendered by the applicant from 01.04.2010 to July 2011.





(iii) The applicant will be paid salary of Rs.5,00,000/- from August 2011.

(B) Letter dated 29.01.2015 (ANNEXURE-7 of the application), wherein it was stated that:

- (i) Remuneration payable to the applicant for the period from 01.04.2010 to 31.05.2015 was Rs.5,28,24,000/-.
- (ii) The said amount will be paid through shares of the respondent/ company at Rs.10/- per share and such shares will be allotted to the applicant by 31.03.2015.
- (iii) Besides, the applicant will be inducted into the Board of the Company during revamping of the Board in April 2015 and start paying the applicant a monthly salary of Rs.6,00,000/- from April 2015, along with perks and requisites.

(C) Letter dated 28.08.2016 (ANNEXURE-9 of the application/ page 82), wherein it was stated that:

- (i) The applicant will receive remuneration of Rs.7.5 crores for the work rendered by the applicant from 01.04.2010 to 31.07.2016 through shares of the respondent/ company at Rs.10/- per share. Calculation Sheet was annexed to the letter.
- (ii) Shares will be issued to the applicant as a combination of Sweat Equity and Employee Stock Options.
- (iii) Of the total amount of Rs.7.5 crores, shares for Rs.3.75 crores and Rs.3.75 crores will be issued in FY 2016-17 and FY 2017-18 respectively.



- (iv) The applicant will be inducted as Full Time Director of the company; salary and perks will be commensurate with other full time Directors of the company.

Thus, contending the applicant prayed for allowing the application and thereby set the Corporate Insolvency Process in motion against the respondent/ Corporate Debtor. Per contra, the Corporate Debtor in its Counter denied having made any offer of employment to the Operational Creditor under the Corporate Debtor or to have offered shares in the Corporate Debtor / company. It is further alleged that the e-mail communications annexed to the Notice dated 05.12.2018 are forged, hence no reliance can be placed on the said e-mails.

4. According to the respondent the applicant had offered to help the respondent/ company in the work of establishment of cement factory in Andhra Pradesh. Reposing faith in the applicant Mr. Mule Srinivasula Reddy had handed over login details to the applicant. The applicant was also handed over letter-heads and other documents relating to the respondent/ company. The applicant had voluntarily accompanied Mr. Mule Srinivasula Reddy occasionally. It is further claimed that the applicant invested a sum of Rs.20,00,000/- in the respondent/ company and within two months thereafter obtained refund of the same. Mr. Mule Srinivasula Reddy had never promised employment to the applicant.

5. As regards allotment of shares it is contended that unless the applicant makes substantial investments no shares can be allotted. The respondent/ company has not employed any person so far. Even the Directors do not draw salary from the respondent/ company. The





applicant's involvement in the respondent/ company is voluntary. It is stated that the login credentials available with the applicant since were not returned, Mr. Mule Srinivasula Reddy had started using another email ID from July 2016.

6. It is stated that all the e-mail communications and letters annexed to the Notice dated 05.12.2018 and to the application bear forged signature of Srinivasula Reddy. (paras 17, 18 and 19). The applicant had obtained domain name "tejacement.com" without knowledge of the Directors of the respondent/ company and created e-mail ID msr@tejacement.com purported to be that of Mule Srinivasula Reddy and had misused the same for addressing e-mail communications unto himself from the said e-mail account.

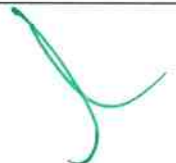
7. The respondent has stated that it had lodged FIR No.04/ 2018 dated 21.12.2018 against the applicant at CID, TS, Hyd Police Station. (para 21).

8. Thus, contending the respondent prayed the Tribunal to dismiss the application.

9. Rejoinder filed by Operational Creditor states that:

Contentions raised in Rejoinder dated 30.09.2019 filed by the applicant.	Counter submissions made by the respondent in Additional Reply dated 13.03.2020.
The Corporate Debtor alleges in the criminal complaint that e-mail	E-mail ID <u>msr@tejacement.com</u> was created by the applicant and the

<p>address msr@tejacement.com was solely under the custody of the applicant. Said allegation is incorrect.</p> <p>Four e-mail addresses were created, each one for the applicant, Srinivasula Reddy, Hima Reddy (daughter) and Kiran Valipa as per e-mail sent by Kiran Valipa Venkat dated 28.05.2013 (ANNEXURE-30 of Rejoinder). Said e-mail IDs were sent to Ms. Hima Reddy and Mule Srinivasula Reddy requesting them to change passwords, vide e-mail communication (ANNEXURE-31). As such the applicant is not aware of login details thereof. [para 5(a)]</p>	<p>applicant alone was the admin of such services as is evident from the documents procured by the Police authorities during investigation.</p> <p>It is denied that e-mail IDs were created at the instance of Mule Srinivasula Reddy by Kiran Kumar Valipa. It is denied that the login credentials of two e-mail addresses were sent to daughter of Mule Srinivasula Reddy.</p>
<p>The applicant was coordinating with one M/s B.S. Envitech Pvt Ltd to procure environmental Clearance and Consents from A.P. Pollution Control Board. It is submitted that the applicant, after procuring the above approvals was also instrumental in issuance of</p>	<p>It is denied that the applicant was instrumental in obtaining all approvals as claimed under para 10 of Rejoinder and the applicant is put to strict proof of the same. The applicant had only voluntarily and intermittently supported Mr. Mule Srinivasula Reddy for the purpose of coordinating</p>



<p>GO MS No.46 in April 2012, for limestone mining lease. (para 10)</p>	<p>with officials and technical associates of the respondent/ company.</p>
<p>As regards the averment that the applicant was going to be made a Director of the respondent/ company only after making substantial investments, it is submitted that the applicant invested time and money in the company and was working in the capacity of Director as is evident from e-mails and letters (ANNEXURE-48) [para 14]</p>	<p>It was always informed to the applicant that he will be inducted into the respondent/ company only upon making substantial investment into the respondent/ company. However, the applicant while intermittently working with the respondent/ company had started introducing himself to others as a Director of the respondent/ company.</p>

The Applicant has annexed copies of number of e-mail communications to Rejoinder dated 27.09.2019/ 30.09.2019 and made general denials to the contentions raised by the respondent/ company and the respondent has submitted its response in his Additional Reply dated 13.03.2020.

10. Additional Affidavit also has been filed by the Operational Creditor asserting that Criminal proceeding being FIR No.04 dated 21.12.2018 was initiated by the respondent was intended to scuttle Insolvency proceedings and to intimidate the Applicant. It is further contended that the Police authorities have filed Final Report (Certified copy is at pages 6 – 11 of this Additional Affidavit) under section 173 of the Code of Criminal Procedure stating that:

“ As such the allegations against I.V. Nanda Gopal are not established with clinching evidences.




*It is, therefore, **the case is closed** as 'UNDETECTABLE. UN' and the Hon'ble Court is prayed the Final Report may be approved and necessary proceedings may be issued."*

11. The Corporate Debtor filed the following response to the Additional Affidavit filed by the Operational Creditor:

(i) The Police authorities have failed to investigate into various aspects of the complaint lodged and failed to conduct complete investigation into the illegalities and fraud committed by the petitioner. The respondent has filed a 'PROTEST' against the Police authorities and the same is pending before the Hon'ble Magistrate Court.

(ii) That the closure of investigation does not warrant admission of the alleged debt.

12. The Operational Creditor filed Written Submissions contending, inter alia, that:

- Respondent/ company has resorted to a feeble legal argument that the applicant was never offered any employment nor remuneration.
- Though the respondent denied legitimacy of the e-mail communications, they have failed to prove their claim by evidence.
- By illustrating various communications exchanged between the applicant and the Corporate Debtor and those communications addressed to Operational Creditor on behalf of the respondent/ company by various Government agencies/ authorities and third

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parties, the applicant/ Operational Creditor sought to prove his case.

- Equitable jurisdiction, as available with Civil Courts, is not available with this AA while dealing with applications under section 9 of the I&B Code, 2016.
- Police Closure report is not final since the same is challenged vide Criminal MP No.162 of 2021 in Crime No.4 of 2018 (CID Hyderabad) before the Court of the VI Addl Chief Metropolitan Magistrate at Hyderabad. Copy of the said application is enclosed.

13. Learned counsel for the Corporate Debtor also placed reliance on the following decisions,

(a) Radha Exports (India) Private Limited Vs. K.P. Jayaram and another, (2020) 10 SCC 538 (paras 39-42), wherein it is held that,

“ The payment received for shares, duly issued to a third party at the request of the payee as evident from official records, cannot be a debt, not to speak of financial debt.”

(b) Canara Bank Vs. IVRCL in IA No.436 of 2018 in CP (IB) No.294/ 07/ HDB/ 2017 dated 01.02.2019 (para 16, 17, 20, 21, 22 and 33), wherein it is held that,

“debt converted into equity shall become a part of the shareholding and therefore, cannot be treated as a debt under IBC.”

14. The learned counsel for Corporate Debtor also filed written Submissions, *inter alia*, contending that:

Abraham

- (i) The application is barred by limitation.
- (ii) The so called claim of the applicant was brought to the notice of Mule Srinivasula Reddy and C. Shekar Reddy only through e-mail dated 19.04.2017 (Annexure-20, page 186-190, Vol.II of the petition) and as the said e-mail communication does not contain any demand, there is no cause of action even as on 19.04.2017 for any action by the applicant.
- (iii) The applicant is neither an employee nor an investor.
- (iv) The respondent relies on section 3(11) of the I&B Code, 2016, which reads as under:

“3(11). ‘debt’ means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;”

In the present case, the petitioner claims the amount as an ‘operational debt’, which is defined under section 5(21) of the I&B Code, 2016, which reads as under:

“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 repayment 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;”

- (v) That mere sending e-mail from a particular e-mail address would not lead to the presumption that the e-mail was sent by the originator. Electronic evidence can only be admitted as secondary evidence, if all the requirements under section 65B of the Indian Evidence Act are satisfied.

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- (vi) All the e-mails are not addressed to the personal e-mail of Mr. Mule Srinivasulu Reddy and were addressed only to msr@tejacement.com which was under the sole control of the applicant. The applicant is bound to establish that the said e-mails have in fact originated from Mr.Mule Srinivasulu Reddy by following the procedure established by law.
- (vii) There is no Board Resolution and approval by General Body of the company to appoint the petitioner as a Director.

15. In the light of the contest as above, the Tribunal framed the following points for consideration.

- (1) Whether application is barred by law of limitation?
- (2) Whether the applicant was not in the employment of the respondent?
- (3) Whether the applicant had obtained domain name "tejacement.com" without knowledge of the Directors of the respondent and created e-mail ID msr@tejacement.com purported to be that of Mule Srinivasula Reddy and had misused the same?
- (4) Whether there is no operational debt or default?
- (5) Whether admitting this petition would amount to exercising equitable jurisdiction by this Adjudicating Authority?

16. We have heard the learned counsel for both parties at length. Perused the record, written submissions and the case law submitted before us.



POINT No.(1) : Whether the application is barred by law of limitation?

17. It is trite to say that the burden lies on the applicant (suitor) to establish that the claim made is within the period of limitation whether or not the opposite party raises the issue of limitation. Insofar as the case on hand is concerned the respondent had raised plea of limitation in its written submissions. Refuting the plea of the respondent that the claim made under the demand notice is barred by limitation learned counsel for the applicant placing reliance on the letter dated 29.01.2015 (Annexure-7), letter dated 27.09.2016 (Annexure-8), letter dated 28.08.2016 (Annexure-9), e-mail dated 10.08.2016 (page 85) and letter of the applicant addressed to the respondent dated 17.10.2016 (Annexure-10), strenuously contended that the respondent had categorically admitted vide letters dated 28.08.2016 and 17.10.2016, the outstanding dues of the applicant, namely, an amount of Rws.7.5 lacs towards salary and shares worth Rs.3.75 lacs. So much so the present application having been filed on 29.03.2019 is well within the period of limitation as provided under Article 137 of the Limitation Act.

18. However, learned counsel for the respondent refuted these contentions mainly on the ground that the documents relied on by the respondent are forged and fabricated, as such no reliance can be placed on them. This Tribunal in its discussion in the preceding pages has categorically held that the letters and e-mail communications filed by the applicant can be relied on in view of the findings given therein. Therefore, placing reliance on these documents wherein there is a clear and categorical admission of outstanding dues of the applicant by the respondent, it can be said that right to sue for the said amount accrued



in favour of the applicant consequent to non-payment and the present claim having been filed on 28.03.2020 is well within three years of accrual of right to sue. Therefore, we hold that the claim as made under the demand notice as well as the application are within the period of limitation.

POINT No.(2) : Whether the applicant was not in the employment of the Corporate Debtor?

19. According to the learned counsel for the applicant, the applicant agreed to work for the respondent on consultancy basis and it was further agreed that the applicant will be paid salary as per the offer made by the respondent that the applicant will also be entitled to Rs.7.50 crores as Sweat Equity Shares in the form of remuneration. It is stated that as the respondent/ company had failed to remunerate the applicant for all the services that the applicant he had rendered from 01.04.2010 to 31.12.2016, the applicant got a Demand Notice dated 05.12.2018 issued to the respondent and as the said notice did not evoke any response from the respondent the present application for initiation of Corporate Insolvency Resolution Process against the respondent has been filed.

20. In support of the said contentions, learned counsel for the Operational Creditor Mr. Mayur Mundra invited our attention to the following letters/ e-mail communications:

- (i) letter dated 25.07.2011 (ANNEXURE-5 of the petition),
- (ii) letter dated 29.01.2015 (ANNEXURE-7 of the petition), and



- (iii) letter dated 28.08.2016 (ANNEXURE-9 of the petition/ page 82).

21. According to the learned counsel the above correspondence clinchingly establishes that the applicant was associated with the respondent/ company for the period from 01.04.2010 to 31.12.2016, as such denial of remuneration to the operational creditor is unjust.

22. Per contra, the learned senior counsel for the respondent Dr. P. Bhaskar Mohan while vehemently refuting the above submissions of the learned counsel for the applicant contended that there is no relationship of employer and employee between the Operational Creditor and the Corporate Debtor. Learned senior counsel further submitted,

- (I) that the documents produced by the petitioner in support of his claim of employee under the respondent; Rs.7.5 crores towards his salary are false and forged, as such no reliance can be placed on these documents.
- (II) When the documents basing on which the claims is made by the applicant are in serious dispute, the matter is required to be adjudicated before a civil court and not by this Tribunal as such the application itself is liable to be dismissed.
- (III) Claim for salary is not supported by any Board Resolution.



23. In the light of the contest put forth as above, we deem it proper to examine various letters and e-mails relied on by the Operational Creditor and disputed by the Corporate Debtor.

- (i) Annexure-5 dated 25.07.2011 is a computer typed letter purportedly addressed by M. Srinivasula Reddy, Director of respondent/company to the applicant, wherein it is stated that,

“You have become an integral part of Teja Cement Limited ever since you started working for us from 1st April 2010 onwards. You have been taking care of all the company matters in Hyderabad very proficiently and we are extremely pleased with your performance.

I am very pleased to inform you that we have decided to offer you a position on the Board of Teja Cement Limited, with a monthly salary of Rs. 5,00,000/- (Rupees five lakhs) and other fringe benefits commensurate with your position.

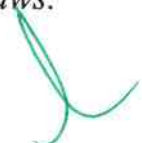
I would like to let you know that an amount of Rs. 80,00,000/- (Rupees eighty lakhs) will be paid through shares of Teja Cement Limited for the work that has already been rendered and contribution made by you from April 2010 to July 2011.

The shares will be issued at the rate of Rs.10/- per share. The shares will be allotted to you on or before 31.03.2012.

There will be a 3-year lock-in period for the above shares from the date of allotment of the shares. In case you want to sell the shares after lock-in period, the promoters of Teja Cement Limited shall have the Right of First Refusal.

Your salary of Rs.5,00,000/- (Rupees five lakhs) per month will be paid from the month of August 2011.

You will receive salary and all other benefits forming part of your remuneration package, after deduction of taxes and other statutory deductions in accordance with applicable laws.



I formally welcome you into the Teja Cement Limited family and I hope that you will have a long and fruitful relationship with us.”

- (ii) Communication dated 29.01.2015 (ANNEXURE-7), is the computer typed letter purportedly addressed by said M. Srinivasula Reddy to the applicant signifying that the applicant will be paid remuneration in the form of shares.
- (iii) Communication dated 10.08.2016 (Annexure-9, Page 85, Volume-1 of the petition) is another computer typed letter purportedly addressed by said M. Srinivasula Reddy to the applicant offering the Corporate Debtor position as Full Time Director, which is as follows.

“Dear Mr. I.V. Nanda Gopal.

You have been working for Teja Cement Ltd since 1st April 2010 and have been a very important part of the company and involved in all aspects of its progress since 2010.

As we have discussed in the past two weeks about your compensation for the past 6 years and 4 months, here is the gist of what the board members discussed. We will discuss this with our CA and CS to formalise this:

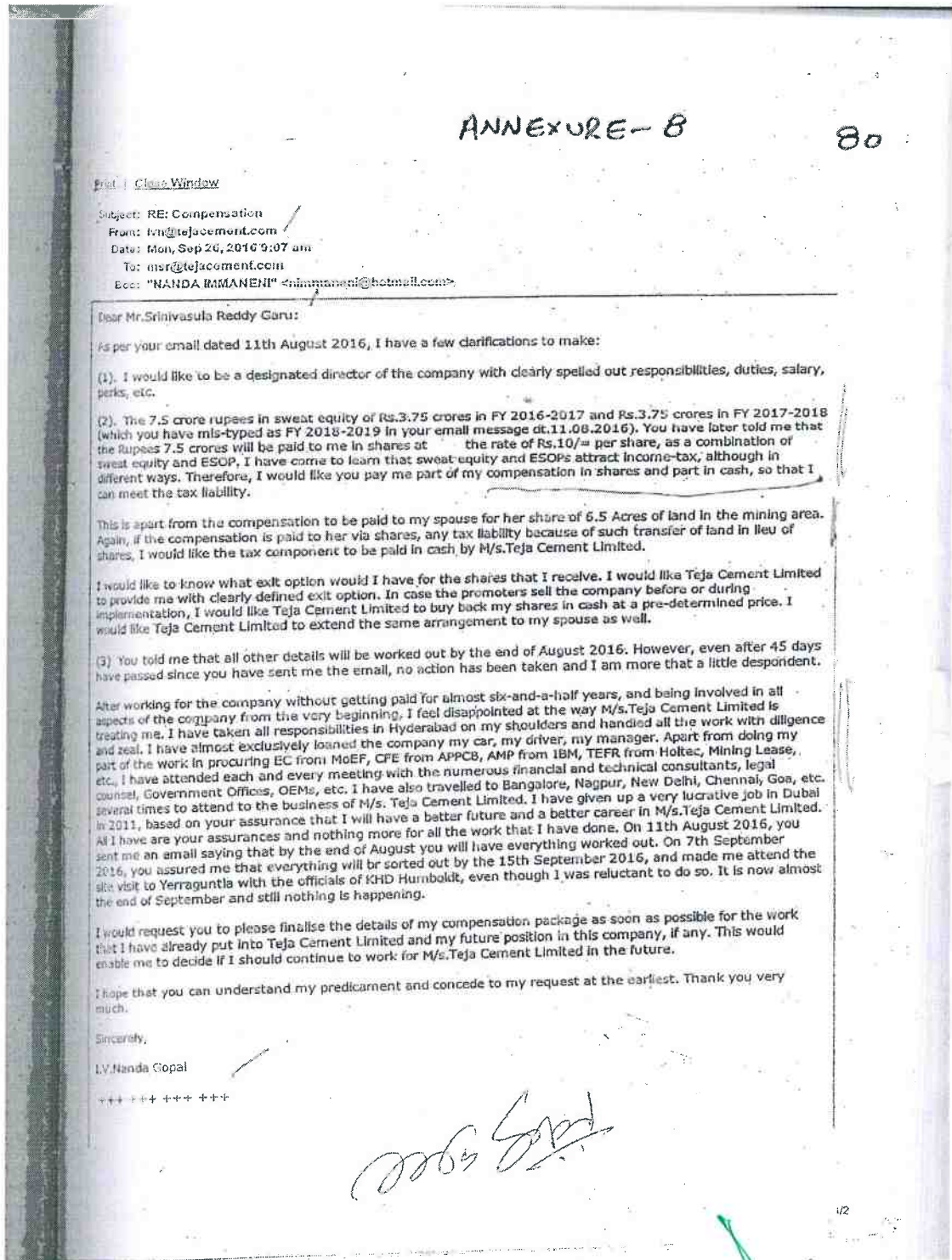
- 1. You will be induced as a full time Director of the board with designated responsibilities, salaries, perks, etc.*
- 2. You will receive sweat equity shares of Rs.7.5 crores in FY 2016-17 and 3.5 cores in FY 2018-19. (This is apart from the compensation that will be paid to the 6.5 acres land purchased by your wife I. Kavitha)*
- 3. All other details we will discuss and finalise by the end of August 6 2016. We will take the appropriate Board Resolutions and filing with ROC and other authorities as soon as possible.*

I hope this is as per your expectations.

*With best regards
M. Srinivasula Reddy
Director”*



- (iv) Communication dated 26.09.2016 (ANNEXURE-8) is the computer typed letter addressed by the applicant to Srinivasula Reddy, wherein it is stated that,



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Subject: RE: Compensation
From: msr@tejacement.com
Date: Tue, Sep 27, 2016 4:57 am
To: ivn@tejacement.com
Cc: tejacementlimited@gmail.com

Dear Nanda Gopal:

Do not think for a minute that work you have done for the last 6-and-half years has gone unnoticed or unappreciated. We have the utmost appreciation for all that you have done for M/s.Teja Cement Limited: In fact, you have been the face of the company and its spokesperson with the consultants, officials, equipment suppliers, etc.

I am not denying any of the things that you wrote in your email. You have played an invaluable part in the company and we would like to make sure that you are suitably compensated for the work you have done since April 2010 as well as in the future. I would like to emphasize that the work that you have done for M/s.Teja Cement Limited is recognised by everyone. I understand your disappointment at the delay in finalising your compensation package. However, please understand that I am doing everything I can to resolve all your issues you have pointed out.

I will have to discuss the points you have raised, especially the part compensation in cash, tax implications of sweat equity vs ESOP, exit options, etc., with the company CA and CS and other promoters and see how best we can get to a mutually agreeable solution. Like I said earlier, we have agreed to compensate you 7.5 crore rupees for your work and contribution made in the last 6-and-half years. You have also agreed to that amount. How to compensate you that amount is the domain of financial professionals, and I need a little more time to see how best it could be done.

I do understand that I promised that I will be able to give you a clear picture by the end of August. But it is taking longer than I expected. I will definitely give you clarity by 15th October 2016.

Meanwhile, I would like you to set aside all doubts and misapprehensions and continue to work with the same diligence and zeal. Teja Cement Limited needs your services now more than ever.

Yours faithfully,

M.Srinivasula Reddy
Director
M/s.Teja Cement Limited.

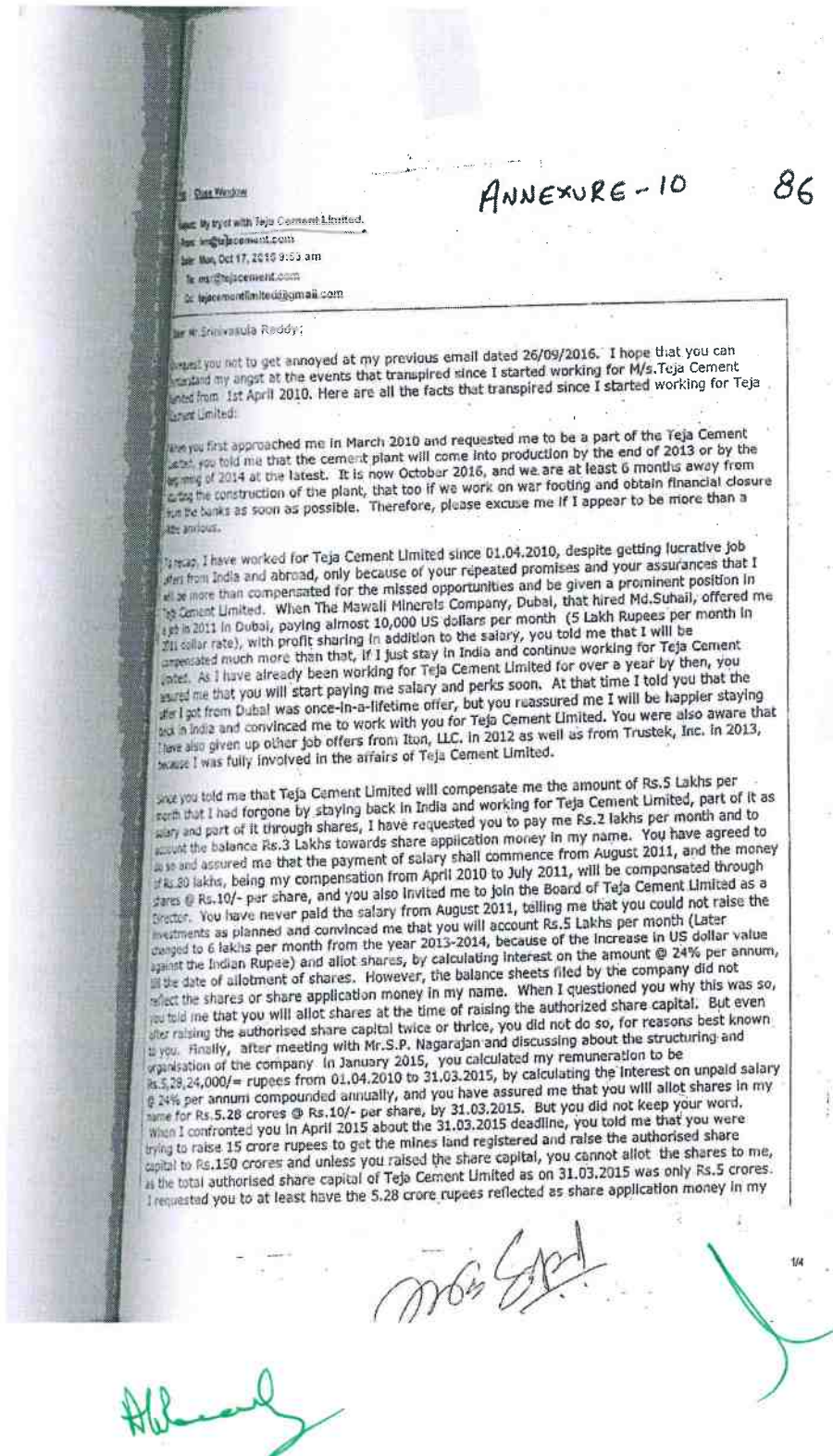
Nanda Gopal

Abhinav

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- (v) Communication dated 17.10.2016 (ANNEXURE-10) is the computer typed letter addressed by the applicant to Srinivasula Reddy stating that,



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name in the company's balance sheet. But, you requested time till 30th June 2014, to raise the share capital, allot me the shares, appoint me to the Board of Teja Cement Limited and start paying me monthly salary from the month of July 2015.

Unfortunately, on 29th April 2015, we came to know in Viskhapatnam that the land alienation file is stuck in the AP CMO because of a query regarding kummara kunta. You immediately told me that till the government land alienation file is cleared by the Chief Minister, and the GO is issued in favour of Teja Cement Limited, you will not be able to formalize my compensation package and my appointment into the board of Teja Cement Limited. I reluctantly agreed, because I also understood the stress you were going through in getting the land alienation file cleared by the AP CMO and AP Cabinet.

At every instance since 2010, you had given some excuse or the other for delaying my compensation and my appointment to the board of Teja Cement Limited. You have always been using the excuse of not having adequate authorised share capital to allot the shares in my name, as you needed Rs.1.5 crores to raise the authorised share capital to Rs.150 crores. Since 2014, you have been using the additional excuse of delay in Government Land alienation for doing so. At last, the land alienation file was cleared by the AP State Cabinet in June 2016, and you received GO Ms. 273, dt.02.07.2016, approving alienation of government land for cement plant construction in favour of Teja Cement Limited. I have not raised the question of my compensation even once from April 2014 till July 2016, when the said land alienation file was pending. I only raised it in July 2016 after the receipt of the said GO Ms 273. After repeated requests from me, on 20th July 2016, you have worked out my compensation package of 7.5 crore rupees, from April 2014 to July 2016, as per our understanding of compensating me the amount of salary foregone by me in not taking up the job in 2011, along with 24% Interest compounded annually. You said that you would have to discuss and finalize the amount with other Directors and promoters and get back to me. On 10th August 2016, you sent me an email message, saying that by end of August 2016, you will allot shares for 7.5 crore rupees as sweat equity and formalise my appointment as a Director to the Board of Teja Cement Limited, but with no other details. You followed it up with a letter dated 28th August 2016, with a few changes - that the 7.5 crore rupees worth of shares will be allotted to me as a combination of sweat equity and ESOPs - and requested time till 15th September 2016 to do so. I have raised a few questions/doubts regarding your letter dt 28.8.2016, and you said that you will discuss the same with the CA, CS and others and get back to me by 15.09.2016. Another 4 weeks passed with no action from you. After I could wait no longer, I have sent an email to you on 26.09.2016 describing my anxiety due to the delay, and you replied saying that you need more time till 15th October 2016 and went to Yerraguntla on 26.09.2016 and have been there ever since. I came to know on 13.10.2016 that you are not planning on coming to Hyderabad till 18th or 19th, and therefore, you will not be able to allot me the shares and fulfil other formalities by the 15th of October 2016, as promised. I am sure you are going to drag this matter further for a few more weeks, as you have been doing so skillfully for the past few years.

I have requested you many times to appoint me as the Director of Teja Cement Limited, as promised by you in 2010 when I joined the company. Upon your insistence only, I have been parading around as the Director of Teja Cement Limited since 2011. I have been serving as the De Facto Director of Teja Cement Limited with the Technical and Financial consultants, RQPs, Government officials, equipment manufacturers and all the others I met on behalf of Teja Cement Limited. Even the Techno-Economic Feasibility Report (TEFR) made by Holtec Consultants (P) Ltd., New Delhi, also mentions me as one of the promoters/whole-time Directors of the company, who had been involved in all aspects of the company. Everyone I deal with on behalf of Teja Cement Limited recognize me as the Director of the Company, because that's what is printed on my Business Card. They even communicate with me as a Director of the company. I have even attended Conferences and Technology & business meetings on behalf of Teja Cement Limited, as its Director. Every time I give out my business card, I feel embarrassed because I know that I have not yet been officially appointed as a Director of the company. I do not know what prevented you from appointing me as a Director on the Board all these years, especially as I was the only one, apart from you, working full time for the company. I do not know what to make of this, as it is only a simple matter of passing a board resolution appointing me as a Director and filing the duly prescribed form with Registrar of Companies.

I do not understand what is taking you so long to formalise my remuneration package. You have all the time in the world to discuss with me at length the matters pertaining to M/s.Teja Cement Limited like finalizing the cement equipment by meeting the equipment manufacturers, following up with the

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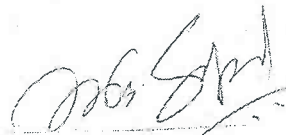

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possible investors, extension of CFE, Extension of IBM approved mining plan, extension of Environmental Clearance, meetings with L&T, Transfer of mining lease of India Cements Limited, site visit by the KHD Humbolt Officials, Meeting the Company Chartered Accountant and Company secretary, planning the layout of new office building, meeting bankers and financial consultants and so on, but when it comes to the subject of my remuneration, you suddenly do not seem to have any time. That is why I am getting worried, because of your lackadaisical attitude towards my well being. If you are really serious about it, formalising my financial compensation and work package, allotment of shares in my name and my appointment to the Board by passing appropriate board resolutions should not take more than 2 or 3 days to finalize at the most. On one hand you assure and reassure me that you will compensate my efforts in the best possible way, and on the other hand you keep on postponing. I do not know what to make of this. Now, I am hearing rumours that you are trying to sell the company on an as-is basis to third parties. This is further troubling me, as your actions also seem to indicate such a move.

At no point of time since 2010 have I missed one single appointment or meeting nor caused any delay in discharging my duties for Teja Cement Limited. I worked with my blood and sweat and tears to help you build this company and you also agree that I played a pivotal role in its development, despite continuous snubs from you and Teja Cement Limited. Even in the face of severe financial stress, I used to book the plane tickets on my credit cards, and meet the incidental expenses from my pocket, even though I knew that Teja Cement Limited will pay me 3 or 4 months later. My dedication to this project has been unquestionable and irrefutable. Believe me when I say that I was getting very anxious as months passed into years, and I was working for Teja Cement Limited with total dedication, without getting paid. Everytime I asked you for salary, you always postponed it by "just two more months."

All I have to show for my six-and-a-half years of work are a few emails and letters from you filled with promises and assurances on behalf of Teja Cement Limited, alleviating my apprehensions, doubts and concerns about the delay in fulfilling the same. Actions speak louder than words, and I request you to convert all the assurances you gave and the promises you made over the years into actions and do the following, as promised by you, at least by the 15th November 2016:

1. Issue 7.50 crore rupees worth of Teja Cement Limited shares to me at the rate of Rs.10/= per share, by discussing with the company chartered accountant and the company secretary and others that you may have to discuss this subject. As I have mentioned in my previous email, if the manner in which you allot the shares (sweat equity, ESOP, etc) in my name attracts Income Tax or capital gains tax, then I would like you to pay the income tax portion in cash and the balance in shares, as I do not have the money to pay to the Income Tax Department. (If you cannot raise the share capital to Rs.150 crores by November 2016, at least place the 7.50 crores as share application money in my name and allot the shares whenever the authorised share capital is raised.)
2. Give me a proper exit option for liquidation of my shares (price of share buy back by the company or other promoters in 2 years, 3 years, 5 years.). There seems to be a good possibility that you may sell part of the company or the entire company lock, stock and barrel to a third party before or during project implementation. Please give me clarity as to what happens to my shares if you sell controlling stake or even the entire company to any third party before or during project implementation. I would like to know specifically the rate per share the company would pay me for my shares, in case I do not want to continue under new Management/Promoters/Investors.
3. Appoint me as the Director of Teja Cement Limited, by convening an EGM and passing appropriate board resolutions and filing the same with the ROC.
4. Fix my salary/perks and start paying me the same from the month of August 2016 (As you have promised me to issue the 7.5 crore rupees worth of shares on 10th August 2016). In case you do not pay salary for August to October 2016, allot me shares for the same and start paying me from November 2016.
5. Indicate the cost of acquisition of the 6.5 Acres of land in the Teja Cement Limited mines area owned by my wife, Mrs.I.Kavitha, and extend the same terms for the shares buy back for her as well.
6. Pass appropriate board resolution/s and file them with the Registrar of Companies for fulfilling 1-5 above.


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I request you to kindly get this exercise completed by 15th November 2016, without fail, so that the trust and faith that I have placed in you and in Teja Cement Limited will not dwindle further. I sincerely hope that your acts will be true to the spirit of the letters and emails that I have received from you. Finalising and formalising my compensation should not take more than 2-3 days at the most.

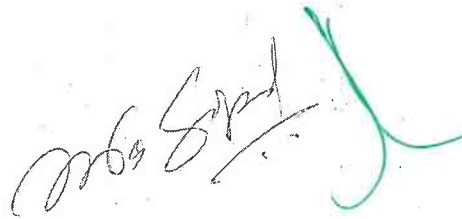
If this or my previous emails has caused you pain or heartburn, I request you to kindly forgive me. I am also willing to continue to work for Teja Cement Limited, as I have also played an important role in its development and growth.

Thank you.

Yours Sincerely,

I.V.Nanda Gopal

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24. It is pertinent to note that as per the interim reply/ Counter dated 13.12.2018 filed by the Corporate Debtor, it is specific contention of the Corporate Debtor that the Corporate Debtor has not made any offer of employment to the applicant/ Operational Creditor, under the respondent nor even offered shares in the respondent/ company. However, in its subsequent reply/ Counter dated 02.08.2019, the Corporate Debtor has contended that the Operational Creditor had offered to help the respondent in the work of establishment of cement factory in Andhra Pradesh and that the Corporate Debtor has handed over letter-heads and other documents relating to the respondent/ company to the Operational Creditor. It is also averred that the Operational Creditor had voluntarily accompanied Mr. Mule Srinivasulu Reddy occasionally.

25. That apart, under Annexure-6, the Corporate Debtor has stated as follows:

“Mr. Nanda Gopal has degree in Mechanical Engineering from University of California, San Deigo, USA and Law degree from Osmania University, Hyderabad, India. After returning to India, he started and headed companies in the fields of Computer Aided Designing, IT Enabled Services, Satellite Communications, and Publishing & Mining and has vast experience in starting and successfully managing an enterprise. He has been with Teja Cement Limited for over 4 years and is actively involved in all aspects of the company.”

26. The above statement was purportedly made made by the respondent/ Corporate Debtor in “Techno-Economic Feasibility Report” submitted in connection with setting up of a cement plant by the respondent- company. The reason for mentioning the credentials of



the applicant including the applicant's active involvement in all aspects of the company for the last four years, obviously to strengthen the feasibility report for setting up a cement plant, which the respondent admittedly intended to set up. Therefore, when the report submitted was for the benefit of the respondent, firstly the theory of forging the said document shall fall to ground and nextly having admitted the credential of the applicant in the said report the respondent cannot now be allowed to approbate and reprobate as the same is impermissible under law.

It is also to be noted that according to the applicant he was offered employment in the respondent-company by the Managing Director of the respondent- company vide correspondence dated 25.07.2011 and since then he has been rendering his services to the respondent. In the Economic Survey Report dated September 2014 supra, it has been mentioned that the applicant has been associating with the respondent-company in all aspects for the last four years. His qualification and past experience was also mentioned in the said Techno-Economic Feasibility Report. So much so the Techno-Economic Feasibility Report has in fact, fully supports the contention of the applicant that he has been under the employment of the respondent-company since 2011.

27. That apart, if really the Operational Creditor is not employed by the Corporate Debtor, why Mr. Srinivasula Reddy had handed over login details, letter-heads and other important office documents relating to the respondent- company to the Operational Creditor stands unexplained or substantiated by the Corporate Debtor.



28. We also find from para 10 of Rejoinder dated 13.03.2020 filed by the Corporate Debtor that the Corporate Debtor had admitted the applicant's contribution in coordinating with officials and technical associates of the respondent- company. Further, it also amplifies that the Operational Creditor was part of the office activities of the respondent- company though his position or designation was not stated.

29. We shall now deal with the plea of the Corporate Debtor that correspondence relied upon by the applicant- Operational Creditor including e-mails are fabricated and forged as the Operational Creditor is in possession of letter-heads, etc. of the Corporate Debtor. Admittedly, the applicant had placed reliance not only on certain letters said to have been exchanged between the applicant and Srinivasula Reddy, but also on the letters/ e-mails addressed to some third parties including Government agencies/ Departments.

30. A perusal of the letters under Annexures 5, 7 and 9 referred to above discloses that the same are computer typed letters and the same contained a signature, purportedly that of Srinivasula Reddy. The signature on these typed letters since denied by the Corporate Debtor, we resorted to the exercise of comparison of the admitted signatures of Srinivasula Reddy at Annexures 8 and 10 with signatures on Annexures 5, 7 and 10 and we found that the signatures on both the above annexures are one and the same.

31. Moreover, the complaint lodged by the Corporate Debtor against the applicant in FIR No.04/ 2018 dated 21.12.2018 (Page 35 of this Reply) before the CID, TS, Hyd Police Station has been investigated by



Police and Final Report under section 173 of the Code of Criminal Procedure has been submitted stating that:

“ .. As such the allegations against I.V. Nanda Gopal are not established with clinching evidences.

*It is, therefore, **the case is closed** as ‘UNDETECTABLE. UN’ and the Hon’ble Court is prayed the Final Report may be approved and necessary proceedings may be issued.”*

32. The Corporate Debtor has challenged the same vide Criminal MP No.162 of 2021 in Crime No.4 of 2018 (CID Hyderabad) filed before the Court of the VI Addl Chief Metropolitan Magistrate at Hyderabad. Learned Magistrate has not passed any interim order and the matter is sub-judice. It is thus, clear that for want of evidences the case is closed by the Police authorities. No doubt, the respondent has challenged the final report, but nothing is said or placed before us, indicating that the final report is stayed or suspended. Therefore, when a report from a competent authority negating the plea of forgery is on record, we find no reason to discard the same and believe the oral and inconsistent version of the respondent/ Corporate Debtor that the documents relied on by the applicant are forged. Thus, we are constrained to hold the plea of forgery as 'absurd' inasmuch as the said document undoubtedly meant for the benefit of the respondent rather than to the applicant.

33. Therefore, we do not find any force in the contention of the learned counsel for the Corporate Debtor that the letters are forged and fabricated by the applicant. Consequently, we hold that the aforesaid documents clearly establish the employer-employee relationship between the applicant and the respondent is assumed accordingly.



POINT No.(3) – Whether the applicant had obtained domain name “tejacement.com” without knowledge of the Directors of the respondent and created e-mail ID msr@tejacement.com purported to be that of Mule Srinivasula Reddy and had misused the same?

34. Coming to the contention that the applicant had created domain name “tejacement.com”, without knowledge of the Directors of the respondent it is to be stated that on this issue of domain name “tejacement.com” having been created without knowledge of the Directors, even if it is assumed that all the communications emanating from the respondent/ company are fabricated due to the petitioner being in possession of letter heads, we could find communications emanating from third parties/ independent entities addressing the petitioner as ‘Director’. Few of such e-mail communications are as under:

Letter/ communication addressed by	Dated	Addressed to	Page No.
Petitioner	22.09.2012	Holtec Consulting	158 (Vol.2)
Holtecnet	28.09.2012	Petitioner	159 (Vol.2)
Holtec Consulting Private Limited, Gurgaon (third party)	Letter dated 12.06.2014	Nanda Gopal, Director (petitioner herein)	164 (Vol.2)
Humboldt Wedag (third party)	04.05.2016	Nanda Gopal, Director (petitioner herein)	182 (vol.2)

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35. Correspondence showing fixing of appointments with various governmental authorities:

Communication		Text	Page number
By	Dated		
e-mail by PS to Prl Secretary, Industries Dept addressed to petitioner	19.12.2014	Apt with Prl. Secretary, Industries is fixed on 20.12.20214 at 4.30 PM.	92 (Vol.I)
Letter by petitioner addressed to Director, Government of India, Ministry of Environment & Forests, New Delhi.	20.12.2010	To grant environmental clearance as per SO 1533 Notification.	112 (vol.I)
- do -	31.03.2011	Information asked for is furnished.	113 (Vol.I)
E-mail by OSD to Secretary, Industries & Commerce Department.	24.04.2015	Model MoU for reference.	94 (Vol.I)
e-mail by petitioner addressed to Director of Industries, Govt of A.P.	25.05.2015	Seeking appointment.	103 (Vol.I)
e-mail by petitioner addressed to Director, GoAP.	28.09.2015	Seeking appointment.	107 (Vol.I)

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The aforesaid communications include the correspondence made with the Government authorities at the level of Principal Secretary and the said correspondence relates to the request for certain statutory clearances required for setting up a cement plant. Thus, when these letters are for the benefit of the respondent, we are unable to find any force in the contentions of the learned senior counsel for the respondent that the above referred e-mails/ letters are forged by the applicant. That apart, while answering the second point we have, in detail, discussed the plea of forgery put forth by the respondent and come to the conclusion that the said plea is baseless and unfounded. So much so, we hold that the correspondence and letters relied upon by the applicant herein are the letters and correspondence made in the capacity of employee of the respondent. As such the plea of misuse of e-mail ID of Srinivasula Reddy by the applicant is totally unfounded and mischievous. Hence we hereby reject the same. Point No.(3) is answered accordingly.

POINT No.(4) – Whether there is no operational debt and default?

36. To determine whether there is an operational debt and default, we need to look at section 5(21) of the I&B Code, 2016, which is reproduced hereunder:

“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 repayment 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;”

37. Relying on the following ruling of the Hon’ble Supreme Court of India supra, the respondent contended that there is no operational debt.



In our discussion under the point, we have held that the applicant was offered employment in the respondent/ company though his position could not be clearly designated, as such we have no hesitation to hold that the claim of the Operational Creditor comes within the meaning of section 5(21) of the I&B Code, 2016. We are therefore, of the opinion that operational debt has been established by the applicant.

POINT No.(5) – Whether admitting this petition would amount to exercising equitable jurisdiction by this adjudicating authority?

38. We may state herein that we have essentially examined the subject-case merits, keeping the provisions of the I&B Code, 2016 in the backdrop, more particularly having regard to the definition ‘claim’ as provided in I&B Code, 2016, which reads as under:

Section 3. Definitions.

“(6) “claim” means –

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;”

39. In the present case the Operational Creditor is able to demonstrate by way of several communications that there was a contract of employment, whether disputed or undisputed and there is breach thereof. Latest of such communications is e-mail dated 27.09.2016 (page 81 of the petition) addressed by M. Srinivasulu



Reddy, Director to the Corporate Debtor. The relevant para is reproduced below:

“I will have to discuss the points you have raised, especially, the part of compensation in cash, tax implications of sweat equity vs. ESOP, exit options, etc., with the company CA and CS and other promoters and see how best we can get to a mutually agreeable solution. Like I said earlier, we have agreed to compensate you 7.5 crore rupees for your work and contribution made in the last 6 and half years. You have also agreed to that amount. How to compensate you that amount is the domain of financial professionals and I need a little more time to see how best it could be done.”

40. We are therefore, of the opinion that the petitioner’s claim does commensurate with the definition provided under section 3(6) of the I&B Code, 2016. Thus, there is no need to emphasize that we have not even remotely considered the principles of equity. Thus, Issue No.(iv) is answered in negative.

41. The claim of the petitioner is continuous spanning over the years. Looking at the peculiar facts of the present case, we are of the view that there is ample and irrefutable evidence of association of the Operational Creditor with the Corporate Debtor / Company and the services rendered by Operational Creditor for the Corporate Debtor / company. While appreciating the covenants/ contracts entered into between individuals in private sector, it is to be borne in mind that the perfection as is available in public sector/ government sector in the matter of appointments cannot be expected in private sector. Private sector is a group of individuals, which owns private-sector business. For example, an individual or group of individuals might own a sole proprietorship or LLC, while shareholders own corporations. Whereas, Governmental agencies are not owned by individuals; they are owned by and operated on behalf of the public and they are governed by written laws, which



have been enacted in the constitution or in legislation. In other words, the level of perfection practised in Union Public Service Commission or Staff Selection Commission in the matter of appointments cannot be expected in a private sector.

42. Therefore, having heard the learned counsel for both parties, considering the submissions made by the learned counsels, on perusal of the record, written submissions and the case law, we are of the view that the present application deserves to be admitted under section 9 of the I&B Code, 2016. Accordingly, the application filed by the Operational Creditor is admitted and the Corporate Debtor is put under CIRP.

43. Shri P.M.V. Subba Rao has filed Memo dated 09.12.2021 along with Form-2, for his appointment as IRP in this matter.

44. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

(A) Corporate Debtor, M/s Teja Cement Limited 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) 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.
- (E) 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.
- (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 P.M.V. Subbarao, having IBBI Registration No.IBBI/ IPA-002/ IP-N00924/ 2019-2020/ 13001 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code. His Authorisation for Assignment is valid upto 07.06.2022. 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.

45. Accordingly, this Petition is admitted.

46. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of the 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