

SL. No.3

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

(Video Conference)

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)
CORAM: SHRI SATYA RANJAN PRASAD, HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 25.05.2023 AT 10:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.10/9/HDB/2020
NAME OF THE COMPANY	Lahari Infra Projects India (P) Ltd
NAME OF THE PETITIONER(S)	S.V.R Nirman Products Inc
NAME OF THE RESPONDENT(S)	Lahari Infra Projects India (P) Ltd
UNDER SECTION	9 of IBC

ORDER

Orders in CP 10/9/HDB/2020 pronounced, recorded vide separate sheets. In the result, this Company Petition is admitted. CIRP is ordered against the Corporate Debtor and moratorium imposed.


MEMBER (I)


MEMBER (J)

Syamala



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

CP(IB) No. 10/09/HDB/2020
[U/s. 9 of IB Code, 2016]

In the matter of:

M/s. S.V.R. Nirman Products Inc.
Survey No.6/E, Opp: SOS Children School
Vattinagulapally Village
Gandipet Mandal, Ranga Reddy District
Hyderabad – 500 075

... Operational Creditor

Vs.

M/s Lahari Infra Projects Limited,
#6-3-904, 3rd Floor,
Behind Yasodha Hospital
Somajiguda
Hyderabad – 500 0082

... Corporate Debtor

Date of Order: 25.05.2023

CORAM:

Dr. Venkata Ramakrishna Badarinath Nandula, Member (Judicial)
Mr. Satya Ranjan Prasad, Member (Technical)

Counsels present:

For the Petitioner : Mr. D. Gopalakrishna, Advocate

For the Respondent : Mr. V.S.Raju and Mr.V.B.Raju, Advocates

[PER: BENCH]

ORDER

I. Under consideration is an Application filed Under Section 9 of the Insolvency and Bankruptcy Code, 2016 by M/s. S V R



Nirman Products Inc against M/s.Lahari Infra Projects India (P) Ltd on 24.12.2019, inter-alia, seeking for initiation of CIRP against the Corporate Debtor for a default of an amount of Rs.15,89,255/- being Rs.11,55,822/- towards principal and Rs.4,33,433/- towards interest (from 01.11.2017 till 13.11.2019) against various invoices raised by the Operational Creditor. The date of default is 01.11.2017.

II. The gist of the Applicant's brief is :

M/s.S.V.R.Nirman Products Inc., for short 'Petitioner/Operational Creditor'. M/s. Lahari Infra Projects India (P) Ltd., for short 'Respondent/Corporate Debtor'. During the course of business, the Corporate Debtor approached the Operational Creditor for manufacturing of cement blocks. Pursuant thereto, the Operational Creditor issued quotation on 09.02.2017 and the Corporate Debtor placed their work order on 09.02.2017 for making cement blocks at YSR Colony, Khammam site as per the specifications, terms and conditions and payment terms mentioned therein. Accordingly, the Operational Creditor completed the work as per the specifications mentioned in the work order and raised invoices on various dates. As per the payment terms of the work order, the Bills will be submitted in every week (weekly basis) and the payment will be made within 15 days from the date of submission of bills



at site. When the Corporate Debtor failed to pay the invoices amount, the Operational Creditor got issued a demand notice on 13.11.2019 claiming an amount of Rs.15,89,255/- . But the Corporate Debtor neither replied to the demand notice nor paid the amount. Hence, the instant application is filed by the petitioner for initiation of the CIRP against the Corporate Debtor.

III. The gist of the Respondent's brief is –

- a. It is denied that the Respondent is liable to pay a sum of Rs.15,89,255/- (Rs.11,55,822/- towards principal amount plus Rs.4,33,433/- towards interest) as claimed by the petitioner herein. The respondent herein is not liable to pay any such amount to the petitioner herein.
- b. The Petitioner submitted quotation dated 09.02.2017 and agreed to carry out the job work for manufacturing of Cement Blocks at the site of the Respondent Company at Khammam. The Respondent Company, vide Work Order No.LIPIL/862/02/2016-17, dated 09.02.2017 agreed to give the job work to the Petitioner for making of cement blocks at their site at Khammam. All the material required for making the cement blocks, i.e., raw material like cement, fly ash, dust and chips, water supply, power and accommodation for labour (employed by the petitioner for carrying out the job work) along with platform were arranged at their Khammam



site by the Respondent company as per the request of the Petitioner.

- c. As per clause 5 of the Work Order dated 09.02.2017 issued by the Respondent Company in favour of the Petitioner, the contractor i.e. the petitioner herein shall depute one person to co-ordinate with the Engineer In-charge and site staff for executing the work order. Further the contractor, i.e. the petitioner herein undertakes to inform the client, i.e. Respondent herein, any change in the persons nominated by him.
- d. Further, as per clause 10 of the said Work Order dated 09.02.2017, billing will be done on weekly basis as per the production on submission of day book signed by the person deputed by the petitioner at the site and Engineer In-charge of the Respondent with respect to the count of bricks on daily basis manufactured at the site of the Respondent herein.
- e. The invoices submitted by the Petitioner herein are not certified by the Engineer In-charge deputed by the Respondent Company at its site at Khammam. Further, the statements enclosed to the invoices relating to production are not either certified or signed by the authorized representative of the petitioner or the Engineer In-charge of the Respondent and also the Petitioner Company has not submitted any day book signed by the authorized person of the Petitioner and the Engineer In-charge of the Respondent with respect to the



count of bricks on daily basis manufactured at the site of the Respondent herein in terms of clause 10 of the work order dated 09.02.2017. In the absence of the certification by the Engineer In-charge at Khammam site of Respondent, the Respondent herein is not in a position to arrive the genuinity of the bills submitted by the Petitioner. The bills submitted by the petitioner herein are in dispute.

- f. That even though the petitioner herein failed to comply with the terms of clause 10 of the Work Order, the respondent herein paid an amount of Rs.9,00,000/- to the Petitioner herein as per their books of accounts.
- g. That there is no agreement for payment of any interest or any clause in the invoice or work order of the Petitioner for payment of interest. It is submitted that as per the petitioners claim, even though there is no outstanding amount payable by the respondent herein, the petitioner herein has claimed an amount of Rs.4,33,433/- towards interest. In the absence of any agreement or clause either in the invoice or work order, the claim of the petitioner for payment of interest is not tenable.
- h. That in fact the respondent herein was negotiating with the Petitioner herein for settling the issue amicably after arriving the actual amount in relation to the bills submitted by the Petitioner, after reconciling the accounts. In the meanwhile, the Petitioner herein, instead of reconciling their accounts,



filed the present petition only to threaten the Respondent herein under the guise of the Insolvency and Bankruptcy Code, 2016 by abusing the process of law in order to gain undue advantage.

IV. The Respondent Company filed a Memo stating that a sum of Rs.6,00,000/- (Six Lakhs only) has been paid to the Operational Creditor / Petitioner by way of Cheque No.286805 dated 13.03.2022 drawn on State Bank of India, MSME Warangal, Warangal.

V. **The gist of the Applicant's brief in Rejoinder is –**

- i. The respondent is liable to pay a sum of Rs.15,89,255/- and to that effect the petitioner filed the relevant invoices, statements, calculations etc.
- ii. The respondent has admitted about the carrying of the job by the operational creditor on the basis of the letter dt.09.02.2017 and also on the basis of the allotment of work for manufacturing of CC blocks issued vide letter dt.09.02.2017 by the respondent. The allegation in respect of para No.5 that as per clause 5 of the work order, the petitioner shall depute one person to co-ordinate with the Engineer in-charge and site staff for executing the work order and any change in the persons etc., is concerned the persons deputed by the



petitioner herein has co-ordinated with the staff of the respondent and during the work there is no change in persons. Further, at any point of time during the execution of the work order this issue was not raised by the corporate debtor.

- iii. That in respect of further allegation as per clause 10 of the said work order billing will be done on weekly basis as per the production on submission of day book signed by the person deputed by the petitioner and Engineer In-charge of the Respondent with respect to the count of bricks is concerned the petitioner has carried out the work as per the terms and conditions. The respondent never raised any dispute at any point of time in respect of the count of bricks etc. The respondent has not filed any books which were in their custody to deny the claim of the operational creditor.
- iv. The invoices submitted by the petitioners are not certified by the Engineer In-charge deputed by the respondent company etc., are concerned the same are invented only for the purpose of the counter. All the invoices filed before this Adjudicating Authority duly signed by the authorized signatory on behalf of the operational creditor. All the invoices were received and duly signed by the representative of the corporate debtor and accepted the same and at any point of time,



the corporate debtor never questioned/raised the validity of the invoices.

- v. The contention of the respondent that the petitioner has claimed the interest to an extent of Rs.4,33,433/- even though there is no outstanding amount payable by the respondent etc., is concerned the invoices filed by the operational creditor along with the application clearly establishes the respondent is liable to pay a sum of Rs.11,55,822/- on the basis of the invoices. Further, the transaction is a business transaction and the respondent failed to pay the amount within the stipulated period as per the terms of the work order and as such, the respondent is liable to pay the interest @ 18% p.a. since the same is a commercial transaction.
- vi. The Operational Creditor issued Form-3 demand notice and also Form-4 notice as per the provisions of the I&B Code and regulations thereunder on 13.11.2019. The Operational Creditor has enclosed the copies of the invoices, bank statement, calculation of interest etc., along with the Form-3 demand notice. The same was received by the respondent on 18.11.2019 but the respondent has not given any reply to the said demand notice. If the claim is not in accordance with the work order and if there is no liability, etc., and the invoices



and statements etc., submitted by the operational creditor along with the Form-3 demand notice is not correct, the respondent ought to have issued a reply within a period of 10 days or even after 10 days denying the liability and contentions raised by the petitioner and ought to have questioned the validity of the invoices etc., which were sent along with the Form-3 demand notice.

vii. That the respondent has taken all these false contentions with a view to gain the time and para 9 of the counter clearly speaks that the respondent was negotiating with the petitioner herein for settling the issue amicably. It shows that the respondent was indebted to the applicant. The respondent never approached the applicant before or after filing this application for any negotiations.

VI. The Operational Creditor had filed a Memo stating that the the Company Petition was filed with a claim amount of Rs.15,89,255/-. While the matter is coming for arguments, the Corporate Debtor issued a post-dated cheque for Rs.6,00,000/- towards the part payment of claim amount and the same is received without prejudice to the rights of Operational Creditor on 07.03.2022 i.e., the last date of hearing. The said cheque was served on the Counsel of the Operational Creditor through a Memo. The said cheque was



submitted by the Operational Creditor through their banker Karur Vysya Bank. The Corporate Debtor's Bank returned the same. The banker of the Operational Creditor issued a Return Memo stating the reason "the cheque was returned by the banker of the Corporate Debtor i.e., State Bank of India assigning reason "Funds Insufficient". Copies of the Memo, Cheque dt.13.3.2022 and return Memo dt. 15.3.2022 are filed alongwith the Memo.

VII. In the light of the contest as afore stated, the point that emerges for our consideration is -

Whether an Operational Debt of a sum over rupees one lakh is due and payable by the Respondent to the Petitioner? If so, whether the Respondent had defaulted in repayment of the same?

VIII. We have heard the Learned Counsel for the Operational Creditor, Mr. D. Gopalakrishna and Learned Counsel for the Corporate Debtor, Mr.V.B.Raju and perused the record.

IX. Point:

Whether an Operational Debt of a sum over rupees one lakh is due and payable by the Respondent to the Petitioner? If so, whether the Respondent had defaulted in repayment of the same?

i). At the outset, it may be stated that the present application being one under Section 9 of IBC, 2016, it is



imperative for the Petitioner/Operational Creditor to establish that a sum over Rs.1,00,000/- is due and payable by the Respondent/Corporate Debtor to the Petitioner and that the Respondent had defaulted in repayment of the same. Upon establishing the same and if the application is found to be in order, the Tribunal can admit the present application. Though the admission of the application can be rejected in the event of proof of a *pre-existing dispute* between the parties, in so far as the case on hand is concerned, no such plea has been raised by the Corporate Debtor.

ii). The claim of the Applicant which is based on the work order dated 09.02.2017 issued by the Respondent to the Applicant. The said work order as well as submission of invoices pursuant to the work done by the Operational Creditor is not in dispute. It is also an admitted fact that the Respondent/Corporate Debtor had made part payment of sum of Rs.9.00 lakhs to the petitioner. The Demand Notice issued by the Operational Creditor as per Form-3 has been duly delivered to the Respondent but the Respondent did not choose to send any reply.

iii). Therefore, in the above backdrop, when the contest put forth in the counter by the Respondent, *namely, -that the work order requires supervision of the work by the Engineer In-Charge deputed by the Respondent, -the work was not*



certified by the Engineer In-charge hence the Applicant is not entitled for the claim, - the claim for interest as made by the Applicant is not admissible in the absence of any Agreement or Clause for payment of any interest, when tested on the basis of the material placed before this Tribunal by both sides, we are of the firm view that the defence is absolutely devoid of any merit or subsistence in as much as no such plea was ever taken by the Applicant when the Demand Notice has been served by the Respondent. Moreover, the Corporate Debtor had admittedly paid a sum of Rs.9,00,000/- towards the partial payment of the amount covered under work order and received the invoices without any demur. So much so, the plea that the invoices require certification by the Engineer In-charge at the site of the Respondent is unsustainable and untenable.

iv). In so far as the plea that interest claimed is not payable in the absence of any agreement between the parties is concerned, the same is *insignificant* in this case, in as much as, whether or not the Respondent is liable to pay the interest on the amount claimed under the Invoices, the principal amount claimed as due and defaulted itself is over Rs.1,00,000/, which is the threshold limit in terms of Section 4 of IBC, as on the date of filing of this application.

- X. Therefore, in the light of our discussion as above, we are fully satisfied that an operational debt of sum over rupees one



lakh is due and payable by the corporate debtor and the Operational Creditor has defaulted in payment of the same. Hence, this petition is liable to be admitted and the same is hereby admitted.

2. 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 the following directions: -
 - i. 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;
 - ii. 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.

- iii. 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.
- iv. 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.
- v. 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.
- vi. The Operational Creditor proposed the name of Mr. Santosh Bhatia as Interim Resolution Professional and he has given his consent in Form-2. As per the Insolvency



and Bankruptcy Board of India (IBB) website, Mr.Santosh Bhatia's Authorisation for Assignment is valid upto 23.12.2023. Accordingly, this Tribunal appoints Mr. Santosh Bhatia as Interim Resolution Professional, having Registration No. IBBI/IPA-001/IP-P-01750/2019-2020/12668.

- vii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- viii. 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.

Sd/-
SATYA RANJAN PRASAD
MEMBER (TECHNICAL)

Sd/-
DR.N.V.RAMA KRISHNA BADARINATH
MEMBER (JUDICIAL)

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