NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 18.01.20201 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 323/7/HDB/2020
NAME OF THE COMPANY	Kyati Metals & Trading Pvt Ltd
NAME OF THE PETITIONER(S)	Aryan Structural Solutions Pvt Ltd
NAME OF THE RESPONDENT(S)	Kyati Metals & Trading Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

The petition is admitted vide separate order.

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)

Karim

THE NATIONAL COMPANY LAW TRIBUNAL,

HYDERABAD BENCH, HYDERABAD

CP (IB) No. 323/7/HDB/2020

Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

M/s. Aryan Structural Solutions Private Limited

Registered Office: H. No. 6-3-347/17/4,

4th Floor, Dwarakapuri Colony,

Punjagutta, Hyderabad,

Telangana- 500 082.

... Financial Creditor

Versus

M/s. Kyati Metals & Trading Private Limited

Registered Office: Plot No. 24/C,

Road No. 8, Film Nagar, Jubilee Hills,

Hyderabad, Telangana- 500 033.

... Corporate Debtor

Date of Order: 18-01-2021

CORAM:

HON'BLE SHRI K. ANANTHA PADMANABHA SWAMY,

MEMBER (JUDICIAL)

and

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI,

MEMBER (TECHNICAL)

Parties/Counsels Appeared:

For the Petitioner: Shri V V S N Raju, Advocate.

For the Respondent: Shri D V A S Ravi Presad, Advocate.

Per: Shri Veera Brahma Rao Arekapudi, Member (Technical)

Heard on: 07/10/2020, 02/11/2020, 19/11/2020 & 22/12/2020.

AVERMENTS

1. The Petitioner/Financial Creditor is a Company registered under the Companies Act, 1956/2013 which is engaged in the business of trading of commodities, like Steels products and the Certificate of Incorporation are annexed with Petition as ANNEXURE 1.

2. The Respondent/Corporate Debtor is a company vides Certificate of Incorporation No. U52100TG2011PTC072425 dated 31.01.2011. Its authorized share capital is Rs. 25, 10,00,000/- (Rupees Twenty Five Crores Ten Lakhs Only) and Paid up Capital is Rs. 25,02,00,000/- (Rupees Twenty Five Crores Two Lakhs Only). It is engaged in the business of trading of steel and allied products.

3. The present application is filed by the Financial Creditor against the Corporate Debtor for default of financial debt of Rs. 81,21,166/- (Rupees Eighty One Lakhs Twenty One Thousand and One Hundred and Sixty Six Only).The Financial Creditor supplied TMT Bars to the Corporate Debtor on 28-06-2017 and raised invoices for an amount of Rs. 81,21,166/- and Corporate Debtor committed default in payments against the said supply as on 30-09-2017. Hence, this petition is filed under Section 7 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

4. It is averred that both the Financial Creditor and Corporate Debtor have agreed on 01-02-2018 to crystallize the dues at Rs. 81,00,000/- (Rupees Eighty One Lakhs Only) and converted the said due into an unsecured loan carrying an interest at the rate of 9% per annum. It is further averred that the Corporate Debtor has agreed to pay a default interest at the rate of 12% per annum, in the event of default, from the date of such default till the date of actual payment.

5. It is further averred that the outstanding due amount of Rs. 1,01,55,375/- (Rupees One Crore One Lakh Fifty Five Thousand Three Hundred and Seventy Five Only) as on 30-04-2020 including interest and penal interest of Rs. 20,55,375/- (Rupees Twenty Lakhs Fifty Five Thousand Three Hundred

and Seventy Five Only) remains unpaid by the Corporate Debtor.

6. It is further averred that the Corporate Debtor had intentionally delayed and defaulted in the payment of total outstanding dues and ignored the requests of the Financial Creditor.

COUNTER DATED 21-12-2020 FILED BY THE CORPORATE DEBTOR

7. The Corporate Debtor contends that the Petitioner filed the petition with distorted factual position while concealing material information relating to the ongoing dispute between the parties.

8. In Para 4 of the Counter it is averred that the Corporate Debtor was supplied with the materials ordered from the Financial Creditor for an amount of Rs. 81, 21,166/- (Rupees Eighty One Lakhs Twenty One Thousand and One Hundred and Sixty Six Only) and subsequently invoices were raised for the aforesaid amount and the Corporate Debtor explained about the financial difficulties for making the payment and sought time for clearing the invoices.

9. It is further averred in Para 7 of the Counter that the Corporate Debtor sought time for settling the dues and both have orally agreed for settlement over the default amount. The Corporate Debtor has always acknowledged its debt to the Financial Creditor and expressed its intention to pay back the amount for the credit facilities availed.

10. However, the Corporate Debtor expressed the willingness to pay the default amount to the Financial Creditor.

OBSERVATIONS

11. We have heard the learned counsel for the Financial Creditor as well as the learned counsel for the Corporate Debtor through video-conference. We have examined the following documents:

    i. The Agreement entered into between the Financial Creditor and Corporate Debtor dated 01-02-2018 is annexed as ANNEXURE 4.

    ii. Letter dated 01-10-2017 & 18-11-2017(ANNEXURES 5 & 6) are addressed by the Financial Creditor to the Corporate Debtor regarding the payment of due amount.

iii. Letter dated 06-12-2017(ANNEXURE 7) addressed by the Corporate Debtor to the Financial Creditor regarding their efforts to pay the dues.

iv. Letter dated 10-01-2018 (ANNEXURE 8) addressed by the Financial Creditor to the Corporate Debtor requesting to clear the outstanding dues.

v. Letter dated 27-01-2018 (ANNEXURE 9) addressed by the Corporate Debtor to the Financial Creditor regarding their willingness for converting the dues of Rs. 81,21,166/- into a loan to be repaid in 12 monthly installments, which will carry simple interest at 9% per annum.

vi. Letter dated 22-05-2018 (ANNEXURE 10) addressed by the Financial Creditor to the Corporate Debtor requesting the Corporate Debtor to pay the dues of an amount of Rs. 20,25,000/- alongwith interest of Rs. 15,188/- as at 30-04-2018 as per the Agreement dated 01-02-2018.

vii. Letter dated 15-03-2019 (ANNEXURE 11) addressed by the Financial Creditor to the Corporate Debtor requesting the Corporate Debtor to pay the dues of an amount of Rs. 81,00,000/- alongwith interest of Rs. 5,26,500/- as per the Agreement dated 01-02-2018.

viii. Letter dated 23-03-2019 (ANNEXURE 12) addressed by the Corporate Debtor to the Financial Creditor regarding their efforts to pay the dues of Rs. 86,26,500/-.

ix. Letter dated 10-10-2019 (ANNEXURE 13) addressed by the Financial Creditor to the Corporate Debtor that as per the Agreement dated 01-02-2018 an amount of Rs. 81,00,000/- alongwith the interest of Rs. 10,93,500/- as at 30-09-2019 and to clear the total outstanding dues of Rs. 91, 93,500/- (Rupees Ninety One Lakhs Ninety Three Thousand Five Hundred Only) within 14 days from the date of receipt of the letter.

12. The Financial creditor has supplied the TMT Bars to Corporate Debtor on 28-06-2017 and raised invoices for an amount of Rs. 81,21,166/- and then corporate Debtor failed to pay the said amount. On 01-02-2018 both entered into Agreement and converted the said dues to unsecured loan carrying an interest at the rate of 9% per annum and the Corporate Debtor agreed for repaying the due in twelve equal monthly installments from 01-03-2018 till 01-02-2019 however, the Corporate Debtor failed to make payments. The learned counsel for the Corporate Debtor acknowledged the financial debt and sought time for settlement. As the Counsels didn't revert back with any settlement and after going through the documents filed by the petitioner and the arguments advanced by both the Learned Counsels we are of the view that the petition is liable to be admitted against the Corporate Debtor. The petition is accordingly admitted.

ORDER

13. Hence, the Adjudicating Authority admits the Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section14 of the Code, with following directions:

A. The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against 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;

B. 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.

C. 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.

D. That the order of moratorium shall have effect from the date of this order till the completion of 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.

E. 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.

F. The Financial Creditor proposed the name of Shri CA Swaminathan Prabhu as Interim Resolution Professional and he has given his consent in Form-2 dated 20-03-2020 and Authorization for Assignment is valid upto 16-12-2021.Accordingly, this Tribunal hereby appoints Shri

CA Swaminathan Prabhu having Reg. No. IBBI/IPA-001/IP-P01275/2018-19/ 11948, whose contact details are:

e-mail ID: carpprabhu@gmail.com
Address: SPP & Co., no. 27/9, Nivedh Vikas,
Pankaja Mill Road, Puliyakulam,
Coimbatore, Tamilnadu- 641 045

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency &Bankruptcy Code.

14. Registry of this Tribunal is directed to send a Copy of this Order to the Registrar of Companies, Hyderabad for making appropriate remarks against Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

15. Accordingly, this Petition is admitted.

18/01/2024

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)

Vismaya