

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

SPECIAL BENCH (Video Conference)

CORAM:

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

and

HON'BLE DR. BINOD KUMAR SINHA, MEMBER TECHNICAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW
TRIBUNAL,
HYDERABAD BENCH, HELD ON 10.11.2021 AT 10:30 AM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.328/7/HDB/2020
NAME OF THE COMPANY	BP Ferrium Industries Pvt Ltd
NAME OF THE PETITIONER(S)	Bharani Commodities Pvt Ltd
NAME OF THE RESPONDENT(S)	BP Ferrium Industries 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

Order is pronounced. The petition is admitted vide separate order.



MEMBER (TECHNICAL)

karim



MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.328/7/HDB/2020
Under section 7 of the IB Code, 2016
Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M /s BP FERRIUM INDUSTRIES PRIVATE LIMITED

Between:

M/s. Bharani Commodities Private Limited,
Having its Registered Office at Plot No.48,
1st Floor, Nagarjuna Hills Punjagutta
Hyderabad Telangana 500082.
Represented by Mr. Bhaskar. B, RP

...Applicant/
Financial Creditor

And

M/s. BP Ferrium Industries Private Limited
Plot No.247, 3rd Floor, Dwarakapuri Colony
Panjagutta Hyderabad Telangana 500082.

...Respondent/
Corporate Debtor

Date of Order: 10.11.2021

**Coram: Dr.Venkata Ramakrishna Badarinath Nandula,Member Judicial
Dr. Binod Kumar Sinha, Member Technical**

Parties/Counsels present:

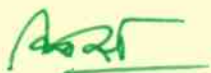
For the Operational Creditor: Mr. VVSN Raju, Counsel

For the Corporate Debtor: Mr. Raja shekar Rao Salvaji, Counsel

Per: Bench

ORDER

- 1) Under consideration is an Application filed by M/s Bharani Commodities Private Limited (in short "*Applicant/Financial Creditor*") under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. BP





Ferrium Industries Private Limited. (In short, "*Respondent/Corporate Debtor*").

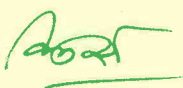
- 2) That subsequent to filing of the Application, the Financial Creditor came to be admitted under CIRP and that the RP has filed Application bearing IA No. 72/2021. The said IA was disposed, permitting RP to continue this proceedings on behalf of the Financial Creditor.
- 3) Brief facts of the case as submitted by the Financial Creditor are as follows:
 - a) That the Applicant is a Company registered under the Companies Act, 1956 and is engaged in the business of trading of commodities, particularly steel products in Hyderabad. The Corporate Debtor is engaged in the business of trading of steel and allied products.
 - b) That the Corporate Debtor had approached the Financial Creditor in the year 2012-13 for supply of MS Chilled Bars and TMT Bars.
 - c) That the Financial Creditor supplied the said materials to the Corporate Debtor on various occasions and raised invoices accordingly for the amount of Rs.23,39,32,333/-. That in spite of repeated requests and reminders, Corporate Debtor failed to make payments to the Financial Creditor.
 - d) That the Corporate Debtor committed default in payments against supply of materials to the tune of Rs. 23,39,32,333/- (Rupees Twenty Three Crores Thirty Nine Lakhs Thirty Two Thousand Three Hundred and Thirty Three only) as on 31.08.2016. That due to financial problems, the Corporate Debtor was unable to make the said payments.
 - e) That the Financial Creditor and Corporate Debtor have on 01-02-2018 agreed to crystallize the dues at Rs.23,39,00,000/- (Rupees Twenty Three Crores Thirty Nine Lakhs only) and have converted the said due into an unsecured loan on 01-02-2018 carrying an

interest at the rate of 9% per annum. That the Corporate Debtor has also agreed to pay a default interest at the rate of 12% per annum, in the event of a default, from the date of such default till the date of actual payment.

- f) That the said loan was to be repaid by the Corporate Debtor in twelve equal monthly installments commencing from 01 March, 2018 till 01.02.20219. That the last date of payment was 01.02.2019 but the Corporate Debtor has failed to make payments.
- g) That till date the outstanding due amount of Rs.29,32,52,125/- (Rupees Twenty Nine Crores Thirty Two Lakhs Fifty Two Thousand One Hundred and Twenty Five only) remains unpaid by the Corporate Debtor to the Financial Creditor.

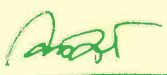
Reiterating the above, learned counsel for the Financial Creditor prayed to admit the instant Application.

- 4) Learned counsel for the Respondent filed counter inter-alia stating that the allegations made by the Financial Creditor are denied except those that are specifically admitted hereunder:
 - a) That the Corporate Debtor had approached the Financial Creditor for supply of Chilled Bars and TMT Bars during 2012-2013. The Financial Creditor supplied the said material and raised invoices for Rs.23,39,32,333/-. The Corporate Debtor could not pay the said amount due to its poor financial condition at the time as its business was not flourishing.
 - b) That despite the said fact, the Corporate Debtor put in its best efforts in clearing its dues. Corporate Debtor had acknowledged its dues and agreed with the Financial Creditor to crystallize the dues at Rs.23,39,00,000/- as on 01.02.2018 and to convert the



said dues into an unsecured loan, at an interest rate of 9% per annum and at a default interest rate of 12% p.a.

- c) That the Corporate Debtor defaulted in making payments under the said loan agreement and agrees that Rs.29,32,52,125/- is due to the Financial Creditor. Nevertheless Corporate Debtor has been in talks with the Financial Creditor proposing new terms of settlement and is trying to repay the dues from its business receivables that would be received in near future.
- d) That the Corporate Debtor is not trying to evade the payment of dues, which is evident from its cooperative attitude with the Financial Creditor acknowledging the existence of debt and the efforts made to repay the debt. The Corporate Debtor has sought further time from the Financial Creditor in order to clear its dues and the Financial Creditor has orally agreed to grant further time and to reschedule the terms of payment.
- e) That though Corporate Debtor's business took a hit, it is currently trying hard to revive the operations and has assured Financial Creditor, the repayment of debt as soon as payments for material supplied is received from its customers. The Financial Creditor, after agreeing to enter into a settlement agreement, has approached the Adjudicating Authority with an ill intention to take over the business of the Corporate Debtor.
- f) That admitting the instant application would wipe out the Corporate Debtor's establishment negatively affecting its stakeholders while the same can be avoided by granting time to the Corporate Debtor to settle its account with the Financial Creditor.



g) That in view of the above facts and circumstances of the case, it is prayed that the Adjudicating Authority may be pleased to reject the instant application.

5) Heard and perused the record.

6) After hearing both sides and perusing record, we are of the view that in the instant case there is a financial debt and there has been a default in repayment of the same and that this Adjudicating Authority is satisfied that the Financial Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. Even the Corporate Debtor acknowledges the debt and default, but seeks time for repayment of the said financial debt. Further, it is pertinent herein to note that the Hon'ble Supreme Court, while deciding the matter in the case of INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017, held as under:

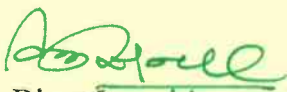
".....The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

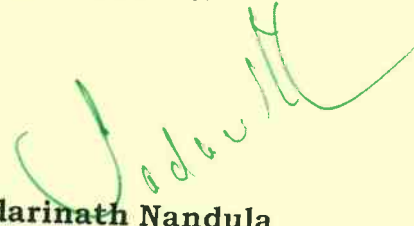
7) Further the Financial Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the Petitioner/Financial Creditor, the contentions of the Corporate Debtor are overruled and this Adjudicating Authority is inclined to admit the instant Application.

8) Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be

- completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.
- 9) The Financial Creditor proposed the name of Mr. Krishna Komaravolu as Interim Resolution Professional and he has filed his written consent in Form - 2. Accordingly, this Adjudicating Authority appoints Mr. Krishna Komaravolu, as Interim Resolution Professional, having Registration No. IBBI/IPA-002/IP-N00562/2017-2018/11699, e-mail id: **Kkyolu@gmail.com** as Interim Resolution Professional. IRP is directed to file fresh Authorization for Assignment within three days from the date of this order, as the earlier one submitted by him appears to have expired.
- 10) The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
- 11) We direct the Financial Creditor/Petitioner to pay sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.
- 12) The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-
- i. *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 or law, tribunal arbitration panel or other authority;*
 - ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*
 - iii. *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
 - iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
 - v. *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.*

- 13) The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.
- 14) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
- 15) The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
- 16) The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
- 17) The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
- 18) Accordingly, this Petition is admitted.


Dr. Binod Kumar Sinha
Member Technical


Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial