NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH NANDULA– MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 29.10.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 583/9/HDB/2019
NAME OF THE COMPANY	MVNR Power & Infra Pvt Ltd
NAME OF THE PETITIONER(S)	Mark One Impex Pvt Ltd
NAME OF THE RESPONDENT(S)	MVNR Power & Infra Pvt Ltd
UNDER SECTION	9 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

CP 583/9/HDB/2019 is admitted. Orders passed vide separate orders.

MEMBER (T) **MEMBER(J)**

Syamala

NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) No.583/9/HDB/2019

U/s 9 of I&B Code, 2016 read with Rule 6 of I & B (AAA) Rules, 2016.

In the matter between:

Mark One Impex Pvt Ltd
Office at : H. No.812/ 28, New Jyoti Park
Gurugram, Haryana – 122 001, India.

.. **Petitioner**
Operational Creditor

VERSUS

NVNR Power & Infra Pvt Ltd
Ref. Office: Plot No.32
Flat No.202, Laxmi Residency
Shanthinagar, Deepthisri Nagar
Madinaguda, Miyapur
Hyderabad – 500049.

.. **Respondent**
Corporate Debtor

Date of order : 29th October 2021

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 Petitioner : Shri Geetesh Meena, Advocate.

For the Respondent: Shri C. Tulasi Krishna, Advocate.

PER BENCH

Heard on: 16.07.2021, 13.08.2021, 30.09.2021 and 21.10.2021.

ORDER

This petition is filed by M/s Mark One Impex Pvt Ltd/ Operational Creditor, claiming that an amount of **Rs.2,30,22,705/-** (Rupees two crore thirty lacs twenty two thousand seven hundred and five only) is due and payable by the Corporate Debtor as on 31.03.2019 along with pendent-lite future interest at 36% per annum. Hence this petition 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 petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The Corporate Debtor / Mark One Impex Pvt Ltd is a private limited company incorporated under Companies Act, 1956 with Registrar of Companies, Delhi and Haryana. The Corporate Debtor is engaged in hot water supply (community supply), Steam Supply (community supply) business and further offering electricity, gas, water and other business activities.

3. The averments made in the petition are as follows:

3.1 In December 2016, the Corporate Debtor had approached the Operational Creditor for supply of solar panels, silvantis @ F- Series 315 WP Module and other materials. The Operational Creditor issued PI (Proforma Invoice) on 02.12.2016 upon the Corporate Debtor in terms of settlement between the parties. The Corporate Debtor placed Purchase Order (PO) on 03.12.2016 (ANNEXURE-6). On 05.12.2016 the Operational Creditor, in turn, placed said PO on M/s Waaree Energies Ltd, a supplier engaged by Operational Creditor for supply of said goods to the Corporate Debtor. On 16.12.2016, Letter of Credit (LC) was opened by Operational Creditor with ICICI Bank, Gurgaon in favour of M/s Waaree Energies. Goods were supplied by M/s Waaree Energies to Corporate Debtor on 04.01.2017. On 07.01.2017 and 09.01.2017 invoices (ANNEXURE-8 COLLY.) were issued on Corporate Debtor which were acknowledged by Corporate Debtor. The Corporate Debtor had also confirmed receipt of material vide e-mail dated 23.01.2017 as per purchase orders.

3.2 On 25.02.2017, the Operational Creditor received cheque (ANNEXURE-7) drawn on Andhra Bank for Rs.3,05,62,204/-. The Operational Creditor returned the said cheque as its validity was to expire with a request to issue a new cheque. Though the Corporate Debtor had taken back the said cheque, it has not issued fresh cheque despite reminders. Reminder was sent on 22.04.2019 through e-mail. Corporate Debtor has replied and admitted the debt via e-mail dated 22.04.2019.

3.3 On 25.04.2019, the Operational Creditor issued Demand Notice (ANNEXURE-1, page 38) in Form-3 for payment of Rs.3,05,62,204/- along with interest. On 09.05.2019, Corporate Debtor intimated through e-mail (ANNEXURE-2, page 65) that part-payment has been made on 08.05.2019 vide NEFT.

3.4 On 20.05.2019 the Operational Creditor issued reminder (ANNEXURE-3) for payment of outstanding balance amount of Rs.2,30,22,705/-, but the said amount has not been paid as on 31.03.2019.

4. Corporate Debtor has filed Counter dated 11.12.2019 and Operational Creditor has filed rejoinder dated 10.01.2020, which are briefly discussed hereunder.

Averments made in Counter dated 11.12.2019 by Corporate Debtor.	**Response given by Operational Creditor vide Rejoinder dated 10.01.2020.**
Purchase Order (PO) dated 03.12.2016 has become the sole contractual document between the parties. Post-dated cheque dated 25.02.2017 (ANNEXURE R-3) for Rs.3,05,62,204/- was issued by Corporate Debtor towards the entire amount in lieu of goods received by the Corporate Debtor	It is denied that the PO was the sole contractual document between the parties. Invoices issued upon Corporate Debtor were duly acknowledged by Corporate Debtor with its terms and conditions. It is further denied that Corporate Debtor made payment of the entire amount of

supplied by Operational Creditor as per PO dated 03.12.2016. (Para 5)	consideration as agreed between the parties. (para 7, page 8-9)
Corporate Debtor made payment of the entire amount of consideration as agreed upon in PO. The said cheque was encashed in time. However, the Corporate Debtor received e-mail dated 18.05.2017 (ANNEXURE R-4) from Operational Creditor asking for new cheque since earlier cheque was not encashed within three months from date of issue. (Para 6)	Operational Creditor asked the Corporate Debtor through e-mail dated 18.05.2017 to issue fresh cheque as earlier cheque was to expire as it could not be presented within its validity period. Though the said cheque was taken back by Corporate Debtor, neither new cheque has been issued nor outstanding amount was paid by Corporate Debtor. (para 7)
Operational Creditor has sent e-mail dated 22.05.2019, viz. after one year, asking for new cheque. As per PO dated 03.12.2016, a sum of Rs.3,05,62,204/- was due and payable by the Corporate Debtor, **without any other conditions**. However, Corporate Debtor has received Demand Notice for an amount of Rs.2,30,22,705/- towards interest in addition to payable amount of Rs.3,05,62,204/-. The alleged invoices do not prescribe any date of payment and interest @ 36% is levied arbitrarily. (Para 8)	It is denied that only a sum of Rs.3,05,62,204/- was payable, without any conditions. It is further denied that the invoice raised was one-sided. The Corporate Debtor made a part-payment out of total debt and an amount of Rs.2,30,22,705/- is still outstanding and it is getting increased day after day with interest @ 36% per annum. It is reiterated that agreed rate of interest was 36% in case of non-payment by due date. It is not arbitrary. (Para 9)
The Corporate Debtor has paid the entire amount of Rs.3,05,62,204/- on 08.05.2019 by way of Bank Transfer directly to the account of Operational Creditor. Said transaction was **confirmed by UTR No.ANDBN 19234180776** on 08.05.2019. Bank Statement is at	It is denied that the amount of Rs.3,05,62,204/- paid by Corporate Debtor satisfied the total demand of Rs.5,35,84,908/- as claimed vide Demand Notice dated 25.04.2019. The amount was paid more than two years after it had become due and after

ANNEXURE R-5. Therefore, the entire amount agreed upon by the parties stood paid as on 08.05.2019. Thus, the amount of Rs.5,35,84,908/- as claimed by Demand Notice dated 25.04.2019 issued in Form-3 was no longer due. (para 9)	service of statutory demand notice under section 8 of I&B Code. It is reiterated that the Corporate Debtor paid Rs.3,05,62,204/- only after service of Demand Notice under section 8 of the Code. (para 10)
The Corporate Debtor reiterates that cheque was issued for Rs.3,05,62,204/-, which was the only sum agreed upon as due between the parties. However, for the reasons known to Operational Creditor, it did not encash in time and allowed the validity to expire. The cheque had lapsed in May 2017. Whereas, Demand Notice was dated 25.04.2019. There was no covenant for payment of interest between the parties. Claim of interest was disputed in Reply dated 09.05.2019 issued by Corporate Debtor (ANNEXURE R-9). (para 10)	The sum of Rs.3,05,62,204/- was not the only sum agreed upon as due. Corporate Debtor has given cheque, but requested the Operational Creditor not to encash the same. (para 11)
Operational Creditor sent communication dated 20.05.2019 (ANNEXURE-3 to the petition) for payment of outstanding balance amount of Rs.2,30,22,705/-, plus arbitrary interest at the rate of 36% per annum. Such interest was demanded **for the first time** and there was no agreement between the parties. In fact, **the PO** dated 03.12.2016 was **the only 'concluded contract'** between the parties. The Invoices	It is a matter of record that a sum of Rs.2,30,22,705/- was due and payable by Corporate Debtor. Interest was stipulated right since inception and was agreed upon by both the parties under Clause 3 of the Invoices. It is wrong to say that the PO was the 'concluded contract' between the parties. In absence of any specific agreement reducing the terms into writing, all the documents involved in the transaction amounted to a

do not constitute any agreement between the parties on levy of interest. (Para 11)	contract. It is denied that the Invoices added a term of interest to the contract which is an after-thought. (para 12)
Once payment of Rs.3,05,62,204/- was made on 08.05.2019, Demand Notice dated 25.04.2019 has become inoperable. Issuance of Notice dated 20.05.2019 demanding interest amounting to Rs.2,30,22,705/- while admitting payment of Rs.3,05,62,204/-, without issuing formal notice under Form 3 under I&B Code, bars the petitioner from filing the petition. Requirement of issuing notice under Form-3 having not complied with the petition cannot be entertained. (para 12)	Claim of Rs.2,30,22,705/- does not require any independent Demand Notice. It is the fact that the Corporate Debtor has made part-payment after receiving notice under section 8 of the Code. (para 13)
Corporate Debtor cannot extort interest amount in absence of any agreed contractual term. Corporate Debtor issued reply-notice dated 24.05.2019, which the Operational Creditor did not enclose to the petition. Copy of said notice is enclosed as ANNEXURE R-7 to this counter. (para 13)	Corporate Debtor made only part payment of Rs.3,05,62,204/-, in response to notice under section 8 of the Code along with invoices raised by Operational Creditor on which stipulation for interest appears. (para 14)
As regards the material received by Corporate Debtor and the documents filed as ANNEXURE-10 (COLLY.) to the petition, the Corporate Debtor pointed out certain discrepancy in describing the names of commodities. The Corporate Debtor also cautions that if such discrepancy leads to	Corporate Debtor has received the material as ordered in PO and utilised the same for its project. Contents of e-way bill does bring the Corporate Debtor into the clutch of CIRP. (para 16)

any difference in rates of VAT, the Corporate Debtor will be at liberty to initiate appropriate proceedings. (para 15)	

5. We have gone through the petition filed by the operational creditor, counter of the corporate debtor, rejoinder filed by Corporate Debtor and the relevant documents produced on record. We have heard the learned counsel for Operational Creditor and learned counsel for Corporate Debtor.

6. There is no dispute with regard to supply of goods made by Operational Creditor and the same having received by the Corporate Debtor, by virtue of Purchase Order (Annexure-6, page 81), Invoices (Anneuxre-8, page 83), Demand Notice dated 25.04.2019 issued in Form-3 (Annexure-1, page 38), Way Bill (Annexure 10, page 109 onwards).

7. It is seen that Clause-3 of the Invoice stipulates that interest will be charged if payment is made beyond the due date. The Corporate Debtor ought to have taken due care to make payment before the due date. Part-payment was made only in respect to notice issued under section 8 of the I&B Code.

8. An allegation is levelled by the Operational Creditor in para 7 of the rejoinder that,

> *"It is submitted that the corporate debtor had issued cheque against the obligations but simultaneously stopped the operational creditor from presenting the cheque in bank due to reasons best known to the corporate debtor. ... ... "*

Said statement has not been controverted by the Corporate Debtor. Nor the Corporate Debtor could explain reasons for such belated payment.

9. 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 NVNR Power & Infra Pvt Ltd 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) 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.

(E) 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.

(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 Ram Niwas Jalan having IBBI Registration No.IBBI/ IPA-001/ IP-P01404/ 2018-19/ 12184, as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code. He has filed Form-2. Authorisation for Assignment is valid upto 11.08.2022. 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.

17. Accordingly, this Petition is admitted.

18. 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.

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

karim