NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

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PRESENT: HON'BLE SHRI RATAKONDA MURALI– MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA– MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 17.12.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	**CP(IB) No.09/9/HDB/2019**
NAME OF THE COMPANY	**Gangidi Industries Ltd**
NAME OF THE PETITIONER(S)	**ASB Glass Machinery & Equipment**
NAME OF THE RESPONDENT(S)	**Gangidi Industries Ltd**
UNDER SECTION	**9 of IBC**

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Ashish Agarwal For Sri Ramakrishna	Adv	90303339	Ashish

Counsel for Respondent(s):

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

ORDER

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

Member (T)

Member (J)

Karim

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No. 09/9/HDB/2019
U/s. 9 of Insolvency & Bankruptcy Code, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016

Between:

ASB Glass Machinery & Equipment
Represented by its Sole Proprietress
Mrs. Parminder Kaur
having Office at
114/7, DLF, Industrial Area
Phase-1, Faridabad
HARYANA

...Petitioner/Operational Creditor

VERSUS

M/s. Gangidi Industries Limited
Represented by its Director
Mrs. Gangidi Sulochana
W/o. G. Srisailam Reddy
Having its Registered Office at
2-14/3, Shiva Reddy Godowns
NCL, Kompally, Qutbullapur
RANGA REDDY – 500 014
Telangana

... Respondent/ Corporate Debtor

Date of order: 17.12.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Parties / Counsels present:

For the Petitioner : Dr. S.V.Ramakrishna, Mr. Rakesh Kumar
Mr.S.V.Vanshi Krishna & Ms. S. Deepa Sree
Advocates

For the Respondent: Mr.S.Ravinder Reddy, Mr. S. Raja Sekhar Reddy
Mr. J. Dheeraj Reddy, Mr. S. Akhilesh Reddy
Advocates

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 22.08.2019, 09.09.2019, 26.09.2019, 21.10.2019,
05.11.2019, 27.11.2019

ORDER

1. The Present Petition is filed by ASB Glass Machinery & Equipment, which is the Operational Creditor in this case stating that M/s. Gangidi Industries Limited (**'GIL'**), the Corporate Debtor had defaulted the total amount of Rs.29,75,512/- (Rupees Twenty Nine Lakhs Seventy Five Thousand Five Hundred and Twelve only), which includes an interest amount of Rs.2,49,712/- @ 24% p.a.

   Hence, this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w 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 averments of the petition filed by the Petitioner/Operational Creditor in brief are:

   i. ASB Glass Machinery & Equipment (for brevity **'ASB'**)/ Operational Creditor is a proprietary concern, which deals in manufacturing of glass. ASB Glass Machinery & Equipment/Operational Creditor had supplied 8 FT Glass Washing Machine with Water Tank Accessories and Glass EVA Laminating Machine 6x10' with Accessories to M/s. Gangidi Industries Limited/Corporate Debtor and raised two invoices, vide Invoice No.0006, dated 17.04.2018 for Rs.18,40,800/- and Invoice No.014, dated 12.06.2018 for Rs.8,85,000/- respectively, which are totalling to Rs.27,25,800/- and due from 17.04.2018.

   ii. It is averred that since the Corporate Debtor failed to make the payment, Operational Creditor issued a Demand Notice on

27.09.2018 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016.

iii. It is averred that Demand Notice sent to the registered office address of the Corporate Debtor did not get delivered and tracking details are showing the remarks as "unsuccessful delivery". Thus, Corporate Debtor committed default of Operational Debt. Hence, this petition.

3. The Averments in the Counter filed by the Corporate Debtor in brief are as follows:

i. It is averred that the instant petition filed by the Operational Creditor is not maintainable in law nor on facts and the same is liable to be dismissed in limini.

ii. It is submitted that the Corporate Debtor placed an order over phone with Bhambra International which is the sister concern of the Operational Creditor for supply of glass manufacturing material. Due to non-performance of the contract, some e-mail conversations were made between Bhambra International and M/s. Gangidi Industries Limited. It is further averred that there is neither any work order placed nor any iota of written exchange or communication or contract between the Operational Creditor and Corporate Debtor, as such, there is no locus standi for the Operational Creditor to file the instant petition. The documents filed by the Operational Creditor shown at Annexure-III are fabricated only for the purpose of filing the petition in order to gain wrongfully and cause wrongful loss to the Corporate Debtor.

iii. It is averred that the Corporate Debtor was utterly shocked and surprised to receive notice from the Operational Creditor.

iv. It is submitted that the Corporate Debtor placed an oral order with Bhambra International in the month of January, 2017 for supply of 8 FT glass washing with water tank for a period of two weeks but Bhambra delivered the equipment in the month of March, 2018 i.e. after a period of one year and the Corporate Debtor received the equipment under protest. Bhambra did not show any remorse in furthering / performing the contract by installing, commencing, training the staff, rectifying the damage to INVT drive etc. It is also submitted that BHAMBRA informed the Corporate Debtor that it would be supplying material from the Operational Creditor. BHAMBRA sent an e-mail to Corporate Debtor stating that they will replace the crucial INVT drive of equipment. The e-mail communication dated 22.08.2018 is shown at **Annexure-1.**

v. It is submitted that the Corporate Debtor had paid an amount of Rs.30,00,000/- during the course of business transactions with Bhambra, which will be adjusted in the future business transactions.

vi. It is further averred that Corporate Debtor when placed the order, Bhambra assured that the cost of the equipment would be adjusted in the due amount of Rs.30,00,000/- and demanded Rs.3,00,000/- for installation, commencement & training the staff but Corporate Debtor protested for the same and asked them to take back the delivered equipment and pay the amount of Rs.30,00,000/-. But Bhambra did not take back the equipment and the equipment was installed through professional technicians at their own cost.

vii. It is also submitted that Corporate Debtor is entitled to receive an amount of Rs.40,00,000/- in total for damages, costs of storage space, cancellation of the order and steps will be taken for filing civil proceedings before the court of proper jurisdiction.

viii. It is averred that there is no existence of debt and there is no question of default of payment.

4. Rejoinder in reply to the Counter filed by the Corporate Debtor, in brief are as follows:

i. It is submitted that Bhambra International and ASB Glass Machinery & Equipment are sister concerns. They are engaged in the business of trading activities of Glass and doing the business of manufacturing of goods.

ii. It is averred that the goods which were supplied by the Operational Creditor to the Corporate Debtor and for which the invoices have been raised shown at Annexure-III which is entirely a different material supplied by the Operational Creditor to the Corporate Debtor. It is not the stand of the Corporate Debtor that it had not received the material as referred in the said invoices from the Operational Creditor.

iii. It is submitted that the Corporate Debtor paid an amount of Rs.30,00,000/- to M/s. Bhambra International and which is payable by Bhambra International to Corporate Debtor. The amount of Rs.30,00,000/- was first transferred by the Corporate Debtor to Bhambra International and thereafter it was retransferred the said amount to the Corporate Debtor. The ledger account and bank statements of both the parties are shown the same. An amount of Rs.36,801/- is outstanding in the books of Bhambra International towards the Corporate Debtor. The Corporate Debtor is making a false statement just to create the false existence of dispute in the matter. As such, there is no dispute between the Operational Creditor and the Corporate Debtor. As such, the defence taken by the Corporate Debtor is completely false and frivolous and liable to be rejected straight away.

iv. It is averred that the contents of para 12 of the reply are wrong and denied. It is incorrect that the Corporate Debtor is entitled to receive an amount of Rs.40.00 lakhs towards damages, costs of storage space, cancellation of the order from Bhambra and appropriate steps will be taken by the Corporate Debtor to file civil proceedings before the court of proper jurisdiction. It is also submitted that the Corporate Debtor has no intention to pay the balance amount of the Operational Creditor. It is also submitted that the defence of the Corporate Debtor is completely based on incorrect facts, falsity and frivolous stands and the same needs to be discarded.

5. We have heard the Counsel for Operational Creditor and Counsel for Corporate Debtor. The Learned Counsel for Operational Creditor would contend that the Operational Creditor is engaged in the business of manufacturing of glass and that Operational Creditor supplied 8 FT Glass Washing Machine with Water Tank Accessories vide Invoice No. 0006 dated 17.04.2018 valued at Rs. 18,40,800/- and Glass EVA Laminating Machine 6x10' with accessories vide invoice No. 014 dated 12.06.2018 valued at Rs, 8,85,000/-. Thus, Operational Creditor claimed a sum of Rs. 29,75,512/- which includes interest of Rs.2,49,712/- @ 24% per annum.

6. The Counsel contended that the Operational Creditor issued Demand Notice to the Corporate Debtor vide Form-3 & 4 dated 27.09.2018 shown as Annexure-VI at page Nos.20-35. The notice was returned with endorsement "un-claimed". The Counsel contended that there was deemed service of notice on the Corporate Debtor who had not claimed the notice though attempt was made to serve on the Corporate Debtor. Counsel contended that the Corporate Debtor is trying to confuse the issue alleging that the Corporate Debtor placed order with Bhambra International and that an amount of Rs. 30 lakhs was credited to the account of Bhambra International and that there

is no amount due to the Operational Creditor. It is also contended that there is no Creditor-Debtor relationship between the Petitioner and Corporate Debtor. Counsel contended that the Petitioner and Bhambra International are sister concerns. Bhambra International is a trading company whereas the Operational Creditor is a manufacturing Company. Thus, the business activities of both the companies are different. The Counsel contended the Corporate Debtor in order to escape the liability, is simply alleging that it has placed order with Bhambra International which is a telephonic order. The further contention of the Counsel is that it shows the falseness in the contention of the Corporate Debtor that it placed telephonic order with Bhambra International which is not a manufacturing company. Counsel contended that invoices are raised by the Operational Creditor in the name of Corporate Debtor. The Corporate Debtor did not dispute raising of invoices. The Counsel contended the amount credited to the account of Bhambra International of Rs. 30 lakhs was again re-credited to the account of Corporate Debtor, on the basis of whatsapp message. Thus, it goes to show the falseness in the contention of Corporate Debtor as if amount of Rs. 30 lakhs is lying with Bhambra International. The Counsel relied on the Whatsapp message dated 07.11.2017. The money credited to the account of Bhambra International was again retransferred to the Syndicate Bank, Medchal Branch basing on the whatsapp message. The Counsel contended money Rs. 30 lakhs was deposited in the account of Bhambra International on 09.11.2017 and on the next day it was returned to the Corporate Debtor basing on the whatsapp message. The bank statement is also filed. The Counsel therefore contended that Petition is liable to be admitted as Corporate Debtor committed default of operational debt.

7. On the other hand, the Learned Counsel for Corporate Debtor would contend that there is no creditor-debtor relationship between Petitioner and Corporate Debtor. The Counsel contended that Operational Creditor never supplied any item to

the Corporate Debtor. The invoices are fabricated. The Counsel contended that Operational Creditor has not filed any supporting evidence about delivery of goods, receipt challan etc. The Counsel contended the ledger account of the Operational Creditor is also fabricated since no other transaction is effected in the ledger. The Counsel contended that the Corporate Debtor filed communications with Bhambra International as Annexures I & II. The Counsel contended that the Corporate Debtor placed order with Bhambra International which is a sister concern of Operational Creditor for supply of material. The Counsel contended till date there are no communications between Operational Creditor and Corporate Debtor regarding the alleged transaction. The annexures filed by Operational Creditor such as Annexures III, IV & V are all fabricated. The Counsel contended that the Corporate Debtor paid an amount of Rs. 30 lakhs in the account of Bhambra International. In the course of business transactions, the Corporate Debtor remitted an amount of Rs. 30 lakhs which in excess of the amount due and hence on the request of Corporate Debtor, Bhambra International returned the amount. The Counsel contended that there was delay in supply of material and Corporate Debtor suffered damage to the tune of Rs. 30 lakhs. Thus, the Learned Counsel contended that there is no creditor-debtor relationship between Operational creditor and Corporate Debtor and the transactions was with Bhambra International which is a sister concern of Operational Creditor.

8. The Corporate Debtor is contending that it placed order with Bhambra International. There is neither purchase order nor invoices from Bhambra International. In other words, it is the case of Corporate Debtor that it placed telephonic order with Bhambra International. If order is placed and goods are supplied, inevitably Bhambra International should have raised invoices. However, there is no documentary proof in support of the allegation made by Corporate Debtor.

9. On the other hand, the Operational Creditor is able to establish that it raised invoices and that Operational Creditor is a manufacturer and that the alleged amount of Rs. 30 lakhs was again re-deposited in the account of Corporate Debtor. So there is no pre-existing dispute and further the Operational Creditor is able to establish that it had supplied material to the Corporate Debtor and raised invoices and payment is not received from the Corporate Debtor. There is no prior dispute and as such petition is liable to be admitted.

10. The Operational Creditor failed to name anyone as Interim Resolution Professional and has requested the Tribunal to appoint one for the Corporate Insolvency Resolution Process. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period 1st July 2019 to 31st December, 2019 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Ms. Sistla Manjula having Registration No.IBBI/ IPA-001/ IP-P00992/2017-2018/11639, Mobile No. 9963307676 e-mail id: manjula@akasmandasassociates.com as Interim Resolution Professional. The aforesaid interim resolution professional has no disciplinary proceedings pending against him. He shall file his written communication and all relevant paper immediately before Registrar of this Tribunal but not later than two days.

11. 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. 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.

iii. 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.

iv. That the order of moratorium shall have effect from 17.12.2019 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.

v. That this Bench hereby appoints Ms. Sistla Manjula, IBBI Registration No. IBBI/IPA-001/IP-P00992/2017-2018/11639, as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

vi. The Petitioner is directed to pay a sum of Rs.1,00,000/- (One Lakh Only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

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

viii. Accordingly, this Petition is admitted.

ix. 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.

17.12.19

NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

17.12.19

RATAKONDA MURALI
MEMBER (JUDICIAL)

Syamala