

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 14.09.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP (IB) No.61/9/AMR/2020		9 of IBC	Suresh Kedia Vs Ardee Hi-Tech Pvt Ltd

Counsel for Petitioner(s):

Ries

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

Counsel for Respondent(s):

Ries

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

ORDER

CP (IB) No.61/9/AMR/2020 is admitted, vide separate orders.

SD/-

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

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CP (IB) No. 61/9/AMR/2020

**In the matter of a Petition under Section 9 of the Insolvency and
Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2016
AND**

**In the matter of
M/s. ARDEE HI-TECH PRIVATE LIMITED**

Between:

Suresh Kedia,
C-401, Shreshta Gardens,
Rajarhat Main Road, Kalipark,
Kolkata – 700136.

... Operational Creditor

AND

M/s. Ardee Hi-Tech Private Limited,
Registered office at 9-30-4, Balaji Nagar,
Siripuram, Visakhapatnam,
Andhra Pradesh – 530003.

... Corporate Debtor

Date of Order: 14.09.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Mr. Rohan Aloor, Advocate.
For Corporate Debtor : Dr.S.V.Rama Krishna, Advocate.

ORDER

1. This petition is filed by the Operational Creditor against the Corporate Debtor i.e., M/s.Ardee Hi-Tech Private Limited seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD) for default in discharging the debt that is due to the Operational Creditor (OC).
2. The facts stated in the Petition are as briefly as follows:
 - a. The Operational Creditor is a marketing consultant by profession and has gained immense goodwill and reputation. He is one of the most sought-after marketing consultants. The Corporate Debtor is a Company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing domestic and other appliances. The Corporate Debtor has approached the Operational Creditor to hire the Corporate Debtor as a marketing consultant. Several meetings and negotiations were held between them through which the price proposal was finalized. Believing the representations of the Corporate Debtor to be true and correct, the Operational Creditor readily agreed to provide his services. The Corporate Debtor agreed to make payments on a monthly basis for the services rendered by the Operational Creditor and that the payments would be released within the first week of the following month.
 - b. The Corporate Debtor issued a letter of appointment on 12.04.2016, appointing the Operational Creditor as a full time

marketing consultant in a post of Head, Business Development for a period of 12 months, extendable by mutual consent on and from 18.05.2017. The payment of salary was agreed to be Rs.2,00,000/- per month.

- c. One of the terms of the said letter of appointment was that compensation of Rs.2,00,000/- would be paid per month, subject to a maximum annual payment of Rs.30 Lakhs. Owing to supreme quality of services rendered by the Operational Creditor, the Corporate Debtor was impressed and by mutual consent, the parties have extended the said employment for a further period of 12 months with effect from 18.04.2017 till 17.04.2018, on the same terms and conditions.
- d. For the self-same reason, the services of the Operational Creditor were renewed for a further period of 12 months i.e., upto 18.04.2019 on a verbal understanding.
- e. Throughout the tenure of the contract, the Operational Creditor performed all his obligations to the utmost satisfaction of the Corporate Debtor. The Corporate Debtor never raised any demur or protest with regard to the quality of service rendered by the Operational Creditor. The same would be evident from the fact that the services of the Operational Creditor were renewed from time to time. The Operational Creditor has rendered his services to the Corporate Debtor on and from 18.04.2016 till 31.03.2019. No dispute was ever raised by the Corporate Debtor. The Corporate Debtor made certain part payments from time to time,

through NEFT and had always cited one reason or the other for non-payment of the full monthly/or yearly compensation amount. Since, the Operational Creditor has not been receiving the payments, he via email dated 30.07.2019 intimated the Corporate Debtor his intention not to continue his services.

- f. The Corporate Debtor fell due a sum of Rs.64,57,022/-. The Operational Creditor repeatedly sought for the payment, but the Corporate Debtor failed to make the payment. In the emails, the Corporate Debtor unequivocally admitted its liability, but however, cited poor business conditions as a reason for non-payment of its dues. As the Corporate Debtor failed to make the payment, the Operational Creditor issued demand notice to the Corporate Debtor on 13.11.2019. The Corporate Debtor failed to reply to the demand notice and did not make any payment. Hence, this application seeking to initiate CIRP against the Corporate Debtor.

3. The Corporate Debtor filed counter, stating that the Corporate Debtor is a Company engaged in building coal dry beneficiation plants to improve the quality of coal after mining at the mine sites before dispatch to power etc. The agreement between the Operational Creditor and the Corporate Debtor is admitted and the term of employment and the extension of employment for one year thereafter was also admitted. The payment of salary @ Rs.2,00,000/- is also admitted. But it is contended that the

Corporate Debtor has failed to perform any of the agreed 10 vital terms and conditions of service engagement and failed to produce any evidence in support of his performance on the above 10 parameters but only attempted to encash on appointment letters and some emails exchanged in good faith between the office of the Corporate Debtor and himself. In the reply notice dated 27.01.2020 to the notice in Form 3 dated 18.01.2020, all the above objections were taken and a chance was given to him to come clean with his cogent replies with documentary evidences but the Operational Creditor miserably failed in giving any reply. While the Operational Creditor failed to perform the contractual obligations and is not entitled for the alleged remuneration, he claimed amounts for a period for which he was not even engaged ie. beyond 17.04.2018. As per the extension letter dated 18.05.2017 term was extended from 18.04.2017 to 17.04.2019 which carries same terms and conditions of earlier original letter of appointment which were not complied with. His term ended by 17.04.2018 but he claims remuneration upto 01.04.2019, which is false. There is no operational debt in existence. A counter-claim is also made against the Operational Creditor on the ground that he took huge reimbursement of alleged expenses on various accounts on false claims, whereas he was actually working as Assistant Vice President in Laser Power & Infra Private Limited, which is nothing but cheating. The Operational Creditor is liable for malicious and

fraudulent initiation of CIRP against the Corporate Debtor. Hence, this application is liable to be dismissed.

4. Written submissions are filed by both sides. Heard the arguments of both the Counsel and perused the written submissions.
5. The main contention of the Counsel for the Corporate Debtor is that though the Operational Creditor was appointed as fulltime marketing consultant on 12.04.2016, he is not entitled for any salary as he failed to fulfil the responsibilities which are enumerated in the appointment letter. He contends that no evidence is produced by the Operational Creditor to show that he has fulfilled his responsibilities mentioned in the appointment letter. Under the head compensation, in the appointment letter it is mentioned that Rs.2 Lakhs per month less statutory deductions would be paid and a note is made that 50% payment will be withheld towards incentive/disincentive for work done during first six months. In case things turn negative, a parting lump sum amount will be paid out at Management's discretion. In case experience is positive, the balance 50% withheld amount for the first six months will be paid, and Ardee will add agreed sum to his monthly compensation which then will be Rs.2 Lakhs per month. There is an Incentive of @ 1% of net order value subject to a maximum of Rs.30 Lakhs which would be paid annually or as and when liquidity permits. The place of posting is mentioned as Kolkata.

6. The Counsel for the Corporate Debtor admits that the services of the operational Creditor were not terminated for nonfulfillment of the responsibilities mentioned in the appointment letter and that they were hopefully waiting for the Operational Creditor to fulfil the responsibilities. Hence, they have extended the contract. The Counsel for the Corporate Debtor draws the attention of this Tribunal to a letter dated 04.12.2018 issued by the Managing Director of the Corporate Debtor to the General Manager Central Mine Planning and Designing Institute Limited, wherein in the 4th paragraph it is mentioned as under:

“Every organization has a set of functionaries who carry out tasks pertaining to their area of expertise. Ardee follows a system of delegating powers to functionaries at different levels. Mr.Suresh Kedia, as Head of Business Development, is playing a key role in this project and has been nominated to negotiate with functionaries at all levels in Coal India and its subsidiaries. His role in the Board of Directors of Ardee for strategy formulation is of extreme importance. It is unfortunate that his professional capacity and integrity is being questioned.”

By relying on the said part of the letter the Counsel for the Corporate Debtor submits that the integrity of the Operational Creditor has always been upheld by the Corporate Debtor and that the Corporate Debtor has been playing key role in the project was

also acknowledged and his role in the Board of Directors of Ardee for strategic formulation is also mentioned to be of extreme importance. The letter which is addressed on 04.12.2018 is also taken as a basis for the Operational Creditor to contend that the contract was extended orally beyond 17.04.2018 which is extension of the contract for 12 months from the period of the original contract which is from 18.04.2016 to 18.04.2017.

7. The Counsel for the Corporate Debtor cogently contends that if the contract was not extended orally beyond 17.04.2018, there was no need for the Operational Creditor to vouchsafe the integrity of the Corporate Debtor in the letter dated 04.12.2018. It is true that there is no specific evidence produced regarding the performance of the Operational Creditor for which the Counsel for the Operational Creditor draws the attention of the Tribunal to the appointment letter, wherein no such reporting back is stipulated and under the head compensation it is stipulated that in case experience is positive, balance 50% withheld will also be paid. Though the Counsel for the Corporate Debtor contends that there is no performance by the Operational Creditor, he admits that no steps were taken to terminate the contract of Operational Creditor. He contends that they have been generous enough to extend his contract with an expectation and hope that he would perform in future. When there is a contract of employment in favour of a , the employer would be liable to fulfil the terms of employment until he

terminates the contract. A clause of termination is also mentioned in the appointment letter. But absolutely, no steps are taken to terminate the services, inspite of noting in the letter dated 18.05.2017 which is the extension of contract letter, that the disappointment of last year was put forward. In spite of noting the said disappointment the fact remains that the contract was nevertheless extended for another year and also for another year thereon orally which can be evidenced by the fact that on 04.12.2018 also a letter was issued to one of the clients of the Corporate Debtor that the Operational Creditor was a key person in the project.

8. The Counsel for the Corporate Debtor raises another contention that the Operational Creditor has been working as Assistant Vice President in Laser Power and Infra Private Limited during the period when he is supposed to work for the Corporate Debtor alone. In support of his contention he relies on a page in the Linked-in account of the Operational Creditor, wherein he mentions that he is working as an Assistant Vice President from April, 2019 till present (1 year 7 months). Relying on this period the Counsel for the Corporate Debtor contends that one year seven months, counted backwards, from April, 2019 would overlap the period during which the Operational Creditor is supposed to work with the Corporate Debtor. In answer to the contentions raised by the Counsel for the Corporate Debtor, the Counsel for the

Operational Creditor explains that the oral contract between the Operational Creditor and the Corporate Debtor comes to an end by April, 2019. The Linked-in profile would only show that he started working from April, 2019. The period of one year seven months, he contends to be an error. The Counsel relies on certain correspondence between the Operational Creditor and the Corporate Debtor to contend that it is the incapacity of the Corporate Debtor that made it not to pay the salaries and nonfulfillment of terms of contract with the Operational Creditor and not the reasons put forth before this Tribunal. In a mail dated 08.08.2019 which is addressed by the Operational Creditor to the Corporate Debtor with a demand for the salaries, it is mentioned that the salaries were pending for the financial years 2016-2017 and 2017-2018 and they were assured to be paid but were never completely paid and that now he is being asked to bring business and get money which is not as per contract clause. It also mentioned that he is cheated and it is also mentioned therein that the Corporate Debtor cannot deny his dues for the years 2018-2019 where he does not have contract copy and for the years 2016 to 2018 he also gave an ultimatum that he will wait till 15th August, failing which he would take legal action. A reply mail was issued to the Operational Creditor to the Corporate Debtor, wherein it is stated that they are fighting several battles one against their debtor like Bevcon Wayors, GMDC, Coal India and the other against their creditors Bank of Maharashtra, statutory dues, staff

disenchantment, vendors and services provides. It is mentioned that the picture looks even worse on that day than what it was a year ago and if no recovery or new project comes through they may have to seize operations and declare bankruptcy and that they are stretching the days hoping for the best. He expresses that at that juncture the kitty is empty and hence, he is not in a position even to discuss what is due to the Operational Creditor or vice versa. But as regards the new business he states that his offer stands. He asks the Operational Creditor to get the business and they will be more than generous with their compensation for the efforts and as of then there is no income and subsequently no payment being given out. It is stated unequivocally that they have reached the end of the road. Prior to that a mail dated 13.02.2019 is also issued to the Operational Creditor stating that they are in serious trouble on the business front, several payments way behind schedule previously they were making payments, salaries, custom duty payments, regular overheads likes rents, power etc. and imports plus domestic procurement, but due to Gujarat Plant being shut down, even the salaries of the personnel, operating the plans, has stopped. At the end it is stated that if some payment comes in, some justice will be done to the Operational Creditor. It is further stated that they can negotiate atleast a part payment. Nowhere in these mails did the Corporate Debtor mention that they are not liable to pay any amounts to the Operational Creditor for his non-performance. The Counsel also submits during the course of arguments that part

payments were made to the Operational Creditor in fact. Except mentioning in one letter which is dated 18.05.2017, that they are disappointed in the previous year there is absolutely nothing to show that the Corporate Debtor was dissatisfied by the performance of the Operational Creditor. The extension of the contract from year to year and testifying the integrity of the Operational Creditor to one of the clients of the Corporate Debtor would imply, if do not clearly prove, that the Corporate Debtor was satisfied with the services of the Operational Creditor. The intention not to terminate the services is clear from the correspondence.

9. The contention of the Counsel for the Corporate Debtor that the Operational Creditor has been visiting the other office does not carry any weight. As the Corporate Debtor is not in a good financial position and as the same was intimated to the Operational Creditor he might have been in search of the other employment. There is absolutely no evidence to show that the Corporate Debtor was paid any salary elsewhere. The stand taken now, before this Tribunal was never taken earlier. The Operational Creditor was never called upon to fulfil the terms of the appointment letter. The dispute now raised by the Corporate Debtor seems to be a moonshine defence, to avoid its liability. Hence, in view of the above the Petition needs to be allowed and is accordingly, allowed.

ORDER

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

- i. **Mr. Kantipudi Venkata Raju**, (Registration No. IBBI/IPA-002/IP-N01125/2021-2022/13675), having office at S/O Veera Raghavulu, 4-198, Near Water Plant, Manikya Nagar, Valasapakala, Kakinada, East Godavari District, Andhra Pradesh-533005; Mobile:**9848835882**; e-mail: **kantipudiven@gmail.com**; is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.
- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under

section 19 of the Code for effectively discharging his functions under the Code.

- v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.
- vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

**SD/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu