

122

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II

SPECIAL BENCH(Video Conference)

CORAM:HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE VEERA BRAHMA RAO AREKAPUDI-MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 18.06.2021 AT 10:30 AM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.96/2021 in CP(IB) No.284/9/HDB/2020
NAME OF THE COMPANY	Bluewheel Infrastructures Pvt. Ltd.
NAME OF THE PETITIONER(S)	Growingleaf Agrotrade Pvt. Ltd.
NAME OF THE RESPONDENT(S)	Bluewheel Infrastructures 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

The case is fixed for pronouncement of order.

IA No/96/2021 in CP(IB) No.284/9/HDB/2020 stands admitted.


MEMBER TECHNICAL


MEMBER JUDICIAL

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No.284/9/HDB/2020
Under section 9 of the IB Code, 2016
Under rule 6 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
BLUEWHEEL INFRASTRUCTURES PRIVATE LIMITED

Between:

M/s. Growingleaf Agrottrade Private Limited
121, Evershine Mall, Chincholi Bunder, Malad (W),
Mumbai – 400064.

...Petitioner/
Operational Creditor

And

M/s. Bluewheel Infrastructures Private Limited
Having its Regd. Office at 1-10-3/1, Boorugu Vihar,
Begumpet, Hyderabad – 500 016.

...Respondent/
Corporate Debtor

Date of Order: 18.06.2021.

**Coram: Shri. Madan B. Gosavi, Member Judicial
Shri. Veera Brahma Rao Arekapudi, Member Technical**

Parties/Counsels present:

For the Operational Creditor: Mr. Mayur Mundra, Counsel

For the Corporate Debtor: Mr. Vikram C. Puttapaga, Counsel

Per: Bench

ORDER

- 1) Under consideration is a Company Application filed by M/s. Growingleaf Agrottrade Private Limited (in short “*Petitioner/Operational Creditor*”) under section 9 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Bluewheel Infrastructures Private Limited (in short, “*Respondent/Corporate Debtor*”).

- 2) Brief facts of the case as submitted by the Operational Creditor are as follows:
 - a) Operational Creditor is a registered company incorporated in the year 2017. The Company deals in trading of various agri products. Corporate Debtor is also a registered company incorporated in the year 2008 involved in infrastructures and developmental activities.
 - b) That Operational Creditor has entered into an Agreement for arrangement of sketches and drawing for their proposed new plant in the year 2018. As per the said agreement Operational Creditor paid an advance amount of Rs.34,43,000/- and Rs.1,12,24,490/- on 10.09.2018 and 11.09.2018 respectively.
 - c) That as per the Agreement Corporate Debtor herein was under obligation to provide such drawings to the satisfaction of the Operational Creditor within a period of 30 days.
 - d) That the Operational Creditor continuously followed up with the Corporate Debtor for the sketches and designs but the Corporate Debtor failed to provide the same. After continuous follow up's few drawings were provided by the Corporate Debtor but all of them were either impractical or wrong designs and thus not to the satisfaction of the Operational Creditor.
 - e) Thereafter the Operational Creditor has written number of times to the Corporate Debtor for refund of the advance amount or to deliver the drawings to the satisfaction of the Operational Creditor but Corporate Debtor failed to do the same. However, due to urgency in the said work was done by Operational Creditor through other vendor and thereafter repeatedly asking the Corporate Debtor to refund the amount which it failed to do so.
 - f) That after several reminders from Operational Creditor, Corporate Debtor did not meet its commitments. Hence, the Operational Creditor has decided to approach this Adjudicating Authority to initiate CIRP against the Corporate Debtor.
 - g) Reiterating the above, learned counsel for the Operational Creditor prayed to admit the instant Application.
- 3) Learned counsel for the Respondent filed counter inter-alia stating that the allegations made by the Operational Creditor are denied except those that are specifically admitted hereunder:

- a) That the Corporate Debtor has submitted the Sketches, designs and drawings to the Operational Creditor on time. But the Operational Creditor showed dissatisfaction on the said designs and drawings. The Corporate Debtor being a decade old company felt common, as in many situations clients show dissatisfaction at first presentation and certain minor modifications to the said designs and drawings they get satisfied. In view of this experience the Corporate Debtor has agreed to show new designs and drawings to the Operational Creditor.
 - b) That the Corporate Debtor has approached the officials of the operational Creditor with modified and some new designs and drawings. In spite of submitting the said designs and drawings the Operational Creditor still showed dissatisfaction. The Corporate Debtor in view of not losing an client has agreed to modified further and bring some more new designs and drawings to the Operational Creditor.
 - c) That the Corporate debtor has requested the Operational Creditor orally to give couple of month's time to submit good and better designs, drawings as they were showing dissatisfaction over the designs and drawings. After acceptance from the Operational Creditor, the Corporate Debtor has returned to the Operational Creditor with new designs and drawings. To the utter shock of the Corporate Debtor, Operational Creditor has informed the Corporate Debtor that they have finalized the designs and drawings of another vendor. Even more shocking was the Operational Creditor started demanding the refund of whole advance amount paid to the Corporate Debtor.
 - d) That the Corporate Debtor had questioned the Operational Creditor that as per the request and requirement of the Operational Creditor the Corporate Debtor was modifying the design from time to time because of which the said design and drawing could not be submitted in agreed period. The Operational Creditor chooses not to answer, the reason is best known to the Operational Creditor.
 - e) Reiterating the above, the learned counsel for the Respondent prayed to reject the instant Application.
- 4) Heard and perused the record.
 - 5) This Adjudicating Authority is satisfied that the Operational Creditor has proved its case by placing evidence that default has occurred for which the

Corporate Debtor was liable to pay. It is further seen from the reply to the demand notice placed along with copy of Application that the Corporate Debtor has admitted its liability. Further the Operational 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/Operational Creditor, this Adjudicating Authority is inclined to admit the instant Application.

- 6) 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.
- 7) Learned counsel for the Operational Creditor filed an Application bearing IA No.96/2021, inter-alia seeking to appoint Mr. Rajkumar Sarda as proposed IRP instead of Mr. G. Madhusudhan Rao as proposed in the Application. Accordingly, this Adjudicating Authority hereby appoints Mr. Rajkumar Sarda, having his Regn. No. IBBI/IPA-001/IP-P-01777/2019-2020/12740 as IRP. He has also filed his written consent in Form-2. He is directed to file Authorization for Assignment within three (3) days of this order.
- 8) 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.
- 9) We direct the Operational Creditor/Petitioner to pay sum of Rs.50,000/- towards the advance fee of IRP, which shall be ratified later on by CoC.
- 10) 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:-
 - a. *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;*
 - b. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*
 - c. *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);

d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

e. 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.

- 11) 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.
- 12) 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.
- 13) The Petitioner/Operational 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.
- 14) The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
- 15) The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
- 16) The address details of the IRP are as follows:-

Mr. Rajkumar Sarda
Regn. No. IBBI/IPA-001/IP-P-01777/2019-2020/12740,
H.No.24, Asbestos Colony, Opp- Vikrampuri, Secundrabad,
Telangana – 500009.
Email ID: rajsarda@gmail.com.

- 17) Accordingly, IA No.96/2021 is allowed and main Application bearing CP (IB) No. 284/9/HDB/2020 is hereby admitted.

- Sd/-

Veera Brahma Rao Arekapudi
Member Technical

- Sd/-

Madan B. Gosavi
Member Judicial