

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
13-05-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE

CP (IB) No. 497/9/HDB/2019
U/s. 9 of IBC, 2016

IN THE MATTER OF:

Navdurga Trade Centre

... Operational Creditor

Vs

Sangha Erectors Pvt Ltd

... Corporate Debtor

CORAM

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders pronounced in Company Petition CP(IB) No. 497/9/HDB/2019. Recorded vide separate sheets. In the result, the petition is allowed. The Corporate Debtor is put into CIRP as per the terms and conditions mentioned therein.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

BM

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) No.497/9/HDB/2019

Under section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of

M/s Navdurga Trade Centre
Represented by its Managing Partner
Harish Harshadrai Bhatt
2-2-105 to 108/9
Ganesh Chamber, Ranigunj
Secunderabad – 500003.

.. **Petitioner/
Operational Creditor**

VERSUS

M/s Sangha Erectors Pvt Limited
Represented by its Director
Harpreet Singh Sangha
Plot No.1, Vasavi Nagar
Kakaguda Village, Lkpicket
Secunderabad – 500003.

.. **Respondent
Corporate Debtor**

Date of order: 13th May 2022

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: Ms. A. Sandhya Rani, Advocate.

For the Respondent: Shri K.V. Raman, Advocate

ORDER

This petition is filed by M/s Navdurga Trade Centre/ Operational Creditor, stating that principal amount of **Rs.26,59,949/-** plus interest amounting to **Rs.2,59,272/-** for the period from 06.10.2018 to 19.03.2019 are due and payable to the Corporate Debtor towards tax invoices raised against supply of industrial equipments/ consumable products. 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 averments made in the petition are as follows:

- (i) The Operational Creditor has supplied and delivered, vide Purchase orders and Invoices for the period from 01.04.2014 to 31.03.2015 (Annexure A, Vol.1 of the petition), industrial equipments/ consumable products to the Corporate Debtor pursuant to an understanding between the Operational

- Creditor and Corporate Debtor. The Operational Creditor has raised invoices towards the same.
- (ii) The Operational Creditor has enclosed Ledger Account maintained by the Operational Creditor during the period 01.04.2014 onwards (pages 44-82 of the petition) showing the amount of Rs.26,59,949/- towards supply of above goods as on 20.03.2019 due and payable by the Corporate Debtor to the Operational Creditor.
 - (iii) The Operational Creditor has issued Demand Notice dated 20.03.2019 (Annexure-F, page 35) in Form-3 to the Corporate Debtor.
 - (iv) The Corporate Debtor gave reply dated 01.04.2019 (Annexure-G, page 38) stating that requisite documents to substantiate the claim have not been furnished to the Corporate Debtor. Notwithstanding non-receipt of documents, the Corporate Debtor has disputed the claim made by the Operational Creditor.
 - (v) The Operational Creditor filed rejoinder dated 26.04.20219 (Annexure-H, page 40) stating that the requisite documents have already been sent to the Corporate Debtor by Speed Post on 23.03.2019. However, another set of documents were sent with rejoinder dated 26.04.2019.
 - (vi) The Corporate Debtor addressed communication dated 07.05.2019 (Annexure-I, page 42), alleging that the required documents were not

furnished along with Form-3. Whatever documents furnished so far are fabricated ones. Still document-5, viz. Principal and interest calculation sheet is not attached. For want of supply of requisite documents the Operational Creditor has not complied with the requirements of I&B Code. The Corporate Debtor has asked the Operational Creditor to withdraw Form-3.

3. The Corporate Debtor has filed counter dated 13.11.2019 contending that:

- (i) The claim made by the Operational Creditor is merely based on Purchase Orders raised by the Corporate Debtor on the Operational Creditor and the amounts being released after due verification and scrutiny by the Corporate Debtor. The invoices/ Purchase orders have no bearing on the claim raised by the Operational Creditor. Such invoices/ purchase orders do not bear stamps of the Corporate Debtor which is essential to establish delivery of goods at the site of the Corporate Debtor. The Operational Creditor has to provide proof towards amount due and payable by the Corporate Debtor.
- (ii) The Corporate Debtor has admitted that the Corporate Debtor had executed work at certain sites as enlisted in para 9, page 6-7 of the Counter. The Corporate Debtor has further admitted that the Operational Creditor had supplied material in respect of only those projects enlisted and not for any other projects.

(iii) The Corporate Debtor has also enclosed certain purchase orders, invoices placed by the Corporate Debtor on the Operational Creditor duly signed by the respective parties. Nevertheless the Corporate Debtor refutes the claim made by the Operational Creditor and states that the Operational Creditor has never supplied the goods as claimed by the Operational Creditor.

(iv) Postal receipt (page 36) of the consignment by which Demand Notice in Form-3 is purported to have been sent weighs only 25 gms. The Corporate Debtor seems to question the prudence of the Operational Creditor as to how Demand Notice with so many enclosures could weigh only 25 grams.

4. The Operational Creditor has filed rejoinder dated 10.02.2020 contending that:

(i) The Corporate Debtor has placed purchase orders, based on which the Operational Creditor has delivered goods and raised invoices. It is the duty of the person who carries goods to the site of the Corporate Debtor to show the goods to the person of the Corporate Debtor and obtain inward stamp affixed by the security person present at the time of delivery of goods and get serial number, date, time entered duly signed by the representative of the Corporate Debtor. It is submitted by the Operational Creditor that at the bottom of the delivery challan the remarks “**Received the goods in**

good condition” can be found duly signed and stamped. That signifies the goods having been received by the representative of the Corporate Debtor.

- (ii) The Corporate Debtor has raised dispute only after receipt of From-3/ Demand Notice, not prior thereto.

5. The Corporate Debtor has filed Written Arguments dated 20.04.2022 with Memo for Condonation of Delay of even date seeking condonation of delay in filing the Written Arguments. Whereas in the Written Arguments the Corporate Debtor tried to draw distinction between the signature and seal put on delivery challan placed at page **no.137** of the counter filed by the Corporate Debtor and rest of the challans/ documents. It is contended in para 7 of the Written Submissions that challan at page 147 of the Counter is genuine and rest of the documents are fabricated ones. On closure scrutiny, the signature of the representative of the Corporate Debtor appears to be similar on the documents at page no.137 and rest of the documents.

6. We have heard Ms. A. Sandhya Rani, learned counsel for the applicant/ Operational Creditor and Shri K.V. Raman, learned counsel for the respondent/ Corporate Debtor. Perused the application filed by the operational creditor, counter and rejoinder filed by the parties and the documents produced before us.

7. In the light of the contest as mentioned above, the following point is framed for consideration by this Adjudicating Authority:

- Whether the documentary evidence furnished with the application establishes an operational debt as claimed by the Operational Creditor and the Corporate Debtor defaulted in payment of the said operational debt?

8. According to the learned counsel for the Operational Creditor, Purchase orders for the period from 01.04.2014 to 31.03.2015 (Annexure A, Vol.1 of the petition) placed on the Operational Creditor by the Corporate Debtor for supply of industrial equipments/ consumable products is not disputed by the Corporate Debtor. Nextly, the learned counsel would contend that in terms of the Purchase Orders, the Operational Creditor delivered goods under various invoices, which are mentioned at Annexure 'A'. Learned counsel submitted that Corporate Debtor had not disputed receipt of goods under these invoices and the Corporate Debtor has not disputed receipt of the goods. Placing reliance on the Ledger Account maintained by the Operational Creditor in respect of goods supplied to the Corporate Debtor herein, the learned counsel would further submit that whatever payments received pursuant to supplies made were stated in the ledger and as per the ledger, an amount of Rs.26,59,949/- remains to be paid by the Corporate Debtor. Therefore, demanding the said payment, the Operational Creditor has issued Demand Notice dated 20.03.2019 in Form-3 which was received by the Corporate Debtor and a reply dated

01.04.2019 has been sent by the Corporate Debtor with some frivolous and baseless pleas.

9. According to the learned counsel for the Operational Creditor as the delivery invoices and receipt of goods under the said invoices is not in dispute and the price of the goods supplied under the said invoices since not paid, an operational debt as claimed by the Operational Creditor due and payable by the Corporate Debtor stands established. Learned counsel reiterates that no dispute as to the goods supplied has ever been raised by the Corporate Debtor. As such the question of existence of any pre-existing dispute does not arise.

10. Per contra, learned counsel for the Corporate Debtor contended that Demand Notice dated 20.03.2019 as issued is not in conformity with the statutory provisions inasmuch as the Operational Creditor failed to enclose all the invoices basing on which the debt is claimed. Nextly, it is contended that signature and seal that appear on delivery challans are disputed as the same are ingenuine. Therefore, the claim is liable to be dismissed.

11. Having heard the learned counsels for both the sides, at the outset it may be stated that when the Corporate Debtor having duly acknowledged various invoices referred to by the applicant and further stated that the industrial equipments/ consumable products supplied by the Operational Creditor are received in good condition, the Corporate Debtor is precluded from contending contra, that too in its

counter. It may be stated herein that prior to receipt of Demand Notice dated 20.03.2019 the Corporate Debtor never raised any such plea or any dispute. So much so, the submission of the learned counsel for the Corporate Debtor that the seal and signature of some of the invoices are forged and fabricated is baseless and hence rejected.

12. Next, the ledger filed by the Operational Creditor for the period for the period from 01.04.2014 to 31.03.2019 in respect of the goods delivered under various invoices mentioned above, is not disputed by the Corporate Debtor. The Corporate Debtor has not placed any material to show that for the goods received under the invoices, the Corporate Debtor had made necessary payment. Therefore, we find sufficient force in the plea of the learned counsel for the Operational Creditor that the Corporate Debtor had defaulted in discharge of operational debt. Thus, existence of operational debt and its default by the Corporate Debtor since established, it is a fit case to put the Corporate Debtor under CIRP.

13. Hence, the Adjudicating Authority admits this Petition under Section 9 of Insolvency & Bankruptcy Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

(A) Corporate Debtor, M/s Sangha Erectors Pvt Limited 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 Ritesh Mittal** having IBBI Registration No. IBBI/IPA-001/IP-P00888/2017-2018/11485, having address at Sanjay Kumar Kothari & Company, 205, Doshi Chambers, Basheer Bagh, Hyderabad, West Marredpally, Telangana-500029, email: mrriteshmittal@gmail.com as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code. The Operational Creditor has filed Memo dated 12.04.2022 enclosing Form-2 dated 12.04.2022 submitted by Shri Ritesh Mittal. His

Authorisation for Assignment is valid till 25.10.2022. 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.

14. The petitioner is directed to communicate this order to the proposed IRP forthwith.

15. Accordingly, this Petition is admitted.

16. 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.

Sd/-

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Sd/-

DR. N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

Karim