

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO:II**

**SPECIAL BENCH(Video Conference)**

**CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL  
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 05.08.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.27/2021 in CP(IB) No.302/9/HDB/2020
NAME OF THE COMPANY	Adarsh Global Traders and Services (P) Ltd
NAME OF THE PETITIONER(S)	Agastadevika Trading and Processing (P) Ltd
NAME OF THE RESPONDENT(S)	Adarsh Global Traders and Services (P) 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**

IA 27/2021 in CP 302/9/HDB/2020 is listed for orders. Orders pronounced vide separate Order.

  
**MEMBER (T)**

Syamala

  
**MEMBER(J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.302/9/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  
**ADARSH GLOBAL TRADES AND SERVICES (P) LTD**

Between:

M/s. Agastyadevika Trading and –  
Processing (P) Ltd.  
6-3-1093,  
Flat No.501, Somajiguda,  
V.V. Foundation, Greenlands,  
Hyderabad, TG 500082.  
Represented by its Authorized Representative  
Sri Khagesh Kumar  
Director

...Operational Creditor

And

M/s. Adarsh Global Trades and Services (P) Ltd.  
1-10-3/1, BooruguVihar,  
Begumpet, Hyderabad, TG – 500016.

...Corporate Debtor

**Date of Order:05.08.2021**

**Coram: Madan B. Gosavi, Member Judicial  
Dr. Binod Kumar Sinha, Member Technical.**

**Parties/Counsels present:**

For the Operational Creditor: Mr. Damodar Mundra, Counsel

For the Corporate Debtor: Ms. C. Mrudula, Counsel

**Per: Bench**

**ORDER**

- 1) Under consideration is a Company Application filed by M/s Agastyadevika Trading and Processing (P) Ltd. (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. Adarsh Global Trades and Services (P) Ltd. (in short, "Respondent/Corporate Debtor").

- 2) Brief facts of the case as submitted by the Operational Creditor are as follows:
- a) That the Operational Creditor is a registered company incorporated in the year 2018. The Company deals in trading of various agri products. Corporate Debtor is also a registered company incorporated in the year 2012 involved in domestic and overseas trading of metals and steel etc.
  - b) That the Operational Creditor has entered into an Agreement for supply of 5000 MT of Maize on 10.08.2018 for an amount of Rs. 7,25,00,000/-. As per the said agreement Operational Creditor paid an advance amount of Rs.7,05,00,000/-.
  - c) The terms of the transaction were that the Operational Creditor must pay the entire amount in Advance and upon receipt of the Purchase Order the Corporate Debtor had to supply the material within a period of 1 month.
  - d) That the Operational Creditor continuously followed up with the Corporate Debtor for the supply of the 5000 MT of Maize but the Corporate Debtor failed to supply the material to the Operational Creditor.
  - e) Thereafter the Operational Creditor has written number of times to the Corporate Debtor for the supply of 5000 MT of Maize but there was no response from the Corporate Debtor. In fact till date the outstanding dues are not paid by the Corporate Debtor.
  - f) That the Operational Creditor issued notice to the Corporate Debtor for the payment of the amount or supply of the material. Corporate Debtor replied to the notice, but has not disputed the amount.
  - g) 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.
- 3) Learned counsel for the Respondent filed counter inter-alia stating as under:
- a) That the company petition filed by the operational creditor is devoid of merits, not maintainable and therefore needs to be dismissed in Limine.

- b) That the Operational Creditor has filed the present petition concealing the material facts and with misrepresentation and false allegations. That there is no amount due as mentioned in the petition and as such the Corporate Debtor Company has not agreed to pay any amount as mentioned in this petition.
- c) That Operational Creditor raised a Purchase Order for supply of 5000 MT of Maize on 10.08.2018. The Operational Creditor is making false allegations that they have paid the entire amount to Corporate Debtor within time. As per the terms of the agreement the Corporate Debtor is not liable to supply material unless Operational Creditor makes complete payment. Therefore, the Operational Creditor is due and liable to pay the same at the time of the Performa Invoice.
- d) That the Operational Creditor has even failed to pay complete amount of Rs.7,25,00,000/- to the Corporate Debtor on time. However, the Operational Creditor is now alleging default on part of the Corporate Debtor.
- e) That the Corporate Debtor, considered the delay of the Operational Creditor and agreed to supply the materials.
- f) That due to tremendous increase of prices of the Maize in the meantime, the Corporate Debtor had addressed numerous communications calling upon the Operational Creditor to pay the difference amount of Rs.50,00,000/-. However, the Operational Creditor till date had not come forward to pay the said amounts.
- g) The Operational Creditor herein had issued a Demand Notice dated 20.01.2020 under the provisions of the Insolvency and Bankruptcy Code, 2016, to which the Corporate Debtor had replied vide its Reply dated 10.02.2020 requesting the Operational Creditor to pay the difference amount of Rs.50,00,000/- for supplying the Maize.
- h) That the Corporate Debtor has a right to deduct 20% of the amount for returning the advance amount. That the Corporate Debtor is not in a position to supply the Maize for the agreed amount as under the purchase order in view of the financial difficulties being faced by the Corporate Debtor due to increase in the prices of Maize.

Reiterating the above, the learned counsel for the Respondent prayed to reject the instant Application.

- 4) Heard both sides and perused the record.
- 5) It is a fact on record that the operational creditor has paid an advance amount of Rs. 7,05,00,000/- to the Corporate Debtor towards purchase of 5000MT of Maize and the same fact is not denied by either of the parties. However, considering the provisions of IBC, the most relevant question arising in the facts and circumstances of the instant case is whether an advance paid for supply of goods can be considered as an Operational debt within the provisions of IB Code, 2016 especially in view of the definition of 'operational creditor' and 'operational debt' as stipulated in Section 5(20) & 5(21) of the Code.
- 6) It is noted that similar question of law arose before the 3-Member bench of Hon'ble NCLAT in the matter of Smt. Andal Bonumalla Vs. Tomato Trading LLP and Anr. CA(AT)(Ins)No. 752 of 2019 and the Hon'ble NCLAT in the said matter has held as under:-

“.....

*(b) Whether an advance amount for supply of goods can be considered as an Operational Debt under Section 5(20) of the I&B Code?*

.....

*12. Now, we have considered the arguments in regard to second issue, this is admitted fact that the Corporate Debtor has agreed to deliver 130 Matric Tons of Sugar to the Operational Creditor, for the same, the Operational Creditor paid an advance amount total Rs. 34,90,180/- to Corporate Debtor and Corporate Debtor has issued Proforma Invoice dated 08.02.2017. The Corporate Debtor refunded Rs. 9 Lakhs only, balance principal amount of Rs. 25,90,180/- and interest Rs. 4,92,634/- total as on 07.03.2018 a sum of Rs. 30,82,814/- is due from the Corporate Debtor. We have considered whether this amount is come within the definition of Operational Debt under Section 5 (21) of I&B Code. The Respondent No. 1 has not supplied any goods or provided any services to Respondent No. 2, but paid an advance amount to Respondent No. 2 for supplying Sugar. However, the Respondent No. 2 failed to supply the Sugar to Respondent No. 1. Thus, the advance amount in the hand of Respondent No. 2 cannot termed as Operational Debt. Consequently, the Respondent No. 1 does not come within the definition under Section 5(20) of I&B Code, the Operational Creditor.*

*13. This Appellate Tribunal in the case of Kavita Anil Taneja (Supra) held that :-*

*“Section 5(20) defines ‘Operational Creditor’ which is r/w Section 5(21) which defines ‘Operational Debt’. In the present case, it is clear from the work order that the amount of Rs. 2,60,000,00/- was advanced by*

*the Respondent 'M/s. ISMT Ltd. to the 'Corporate Debtor' for supply of 10,000 Metric Tons of Indonesian Thermal Coal. From the aforesaid fact, we find that the Respondent had not supplied any goods nor provided any services and, therefore, it does not come within the meaning of Operational Creditor"*

*We have taken the same view in the case of Roma Infrastructure India Pvt. Ltd. (Supra) and held that Roma Infrastructure India Pvt. Ltd. has not supplied the goods nor provided any services to the Respondent A.S. Iron and Steel (I) Pvt. Ltd. It advanced payment to Respondent (Operational Creditor) for supply of goods cannot be treated to be an Operational Debt and the Application under Section 9 of I&B Code, was not maintainable.*

*14. As aforesaid, we are of the considered view that the advance amount paid by the Respondent No. 1 to Respondent No. 2 for supply of Sugar is not an Operational Debt....."*

- 7) As the Hon'ble NCLAT have categorically laid down that an advance amount paid for supply of goods cannot fall within the category of 'Operational Debt' We, following the guidance available in their Judgment *supra*, hold that the claim of the Operational Creditor in the instant Application which is totally based on the advanced amount of Rs.7,05,00,000/- paid towards supply of 5000MT Maize and as such, the instant claim cannot be treated as Operational Debt as per Section 5(21) of the IB Code, 2016 nor the Applicant herein be called as Operational Creditor as per Section 5(20) of the IB Code, 2016. Such being the case, the instant Application cannot be admitted U/s 9 of the Code.
- 8) In view of the above findings, CP(IB) No. 302/9/HDB/2020 is rejected. IA No. 27 of 2021 filed for change of proposed IRP also stands disposed.

**Dr. Binod Kumar Sinha**  
**Member Technical**

**Madan B. Gosavi**  
**Member Judicial**