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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 12.02.2020

PRIORITY CAUSE LIST - 1

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 366/BB/2019	For admission	Sec 10 of I&B code 2016	M/s Aradhya Wire And Ropes Pvt Ltd	V.H. Prasanna Kumar, Advocate	M/s The South Indian Bank Ltd	Francis Xavier, Advocate

ADVOCATE FOR PETITIONER/s: PRASANNA KUMAR V H
[Signature]

ADVOCATE FOR RESPONDENT/s: FRANCIS XAVIER
[Signature]

ORDER

Heard Mr. Prasanna Kumar .V.H, learned Counsel for the Petitioner and Mr. Francis Xavier, learned Counsel for the Respondent:

C.P (IB) No. 366/BB/2019 is admitted of by separate order.

[Signature]

MEMBER (T)

[Signature]

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.366/BB/2019
U/s 10 of the I&B Code, 2016
R/w Rule 6 of the I&B (AAA) Rules, 2016

In the matter of:

**M/s. Aradhya Wire and Ropes
Private Limited**

"Aradhya House", Door No: 385,
2nd Cross, 1st Main,
K.B. Extension
Davanagere – 577 002

- Petitioner/Corporate Applicant
Versus

M/s South Indian Bank Limited

Door No. 74, Ward No.111,
Front Side, Sumeru Towers,
Brigade Road, Near St. Joseph's
College of Commerce,
Museum Road P.O.,
Bangalore – 560 025

- Respondent

Date of Order: 12th February, 2020

Coram: 1) Hon'ble Shri Rajeswara Rao Vittanala, Member (J)
2) Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsel Present:

For the Petitioner : Mr. Prasanna Kumar.V.H

For the Respondent : Mr. Francis Xavier

ORDER

Per: Rajeswara Rao Vittanala, M (J)

1. C.P. (IB)No.69/BB/2018 is filed by M/s. Aradhya Wire and Ropes Private Limited (hereinafter referred to as Corporate Applicant) under Section 10 of the Insolvency and Bankruptcy Code, 2016, R/w Rule 6

of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Aradhya Wire and Ropes Private Limited on the ground that there is debt and default committed by Corporate Applicant is Rs.25,28,84,373.06/-.

2. Brief facts of the case, as mentioned in the application, which are relevant to the issue, are as follows:

- 1) M/s. Aradhya Wire and Ropes Private Limited (Petitioner/Corporate Applicant) was incorporated on 05.01.1996 in the State of Karnataka with an Authorized Share Capital of Rs.15 Crores and Paid-up Share Capital of Rs.5 Crores. The main object of the applicant is into the business of manufacturing steel wires and ropes which are used in automotive sector, the Applicant had been sanctioned loan/credit facility by the Respondent bank (hereinafter referred to as South Indian Bank Limited) to the tune of Rs.25 Crores for meeting its working capital requirements. Thus the loan facility of Cash Credit (loan sanctioned amount Rs.25 crores) is secured by hypothecation of inventory, trade debtors/receivables, second charge over fixed assets, corporate guarantee of group concern, collateral security of the properties of the promoters and personal guarantees of the directors.
- 2) It is submitted that due to recession in automotive sector, the Corporate Debtor has incurred huge loss to the tune of Rs.32.06 Crores and therefore unable to service its financial obligations which has resulted in default of the debt. It made all possible efforts to appraise the situation to Respondent and to all concerned official through various communications and on personal visits to Respondent's office at different point of time but the efforts have been futile. The Respondent has demanded immediate settlement of its dues totaling to Rs.25,28,84,373.06/- vide a letter dated 17.08.2019. Thus the balance sheet of the Corporate Debtor showed its liability and there was evidence to show a claim had been lodged with the



Corporate Debtor and was outstanding as on date which clearly shows the default.

- 3) It is stated that the conduct of the Applicant in not settling the dues is nether intentional, deliberate nor willful but for purely commercial & economic reasons. It is purely a business failure which is a normal and legitimate part of the working of the market economy. The Applicant is not utilizing the privileges available to legal person, especially the formation of the Company under the Companies Act for the purpose of indebtedness or defrauding others or to exploit the public at general for its benefits contrary to provisions of law and any act or omission contrary to the applicable statutes or provisions.
- 4) It is stated that the failure of some business plans is integral to the process of the market economy. When business failure takes place, the best outcome for society is to have a rapid re-negotiation between the financiers, to finance the going concern using a new arrangement of liabilities and with a new management team. If this cannot be done, the best outcome for society is a rapid liquidation. When such arrangements can be put into place, the market process of creative destruction will work smoothly, with greater competitive vigour and greater competition. A recent article titled "*Wheels of Misfortune*" in the newspaper "The Hindu" dated 07.09.2019 clearly reflects the economic and the financial strain of the automotive sector currently underway.
- 5) It is stated that the Applicant has failed to make payments of the outstanding amount and it has become abundantly clear that it is unable to discharge its debt and is not in a position to clear its liabilities for reasons beyond its control. It accepts and acknowledges that the dues have not been settled. The Applicant is not generating sufficient income and profit and the consequent failure of the Corporate Debtor to make payments as demanded by the Respondent, clearly establishes that fact that the Corporate Debtor is in strained financial circumstance. The Applicant is commercially insolvent and



its continued existence will only prejudice the public at large. The conduct of the Corporate Debtor in delaying the payment, clearly demonstrates its dismal financial position. The continued existence of the Corporate Debtor will cause erosion of the available assets from which the debt of secured/unsecured creditors like the Financial Creditor could be discharged. Thus, the Applicant Company can be deemed unfit to clear its debts and requires Corporate Insolvency resolution to be initiated as per the provisions of the Code.

- 6) Therefore, the present Petition is filed seeking to initiate Corporate Insolvency Resolution Process (CIRP).
3. The South Indian Bank Ltd, Financial Creditor, has filed statement of objections dated 20.12.2019/31.01.2020, by *inter alia*, stating as follows:
 - 1) The Petitioner in order to avoid legal liability due to the answering Respondent has approached this Hon'ble Tribunal on a fallacious grounds'. The Petitioner is commercial solvent and capable of paying the outstanding due amount to the answering Respondent. The Petitioner Company was running under profit up to 31.03.2018 as per the balance sheet and profit and loss for the period ended as on 31.03.2018. It could be seen from the balance sheet and profit and loss account as on 31.03.2019 the entire balance sheet has become negative. The Balance Sheet and Profit and loss account as 31.03.2019 and as on 15.09.2019 prima facie appears to be suspicious, the figures shown in the said financial statements are set up to make the company is commercially not viable. The entire case of the Petitioner is false hood and misleading this Hon'ble Tribunal in order to admit the petition. The Respondent Bank seriously disputing the Profit and Loss Account and the Balance sheet ended as on 31.03.2019 and as on 15.09.2019 for the following reasons;
 - i. Firstly, under the financial statement for year 2018-2019 the trade payable shown as Rs.2,18,80,21,327/- whereas in the provisional balance sheet as on 15.09.2019 the trade payable

as on 31.03.2019 (2018-2019) shown as Rs.5,19,62,321/-. The figure shown for the same period are contrary to each other;

- ii. Secondly, the main reason shown for loss of the Company is 'prior period expenses' of Rs.26,86,97,375/- as shown in the profit and loss account as on 31.03.2019. The prior period expenses is/are basically in correction of any mistakes in the previous year's financial statement. If at all, such being a case, the Petitioner Company incurred prior period expenses as shown in the profit and loss account as on 31.03.2019, the same has to be 'mandatorily; disclosed in the scheduled. Except the imagination figures as shown in the profit and loss account as on 31.03.2019, no material evidence has been placed in order to justify that the Company has suffered 'Prior Period Expenses' of Rs.26,86,97,375/-. The break-up of 'Prior Period Expenses' is not provided in the note to the Balance Sheet. No information as to what the said expenses is.
- iii. Thirdly, the 'inventories' shown in the balance sheet as on 31.03.2019 is Rs.95,62,684/-. However, the sale made for the period 01.04.2019 to 15.09.2019 is Rs.67,58,348/- as shown in profit and loss account for the period as on 15.09.2019. The balance has not accounted nor reflected in the balance sheet.
- iv. Fourthly, the 'revenue from operation' as on 31.03.2019 is Rs.2,80,24,22,931/- as shown in profit and loss account for the year end as on 31.03.2019. However, the revenue from operation' for the year end is Rs.67,58,348/-. There is huge drop in sales figure.
- v. Fifthly, the 'Trade Payable' opening is Rs.5,19,62,321/- and purchases is Rs.1,00,275/- and closing 'Trade Payable' as on



15.09.2019 is Rs.16,29,75,535/-. When there is no purchase, the 'Trade payable' shall not be increased.

vi. Sixthly, it is stated that the 'Trade Receivables' as on 15.09.2019 is Rs.23,31,58,585/- out of the above, an aggregate amount of Rs.71,39,405/- is outstanding for a period exceeding 6 months from the date they are due for the payment i.e., previous year receivables (01.04.2018 to 31.03.2019). The balance approximately Rs.22 crores has to be made for the period 01.04.2019 to 15.09.2019, which is contrary to the figure shown in the profit and loss account.

- 2) When such being a fact, instead of discharging the liability due to the answering Respondent, the Petitioner has knocked the doors of this Hon'ble Tribunal stating that it has commercial insolvent to paying the debt due to the financial crisis and infusing of funds.
4. Heard Mr. Prasanna Kumar.V.H, learned Counsel for the Petitioner, and Mr. Francis Xavier, learned Counsel for the Respondent. We have carefully perused the pleadings of both Parties, and the extant provisions of the Code, the Rules made there under, and the law on the issue.
5. Mr. Prasanna Kumar.V.H, learned Counsel for the Petitioner, while reiterating various averments made in the Petition, as briefly stated supra, has *inter alia* further contended that the Company admittedly has become commercially insolvent and the contentions raised by the Bank is not correct.. Therefore, he urged the Tribunal admit the case as prayed for.
6. Mr. Francis Xavier, learned Counsel for the Respondent, submit that Bank do not want to press the Objection already filed and thus has no objection to initiate CIRP as prayed for. He has also filed Memo dated 12.02.2020 affirming the same.
7. The facts as narrated supra, the Petitioner admittedly became insolvent having committed default for an amount of Rs.25,28,84,373.06/- and also facing several claims from other creditors too. The Sole Financial



Creditor has also no objection to initiate CIRP. The instant Petition is filed strictly in accordance with extant provisions of the Code, and also suggested a qualified Resolution Professional namely Shri V.S. Varun, with Registration No. IBBI/IPA-002/IP-N00290/2017-2018/10848, who has filed his written Consent in Form-2 on 26.09.2019 by *inter alia* declaring that no disciplinary proceedings pending against her with the Board or the Indian Institute of Insolvency Professionals of ICAI. Therefore, he is provisionally eligible to be appointed as IRP. Hence, the Instant Company Petition is a fit case to admit by initiating CIRP by appointing IRP, and declaring moratorium etc., in respect of the Corporate Applicant.

8. Hence, by exercising powers conferred on this Adjudicating Authority, U/s 10(4) (a) of the Code, we hereby admit C.P (IB)No.366/BB/2019 with the following consequential directions:

- 1) **Shri V.S. Varun**, having IBBI **Registration No. IBBI/IPA-002/IP-N00290/2017-2018/10848**, is hereby appointed as Interim Resolution Professional, to conduct the Corporate Insolvency Resolution Process in respect of **M/s. Aradhya Wire and Ropes Private Limited** to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting 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 of 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 right 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;
- 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. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- f. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016, and all the extant rules framed by the IBBI from time to time. All the officials and Directors of the Company Applicant are hereby directed to extend all cooperation to the IRP in order to carry out his statutory duties as IRP.
- 4) The IRP is directed to file his reports from time to time to Tribunal about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within stipulated time.
- 5) Post the case for report of IRP on 16.03.2020.

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL