

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 16.12.2019 AT 10.30 AM

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|----------------------------------|---------------------------------------|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | CP(IB) No.75/9/HDB/2019 |
| NAME OF THE COMPANY | SRK Construction&Projects Pvt Ltd |
| NAME OF THE PETITIONER(S) | Thyssenkrupp Industries India Pvt Ltd |
| NAME OF THE RESPONDENT(S) | SRK Construction&Projects Pvt Ltd |
| UNDER SECTION | 9 of IBC |

Counsel for Petitioner(s):

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

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

Orders passed vide separate orders. Petition is admitted.


Member (T)
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Member (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I**

CP (IB) No. 75/9/HDB/2019

Company Petition filed under Section 9 of IBC, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016

In the matter of:

M/s Thyssenkrupp Industries India Private Limited.,
154C Mittal Tower, 15th Floor, 210,
Nariman Point, Mumbai,
Maharashtra – 400 021,
India

Also at

Survey No. 212 to 215, IDA, Phase – II,
Cherlapally, Hyderabad 500 051, India

...Operational
Creditor

VERSUS

M/s SRK Constructions & Projects Private Limited
Registered Office at:
8-2-293/82/A/732-A/1, 4th Floor, Sasi Icon,
Road No 36, Jubilee Hills,
Hyderabad TG 500033 IN

...Corporate Debtor

Date of order: 16.12.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Appearance:

For Petitioner : Shri P. Vikram, Advocate
For Respondent : Shri V.K. Sajith, Advocate

Heard on: 16.07.2019 & 18.09.2019





PER: SHRI RATAKONDA MURALI
MEMBER (JUDICIAL)

1. This Petition is filed under Section 9 of Insolvency & Bankruptcy Code, 2016 by Operational Creditor stating that M/s SRK Constructions & Projects Private Limited/ Corporate Debtor has defaulted in its payments to the extent Rs. 60,74,330/- which includes interest @ 18% till 28.10.2018. 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 commencement of Corporate Insolvency Resolution Proceedings (CIRP) against the Corporate Debtor, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

FACTS OF THE CASE

2. The averments germane to the Petition in brief are:-
 - 2.1 The Operational Creditor is engaged in engineering, procurement, construction and service of plants and machinery to domestic and overseas markets. During the course of business, the Corporate Debtor approached Corporate Debtor for supply of spare parts and also for providing services for 300 TPH 4 Stage Stationery skid mounted crushing and screening plant situated at Sevagad and Gunthakal in Andhra Pradesh and placed purchase orders during the period 18.03.2017 to 17.10.2017. The purchase orders are 15 in number, details of which are filed as Annexure-8 at page nos. 245-268.

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- 2.2 It is stated Operational Creditor supplied spare parts and rendered services for which it raised 54 invoices totalling Rs. 96,18,418/-. The invoices are filed at page Nos. 269-376 as Annexure-9.
- 2.3 It is stated that Corporate Debtor received spare parts and also utilised the services without raising any objection and that the Corporate Debtor made part payment of Rs. 46,10,126/- out of Rs. 96,18,418 leaving an outstanding of Rs. 50,08,292/- The Computation Table is filed at Page No. 24 – 32 of Company Petition and marked as Annexure-2). Brief of Computation table is as under:

2.4

| S.No. | Description | Amount (Rs) |
|-------|--------------------------------|------------------|
| 1 | Total Debt | 96,18,418 |
| 2 | Part Amount paid | (46,10,126) |
| 3 | Balance outstanding amount | 50,08,292 |
| | Interest @ 18% till 28.10.2018 | 10,66,038 |
| | Total Debt | 60,74,330 |

According to Operational Creditor, despite several reminders when the Corporate Debtor failed to make payment, it issued Demand Notice dated 30.10.2018 to the Corporate Debtor who issued reply dated 10.11.2018 with false and frivolous objections.

- 2.5 The case of Operational Creditor is that the Corporate Debtor committed default of operational debt and hence filed this petition to trigger Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor.





COUNTER FILED BY CORPORATE DEBTOR

3. Reply / counter is filed by Corporate Debtor refuting the averments made by the Operational Creditor and contested as under:-
 - 3.1 The Corporate Debtor placed purchase orders with Operational Creditor and basing on the purchase order, payment of 10% of the project cost as advance was to be made and 90% of the balance amount was required to be paid against the proforma invoice prior to despatch. It is stated Corporate Debtor made it clear that it would pay 2% from the agreed 10% advance at the time of purchase order and balance 8% before the last despatch. According to the Corporate Debtor, the Operational Creditor has not followed the terms of purchase orders with respect to time schedule fixed for supply of machinery, resulting in huge loss to the Corporate Debtor.
 - 3.2 It is stated that the Corporate Debtor made payment of Rs. 12,94,33,420/- which comes to 92% of the value of the purchase order, though Operational Creditor continued supplying machinery up to April, 2017. The Corporate Debtor attributed the loss of Rs. 40 crores to delay in supply and erection of machinery by Operational Creditor, which in turn caused delay in completion of its project. Corporate Debtor alleged that in fact it has to receive Rs. 38 crores from the Operational Creditor.
 - 3.3 The Corporate Debtor states that it issued reply notice date 10.11.2018 and disputed the amount claimed by the Operational Creditor. It is also stated that the Corporate Debtor is legally entitled to adjust the amount payable to the Operational Creditor towards loss suffered by it due to violation of terms by the Operational Creditor. It is





also alleged that machinery supplied was also found to be defective. As such, there was a pre-existing dispute before issue of notice of demand.

- 3-4 The Corporate Debtor was demanding the Operational Creditor to come to the table to settle the issue but the Operational Creditor was unwilling for settlement. By raising a suit, the Operational Creditor committed breach of contract. Hence, prayed this Tribunal to dismiss the Petition.

**REJOINDER FILED BY OPERATIONAL CREDITOR TO
THE COUNTER FILED BY CORPORATE DEBTOR**

4. Rejoinder is filed by Operational Creditor countering the objections raised by the Corporate Debtor and reiterated the averments made in the Petition as under. In the rejoinder the Operational Creditor submitted that the Corporate Debtor in its entire counter/reply relied on the purchase orders issued by the Corporate Debtor in the year 2016 but did not specifically deny nor dispute the supply and services which were provided by the Operational Creditor with regard to Purchase Orders filed in the present petition, which the Corporate Debtor did not reply to and trying to create a moonshine dispute by mixing the facts of other purchase orders with the present case only to mislead this Tribunal.

DISCUSSION

5. We have heard the Counsel for Operational Creditor and Counsel for Corporate Debtor. The Counsel for Operational Creditor filed written submissions and relied on the decision of Hon'ble Supreme Court in the matter

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of Mobilox Innovations Private Limited vs Kurusa Software Private Limited reported in (2017) SCC Online SC 1154).


6. The Learned Counsel for Operational Creditor would contend that the Corporate Debtor in the course of business approached the Corporate Debtor for supply of spares and issued various Purchase Orders during the period from 18.03.2017 to 17.10.2017 and also for providing services for 300 TPH 4 stage Stationery Skid mounted crushing and screening plant situated at Sevagad and Gunthakal, Andhra Pradesh.
7. The Learned Counsel for Operational Creditor would contend that the purchase orders placed by the Corporate Debtor from time to time are shown at page Nos. 245-268 and marked as Annexure-8. The Counsel contended that the Operational Creditor supplied the spares as per purchase orders and the details of invoices raised thereon are shown as Annexure-9 at page Nos. 269-376 in the company petition.
8. The Counsel contended that the spares are supplied to the Corporate Debtor and services were rendered. The Counsel contended that the Corporate Debtor made part payment of Rs. 46,10,126/- leaving the outstanding balance of Rs. 50,08,292/-. The computation of amount in default is shown at page Nos 24-32. The Counsel contended that the Operational Creditor time and again vide emails requested the Corporate Debtor to clear the outstanding balance by way of email communications.

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balance which was committed default. Thus, the Learned Counsel contended that the petition is liable to be admitted and defence taken by Corporate Debtor is only a moonshine.

10. On the other hand, the Learned Counsel for Corporate Debtor would contend that Corporate Debtor, no doubt approached the Operational Creditor for supply of spares for crushing and screening plant for crushing operations. It is also true that Corporate Debtor placed purchase orders with the Operational Creditor. Counsel contended that 90% of the amount under the purchase orders was paid. The Counsel contended that the Operational Creditor has not followed the terms of purchase orders as far as time schedule is concerned, as a result Corporate Debtor sustained huge loss. The Counsel contended that the Operational Creditor has not supplied the required equipment as per the purchase orders within the time which was extended till June 2017. The Counsel contended that the Corporate Debtor sustained damages as a result of delay in supplying the material by the Operational Creditor. The Counsel contended that it is operational creditor who is liable to pay Rs. 35.56 crores to the Corporate Debtor due to loss sustained by it. Counsel further contended that Corporate Debtor gave reply to the notice issued under the IBC. Thus, Corporate Debtor raised dispute with regard to the debt. The Counsel contended that the equipment supplied by the Operational Creditor is also of poor quality and as such there is a prior dispute. Hence, petition cannot be admitted.





11. In support of the case, the Operational Creditor has relied upon the demand notice dated 30.10.2018 shown as Annexure-3 at page Nos.33-48, the reply given by Corporate Debtor is shown as Annexure-4 at page nos. 49-111 of paper booklet. The Operational Creditor also filed bank statements to prove that no amount is received from the Corporate Debtor. The purchase orders are shown as Annexure-8 and invoices raised are shown as Annexure-9.
12. The Operational Creditor mainly relied on the exchange of emails shown at page Nos 379-297 marked as Annexure-10. These annexures would go to establish that Operational Creditor was demanding the Corporate Debtor to pay balance amount in respect of spares supplied and Corporate Debtor never raised any dispute but on the other hand Corporate Debtor was requesting time for payment. The email correspondences is contrary to the defence taken by the Corporate Debtor as if there was a pre-existing dispute. In fact, Corporate Debtor is referring to the purchase order of 2016 which is for erection of plant, whereas the present case is filed in respect of purchase orders placed for supply of spares and invoices are also raised for the same. It is interesting to note that the Corporate Debtor paid part of the amount covered by the invoices and committed default of paying the remaining balance.
13. The main contention of Corporate Debtor is that there is a prior dispute. The Corporate Debtor is referring to the Purchase order of the year 2016. The Operational

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Creditor is contending that all the works were completed in respect of purchase orders which are two in number of the year 2016. On the other hand, the Corporate Debtor is trying to contend that there is a pre-existing dispute by referring to purchase orders of the year 2016 which is not at all the subject matter of the present petition. Except alleging some dispute with regard to the purchase orders of 2016, the Corporate Debtor did not raise any objection with regard to the purchase orders relied upon by the Operational Creditor in the present case. Therefore, it cannot be said that there is a prior dispute.

14. Admittedly, the Corporate Debtor has not raised any dispute with regard to placing purchase order with Operational Creditor and further there is no dispute with regard to raising invoices by the Operational Creditor. Thus, Operational Creditor is able to establish default of operational debt. The Operational Creditor suggested the name of Interim Resolution Professional who has given his consent in Form-2. The Application is in order and deserves to be admitted.

ORDER

15. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-
 - (a) The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of

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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;

- (b) 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.
- (c) 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.
- (d) That the order of moratorium shall have effect from 16.12.2019 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.

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- (e) 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.
- (f) That this Bench hereby appoints Shri Kranthi Kumar Kedari having IBBI Registration No. IBBI/IPA-001/IP-PO0173/2017-2018/10342) as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.
- (g) Accordingly, this Petition is admitted.
- (h) Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on MCA-21 site of Ministry of Corporate Debtor.
- (i) Registry to communicate the order to Interim Resolution Professional appointed in this case.

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16.12.19
NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

16/12/19
RATAKONDA MURALI
MEMBER (JUDICIAL)

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