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**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
SIGNLE BENCH, CHENNAI**

**CP/708/(IB)/CB/2017**

Under Section 9 of the Insolvency and  
Bankruptcy Code 2016 r/w Rule 6 of the  
Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016

In the matter of **M/s. Hitro Energy Solutions Private Limited**

**M/s. Consolidated Construction Consortium Limited**

*... Operational Creditor*

Vs.

**M/s. Hitro Energy Solutions Private Limited**

*... Corporate Debtor*

*Order delivered on 6<sup>th</sup> of December, 2018*

CORAM :

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**

*For Operational Creditor(s) : Mr. S.Karthikei Balan, Counsel*  
*For Corporate Debtor (s) : Mr. K.Chandrasekaran, Counsel*

**ORDER**

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under Adjudication is CP/708/(IB)/CB/2017 that has  
been filed by the Operational Creditor under Section 9 of the

Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard the Counsels for the Operational Creditor, the Corporate Debtor and perused the documents placed on record.

3. The Operational Creditor has claimed an outstanding debt to the tune of Rs.83,13,973/-, which is inclusive of interest calculated @ 18% p.a. w.e.f 07.11.2013, which the Corporate Debtor failed to pay.

4. The brief facts of the case are that the Operational Creditor had entered into a contract with Chennai Metro

Rail Limited (CMRL) for supply of light fittings for construction of work. The Corporate Debtor, viz., M/s. Hitro Energy Solutions Pvt. Ltd., has been dealing in the business of supply of light fittings and therefore, the Operational Creditor entrusted the work of supply of light fittings in relation to the construction work taken by the Operational Creditor with the condition that it must be delivered as per the delivery schedule that would be intimated by the Operational Creditor. In the process, the Corporate Debtor insisted for Rs.50 Lakhs as special advance for the supply of the said material. As per the request of the Corporate Debtor, CMRL issued a Cheque dated 07.11.2013, copy of which is placed at page 85 of the typed set filed with the Application. The said amount of Rs.50 Lakhs was paid by the CMRL on behalf of the Operational Creditor to the Corporate Debtor for delivering the light fittings as per the delivery schedule to be intimated by the Operational Creditor in relation to the project as mentioned above. However, the contract that was signed between the

Operational Creditor and the CMRL was cancelled and the amount of Rs.50 Lakhs was debited to the account of the Corporate Debtor from the account of the CMRL. Since the contract was cancelled and CMRL insisted to return the said amount, the Operational Creditor paid the money to CMRL and intimated the same to the Corporate Debtor.

5. Accordingly, the Operational Creditor indemnified CMRL by paying Rs.50 Lakhs, and has requested the Corporate Debtor to make payment of Rs.50 Lakhs to the Operational Creditor, to which the Corporate Debtor has stated that the money has been paid by CMRL and if it provides any authority or letter to the Operational Creditor, then the same will be paid by the Corporate Debtor to the Operational Creditor. Pursuant to that, the Operational Creditor has also obtained a letter from CMRL on 27.12.2016, copy of which is placed at page 89 of the typed set filed with the Application wherein it has been confirmed that it has issued a cheque of Rs.50 Lakhs on 07.11.2013, based on the request of the Operational Creditor to M/s.

Hitro Energy Solutions Pvt. Ltd., as part of Special Advance on behalf of the Operational Creditor. In spite of obtaining the confirmation of the payment of Rs.50 Lakhs from CMRL, the Corporate Debtor has refused to make payment to the Operational Creditor.

6. It is on record that at the time when the advance was made by CMRL to the Corporate Debtor, it was a sole Proprietorship Firm and subsequently the Proprietorship Firm was converted into the Company having name and style M/s. Hitro Energy Solutions Private Limited which has got incorporated on 28.01.2014 on the basis of the Memorandum of Association filed on 24.01.2014, copy of Memorandum of Association is placed at page 25 to 33 of the typed set filed with the Application, wherein under Para (A) 4, it has clearly been stated under "*Main Objects of the Company to be pursued by Company on its Incorporation*", i.e., it takes over the existing Proprietorship Firm viz., M/s. Hitro Energy Solutions having registered office at Chennai. The document placed on record clearly established that the

Firm viz., M/s. Hitro Energy Solutions has been converted into the M/s. Hitro Energy Solutions Private Limited ~~and~~ <sup>that</sup> got incorporated under the Companies Act, 2013. *mu*

7. The Operational Creditor has sent Form-3 Demand Notice dated 18.07.2017 under Section 8 of I&B Code, 2016 wherein the amount of debt claimed is being mentioned. The copy of notice is placed at pages 17 to 22 of the typed set filed with the Application, which has been dispatched and delivered on 25.07.2017. The postal receipts acknowledgment thereof is placed at page 23 of the typed set filed with the Application to which the Corporate Debtor has not given any reply as per the submissions of the Counsel for the Operational Creditor.

8. The Operational Creditor has complied with Section 9 (3) (b) & (c) of the I&B Code, 2016, by filing Affidavit, wherein under Para 4, it has been deposed that the Operational Creditor did not receive any notice of dispute in relation to the unpaid operational debt. The copy of the

Affidavit is placed at pages 316 and 317 of the typed set filed with the Application. The statement of account has been placed on record at pages 98 to 315 of the typed set filed with the Application.

9. The Counsel for the Corporate Debtor has submitted that the Proprietorship Firm by the name and style M/s. Hitro Energy Solutions is still in existence and has not been taken over by M/s. Hitro Energy Solutions Private Limited. The reference to the Memorandum of Association is to take over the existing Proprietorship Firm viz., M/s, Hitro Energy Solutions. The Counsel for the Corporate Debtor has also submitted that the Operational Creditor has written a letter on 27.02.2017 to the said Proprietorship Firm ~~and did claim~~ (✓) demanding a sum of Rs.50 Lakhs with interest @ 18% p.a. from the date of payment made by the CMRL i.e. 04.11.2013 to which a reply was given vide Letter dated 2<sup>nd</sup> March, 2017 informing the Operational Creditor that since payment is directly received from CMRL, the said amount would be returned only to CMRL, if they claim the same, there is no

communication from CMRL regarding cancellation of the contract entered into with the Operational Creditor. However, it has been admitted that the Cheque for an amount of Rs.50 Lakhs has been received on 07.11.2013 by the Proprietorship Firm as a Special Advanced on behalf of the Corporate Debtor. In the subsequent paragraphs certain allegations have been levelled by the Proprietorship Firm against the Operational Creditor for not informing about the cancellation of the contract with CMRL stating that CCCL (Operational Creditor) cheated by way of fraud by committing criminal breach of trust.

10. The Counsel for the Operational Creditor has referred to the communication dated 23.07.2016 wherein the Operational Creditor has written to the Proprietorship Firm stating therein that CMRL has terminated the contract with the Operational Creditor, copy of which is placed at page 86 of the typed set filed with the Application, and he has also referred to the communication dated 04.08.2016 pertaining to the minutes of the meeting of the two parties. Therefore,



the plea that has been taken by the Counsel for the Corporate Debtor that the Operational Creditor has not informed the Proprietorship Firm about the cancellation of contract is contrary to the record placed on file.

11. It has also been noted by this Authority that the Memorandum of Association being the constitutional document of the Corporate Debtor is not rebutted by any other documentary evidence. In view of it, the objection raised by the Counsel for the Corporate Debtor stands rejected.

12. It has been submitted by the Counsel for the Corporate Debtor that till date, the Proprietorship Firm is paying the income tax and also carrying on the business which is contrary to the Memorandum of Association of the Corporate Debtor viz., M/s. Hitro Energy Solutions Private Limited. It seems that the Director of the Corporate Debtor viz., N. S. Rangachari may be making communications on behalf of Proprietorship Firm for the purpose of dubious transactions or Tax benefits but as per the Memorandum of

Association, the same has been taken over by the Corporate Debtor, of which there is no doubt at all. Thus, the Memorandum of Association being the constitutional document of the Corporate Debtor is an authentic documentary proof that the Proprietorship Firm has been taken over or converted into corporate entity.

13. It has been submitted by the Counsel for the Corporate Debtor that in case the CMRL could have given a certificate that they would not claim Rs.50 Lakhs from M/s. Hitro Energy Solutions then, the amount could have been paid by the Corporate Debtor to the Operational Creditor, to which the Counsel for the Operational Creditor has submitted that his client has always been ready and willing to give indemnity bond against any claim made by the CMRL, but the Counsel for Corporate Debtor did not give any response with regard to the security offered.

14. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This

IRP is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.

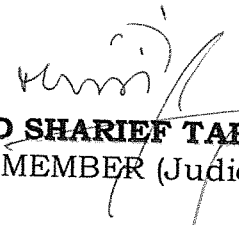
18. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the I&B Code, 2016.

19. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP with immediate effect, 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. The e-mail and other details of the IRP are as follows: -

**Mr. Vasudevan Gopu,**  
IBBI/IPA-002/IP-N00291/2017-18/10849  
11A, Collector Sivakumar Street,  
K.K. Pudur, Coimbatore- 641 038  
Email ID: vasudevanacs@gmail.com  
Mobile : 9944937063

20. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

21. Order is dictated and pronounced in open court in the presence of the Counsels for the Operational Creditor and the Corporate Debtor.

  
**[CH.MOHD SHARIEF TARIQ]**  
MEMBER (Judicial)

P. ATHISTAMANI