

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 30.09.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.41/9/AMR/2020		9 of IBC	A.K. Pipe & Steel Vs Pragati Engineering & Rail Projects Pvt Ltd

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

CP(IB) No.41/9/AMR/2020 is admitted, vide separate orders.

SD/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

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CP (IB) No. 41/9/AMR/2020

**In the matter of a Petition under Section 9 of the Insolvency and
Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2016
AND**

**In the matter of
M/s. PRAGATI ENGINEERING & RAIL PROJECTS PRIVATE
LIMITED**

Between:

A.K.Pipe & Steel,
108/2016, 1st Floor,
Chennai, Tamil Nadu -600108.

... Operational Creditor

AND

M/s. Pragati Engineering & Rail Projects Private Limited,
Aakruti Apartments, D.No.10 1 9 1 DCH 1,
Waltair Uplands, Andhra Pradesh – 530003.

... Corporate Debtor

Date of pronouncement of order: 30.09.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Mr.J.Govardhan Reddy &
Mr.MD Raheem, Advocates.

For Corporate Debtor : None Appears.

ORDER

1. This petition is filed by the Petitioner who is the proprietor of M/s. A.K.Pipe & Steel, Operational Creditor (hereinafter referred to as OC) against the M/s. Pragati Engineering & Rail Projects Private Limited, Corporate Debtor (hereinafter referred to as CD) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD) for the default committed by the CD with regard to the debt that is due to the OC.
2. The basic facts on which the reliefs are based are as follows:
 - i). The OC is involved in the business of manufacturing of TMT Bars and value added activities and supplied TMT Bars to the CD which is a Private Limited Company. Invoices were generated in the name of the CD who is majorly in the business of manufacturing (metals & chemicals and products thereof). The CD issued a Purchase order.
 - ii). The goods were received and accepted by the CD, there was no dispute at the time of delivery of the goods or thereafter, relating to the quantity and quality of goods. But subsequently the CD failed to make payment for the outstanding invoices, amounting to Rs.34,53,777/-. The CD is also liable to pay an interest @18% per annum for the delayed payment.

- iii). After giving several reminders, the OC issued a demand notice in Form 3 along with Form 4 on 19.07.2019. After the demand notice, the CD issued a cheque for Rs.30,00,000/- dated 25.10.2018 but when cheque was presented in the Bank it was dishonoured on 10.12.2018. Hence this Company Petition seeking to initiate CIRP against the CD.
3. The CD filed counter, contending that the Petition is not maintainable as there is a breach of contract where the OC sent defective goods. A dispute was raised by the CD with regard to the deficiency in the material supplied by the OC which was informed by the client of the CD to the CD and the same was informed to the OC. The CD informed the rejection of material which was raised against the invoice No.C-169 for which the amount charged was Rs.15,25,226/-. The CD cancelled the project due to the deficiency in the material and payments were stopped, due to which the CD had to face huge loss as already an amount of Rs.28 Crores was invested in the project by the CD. As the work was stopped, the Himachal Workers Union raised objections and started protests at the project and the same was informed to the OC. Irrespective of the fact that the project was on hold, the OC sent the material again, due to the protests happening at that time. The access was denied to the CD for the reason that the CD was using low quality material, which was not true. Due to the low quality material supplied, the CD had to face huge financial loss and even work

order was cancelled. The CD should have filed for the damages in the appropriate forum. The non-payment was neither wilful nor wanton, hence the Company Petition is liable to be dismissed.

4. Rejoinder was filed by the OC, contending that with regard to Purchase Order dated 22.08.2018 the OC supplied part material and raised invoices namely Invoice No.158 dt.25-08-2018 and Invoice No.C-169 dated 01.09.2018, . Immediately, acceding to the request of the CD to replace the part material delivered vide Invoice No.C-169, the OC replaced the said material and raised consolidated Invoice No.C-187 dated 12.09.2018 for the remaining goods supplied under Purchase Order, along with the material replaced by the OC. With respect to Invoice No.169 dated 01.09.2018 amounting to Rs.15,25,226/-, material of 4,137 Kgs of 32 MM TMT was accepted by the CD out of the total 24,530 Kgs of 32 MM TMT supplied by the OC. This is evidenced by an email dated 17.09.2018 sent by the CD to the OC wherein it was acknowledged that the material was received. A Credit Note amounting to Rs.12,87,000/- in favour of the CD was already issued on 06.09.2018, which is also evidenced by the GSTR-1 details maintained on the web portal of Goods and Service Tax Department. It is in fact the CD who has, after accepting the delivery of materials, breached the contract by not making the payment.

5. The CD did not adduce any evidence to corroborate the fact of rejection of goods by its clients at the time of delivery of goods. It is only in the reply filed by the CD that this new fact has been brought up. The only defect raised was towards the size of the material supplied and not towards the quality of the materials supplied, which too was immediately cured by the Operational Creditor by replacing the goods. With regard to the contention of the Corporate Debtor that they have approached the Operational Creditor for arriving at settlement, it is contended that it is the Operational Creditor who has sent its representative for an amicable settlement. On the above grounds the Operational Creditor seeks to allow the Petition.

6. Heard the Counsel for the Operational Creditor. None appears for the Corporate Debtor. The arguments of the both sides were heard earlier on 25.04.2022 & 12.09.2022 and the matter was adjourned with the following docket order:

“The Counsel for the Corporate Debtor, after arguing the matter, seeks time till tomorrow for getting instruction with regard to the willingness of his client for discharging the claim amount. List the matter on 13.09.2022.”

7. Later on, the Corporate Debtor did not turn up on 13.09.2022 and the Court made the following order:

“None appears for the Corporate Debtor, inspite of the undertaking to get instructions with regard to the willingness

of his client for discharging the claim amount. However, list the matter on 29.09.2022, making it clear that if none appears for the Corporate Debtor on that day the matter would be decided on merits.”

8. Even today none appeared for the Corporate Debtor. The only dispute raised is with regard to the defective material. The Counsel for the Operational Creditor, in that regard submits that already a credit note was given for the defective material on 06.09.2018 and the same is reflected in the GST portal and the copy of the said credit note and the screen shot of the said GST portal are also filed. The copy of the cheque issued by the Corporate Debtor for Rs.30 Lakhs is also filed, which is issued on 25.11.2018. Hence, it stands as a proof of acknowledging the debt by the Corporate Debtor as on that date. Since, a credit note is already issued for the defective material and the same is not included in the claim amount and since the dispute is only with regard to that, there cannot be any other reason for the Corporate Debtor to contend that the petition is liable to be dismissed. On the Counsel for the Operational Creditor pointing out the credit note and copy of the GSTR-1 the Counsel for the Corporate Debtor infact took time to get instructions with regard to discharging the claim amount. Since, none appeared for the Corporate Debtor and did not raise any objection with regard to the argument made by the Operational Creditor, it has to be considered that the Corporate Debtor does not have anything to say

against the contentions of the Counsel for the Operational Creditor. Hence, considering the above, this Company Petition needs to be admitted and is accordingly the CP (IB) No.41/9/AMR/2020 admitted.

ORDER

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

- i. **Mr. Srinivas Rao Gudla**, (Registration No. IBBI/IPA-001/IP-P-02093/2020-2021/13333), having office at 6-20-20/3, Flat No.201, Aqua Towers, East Point Colony, Back Gate, Chaitanya College, Visakhapatnam, Andhra Pradesh-530017; Mobile:**8885524036**; e-mail: **gudlasrinivasrao@gmail.com**; is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.
- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.

- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.
- v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.
- vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu