

S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
22-05-2023 AT 10:30 AM**

CP (IB) No. 285/9/HDB/2019
u/s. 9 of IBC, 2016

IN THE MATTER OF:

Nacre Gardens Hyderabad Ltd

...Operational Creditor

VS

Telangana State Industrial Infrastructure
Corporation Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Order pronounced. Recorded vide separate sheets. In the result, this Company Petition is dismissed with costs of Rs.5,00,000/- (Rupees Five Lakhs only) payable by the petitioner to the **BHARAT KOSH**, within 15 days from the date of uploading of this order and proof of deposit shall be filed before the Registry in the form of a memo.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 285/9/HDB/2019

Under Section 9 of Insolvency and Bankruptcy Code
read with Rule 6 of Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

Between

Nacre Gardens Hyderabad Limited
(formerly known as Unitech Hyderabad Township Limited),
Having its registered address at
Basement 6, Community Centre,
Saket, New Delhi – 110 017.

...Petitioner/ Operational Creditor

Versus

Telangana State Industrial Infrastructure Corporation Limited
5-9-58/B, 6th Floor, Parishrama Bhavan,
Basheerbagh, Fateh Maidan,
Hyderabad, 500 004.

...Respondent/ Corporate Debtor

Date of order: 22.05.2023

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Sh. Charan Singh, Hon'ble Member (Technical)

Appearance:

For Petitioner: Mr. Avinash Desai, Advocate

For Respondent: Mr. J.Ramachandra Rao, Advocate

PER: BENCH

ORDER

1. Under consideration before us is the petition filed by Operational Creditor herein stating that the Telangana State Industrial Infrastructure Corporation Limited, formerly Andhra Pradesh Industrial Infrastructure Corporation Limited/ Corporate Debtor committed default of Rs.260.51 Crores. Hence this petition filed under Section 9 of Insolvency and Bankruptcy Code (hereinafter to be referred as “Code”), read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking admission of the Petition, commencement of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. **The averments in brief of the Application are as follows:**
 - 2.1 It is averred that the Corporate Debtor issued a press release calling for bids to develop, design and construct the Integrated Township Project/ Multi Services Aerospace Park in the area of Approximately 350 acres of land in Saroornagar Mandal, Ranga Reddy District, Hyderabad, Telangana State. The Corporate Debtor is the successor to Andhra Pradesh Industrial Infrastructure Corporation Limited for all the assets and liabilities situated in the State of Telangana, post the bifurcation of the erstwhile State of Andhra Pradesh.
 - 2.2 It is averred that in pursuance to the said Notice inviting Tender, Unitech Limited applied for the tender by purchasing the Bid Document

after depositing INR 20 crore as earnest money deposit with the Corporate Debtor. It is averred that Unitech Limited was selected as L1 in the tender process and accordingly the Corporate Debtor issued a Letter of Award (LoA) dated 28.11.2007 to Unitech Limited, which was accepted on 03.12.2007. It is pertinent to note that the LoA categorically stated that *the allotment of said land is subject to the outcome of the Appeal Suit No. 274/2007 in OS.No. 155/05, WP.Nos. 19670/07, 20667/07 and 22043/07 pending before the Hon'ble High Court of Andhra Pradesh.*

2.3 It is averred that the Bid document and the LoA was conditional upon the Corporate Debtor claiming title before the Hon'ble High Court of Andhra Pradesh over the subject land, failing which the Corporate Debtor was to refund all the amounts it received for the subject land. Unitech Limited subsequently paid a total sum of Rs.145 crores to the Corporate Debtor as per the terms and conditions of the Bid document and the LoA. This was in addition to the amount of earnest money deposit of INR 20 crore. The total amount paid by Unitech to the Corporate Debtor was INR 165 as per the following schedule:

1. INR 20 Cr on 17.09.2007
2. INR 35 Cr on 04.12.2007
3. INR 5 Cr on 27.12.2007
4. INR 35 Cr on 02.01.2008
5. INR 35 Cr on 16.01.2008
6. INR 35 Cr on 28.01.2008

2.4 In the meanwhile, Unitech Limited incorporated Unitech Hyderabad Township Limited as a Special Purpose Vehicle to avoid operational problems in executing the LoA. Subsequently, a Joint Development

Agreement dated 19.08.2008 was executed between Unitech Limited, Unitech Hyderabad and the Corporate Debtor as Unitech Limited completed its payment obligations under the LoA. The Joint Development Agreement provided for compensatory payment payable by the Corporate Debtor to Unitech Hyderabad in case the Corporate Debtor fails to execute the Sale Deed in favour of Unitech Hyderabad.

2.5 It is averred that the Hon'ble High Court vide its Judgment dated 19.12.2011 in AS.no. 274 of 2007 observed that the Corporate Debtor has no title over the subject land, which was allotted to Unitech Limited and Unitech Hyderabad as per the LoA. The Corporate Debtor appealed the Judgment before the Hon'ble Supreme Court. The Hon'ble Supreme Court in *Govt. of Andhra Pradesh Vs. Pratap Karan, (2016) 2 SCC 82* vide judgment dated 09.10.2015 re-affirmed the judgment of the Hon'ble High Court and observed that the Corporate Debtor has no title over the subject land which was allotted to Unitech Limited and Unitech Hyderabad.

2.6 It is averred that the final declaration of law by the Hon'ble Supreme Court in *Govt. of Andhra Pradesh Vs. Pratap Karan (2016) 2 SCC 82* meant that the Corporate Debtor was in default of its obligations under the Development Agreement, and cast a burden on the Corporate Debtor to refund the Rs. 165 crores paid by Unitech Limited to Unitech Hyderabad for the subject land along with SBI PLR compounded annually (Applicable Rate) from the date of deposit till the date of its payment as per the terms and conditions of the Development Agreement as compensatory payment. Thus Unitech Limited and Unitech Hyderabad made repeated requests to the Corporate Debtor to remit the

acknowledged unpaid operational debt arising out of failure to provide services as per the Joint Agreement immediately.

- 2.7 It is averred that aggrieved by the inaction of the Corporate Debtor, Unitech Limited and Unitech Hyderabad approached the Hon'ble Supreme Court of India vide W.P. (Civil) No. 302 of 2017 praying for a direction to the Corporate Debtor to forthwith return Rs.165 crores along with interest at SBI PLR compounded annually, from the date of deposit till the date of payment. The Hon'ble Supreme Court vide orders dated 01.05.2017 disposed of the above Writ Petition without expressing any opinion on the merits of the petition but observed that Unitech Limited and Unitech Hyderabad may choose to approach the Hon'ble High Court under Article 226 of the Constitution of India.
- 2.8 With regard to the same the Unitech Limited and Unitech Hyderabad subsequently filed W.P.No. 29722 of 2017 before Hon'ble High Court against the Corporate Debtor to forthwith return Rs. 165 crores along with interest at SBI PLR compounded annually, from the date of deposit till the date of payment. The Hon'ble High Court vide its Judgment dated 23.10.2018 ordered the Corporate Debtor to pay Rs.660.55 crores within four weeks from the date of Judgement.
- 2.9 Further Corporate Debtor filed a Writ Appeal, W.A.No.1594 of 2018 against the judgement of the Hon'ble High Court in W.P.No. 29722 of 2017. The Hon'ble High Court vide its judgement dated 01.04.2019 vide W.A.No. 1594 of 2018 disposed off the Appeal by modifying the order of the Hon'ble Single Judge dated 23.10.2018 only with reference to the interest component. The Hon'ble Division bench noted the decision of the Hon'ble Single Judge is based on undisputed and admitted facts of debt owed by Corporate Debtor to the Operational

Creditor but noted that the interest accrues from 09.10.2015 (the date of the decision of the Hon'ble Supreme Court in *Govt. of Andhra Pradesh Vs. Pratap Karan*) and not from 2007.

2.10 It is averred that the debt therefore has been crystallized by the Judgments of the Hon'ble Single Judge and Hon'ble Division Bench of Hon'ble High Court and no dispute can be raised by the Corporate Debtor. Unitech Limited and Unitech Hyderabad filed Special Leave Petition (Civil) No. 9019 of 2019 before the Hon'ble Supreme Court aggrieved by that part of the decision of the Hon'ble Division Bench of the Hon'ble High Court in W.A.No. 1594 of 2018 wherein the interest component was reduced and thus seeking enhancement before the Hon'ble Supreme Court.

2.11 The Operational Creditor had issued demand notice in the prescribed Form-3 under Section 8 of IBC on 04.04.2019 and the Corporate Debtor has not raised any dispute to the existence of the undisputed debt.

2.12 Thus it is clear that the Corporate Debtor has defaulted on the operational debt of Rs. 165 crores along with interest at SBI PLR, from the date of deposit till the date of payment and is liable to pay Rs.261.55 crore to Unitech Hyderabad as compensatory payment to the Corporate Debtor as per the order of the Hon'ble High Court and terms of the Development Agreement.

3. Reply/Counter filed by Respondent/Corporate Debtor

3.1 Corporate Debtor denied all the allegations made in the petition by the Operational Creditor except those which are specifically admitted hereunder. It is stated that the present petition is not maintainable based

upon the Judgment of Hon'ble Supreme Court in re *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*.

- 3.2 It is averred that an SLP before the Honourable Supreme court of India challenging the orders of the division bench of the High Court is pending disposal before the Supreme Court. When an issue is pending adjudication before the Supreme Court, no party is allowed to execute the part of the order of the court below which was challenged before the Supreme Court. While the issue of any nature is pending before the Supreme Court the subject matter of which either partly or fully is the subject matter of the petition before this Honourable Tribunal, the same is not tenable and not maintainable.
- 3.3 It is further stated that the Corporate debtor has challenged the order of the division bench in W A No 1594 of 2018 before the Honourable Supreme court of India in SLP(C) No.010135/2019 after due notice to the respondent and this is pending disposal before the supreme court.
- 3.4 Thus it is averred that the SLPs of both the petitioner and respondent are pending before Hon'ble Supreme Court the decision may any time materially affect the rights and claims of the parties as defined under the Code.
- 3.5 Thus prayed the Tribunal to dismiss the Company Petition with exemplary costs and pass an orders it may deem fit.
4. The Operational Creditor also filed Rejoinder to the counter filed by the Corporate Debtor.
5. In the above back drop of facts and circumstances, but for the memo dated 23.03.2023 filed on behalf of the Corporate Debtor along with

enclosures, this Tribunal would have framed necessary “points” for consideration and embarked upon the exercise of finding, whether an Operational Debt as claimed by the Petitioner exists ? If so, whether the respondent has defaulted in re-payment of the said debt? Besides, whether there is a pre-existing disputes between parties in respect of the debt claimed as due.

6. It is pertinent to state that the case record discloses that on 23.12.2020 after the counsel for the respondent filed a memo informing the status of the proceedings relating to the subject dispute then pending before the Hon’ble Supreme Court, this matter was adjourned to 25.01.2021. Thereafter as the then Ld. Member (Judicial), had expressed his desire to recuse himself from the proceedings, hence a letter has been addressed to the Principal Bench, informing the request of the then Ld. Member (Judicial), vide letter dated 02.02.2021. The matter, again got listed on 21.03.2023, before this Bench on which date, only the counsel for the Corporate Debtor was present, and the matter was adjourned to 23.03.2023 as a last chance.

- On 23.03.2023 the following order has been passed.

“Ld. Counsel for the Operational Creditor Ms. Mrudula present and Ld. Counsel for the Corporate Debtor Shri DVAS. Ravi Prasad present. Heard both sides in part. According to Ld. Counsel for Corporate Debtor, whatever amount required to be deposited as per the orders of the Hon’ble Supreme Court of India has in fact been deposited and memo to this effect will be filed during the course of the day. He is directed to file proof of the same today. Ld. Counsel for Operational Creditor seeks time till 24.03.2023. Hence, we adjourn the matter finally. No further extension will be allowed. List the matter on 24.03.2023”.

- On 24.03.2023 after passing the following order the matter has been adjourned to 27.03.2023.

On 24.03.2023 ***“the Ld. Counsel Ms. Mrudula for the Operational Creditor and Sri. S. Ravi Prasad. Ld. Counsel for Financial Creditor represented that this application will be withdrawn. As per the instructions of the Operational Creditor, withdrawal memo would be filed by 27.04.2023. Before that Ld. Counsel for Corporate Debtor to file a memo confirming that amount has been deposited in Hon’ble Supreme Court of India”.***

- On 27.03.2023 after passing the following order the matter has been adjourned to 31.03.2023.

“both sides present. At request of the Operational Creditor matter adjourned to 31.03.2023. After passing the following order the matter has been adjourned to 31.03.2023.

- On 31.03.2023, after passing the following order, the matter was adjourned to 21.04.2023

“Learned Counsel Ms. Mrudula Sarampally for the Petitioner present. At request of the Operational Creditor the matter is adjourned to 21.04.2023 finally. After passing the following order the matter has been adjourned to 21.04.2023”.

- On 21.04.2023, the following order has been passed

“Heard both sides. For orders, post on 22.05.2023. Meanwhile, written submissions to be filed by 04.05.2023, if not already filed.

The following order was passed”.

7. Here it is pertinent to state that from the memo filed on 23.03.2023, along with the enclosures by the counsel for the Corporate Debtor (after due notice to the counsel for the Operational Creditor), it is absolutely clear that the Hon’ble Supreme Court of India, had infact disposed of Civil Appeal No. 317 of 2021 arising out of SLP(C) No. 9019 of 2019 filed by the Operational Creditor herein, along with the Appeals arising out of SLPs filed by the State of Telangana and TSIIC, as below:

“44 TSIIC and the State of Telangana have brought to our notice that the Development Agreement, on the basis of which Unitech has sought to avail its contractual remedy has not been registered or assessed to stamp duty. Under Article 3.1 of the Development Agreement the obligation of paying registration fees and stamp duty is on Unitech. It is well-settled law that the Stamp Act is a fiscal measure enacted to secure the revenue for the State, and not to arm the opponent with a weapon of technicality.²⁰ Unitech's claim to compensatory payment cannot be defeated on the sole ground of the payment of stamp duty. The Development Agreement shall have to be impounded and be presented to the Chief Controlling Revenue Authority in the State of Telangana for assessment of stamp duty and to the competent authority for registration. The assessment shall be completed within thirty days. The appropriate stamp duty and registration charges liable to be paid in terms of the determination shall be paid by TSIIC and be deducted from the refund due and

payable to Unitech under the terms of this Vide order dated 17.02.2021.”

8. The copy of the additional affidavit dated 05.12.2022, which was filed by the General Manager (AM) legal of the TSIIC, before the Civil Court at Gurgoan, further discloses that a sum of Rs. 456,39,88,858.01/- was payable to M/s Unitech Limited (Corporate Debtor) as per the order of the Hon'ble Supreme Court of India, in Civil Appeal No. 317 of 2021 dated 17.02.2021, and the same has been paid to the Unitech Limited, as per the details mentioned in the said affidavit.
9. Therefore, it is as clear as crystal, that over and above the amount claimed by the Operational Creditor as due and payable by the corporate debtor, in the above Company Petition has been deposited by the corporate debtor by 21.02.2021 itself. Strangely despite, being fully conscious of the deposit of the sum of Rs. 456,39,88,858.01/-, the Petitioner/Operational Creditor, did not choose withdraw the above Company Petition and on the other hand pursued the matter till 21.04.2023 and thus, unjustly prolonged the matter and consumed the precious time of the Tribunal, and the public as well.
10. Therefore, in the light of our discussion as above we have no hesitation to hold that the plea of existence of an Operational Debt of a sum over rupees one crore due and payable by the respondent to the petitioner and

that the respondent had defaulted in payment of the same, no survives.

Consequently the Corporate Debtor cannot be admitted into CIRP.

11. Since the Operational Creditor had failed in disclosing the compliance of the order of Hon'ble Supreme Court, supra, and pursued the matter of receipt of the sum of Rs. 456,39,88,858.01/- for nearly two years, we feel it is a fit case to impose costs on the Petitioner, while dismissing this application.
12. Hence, this Company Petition is dismissed with costs of Rs.5,00,000/- (Rupees Five Lakhs only) payable by the petitioner to the **BHARAT KOSH**, within 15 days from the date of uploading of this order and proof of deposit shall be filed before the Registry in the form of a memo.

Sd/-

Charan Singh
Member Technical

Sd/-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Pavani/Sridher