

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 15.03.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.712/9/HDB/2019
NAME OF THE COMPANY	Vaishnovi Infratech Ltd
NAME OF THE PETITIONER(S)	D. Srinivasa Rao
NAME OF THE RESPONDENT(S)	Vaishnovi Infratech Ltd
UNDER SECTION	9 of IBC

ORDER

This Petition is allowed, vide separate orders.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-II**

C.P. (IB) No.712/9/HDB/2019
Under Section 9 of the IB Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

Between:

Sri D. Srinivasa Rao
Door No. 65, Cyber Meadows,
Masjid Banda, Kondapur,
Hyderabad – 500 084

...Applicant/Operational Creditor

A N D

M/s Vaishnovi Infratech Ltd.,
H.No. 6-3-347/222, Flat No. 9,
4th Floor, Iswarya Nilayam,
Dwarakapuri Colony,
Punjagutta, Hyderabad
Telangana – 500 082

...Respondent/Corporate Debtor

Date of Order: 15.03.2023

Coram:

Hon'ble Justice Telaprolu Rajani, Member (Judicial)
Hon'ble Sri Charan Singh, Member (Technical)

Counsel present:

For the Operational Creditor: Shri Rohit Pogula
For the Respondent: Shri Y. Suryanarayana

Heard on: 14.03.2023

Per : Bench

ORDER

1. This application is filed by the Petitioner Shri D. Srinivasa Rao, Operational Creditor (OC) against the Respondent M/s Vaishnovi Infratech Ltd., Corporate Debtor (CD), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the CD for the default committed by the CD, in discharging the debt due to it.

2. The facts of the case, briefly, are as follows:

The CD was to pay Sri D. Srinivasa Rao an amount of Rs. 20,19,452/- towards the salary for the period of 1st October, 2013 to 31st January, 2015. The CD entered into a Memorandum of Understanding (MoU) with the OC on 6th December, 2017, agreeing to pay an amount of Rs. 18 lakhs towards full and final settlement of dues as against the total due of Rs. 20,19,452/-. The CD paid an amount of Rs. 10,00,000/- and the remaining payment of Rs. 8 lakhs, was defaulted. Hence, this application seeking the above mentioned relief.

3. CD filed counter stating that the MoU cannot be admitted as it was executed under fear and threat to life and that total outstanding was admitted to be Rs. 18 lakhs as full and final settlement. It is also admitted that an amount of Rs. 10 lakhs was paid. It is contended that the said

payment of Rs. 10 lakhs was made by the CD to avoid threat to his life. The judgment of NCLT, Hyderabad Bench in CP (IBC) No. 691/2019 in the matter of Prajay Properties Pvt. Ltd., was relied upon wherein it was observed as under:

“ The present petition is filed by the Petitioner for initiation of CIRP for default in payment of amount under the Agreement to pay in question. In order to initiate proceeding under section 9 of I&B Code. Operational Creditor is required to establish a default for non-payment of operational debt as defined under section 5(21) of the Code. We are of the opinion that the Agreement to pay on the basis of which the present petition is filed by the Petitioner does not come under the definition of Operational debt. On this point, order dated 14/05/2019 of the NCLT, Allahabad in Company Petition (IB) No. 343-ALD-2018 in the matter of M/s Delhi Control Devices (P) Ltd. Vs. M/s Fedders Electric and Engineering Ltd. is relevant. It is held in the said order that:

“ 12. Further, unpaid instalment as per the Settlement Agreement cannot be treated as operational debt as per section 5(21) of IB Code. The failure or breach of settlement agreement cannot be a ground to trigger CIRP against Corporate Debtor under the provision of IBC 2016 and remedy may be elsewhere not necessarily before the Adjudicating Authority.”

9. In the light of the above decisions and provisions, we are of the view that the case of the petitioner is governed by the aforesaid decisions and the default in payment of instalments according to Agreement to pay in question entered into between the parties does not come within the definition of operational debt. Besides, there was pre-existing dispute on the issue of ‘maintenance lifts’ between the parties as seen from the email communications of the users of elevators. Simultaneously, parallel proceedings have been initiated for dishonour of cheques under section 138 of the Negotiable Instruments Act. All the above prove that this Tribunal has no jurisdiction to entertain this Petition under section 9 of the I&B Code, 2016. We are, therefore, not inclined to admit the Petition.

10. In view of the above the petition is hereby rejected.”

4. On the above grounds, the respondent seeks to dismiss the application.

5. We have heard both the Counsel. The Counsel for the Petitioner submits that the amount that is due is towards the salary that is to be paid to the OC. Since the CD did not pay the salary as agreed, this application is filed. The Respondent does not offer any argument and she submits that the order can be passed on merits. A perusal of the MoU would show that there was an agreement to pay Rs. 18 lakhs as full and final settlement. It was also agreed that Rs. 10 lakhs would be paid under first instalment and remaining Rs. 8 lakhs would be paid later i.e. on or before 20th February, 2018. It also shows that a cheque was issued with a post date, for the said amount. It is also clearly recited in the MoU, that in case of non-compliance or deviation from any one of the agreed terms or non-payment of final instalment, the entire claim of Rs. 20,19,452/- with interest by the first party shall stand good and the first party will be entitled to proceed with all the pending cases or initiate any appropriate proceedings as may be required towards the recovery of the amount of Rs. 20,19,452/-.

6. The judgment, which is relied upon by the CD seems to have been rendered on a different set of facts. Except the extract of the judgment which is reproduced above, the full

text is not placed before us. What can be understood from the above extract is that the amount due under the agreement therein did not qualify for an operational debt. Hence, the same cannot be applied to the facts of the present case.

7. Salaries fall within the definition of an operational debt under section 5(21) IBC as according to the said provision, a claim in respect of goods or services including employment, is an operational debt. In view of the fact that the MoU is violated and that the amount under the MoU is due towards the salaries of the OC and that it was admittedly not paid, we do not find any reason to disallow the application.

8. In the result, the application is allowed.

I. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.

II. The Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one for the Insolvency Resolution Professionals as IRP. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals

for appointment as Insolvency Resolution Professional for the period from January 1, 2023 to June 30, 2023 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Venugopal Kaspas, having Registration No. IBBI/IPA-001/IP-P01661/2019-2020/12580, e-mail: kaspavenugopal@gmail.com as Interim Resolution Professional. As per the IBBI website, his AFA is valid upto 30.06.2023. He is directed to file Authorization for Assignment within three days from the date of this order.

III. The IRP is directed to take charge of the Respondent/Corporate Debtor's Management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

IV. We direct the Operational Creditor/Petitioner to pay a sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.

V. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in Section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-

i. 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 or law, tribunal arbitration panel or other authority;

ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;

iii. 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 Operational Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

v. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

VI. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such

Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements, or other arrangement as may be notified by the Central Government in consultation with any operational sector regulator or any other authority.

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

VIII. The Petitioner/Operational Creditor as well as the Registry is directed to send the copy of this Order to IRP 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.

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

X. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.

XI. Accordingly, this CP (IB) No. 712/9/HYD/2019 is admitted.

Sd/-
Charan Singh
Member, Technical

Sd/-
Justice Telaprolu Rajani
Member, Judicial

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