

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 30.08.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.149/9/HDB/2018
NAME OF THE COMPANY	Legend Estates Pvt Ltd
NAME OF THE PETITIONER(S)	Sheetal Ispat Pvt Ltd
NAME OF THE RESPONDENT(S)	Legend Estates Pvt Ltd
UNDER SECTION	9 OF IBC

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

Orders pronounced vide separate orders


Member(Judl)

Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No. 149/9/HDB/2018

U/s 9 of IBC, 2016

In the matter of:

Sheetal Ispat Private Limited
6-56/2, Opp IDPL Factory, Balanagar
Hyderabad, Telangana – 500037

...Petitioner /
Operational Creditor

VERSUS

Legend Estates Private Limited
6-3-1238, 6th Floor, Legend Apartment
Renuka Enclave, Rajbhavan Road
Somajiguda, Hyderabad – 500082
Telangana

...Respondent/
Corporate Debtor

Date of pronouncement of order: 30.08.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties/ counsels present:

For the Petitioner: Shri Sanjay Kumar Sharda, CA along
with Shri Mohit Bothra, CS

For the Respondent: Shri Pranay Somini, Advocate.

Heard on: 02.04.2018, 19.04.2018, 09.05.2018, 06.06.2018,
21.06.2018 and 17.07.2018

ORDER

1. Sheetal Ispat Private Limited, Operational Creditor filed the Petition under Section 9 of Insolvency and Bankruptcy Code, 2016, Read with Rule-6 of Insolvency & Bankruptcy (Application to Adjudicating Authority)


Rules, 2016. Petitioner / Operational Creditor filed Form-5.


2. Brief averments made in the Petition are as follows:-
- (1) The Petitioner Company Sheetal Ispat Private Limited is Operational Creditor. The operational creditor is engaged in the business of trading in Iron and Steel and also a trader in steel & steel products.
 - (2) Legend Estates Private Limited is the Corporate Debtor, having its registered office at 6-3-1238, 6th Floor, Legend Apartment Renuka Enclave, Rajbhavan Road, Somajiguda, Hyderabad, Telangana- 500082. The corporate debtor is engaged in the real estate business.
 - (3) It is averred that during the course of business, Corporate Debtor placed three purchase orders dated 05.04.2013, 29.01.2013 and 12.04.2013 with the Operational Creditor for supply of TMT to the Corporate Debtor to the tune of Rs.1,62,36,212/- and raised invoices to the tune of Rs.1,64,44,016/-. It is the case of the Operational Creditor that the representative of Corporate Debtor has acknowledged the receipt of the material and affixed its stamp and signature on the delivery challan.
 - (4) It is also averred that a sum of Rs. 1,26,67,412/- was paid to the Operational Creditor on various dates until 08.02.2017 and Rs.37,76,604/- is outstanding due to the Operational Creditor. It is the case of the Operational Creditor that the Corporate Debtor was under the obligation to clear the amount as per terms of supply. It is further averred that the last payment amounting to Rs. 5,00,000/- was made on 08.02.2017 after 45 months of supply of the material,

which was on 07.05.2013. It is the case of Operational Creditor that four cheques were issued on different dates that too after 25 months of last supply of material.

- (5) It is averred that despite repeated requests and telephonic calls, the Corporate Debtor failed to make payment. It is the case of Operational Creditor that the transaction with Corporate Debtor is a commercial transaction as such Corporate Debtor is liable to pay 24% interest per annum on due amount of Rs. 37,76,604/-. It is averred that the Corporate Debtor is liable to pay a sum of Rs. 79,20,558/- including interest till the date of issue of Demand Notice on 19.12.2017.
- (6) When the Corporate Debtor failed to make payment, the Operational Creditor issued demand notice and the same has been received by the Corporate Debtor on 20.12.2017 as per postal track consignment report which is marked as annexure – XI. However, no reply was received from the Corporate Debtor. Further, no dispute with regard to the unpaid dues for supply of goods received from Corporate Debtor by the Operational Creditor at any point of time earlier.
- (7) The Operational Creditor / Petitioner has suggested the name of Mr. Sunil Kumar Jain (IBBI registration No. IBBI/IPA-001/IP-P00697/2017-2018/11244 as Interim Resolution Professional and his consent in Form -2 is marked as Annexure-XIV. Hence Operational Creditor / Petitioner requests the Tribunal to admit the case and initiate CIRP against the Corporate Debtor.



3. Corporate Debtor has filed counter. The contentions in brief are as follows:-
- (1) It is contended that the total volume of business between the petitioner and Respondent was to the tune of Rs.1,64,44,016/- out of which Rs.1,26,67,412/- was paid and balance of Rs.37,76,604/- is due for which the Corporate Debtor issued four post-dated cheques which has not been cleared till date is false and incorrect, which is contrary to the purchase order dated 12.04.2013 filed by the Petitioner and marked as Annexure-VII.
 - (2) It is further contended that after constant efforts and follow ups of the representatives of the Corporate Debtor company the Petitioner has not supplied the TMT Iron bars in good conditions and the same was not as per specifications of the Corporate and substandard material was delivered at the site of the Corporate Debtor Company. It is the case of Corporate Debtor that when the Engineers of the Company came to know about the defective quality of the material, they conveyed the rejection of the material to the Operational Creditor and requested to take back the defective material. It is also contended that the defective material was not at all used by the Corporate Debtor and the Operational Creditor has not taken back the defective material despite repeated requests.
 - (3) It is also alleged that representative of the Petitioner Company instead of settling the account with regard to defective material, pick up quarrel with the Corporate Debtor Company employees and also warned of dire consequences.
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- (4) It is also the case of the Corporate Debtor that Corporate Debtor was forced to pay the entire amount of the invoices raised by the Petitioner Company including transportation and labour charges. It is contended that the Petitioner raised invoices to the tune of Rs.1,12,85,423/- in respect of purchase order dated 12.04.2013 of Rs.1,12,65,345/- and the entire amount of the invoices raised was already paid to the Operational creditor.
 - (5) It is contended that post-dated cheques were issued as security by the Corporate Debtor and were not returned despite receiving the entire payments. Further, the Petitioner never deposited the cheques with their bankers as it was never issued for the purpose of any payment, but for security.
 - (6) The Corporate Debtor prayed to dismiss the petition being devoid of merits and imposing exemplary costs.
4. The Operational Creditor filed rejoinder. It is contended that the Corporate Debtor has all of a sudden raised dispute regarding the quality of the material after paying some amount and issuing cheques. The Operational Creditor also contended that Corporate Debtor cannot raise any dispute which is not pre-existing as there were no correspondences wherein Corporate Debtor has raised any dispute. It is further alleged that the Operational creditor made supplies during the Financial Years 2012-2013 and 2013-14 and Corporate Debtor had not cleared cheques even after 2 years of supply. As regards issuance of post-dated cheques as security, Operational Creditor contends that since Corporate Debtor was not paying the amount to Operational Creditor, post-dated cheques were
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subsequently given by Corporate Debtor that too after 2 years of supply.

5. I have heard the counsels for Operational Creditor as well as Corporate Debtor.
6. Petitioner is Operational Creditor. Respondent is Corporate Debtor. The case of Petitioner/Operational Creditor that it had supplied goods to the Corporate Debtor in pursuant of purchase order placed by the Corporate Debtor dated 12.04.2013. It is the case of Operational Creditor, goods were supplied to the Corporate Debtor during 2012-13 & 2013-14. The value of goods supplied to the Corporate Debtor was at Rs.1,64,44,016/- out of which Corporate Debtor paid an amount of Rs.1,16,67,412/- on various dates and leaving a balance of Rs.37,76,604/-.
7. The case of Corporate Debtor that no amount is due by it to the Operational Creditor. The case of Corporate debtor, purchase order which is marked as Annexure-7 dated 12.04.2013 is at Rs.1,12,65,345/- and invoices raised for the same for Rs.1,12,85,423/-. Thus, the case of Corporate Debtor that it had paid money covered by purchase order under Annexure-7. Thus, there is no amount due by it to the Operational Creditor.
8. The Operational Creditor has to establish that an amount of Rs.37,76,604/- was payable under the invoices by Corporate Debtor and if interest @ 24% is added over the balance amount then the amount payable by Corporate Debtor is Rs.79,20,558/-.
9. The Corporate Debtor on the other hand pleaded discharge for the first time after Application was filed against Corporate Debtor by the Operational Creditor. Prior to filing of Petition by Operational Creditor, a demand notice



was issued to the Corporate Debtor. The demand notice was served on the Corporate Debtor. There was no response to the Demand Notice. The Corporate Debtor did not raise any dispute. Only after Application was filed, the Corporate Debtor came forward with a plea of discharge. However, burden is on the Corporate Debtor to prove discharge. If really Corporate Debtor was not liable to pay any operational debt to the Operational Creditor then what prevented Corporate Debtor to raise dispute prior to demand notice.

10. Operational Creditor relied on invoice copies for supply of goods to the Corporate Debtor. It is very interesting to note that Corporate Debtor did not raise any dispute with regard to supply of goods as per purchase order. It is further interesting to note, the Corporate Debtor has alleged in the counter that there was an understanding between the Corporate Debtor and Operational Creditor for supply of TMT Iron Bars in good condition. The contention of the Corporate Debtor that TMT bars supplied was not in accordance with specifications. The goods supplied were defective and it was immediately brought to the notice of Operational Creditor. However, none came from Operational Creditor to examine the defective goods. So the contention of Corporate Debtor in the reply/counter that the goods supplied was of defective/inferior quality and that the goods were not used by the Corporate Debtor.
11. The Corporate Debtor has alleged in the counter that the dispute was raised with regard to the quality of goods supplied and it was also informed to the Operational Creditor. If this is true and correct, the Corporate Debtor would have given reply to the demand notice. Surprisingly, there was no reply. If this dispute was true and correct,

certainly there would have been some correspondence between the Corporate Debtor and Operational Creditor. The dispute should not be hypothetical, spurious and imaginary. Without filing any proof in respect of alleged dispute for alleged supply of inferior quality of goods said to have been delivered, the Corporate Debtor for the first time pleaded the same in the counter. At the same time, Corporate Debtor is saying it had paid amount due under the invoice in respect of purchase order dated 12.04.2013 marked as Annexure-7. Which version is to be accepted if goods supplied were of inferior quality, then there was no need for Corporate Debtor to pay amount to the Operational Creditor under the invoices. Quite contra, Corporate Debtor pleaded that amount due under Purchase order dated 12.04.13 and consequent invoices raised were fully honoured. Therefore, the plea taken by the Corporate Debtor cannot be relied and dispute raised by Corporate Debtor is nothing but spurious. ‘

12. It is also the specific case of Operational Creditor that Corporate Debtor had issued cheques and cheques were not honoured. The total amount for which cheques were issued is for Rs.37,67,005/-. Details of cheques are given. Interestingly, cheques were for the balance amount. What was the need to give cheques for the balance, if no amount was due to the Operational Creditor? The answer given by the Corporate Debtor that cheques were given as security. The supply was made in 2013. The invoices were raised during the month of April and May 2013. Surprisingly, 3 cheques were issued in 2015. If really cheques were given as security, then it should have been given in 2013 when the goods were supplied. There was no occasion to give cheques in the year 2015 as the security for the goods

supplied in 2013. It shows the fallacy of contention of the Corporate Debtor that cheques were issued as security. There is truth in the contention of the Operational Creditor that the cheques were issued towards payment but cheques were not honoured. Probably necessary funds were not made available in encashing the cheques. Therefore, Operational Creditor cannot utilise the cheques.

13. The fact that cheques were given is not in dispute. It goes without saying that the cheques were issued as there was outstanding operational debt payable by Corporate Debtor. There is no other reason to give cheques to the Operational Creditor except towards payment of balance. This lends credence to the contention of operational creditor that Corporate Debtor committed default in paying the balance of operational debt. Annexure-2 consists of invoices at page 15-23 of the Petition. The invoices are raised in the name of the Corporate Debtor starting from 20.04.2013. Annexure-3 is the particulars of unpaid operational debt. The Operational Creditor also relied on the certificate issued by NESL which is marked as Annexure-4.
14. The Operational creditor also relied on invoices cum delivery receipts marked as Annexure-8 shown at page nos. 50-58 of the Petition. In these delivery challans nowhere any dispute was raised with regard to quality. However, Delivery challans signed on behalf of the Corporate Debtor contain printed matter that **“received above material in good condition”**. So after verifying the goods and after satisfying the quality the representative on behalf of Corporate Debtor signed in the delivery challan. The Corporate debtor cannot speak against to the contents of the documents i.e. delivery challans. It is not open to

the Corporate Debtor to contend that the goods supplied are of inferior quality when delivery challans signed on behalf of corporate debtor contain clear description that the goods are in good condition at the time of delivery.

15. Interesting, there is no dispute regarding raising of invoices and receiving the goods covered by the delivery challan. The only contention whether goods are of inferior quality as contended by Corporate Debtor. I have discussed at length that there is absolutely no material to accept the contention of the Corporate Debtor that goods supplied are of inferior quality. Regarding discharge, the Corporate Debtor failed to prove the same.
16. The Corporate Debtor filed invoices and delivery challans. The Corporate Debtor has not given any account sheet maintained in respect of goods supplied by Operational Creditor. Absolutely there is no dispute in respect of raising invoices and in pursuance of invoices goods were delivered to the Corporate Debtor. Both sides are relying on invoices and delivery challans. The Corporate Debtor has not furnished any account in support of its contention that no amount was due or a part of the goods supplied was found defective and value thereof. The Corporate Debtor in the normal course should have maintained an account in respect of transactions with Operational Creditor. The Corporate Debtor is a company and it is bound to maintain accounts. The Corporate Debtor has not filed any ledger copy relating to the transactions with Operational Creditor. Mere filing of invoices and delivery challans do not in any way support the contention of the Corporate Debtor that no amount was due to the Operational Creditor. The invoices and delivery challans

filed by Corporate Debtor are also relied by the Operational Creditor.

17. The Operational Creditor filed additional documents dated 23.07.2018. The Operational Creditor filed reconciliation statement shown as Annexure-1 certified by CA. The total sales and payment commencing from 31.03.2013 to 24.04.2014 are furnished. The latest account from 01.04.2017 to 31.01.2018 is also furnished and the balance payable amount is Rs.37,76,604/- without adding interest.
18. The Operational Creditor is further able to establish that Corporate Debtor gave purchase orders No.4 dated 29.01.2013. The second purchase order No.9 is dated 05.04.2013 and 3rd Purchase Order No.9 is dated 12.04.2013. Whatever material supplied to the Corporate Debtor under these three purchase orders and details of invoices, delivery challans and amount involved etc are furnished. The invoice and delivery challans for purchase order Nos. 4, 5 & 9 are all furnished. Thus, Operational Creditor is able to establish total transactions under various Purchase Orders at Rs,164,44,016/- and amount paid by Corporate Debtor under various invoices was totalling at Rs.1,16,67,412/- and balance is Rs.37,76,604/- and if interest @ 24% is added, the total amount due was Rs.79,20,558/- since it is commercial transactions, the Operational Creditor is entitled to claim interest. The payment shall be made within 35-45 days as per purchase orders. The Corporate Debtor has committed default. The Operational Creditor is able to show balance payable by Corporate Debtor along with interest. The Corporate Debtor has committed default.

19. This Petition is filed under Section 9 of I & B Code. This is an operational debt and Corporate Debtor committed default. The Petition is in conformity with the provisions of Section 9 of the Code. Therefore, there are grounds to admit the petition and CIRP to be started against the Corporate Debtor Company. The petition is therefore to be admitted.
20. In the result, 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 Adjudicating Authority hereby prohibits 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 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 30.08.2018 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.
- (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. That this Bench hereby appoints Shri Sunil Kumar Jain, CA (IBBI/IPA-001/IP-P00697/2017-2018/11244) #1-7-264/2017, II Floor, 2017 Emerald House, SD Road, Secunderabad, Telangana - 500068 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

Accordingly, this Petition is admitted.


(RATAKONDA MURALI)
Member (Judicial)

30.8.18