

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

CP (IB) No.171/9/HDB/2017
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA), 2016

In the matter of

M/s Varnika Industries Pvt. Ltd
D.No.1-8-619 (29/2RT), Sai Arcade
First Floor, Prakash Nagar
Begumpet Hyderabad-500016

... Petitioner /
Operational Creditor

Versus

M/s Bumblebee Electronics Pvt. Ltd
IDA Phase-II, Cherlapally, HCL Post
Hyderabad - 500061

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OF THE ORIGINAL**

...Respondents /
Corporate Debtor

Date of order: 19.09.2017

CORAM

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties / Counsels Present

For the Petitioner :
For the Respondent:

Dr K.V. Srinivas, Advocate
Shri. K.Ravi Chandra
Mohan, Advocate

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Petition bearing No. CP(IB) No.171/09/HDB/2017 is filed by M/s Varnika Industries Pvt. Limited against M/s Bumblebee Electronics Pvt. Ltd, seeking to initiate Corporate Insolvency Resolution Process under Section 9 of Insolvency and Bankruptcy Code, 2016, R/W



Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. Brief facts, as mentioned in the present company petition, are as follows:-

- a. M/s Varnika Industries Pvt Ltd. (the Petitioner/Operational Creditor) is a private limited company incorporated under the provisions of Companies Act, 1956 and it is an "Operational Creditor" within the meaning of Sec 5(20) of the Code which reads as *"Operational Creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred"*. It is engaged in the business of buying and selling design, plan, manufacture, assemble, supply, erect, commission, test, maintain, trouble shooting, repair, etc.
- b. M/s. Bumblebee Electronics Pvt Ltd., (Respondent/Corporate Debtor) is a private limited company incorporated under the provisions of the Companies Act, 1956.
- c. The Operational Creditor had been supplying goods such as Voltage Stabilizers, Regulators and Power Saver equipments of various capacities to the Corporate Debtor on credit basis. It is very regular and prompt in clearing the invoices as and when due for the past many years from the year 2014-15, the Corporate Debtor is irregular in making payments against the pending invoices.
- d. When the pending bills amounted to Rs.12,48,41,727/- (Rupees Twelve Crores Forty Eight Lakhs Forty One Thousand Seven Hundred and Twenty Seven Only) as on 02.07.2014, the Operational Creditor has stopped supplying the goods to the Corporate Debtor and made demands to pay the pending bills. However, they failed to pay inspite of best efforts made by the petitioner.



- e. When the default works out to be Rs. 12,48,41,727/-, the Corporate Debtor had remitted only a meagre amount of Rs.1,00,000/- on 30.05.2017 and another amount of Rs.50,000/- on 03.07.2017. So the balance still remains to be paid.
- f. The Petitioner issued a demand notice in Form No.3 under rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 23.05.2017 by demanding to pay an amount of Rs.12,48,41,727/- within a period of 10 days, failing which appropriate proceedings will be initiated under the provisions of IBC.

- g. The respondent by acknowledging above notice has given a reply dated 12.07.2017, which reads as under:

“This is in response to the demand notice referred above demanding the payment of the outstanding invoice amounts totally amounting to Rs.12,48,41,727/-. At the outset, we would like to strongly express our displeasure over your proposed initiation of proceedings under the Insolvency Code. We would like you to kindly recall our long standing business relation and the support we had extended to you in our good times.

You are very well aware that our company is going through severe financial crises for the last 4 years and we are trying our best to stay afloat.

During your last visit to office in the month of March, 2017, we had appraised you about our efforts in protecting the Factory property being taken over by the Bank and with great effort, we could buy some time. You are very well aware of the present financial situation of the Company, which, we have, in every earnest belief, have been updating you in all your personal visits to our office. You have been supporting us emotionally in our hard times and we were expecting the same for some more time. You had been patient for more than 3 years and never initiated



any legal action in the recovery of the amounts due to you. Having waited for so many years, we would request you to be little more patient, and we assure you that, you shall be repaid all the amounts due to you till the last rupee.

I once again request you to kindly drop the proposal of initiating proceedings under IBC Code, in the interest of both of us.”

- h. Hence, the present petition is filed since the Corporate Debtor failed to pay the outstanding amount as per the demand notice.
3. Heard, Dr.K.V.Srinivas, learned counsel for the petitioner and Mr.K.Ravi Chandra Mohan, learned counsel for the respondent.
4. The case was listed before the Bench on various dates viz: 30.08.2017, 04.09.2017, 14.09.2017, 19.09.2017 and adjourned at the request of the parties.
5. Shri. K.Ravi Chandran Mohan takes notice for the respondent and filed a reply dated 19.09.2017. The following are sum and substance of the contentions raised in the reply;
- i. The contentions raised by the petitioner in the Company Petition are totally false and baseless. The petitioner Company (M/s Varnika Industries Pvt Ltd) was incorporated in the year 2013 and the respondent Company (Bumblee Bee Electronics Pvt Ltd) was incorporated in the year 2012 as per the Companies Act, 1956.
- ii. The Petitioner/Operational Creditor marketing persons approached the respondent/Corporate Debtor and requested to sell their goods, and the petitioner also accepted to deliver the good on credit basis, and whenever the amount realized after the sale of goods, the petitioner is ready to accept the remittance. With this proposal that the respondent accepted the proposal



offered by the petitioner, but the petitioner made false allegations that the respondent is very irregular in making the payments against the pending invoices.

- iii. It is admitted that total amount of outstanding due as on the date of petition is an amount of Rs.12,48,41,727/-. But it is not correct to say that the petitioner stopped supplying the goods with effect from 02.07.2014. The respondent itself ordered the petitioner to stop supply material/goods, since the material is not moving into the market. The respondent denied that it is defaulter. It is stated that the petitioner supplied the material/goods worth of Rs.21,61,12,436/- and for the end of the accounting year, i.e. on 31st March, 2014, the petitioner requested for the stock adjustment for an amount of Rs.9,61,23,435/- to M/s SERVOMAX INDIA LIMITED (UNIT-XVII) and in the same way petitioner requested the stock adjustment on 31st March, 2015 for an amount of Rs.9,61,20,857/- in the name of M/s SERVOMAX INDIA LIMITED (UNIT-XVII) and M/s SPILLEZER ELECTRONICS PRIVATE LIMITED. After the stock adjustment the respondent had to pay an amount of Rs.1,70,34,450/- till the end of March, 2016.
- iv) It is further stated that the respondent's balance sheet clearly states that the trade receivables as on 31st March, 2016 is an amount of Rs.11,05,58,406/- and Trade payables are Rs.28,29,94,440/- and the outstanding stock/inventory is an amount of Rs.22,66,36,263/-. It means that the accounting calculations are clearly stating that the respondent is not a defaulter in payment of outstanding dues.
- v) Hence, the respondent prayed the Tribunal to pass appropriate orders in the interest of justice.



6. The present Company Petition is filed under section 9 and the present Petition/Application is filed duly following all the provisions of section 9 such as the application is filed in prescribed form accompanied with fees, demand notice in a prescribed form was delivered by the Operational Creditor to the Corporate Debtor, there is no dispute received by the petitioner from the Corporate Debtor with regard to the unpaid operational debt, the debt and default in question, is not in dispute, Interim Resolution Professional namely Mr.T.Siva Naga Raja is proposed etc.
7. We have perused all the pleadings by both the parties along with the documents filed by both the parties in the light of extent provisions of IBC. The IRP suggested namely Mr.Pavan Kankani, who has filed written communication in Form-2 dated 23.09.2017 by furnishing the details of the registration and continuation of any other assignment etc. Therefore we are convinced that the Petition/Application is complete in all respects under section 9 (2) of IBC so as to admit the case under section 9(5) (i) (a) of IBC.
8. In view of the above facts and circumstances of the case, we hereby admitted the Company Petition bearing CP(IB)No. 171/09/HDB/2017, by exercising powers conferred on this Tribunal/Adjudicating Authority, under section 9 (5) (i) (a) of IBC. Post the case on 25.09.2017 with regard to appointment of IRP and consequential moratorium etc.



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Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

for Dy. Regr./Asst. Regr/Court Officer/
National Company Law Tribunal, Hyderabad Bench

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

प्रमाणित प्रति
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केस संख्या
CASE NUMBER: CP(IB)No. 171/09/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT: 19.9.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON: 28.9.2017