

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH : AT HYDERABAD**

C.P.(IB) No.40/7/HDB/2017  
u/s 7 of the IBC, 2016 r/w rule 4 of I&B  
(Application to Adjudicating Authority) Rules, 2016

**In the matter of:**

M/s. PEC Limited  
(A Govt. of India Enterprise)  
Regd. Office at Hansalaya 15,  
Barakhamba Road  
New Delhi – 110001.

....Petitioner / Financial Creditor

Versus

M/s. Sri Gangadhara Steels Limited  
Registered Office:  
Flat No.-4C, 4<sup>th</sup> Floor,  
Muralidhar Raos Doyen Villa,  
Plot No.118, Srinagar Colony,  
Hyderabad – 500 073. Telangana.

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

....Respondent/Corporate Debtor

Order delivered on 29.08.2017

**CORAM:**

Hon'ble Shri Rajeswara Rao Vittalala, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

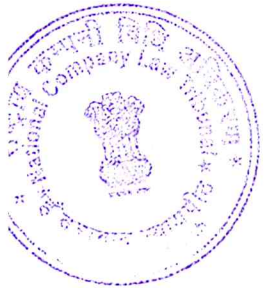
**Parties / Counsels Present:**

Counsels for the Petitioner:

Shri Deepak Bhattacharjee  
Senior Advocate with  
Shri V.K.Sajith  
Shri Dishit Bhattacharjee

Counsel for the Respondent:

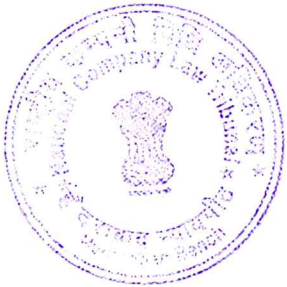
Shri Rajesh Bohra



**Per: Shri Ravikumar Duraisamy, Member (Technical)**

**ORDER**

1. The Application has been filed to initiate Corporate Insolvency Resolution Process in the matter of Sri Gangadhara Steels Limited under IBC 2016.
2. PEC Limited, Government of India Enterprise (hereinafter called as Petitioner / Financial Creditor) is a Company incorporated under the Companies Act, 1956 having its Registered Office at Hansalaya 15, Barakhamba Road, New Delhi – 110001
3. Sri Gangadhara Steels Limited (hereinafter called as Respondent/ Corporate Debtor/SGSL) is registered under the Companies Act, 1956 having its Registered Office at Flat No.-4C, 4<sup>th</sup> Floor, Muralidhar Raos Doyen Villa, Plot No.118, Srinagar Colony, Hyderabad, Telangana State – 500 073.
4. The Respondent Company proposed to procure 1292 MT of MS Billets from M/s. Hari Hara Traders, Visakhapatnam and thus made a request to the Petitioner for approval and clearance for the purchase of Inland Letter of Credit for Rs.4,99,97,493/- (Rupees Four Crores Ninety Nine Lakhs Ninety Seven Thousand Four Hundred and Ninety Three only). Accordingly the following agreements were executed by the Petitioner and Respondent.
5. Agreement No. PEC/ILC/SGSL-HHT-08/2013-2014, dated 18.03.2014 between the Petitioner/Financial Creditor and the Respondent/ Corporate Debtor by inter-alia agreeing that material should be delivered and stored in open space earmarked for PEC duly fenced at SGSL's Yard, Paravada, Visakhapatnam subject to several terms & conditions are mentioned there in.



6. Accordingly, there is a Deed of Pledge vide Agreement No. PEC/ILC/SGSL-HHT-08/2013-2014 was executed between the Respondent and Petitioner on 21-03-2014 by pledge material purchased from supplier delivered at pledgee's warehouse/pledger's open yard with compound wall / fencing at the factory premises of SGSL subject to several terms mentioned there in.
7. Another proposal vide Agreement No. PEC/ILC/SGSL-HHT-01/2014-2015 dated 19-05-2014 for procuring Billets/WR Coil/Blooms/MS Billets/Squares/Rounds/Ingots/Pig Iron/rebars and converting them to into M.S. Tor/Rebar/Angles etc, in different sizes in their plant at Viskhapatnam.
8. Another Deed of pledge dated 22-05-2014 executed vide Agreement No. PEC/ILC/SGSL-HHT-01/2014-2015 for procuring Billets/WR Coil/Blooms/MS Billets/Squares/Rounds/ Ingots/Pig Iron/rebars and converting them to into M.S. Tor/Rebar/ Angles etc, in different sizes in their plant at Viskhapatnam.
9. When the Respondent failed to clear the outstanding amounts, the Respondent addressed a letter to the Petitioner dated 04-11-2015 by giving repayment schedule as follows:-

Month	Amount	By (date)
November – 2015	Rs.0.50 Cr.	30.11.2015
December – 2015	Rs.1.00 Cr.	31.12.2015
January – 2016	Rs.2.00 Cr.	31.01.2016
February – 2016	Rs.5.00 Cr.	28-02-2016
March – 2016	Balance outstanding principal amount of approximately Rs.8.00 Crores along with accumulated interest and all other dues.	

The Respondent committed that they would comply the above schedule without fail.





10. When the Respondent failed to clear the outstanding dues as agreed upon by them earlier, the Petitioner issued a letter No.PEC/VIZAG/SGSL dated 24.11.2016 by advising them to remit the above amount of Rs.5,26,40,649/- along with overdue interest by 9-12-2016, failing which the Petitioner shall proceed to take all legal actions including filing of FIRs with concerned police station, CBI, EOW and other agencies, in order to recover money due to the Petitioner.
11. The Respondent again addressed another letter No.SGSL/VIZAG/PEC/2016-17, dated 06-12-2016 to the Petitioner by expressing their regret with regard to payment of outstanding dues as agreed earlier and thus request made to the Petitioner to bear with them for another two months i.e. till end of December 2016 to clear the all outstanding dues.
12. When they failed to pay the outstanding amounts, the present Company Petition was filed to claim total amount of Rs.7,43,89,467/- (Rupees Seven Crores Forty Three Lakhs Eighty Nine Thousand Four Hundred and Sixty Seven only) which includes interest as on 06-03-2017.
13. We have carefully perused all pleadings along with material papers filed in their support.
14. The case was listed on various dates viz. 05-04-2017, 5-06-2017, 29-06-2017, 14-08-2017, 21-08-2017 & 29-08-2017 and adjourned from time to time on the requests of Learned Counsel for Respondent on the ground that issue is likely to be settled / resolved with the Petitioner. However, the Learned Counsel for Petitioner opposed the adjournments of the case.
15. Consequently, the Director of Sri Gangadhara Steels Limited i.e. Respondent filed Three Affidavits dated 02-06-2017, 30-06-2017 and 16-08-2017.



16. The Respondent vide submission dated 03-04-2017, stated that Sri Gangadhara Steels Limited was incorporated on 10-04-1997 and was into business of manufacturing structural steel & MS Angels etc, it was enjoying credit facility with Lakshmi Vilas Bank, Gajuvaka, Visakhapatnam to the tune of Rs.85 Crores under sole banking, by extending their difficulties in the steel sector industries, expressed their willingness to clear dues to the Petitioner at one time, as they are in talks with Lakshmi Vilas Bank for additional funds. Therefore, they requested about 4 to 6 weeks' time.
17. In the 1<sup>st</sup> Affidavit dated 02-06-2017, the Respondent submitted that the Company has got an opportunity to be associated with a trade partner i.e. VHR Enterprises Limited, Hyderabad and they will advance the Respondent Company an amount of Rs.5 Crores, as an advance commitment to earmark the part of manufacturing facility towards their orders. Further, the disbursal of sanctioned loans from Lakshmi Vilas Bank will take about 15 to 20 days of time and in view of the above they asked for further period of 2 to 3 weeks' time for the same purpose.
18. In the 2<sup>nd</sup> Affidavit dated 30-06-2017, the Respondent again requested 60 days' time to settle the dues. The Director of Respondent Company submitted that they shall approach the Applicant Company, for OTS by paying an amount of Rs.50 lakhs which will be adjusted against mutually agreed amount under OTS within a period of 45 days and the balance amount will be paid to the Petitioner within a total period of 60 days. Further it was also submitted that the sanctioned / disbursal of loan from Lakshmi Vilas Bank was delayed on account of procedural issues and trade advance from the new partner is also expected during the last week of August, 2017. In view of the above facts, the admission of the case under IBC will avert the Bank to disburse/sanction fresh credit limits and also impact the trade agreements and morale of workers.





19. In the 3<sup>rd</sup> Affidavit dated 16-08-2017, the Director of the Respondent Company again reiterated the terms and conditions of the OTS as stated above and sought additional 60 days' time.
20. From the records submitted by the Petitioner, it is also observed that the Petitioner Company wrote two letters (04-11-2015, and 24-11-2016) for recovery of outstanding amount of more than Rs.5.26 crores along with interest.
21. By considering the appeal of the Director of Respondent Company who is present before the Adjudicating Authority/Court every time granted adjournments as mentioned above especially on the ground that there are about 142 employees working in the Respondent Company, proposal of Respondent Company for loan is considered favourably by Lakshimi Vilas Bank/expected advance from the trade partner as stated supra,. Once the loan/funds is released entire outstanding amount would be paid to Petitioner Company in one go.
22. In view of the above facts & circumstances, Adjudicating Authority was also of the view that the issue will be settled amicably without going through the entire process of CIRP which would be a "win-win" situation for both Petitioner & Respondent Company.
23. Though the matter was in progress before Adjudicating Authority, the Petitioner has approached the Hon'ble NCLAT by filing Company Appeal (AT) (Insol.) No. 121 of 2017 in the order passed by Adjudicating Authority on 29-07-2017. The Hon'ble NCLAT vide order dated 04-08-2017, disposed of the appeal by observing that the Adjudicating Authority will not grant further time to any of the parties and decide the case either way, there being a time frame given for admission or rejection.
24. The Learned Counsel for Respondent along with the Director, Sri Gangadhara Steels Limited has again submitted on 16-08-2017 that further time may be granted as they are still in the process of



getting loan from their bankers. The corporate debtor will pay upfront amount of Rs.50.00 lakhs which will be adjusted against mutually agreed amount under OTS within the period of 45 days from now and the balance amount will be paid within the period of 60 days.

25. Shri Deepak Bhattacharjee, Senior Counsel for Petitioner submitted that the Adjudicating Authority cannot grant any further time as sufficient time has already been granted in the past to the Respondent and the contentions raised in their affidavits are just for the sake of getting time and they have not paid any single pie till today.
26. In view of the above submissions, directions of the Hon'ble NCLAT as stated supra, case has to be decided quickly without granting any further time.
27. As stated supra, there is no dispute with regard to the debt and default and only the defence is that since more number of employees (142 employees) are working in the company, bank is considering their loan proposal favourably & expected sanction any time, trade advance of Rs.5 crores from Trade partner, hence, they were requesting time. However, considering the time already consumed by the Respondent and not even a single rupee is paid to the Petitioner so far, Adjudicating Authority is of the considered view that it is not possible to extend any further time.
28. The Petitioner has suggested to appoint Mr. Vikarm Kumar as IRP. The IRP proposed also filed an affidavit by giving declaration as required under the law.
29. Shri Rajesh Bohra, Learned Counsel for Respondent after requesting time on several dates as mentioned above, has raised the plea that the Petitioner will not come under the definition of "Financial Creditor" but as "Operational Creditor".





In order to have ready reference, some of the definitions are reproduced as follows:

- (1) Section 5 (7) defines "Financial Creditor" – means any person to who a financial debit is owned and includes a person to whom such deb has been legally assigned or transferred to;
- (2) Section 5 (20) defines "Operational Creditor" – means a person to whom an operational debt is owned and includes any person to whom such debt has been legally assigned or transferred;
- (3) Section 5 (21) defines "Operational Debt" – means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;
- (4) Section 3 (6) defines "Claims" – means
  - a. a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;
  - b. right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;
- (5) Section 7 (5) Where the Adjudicating Authority is satisfied that:
  - a. default is occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or
  - b. default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application.





(6) Section 7 (7) the Adjudicating Authority shall communicate:

- a. the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;
- b. the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

(7) Section 9 – Application for initiation of corporate insolvency resolution process by operational creditor:

- (1) after the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

- (4) an operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.



(7) Section 13 - Declaration of moratorium and public announcement.

- (1) the Adjudicating Authority after admission of the application under section 7 or section 9 or section 10, shall, by an order –

- a. declare a moratorium for the purposes referred to in section 14;
- b. cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and
- c. appoint an interim resolution professional in the manner as laid down in section 16.

(2) the public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the Interim Resolution Professional.

(9) As per Section 5(i) communicate such decision to operational creditor & the corporate debtor if,

- a. under both the sections an application in such form and manner has to be filed.
- b. In both the sections record of default / evidence of default to be submitted
- c. In section 7 name of Resolution Professional (RP) to be proposed to act as IRP where as in section 9 (4) operational creditor may propose an IRP.
- d. In section 9 notice (or) invoice demanding payment u/s 8(1) in such form notice of dispute u/s 8(2)

30. Since the issue was raised by Respondent, the bench advised the petitioner to substantiate their claim on financial creditor. In spite of advising the Petitioner to submit a brief write up to substantiate their position as financial creditor, Balance Sheets to analyse their position as financial creditor, Petitioner has made available Balance Sheets to Adjudicating Authority only on the last date of hearing. Upon perusal of their Profit & Loss A/c, Invoice raised on the corporate debtor dated 27-03-2014, it is noted that Tax Invoice includes VAT of 5%, Quantity, Rate per metric ton etc. From Note No.13 of the Annual Report as at 31-03-2016, Debtors secured against I.L.C. have been classified as Trade Receivables. Further it is also noted that an amount of Rs.3,746.59 crores have been shown as sale of products in Note No.17 under the Head Revenue from Operations. In view of the same, we are of prima facie view that the Petitioner comes under section 9 i.e. Operational Creditor. The Counsel for Respondent also did not object to consider the petition under section 9 of IBC.



31. In the instant case, facts specific to the case, where the case is filed either under section 7 or 9 would not have much difference since the Petitioner Company has already demanded Respondent



to pay the outstanding dues and the Respondent also agreed for the same and to clear the outstanding dues within the stipulated period i.e. end of December 2016, vide letters dated 24-11-2016 and 06.12.2016. Moreover, an IRP is also suggested by the Petitioner.

32. The major difference between Section 7 & 9 are in respect of notice (or) invoice demanding payment or notice of dispute and suggesting an IRP. The distinctive advantage in section 7 over section 9 is Financial Creditor is part of CoC, participate in CoC meetings, and to exercise voting rights in CoC. Considering the fact that a huge amount is outstanding since 2015, inspite of various Affidavits filed /adjournments granted to Respondent not even a single rupee is paid so far even though petition was submitted under IBC on 22-03-2017. Moreover, the petitioner being a Government of India Enterprise taken steps for recovery of its dues from 2015 and considerable time had already lapsed therefore in the interest of time / both the parties we have considered the present petition under section 9 of IBC, the petition filed is maintainable and petition is also complete in all respects as per provisions of section 9 of IBC and thus it is a fit case for admission. Therefore we have no hesitation to consider this petition under section 9 of IBC.

33. Heard, Counsels for both the sides. Considering the facts and circumstances of the matter as discussed supra and we are also satisfied that there is no disciplinary proceedings pending against the proposed IRP. In the result, the Company Petition bearing CP No.40/7/HDB/2017 is admitted by exercising the powers conferred under section 9 of IBC, 2016.

34. By invoking the powers under Sections 10,12,13,14,15,16, 17, 18, 19, 20, 21, 22 and 25 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority passes the following order :-



- 1) Appointed Shri Vikram Kumar, Regd. No.IBBI/IPA-001/IP-P00082/2017-18/10178, Sector B-1/1748, Vasant Kunj, New Delhi - 110070 to act as Interim Resolution Professional with a direction to initiate appropriate action contemplated in CIRP in accordance with extant provisions of IBC, 2016 and other relevant rules.
- 2) We hereby declare the Moratorium under Section 14(1) of Code in respect of the following:
  - (a) 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;
  - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - (c) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 (54 of 2002).
  - (d) The recovery of any Property by an owner or lessor where such property is occupied by or in the possession of Corporate Debtor.
  - (e) This order of moratorium shall have effect from the date of communication of this order till completion of Corporate Insolvency Resolution process (CIRP) or till passing an order for liquidation of Corporate Debtor under section 33, whichever is earlier.





- (f) Directed to cause a public announcement of the initiation of Corporate Insolvency Resolution Process immediately as prescribed under section 15 (1) and (2) of Insolvency and Bankruptcy Code, 2016, on [www.ibbi.gov.in](http://www.ibbi.gov.in) (designated website of Insolvency and Bankruptcy Board of India, circulated vide IBI/IP/PUBLIC ANN/221 dated 01.02.2017) and email to [public.ann@ibbi.gov.in](mailto:public.ann@ibbi.gov.in), in addition to other accepted modes of publication immediately and call for submission of claims as per Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Company is also directed to publish the same in its Official website.
- (g) The IRP is directed to follow all extant Code of IBC and all the rules and regulations framed by Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons) Regulations, 2016. Afford full opportunity to all concerned parties to the issue by duly following Principles of Natural Justice;
- (h) Both the petitioner and respondent are directed to extend full-cooperation to the IRP to discharge his statutory functions;
- (i) Direct the personnel of Sri Gangadhara Steels Limited, its promoters or any other person associated with the management of Sri Gangadhara Steels Limited, to assist and cooperate with Interim Resolution Professional to provide access to documents and records and management of the affairs of the Company.



3) Post the case on 17<sup>th</sup> October, 2017 with a direction to the IRP to apprise the Tribunal, about steps being taken by him from time to time, in instant CIRP, by way of filing an affidavit.

4) The IRP is also directed to schedule meeting(s) of concerned parties, verification etc, in such a way that CIRP shall be completed well before the prescribed time limit of 180 days under the Code..



*Sd/-*  
RAVIKUMAR DURASAMY  
MEMBER (TECHNICAL)

*Sd/-*  
RAJESWARA RAO VITTANALA  
MEMBER (JUDICIAL)

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

प्रमाणित नकल  
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केस नं. ४०/७/१४८३/२०  
CASE NUMBER C.P.(13) No. 40/7/1483/20  
निर्णय की तिथि  
DATE OF JUDGEMENT 29-8-2017  
नकल तैयार की गई तिथि  
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