

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

C.P.(IB).No.115/09/HDB/2017
U/S 9 of IBC 2016 r/w Rule 6 of I&B
(Application to Adjudicating Authority) Rules, 2016

In the matter of :

McNally Sayaji Engineering Ltd
Registered Office: No.4
Mangoe Lane,
Kolkatta – 700 001.

.....Petitioner / Operational Creditor

Versus

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

Suryodaya Infra Projects (I) Private Limited
Registered Office : Plot No.45,
7-1-644, Near ESI Hospital,
Sundar Nagar Colony,
Hyderabad-500 038,
Telangana.

...Respondent / Corporate Debtor

Date of Order : 14.11.2017

CORAM:

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

Counsels Present:

For the Petitioner

Shri T.Suryanarayana
Ms.K.Srilatha

For the Respondent

Dr. S.V.Ramakrishna

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Petition bearing C.P.(IB).No. 115/09/HDB/2017 is filed by M/s.McNally Sayaji Engineering Limited u/s 9 of the Insolvency and Bankruptcy Code, 2016 R/W



Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016 by seeking to initiate Corporate Insolvency Resolution Process against M/s. Suryodaya Infra Projects (I) Private Limited under IBC, 2016.

2. The case is listed before this bench on various dates viz 25.07.2017, 27.07.2017, 08.09.2017, 14.09.2017, 19.09.2017, 27.09.2017, 17.10.2017, 10.11.2017 and 14.11.2017. The case has been adjourned on the above dates as the parties submit that the issue in question was going to be resolved between the parties themselves.

3. Brief facts of the case:

a. The Applicant / Operational Creditor is a company engaged in manufacturing various kinds of crushing and screening machines and other equipments. In the course of its business, the Corporate Debtor / Respondent Company approached the Operational Creditor for supply of portable crushing plant machinery. Accordingly, the Corporate Debtor issued a Letter of Intent dated 07.08.2012 for a value of Rs.2,35,00,000/- and Purchase Order dated 09.08.2012 for a value of Rs.2,27,70,000/- plus applicable taxes.

b. The Operational Creditor supplied in terms of the LOI / Purchase Order and Invoices (Bill Nos. 6010052 to 6010061 all dated 19.02.2013 and Bill No.6010063 dated 26.02.2013) were raised to the tune of Rs.2,86,51,799/- (Rupees Two Crore Eighty Six Lakh Fifty One Thousand Seven Hundred and Ninety Nine Only).

c. The Corporate Debtor entered into a Loan cum Hypothecation Agreement with its Financer, L&T Finance Limited whereby the financer committed a payment of Rs.2,43,54,000/- (Rupees Two Crores Forty Three Lakhs Fifty Four Thousand Only). The Financer released part payment of Rs.1,71,91,050/- leaving a balance of Rs 71 62 950/-



- d. Although supply was completed in February 2013, the commissioning of the plant could not be proceeded, as the Corporate Debtor failed to make arrangement. Despite Corporate Debtor's promise to pay the balance payment of Rs.83,20,750/- on or before 31.03.2015, the payment was not settled. The Corporate Debtor issued cheques on 23.04.2015, hence, the cheques issued were returned on presentation for Insufficient Funds / Stop Payment Instruction.
- e. In an email dated 24.08.2015, the Corporate Debtor explained about its financial constraints and stated that the amount would be paid in two months. However, the even as on date payments are not made.
- f. The Corporate Debtor's Statement of Account upto 30.09.2016 would indicate that the balance payable is Rs.74,62,949/-. In fact as per the payment terms contained in P.O. dated 09.08.2012, balance was to be paid along with 100% taxes before taxes.
- g. Despite the acknowledgement of dues on several dates by letters and emails, the Corporate Debtor has continuously failed to honour the commitment as it is evidently not in a position to pay the outstanding. In other words, the Corporate Debtor is commercially insolvent, under these circumstances, a statutory notice under the provisions of erstwhile Companies Act was issued on 30.09.2016 calling upon the Corporate Debtor to settle the outstanding sum amounting to Rs.74,62,949/- along with interest at 22% as per condition for delayed payment amounting to Rs.49,25,000/- as on 30.09.2016 for which no reply was received.



- h. The Corporate Debtor ought to pay Rs.1,23,87,949/- as on September, 2016 for which settlement of account was served upon on the Corporate Debtor. The aforesaid sum as on March 2017 with further applicable interest amounted to Rs.1,60,59,350/-. The above payment as on 30.04.2017 amounts to Rs.1,61,94,296/- which ought to be paid with further interest till date of payment / realisation.
- i. The Operational Creditor in view of the outstanding issued notice in Form-3 dated 04.04.2017 demanding payment under the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor received the notice on 06.04.2017. However, the Corporate Debtor defaulted to make the payment and the Corporate Debtor also has not notified the existence of any dispute under the said code. In the circumstances, the Operational Creditor has filed the above application to initiate the Corporate Insolvency Resolution Process and failing that the liquidating the Corporate Debtor.

- 4. Heard. Mr.T.Suryanarayana along with Ms.K.Srilatha, Ld. Counsel for Petitioner / Operational Creditor and Dr.S.V.Ramakrishna, Ld. Counsel for Respondent / Corporate Debtor.
- 5. The Bench passed an order dated 17.10.2017 by directing the Respondent to depute one senior technical person to visit the site near Bellary, to inspect the condition of machinery and possibility of commissioning the machinery and report to this Tribunal. In pursuant of the orders, the Operational Creditor has inspected the machine in question and filed Memo dated 10.11.2017.
- 6. Subsequently, both parties have filed another Joint Memo of Settlement dated 14.11.2017, which is extracted as below:-





- a. The Corporate Debtor agrees to pay an amount of Rs.61,00,000/- (Rupees Sixty One Lakhs only) in full and final settlement of all its dues in respect of the transaction in question to the Operational Creditor. The Operational Creditor has accepted the offer made by the Corporate Debtor.
- b. The above amount of Rs.61,00,000/- (Rupees Sixty One Lakhs only) is being paid by way of the Cheque bearing No.763350 dated 14.10.2017 for Rs.61,00,000/- (Rupees Sixty One Lakhs only) drawn on State Bank of India, Yellareddiguda Branch, Hyderabad and it being a high value cheque, the same would be presented on 24th November, 2017 and the same shall be duly honored on presentation for payment;
- c. The Operational Creditor has on this day handed over the Manuals as stated by them in their Memo submitted to Hon'ble NCLT on 10th November, 2017 and the Corporate Debtor acknowledges receipt of the same.
- d. The Operational Creditor agrees to withdraw the subject petition in C.P.(IB)/115/09/HDB/2017 as soon as it realizes payment made vide the above cheque. The Operational Creditor agrees to provide such support as may be required by the Corporate Debtor in respect of the plant supplied on such terms and conditions as may be mutually agreed between the parties;
- e. The Corporate Debtor undertakes that the above cheque will be honoured on presentation without fail. The Corporate Debtor agrees that in the event of dishonor of the above cheque for any reason, the Operational Creditor will be at liberty to initiate proceedings under Section 138 of the Negotiable Instruments Act;
- f. On realization of the amount covered by the above cheque, the Operational Creditor will


unconditionally withdraw all the pending cases in C.C.Nos.50066/2015, 51935/2015 and 51937/2015 filed under Section 138 of the Negotiable Instruments Act before the Hon'ble Chief Judicial Magistrate, Vadodara and provide necessary proof thereof to the Corporate Debtor within 15 days of the realization of the above cheque amount; and

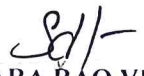
- g. In the event of any default on the part of the Corporate Debtor in abiding by the above terms and conditions of settlement, the above agreed settlement amount of Rs.61,00,000/- will no longer be in force and the Operational Creditor will be at liberty to seek recovery of the entire principal amount of Rs.74,62,949/- together with the interest as per the terms and conditions of the contract.

7. In the light of the above developments, both the Ld. Counsels submitted that issue in question is resolved subject to terms and conditions as mentioned in the Joint Memo of Settlement. Therefore, Ld. Counsel for Petitioner wanted to withdraw the Company Petition subject to compliances of terms and conditions of above settlement.

8. Therefore, the Company Petition No.115/09/HDB/2017 is disposed of as withdrawn by directing both the parties to strictly adhere with the terms and conditions contained in Joint Memo of Settlement dated 14.11.2017.

9. The parties are at liberty to file Miscellaneous Application, in case, any party wanted clarifications etc. No order as to costs.


RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)


RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)


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

प्रमाणित प्रति
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केस संख्या
CASE NUMBER...C.P.(115)Nb.115/09/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT...14.11.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON...17.11.2017