

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

CP (IB) No.229/9/ HDB/ 2021

Under section 9 of Insolvency and Bankruptcy Code,
2016 read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of

M/s Sunland Alloys

A partnership firm registered under
Indian Partnership Act, 1932

Having registration No.BA 105432

Registered Office : A/501-502

Ramji House Premises CHS Ltd

30, Jambul Wadi, Kalbadevi Road

Mumbai – 400002.

FREE OF COST COPY

.. **Petitioner/
Operational Creditor**

VERSUS

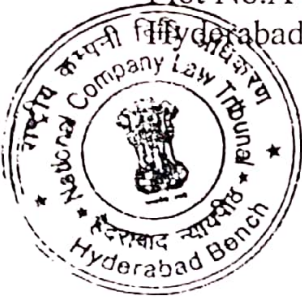
Castall Technologies Pvt. Ltd

Plot No.A-55, IDA Kukatpally Gandhi Nagar

Hyderabad, Telangana – 500037.

.. **Respondent
Corporate Debtor**

Date of order: 19th April 2022



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Coram:

**HON'BLE SHRI VENKATA RAMAKRISHNA BADARINATH
NANDULA, MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Parties / counsels present:

For the petitioner .. Shri Bharat Kothari, Advocate assisted by
Shri T. Raghunath Reddy, Advocate.

For the respondent: .. Shri R.S. Sravan Kumar, Advocate.

PER BENCH

ORDER

This petitioner/ Operational Creditor is a partnership firm incorporated under Indian Partnership Act, 1932. It is engaged in supply of raw aluminium. The respondent/ Corporate Debtor is engaged in production of high precision non-ferrous die castings, CNC machine parts, etc.

2. The present petition is filed by M/s Sunland Alloys/ Operational Creditor, stating that the following amounts are due and payable by the Corporate Debtor / Castall Technologies Pvt Ltd.:

•Principal amount	..	Rs.1,44,67,983/-
•Interest @ 18% per annum	..	Rs.0,49,78,107/-

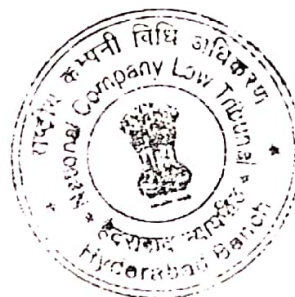


• Aggregate amount due .. Rs.1,94,46,090/-

Thus, aggregated amount of Rupees one crore ninety four lacs forty six thousand and ninety only is due and payable as on 26.06.2021 by the Corporate Debtor / Castall Technologies Pvt Ltd. Particulars of Claim is at ANNEXURE-6.

3. The petitioner/ Operational Creditor alleges that the petitioner's Bank is not issuing certificate under section 9(3)(c) of the Insolvency & Bankruptcy Code, 2016, which the Operational Creditor intends to produce as a proof of 'no payment' of an unpaid operational debt. A copy Bank statement of the Operational Creditor is produced at ANNEXURE-7 to show that no payment is received from the Corporate Debtor towards operational debt as claimed in the present petition.

4. Hence this petition is filed under section 9 of Insolvency and Bankruptcy Code, 2016, read with Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process,



granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

5. The averments made in the petition are as follows:

(i) The Operational Creditor had supplied aluminium alloy ingots as per Purchase Orders placed by the Corporate Debtor from time to time. Such invoices, 10 in number, along with e-way bills are at ANNEXURE-2 COLLY. Purchase Order requires the Corporate Debtor to make payment within 45 days. Ledger Statement is at ANNEXURE-3. However, the Corporate Debtor had defaulted in payment of Rs.1,44,67,983/-.

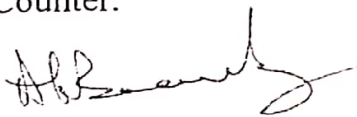
(ii) Certain e-mail communications were exchanged between the Operational Creditor and Corporate Debtor (ANNEXURE-4) by which the Corporate Debtor has confirmed the account and amount due and payable to the Operational Creditor.

(iii) The Operational Creditor issued statutory Demand Notice dated 27.02.2021 under section 8 of the I&B Code, 2016. Copies of said Demand Notice dated 27.02.2021, postal receipt dated 02.03.2021 and Online Tracking Report dated 06.03.2021 are at ANNEXURE-5.



6. The respondent-corporate debtor has filed its Reply dated 22.11.2021. In its reply though the Corporate Debtor does not dispute the debt and default as alleged by the Operational Creditor and the amount as claimed by the Operational Creditor. The Corporate Debtor cites COVID-19 pandemic and other such circumstances for the downfall in its business. Nevertheless, the Corporate Debtor vehemently disputes levy of interest at the rate of 18%. Levy of interest has never been agreed upon between the parties. Besides, the Corporate Debtor speaks about some additional amounts payable over and above Invoice value. The averments made in the counter briefly stated thus:

(i) The Corporate Debtor had business with the Operational Creditor commenced from 20.02.2014 and lasted on 20.02.2014. Total purchase value by the Corporate Debtor was Rs.22,90,92,416/-. In case payment is delayed due to market conditions, the Corporate Debtor used to compensate the same by making certain additional payments over and above the Invoice value. Such additional amounts ranging from 2014 to 2019, as agreed between the parties, payable over and above the Invoice value are listed in para 9 of the Counter.





(ii) The Corporate Debtor accused the Operational Creditor having violated the contract, having stopped supplies without assigning any reasons and having not reconciled the accounts.

(iii) The Corporate Debtor further alleges that due to not receiving the committed material from the Operational Creditor the Corporate Debtor sustained damages and failure to honour its commitments.

7. The petitioner/ Operational Creditor has filed Written Arguments dated 28.03.2022, mainly contending that the respondent/ Corporate Debtor has never replied the Demand Notice dated 27.02.2021 issued by the Operational Creditor and delivered on the Corporate Debtor on 06.03.2021.

8. Heard Shri T. Raghunath Reddy, learned counsel for the petitioner/ Operational Creditor and Shri R.S. Sravan Kumar, learned counsel for the respondent/ Corporate Debtor. Perused the documents produced before us and reply/ written submissions. The Petitioner filed the present petition under

Section 9 of I&B Code, 2016.

It is the case of the petitioner herein that it had supplied aluminium alloy ingots as per Purchase Orders placed by the Corporate Debtor from time to time. Some of such invoices, along with e-way bills are at ANNEXURE-

2 COLLY. Purchase Order requires the Corporate Debtor to make payment within 45 days. However, the Corporate Debtor defaulted in payment thereof. The petitioner issued Demand Notice under section 8 of the I&B Code, which is not replied by the Corporate Debtor.

10. In the above facts and circumstances the following points are framed for consideration by this Adjudicating Authority:

POINTS FRAMED :

(1) Whether there is an 'operational debt' as defined exceeding Rs.1,00,00,000/-?

(2) Whether the documentary evidence furnished with application shows that the aforesaid debt is due and payable and has not yet been paid?

The points are answered thus:

POINT No.(1) :

(1) Whether there is an 'operational debt' as defined exceeding Rs.1,00,00,000/-?

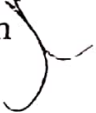
Yes. The operational debt as claimed by the Operational Creditor satisfies the threshold limit of Rs.1 crore as prescribed in Notification dated 24.03.2020 issued by the Ministry of Corporate Affairs.

POINT No.(2) :

(2) Whether the documentary evidence furnished with application shows that the aforesaid debt is due and payable and has not yet been paid?

We have perused e-mail communications and invoices. Also perused the reply filed by the Corporate Debtor, wherein we find tacit admission of debt and default by the Corporate Debtor. Debt and default has not been refuted by the Corporate Debtor in its reply, albeit elaborately expressed difficulties experienced and challenges confronted by the respondent/ Corporate Debtor. In the facts and circumstances we are satisfied that the claim of the petitioner/ Operational Creditor is properly supported by the documents. Thus, the aforesaid debt as claimed by the petitioner/ Operational Creditor has become due and payable and has not yet been paid by the Corporate Debtor.

Here it may be noted that despite receipt of Demand Notice (Form-3) issued by the Operational Creditor, the Corporate Debtor had not sent any response. As already stated, the reply filed by the Corporate Debtor only contains the so called reasons and excuses for not discharging the outstanding debt. Insofar as the plea of the Corporate Debtor that there is no provision for payment of interest by the Corporate Debtor, as such the claim for interest is not tenable is concerned, it may be stated that, this Tribunal in an application



under section 9 of the I&B Code, 2016 will not decide the quantum of debt, but would only decide whether there exists a debt. If so, whether there is any default in discharging such debt. In our discussion supra, we have categorically held that there is an operational debt due and payable by the Corporate Debtor to the applicant herein and the Corporate Debtor has defaulted in payment of the same. As such it is a fit case to order initiation of Corporate Insolvency Resolution Process.

13. Hence, the Adjudicating Authority admits this petition under Section 9 of I&B Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

(A) Corporate Debtor, M/s Castall Technologies Pvt. Limited is admitted in Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016,

(B) The Bench 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;

(C) 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.

(D) 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.



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(E) 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.

(F) That the order of moratorium shall have effect from the date of this order 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.

(G) 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.

(H) The petitioner/ Operational Creditor failed to name any one as IRP and has requested the Tribunal to appoint one for the CIRP. The IBBI has recommended a panel of IRPs for appointment as IRP for the period from 01.01.2022 to 30.06.2022. In compliance with section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints **Shri Haridasu**

Sambasiva Rao, having registration No.IBBI/IPA-002/IP-N00603/2018-2019/11858 having address at 107, Prajapathi Elite 3, Mayurinagar, Miyapur, Hyderabad, Telangana, 500049, email : hsrao.siva@gmail.com as IRP. The



aforesaid IRP has no disciplinary proceedings pending against him. His Authorisation for Assignment is valid till 07.12.2022. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(I) The petitioner is directed to pay a sum of Rs.1,00,000/- (Rupees one lac only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

Proposed IRP shall file Form-2 within three days from the date of this order

The petitioner is directed to communicate this order to the proposed IRP forthwith.

(L) The petitioner is directed to communicate this order to the proposed IRP.

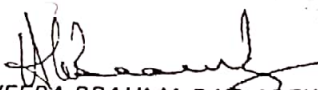


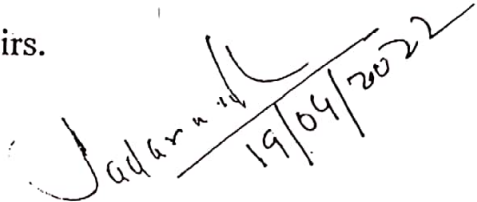
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14. Accordingly, this Petition is admitted.

15. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

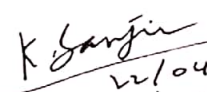

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


DR. N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

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केस संख्या
CASE NUMBER. CP(28) No. 229/9/HDB/21
निर्णय की तारीख
DATE OF JUDGEMENT. 19/4/22
प्रति तैयार किया गया तारीख
COPY MADE READY ON. 22/4/22


22/04/2022
Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

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