

SL.No.3

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**PHYSICAL HEARING**

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)**

**CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 25.04.2023 AT 02:30 PM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>CP (IB) No. 54/9/HDB/2020</b>
<b>NAME OF THE COMPANY</b>	<b>Srichaitanya Chloridest Pvt Ltd (Valanties Laboratories Pvt Ltd)</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Ven Infra Projects</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Srichaitanya Chloridest Pvt Ltd (Valanties Laboratories Pvt Ltd)</b>
<b>UNDER SECTION</b>	<b>9 of IBC</b>

**ORDER**

Orders pronounced vide separate order. Application is dismissed.

**Sd/-  
MEMBER (T)**

**Sd/-  
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH - II**

**CP(IB) No.54/09/HDB/2020**  
**U/s. 9 of IB Code, 2016**

**In the matter of:**

M/s. Ven Infra Projects,  
8-3-229/D/97/4, Flat No.401,  
Road No.11, Jubilee Hills,  
Hyderabad – 500 045.

...Operational Creditor

Vs

M/s. Valentis Laboratories Private Limited,  
(formerly known as Srichaitanya Chlorides Pvt. Ltd),  
Plot No.31 & 32, 39 & 40,  
Phase 2, IDA, Pashamylaram  
Telangana – 502 307.

...Corporate Debtor

**Date of order: 25.04.2023**

**CORAM:**

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

**Counsels present:**

For the Operational Creditor : Mr. P. Vikram, Advocate

For the Corporate Debtor : Mr. V. Pandu Ranga Reddy, Advocate  
Mr. Parameswara Reddy, Advocate

Heard on : 19.04.2023

**[PER: BENCH]**  
**ORDER**

1. This is an application filed by the Petitioner M/s. Ven Infra Projects, Operational Creditor (OC) against the Respondent M/s. Valentis Laboratories Private Limited (formerly known as Srichaitanya Chlorides Private Limited), Corporate Debtor (CD), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor for the default committed by the Corporate Debtor in discharging the debt that is due to the Operational Creditor.
2. The facts in brief as laid in the synopsis filed along with the application are as follows:
  - a. The OC's Company is engaged in the business of construction as land developers, builders and contractors. The CD is engaged in the manufacture of products such as Tri Cholo Acetyl Chloride, Tetralone etc.
  - b. In the course of business, CD approached the OC for availing the OC's specialized services for construction of B Block Extension, Intermediate Block etc. The OC completed the aforesaid services and issued seven (7) Invoices for Rs.94,99,247/-. As on

29.09.2019, the CD is liable to pay the total outstanding debt of Rs.1,06,19,764/- including interest @ 24% per annum.

- c. The OC requested the CD to clear the outstanding debt on several occasions, but in vain. A Demand Notice was sent on 29.09.2019 in Form 4. A reply Notice was issued, by denying the contents of the Demand Notice. Hence, this application seeking the above mentioned relief.
3. The CD filed Counter denying the contents of the Petition and further, contending that a similar Notice was issued on behalf of M/s. Alex Constructions Pvt. Ltd. for which, a detailed reply was given. The Notice sent to the Respondent was in a running Word printed format without following the specified forms as prescribed under the IBC, 2016.
    - a. M/s. Ven Infra Projects i.e. OC herein has relationship with the transactions made with M/s. Alex Constructions Pvt. Ltd, since they are inter related in terms of ownership. The CD need not pay any amounts to the OC and as per the records of the CD, an amount of Rs.32,96,754/- was paid as an advance against quotations submitted by the OC. After the said advance, the OC

did not carry out any works and hence, he is liable to return the advance amount.

- b. Though, the CD was not satisfied with the performance of the work made by the OC, as a good gesture, by believing the sweet words of one Mr. Venkata Reddy, the CD made several advances in excess than the defective works carried out by the firm which is owned by Mr. Venkata Reddy under the name and style of M/s. Ven Infra Projects.
- c. M/s. Alex Constructions Pvt. Ltd. was unable to procure the said material by paying advances to such supplying companies. In view of completing the projects within the stipulated time, the CD took risk of paying amounts for the said material, to the supplier, which has to be deducted from the total Invoice.
- d. The CD waited with lot of patience for the rectifications pointed out, but in vain.
- e. The Telangana State Industrial Infrastructure Corporation (TSIIC) addressed a letter dated 20.06.2019 to the CD, pointing out certain defects which are that; the slab is not poured properly and the beams are exposed at various place,

honeycombs of concrete are visible at multiple places, staircase is poorly constructed which can lead to accidents in future.

- f. The CD expressed displeasure with regard to the non-progress and defects in addition to the rectification required, inspite of which, the OC did not care. Since, the OC turned a deaf ear, the CD had to entrust the work to other Companies.
  - g. With regard to incompleteness of work, an email was sent by the CD on 28.09.2019. As a counter blast to the said email, a Demand Notice was sent on the very next day and the said Notice is not in the prescribed format. However, a reply was sent for the same. Hence, the application is liable to be dismissed.
4. A rejoinder is filed by the OC contending that the work was performed before the striking off of the Company and Invoice was raised accordingly. The CD has released the amounts towards the Invoice. The OC & the CD agreed that as M/s. Alex Constructions Pvt. Ltd. is under strike off and that M/s. Ven Infra Projects will continue the work. As per the mutual understanding, the CD has carried forward the balance amount to OC. The CD is showing the Inspection Report for the first time and never communicated to the OC till date. It is shocking to

know that the CD has approached another construction company for rectification of the structure. There was no incident of collapse of any part of the structure. It shows that the CD has manipulated in extracting the false report that the structure is defective, hence the application deserves to be allowed.

5. Heard both the Counsel and perused the written submissions. In the foremost, the issue raised by the Respondent's Counsel with regard to the Demand Notice can be discussed.
6. A perusal of the Demand Notice would show that it is issued in Form-3. But, however Form-4 is not attached to Form-3 Notice.
7. The judgement of the *Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.39 of 2017 between Uttam Galva Steels Vs. DF Deutsche Forfait AG and Ors.* is relied upon by the respondent's counsel, wherein, it was held that before filing an application under Section 9 of Insolvency & Bankruptcy Code, 2016 the requirements under Section 8 of Insolvency & Bankruptcy Code, 2016 are required to be fulfilled. Section 8 of IBC, 2016 is extracted hereunder:

**“Section 8 - Insolvency resolution by operational creditor:-**

*(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the*

*default to the corporate debtor in such form and manner as may be prescribed. Persons who may initiate corporate insolvency resolution process. Initiation of corporate insolvency resolution process by financial creditor. Insolvency resolution by operational creditor. (2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor - (a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute; (b) the repayment of unpaid operational debt- (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

*Explanation:- For the purposes of this Section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.”*

8. In this case, the notice was nevertheless sent as mandated by Section 8, but it is not in the prescribed format. Hence, as per the above cited judgement, the application has to fail due to non-compliance of the mandate of Rule 5 of the Insolvency & Bankruptcy Code (Application for Adjudicating Authority) Rules, 2016.
9. Apart from the issue with regard to the Demand Notice being in proper format, the Counsel for the Respondent raises another issue, which is with regard to the pre-existing dispute between the parties. He draws our attention to an email sent on 28.09.2019, wherein, defects were pointed out by the CD stating



that the pillars are improperly finished, poured slabs without proper boxes and channels which has led to exposed beams etc. It is also stated that they have communicated to the OC and the OC tried to repair these, but to no avail.

10. The Counsel for OC submits that they have demanded the amount one day prior to the issuance of the said email and as a counter blast and to avoid the said payment, this mail was sent. But, absolutely no evidence with regard to the same, is placed before this Tribunal. Hence, we cannot accept the contention of the Counsel for the Petitioner that the email is sent as a counter blast for the demand made by the Petitioner. Even in the email, the pre-existing dispute was very much mentioned. Since the dispute is raised prior to the demand notice, we believe that there is a pre-existing dispute.
11. Hence, in view of the above, this application is liable to be dismissed and is accordingly dismissed.

**Sd/-**

**(CHARAN SINGH)  
MEMBER (TECHNICAL)**

**Sd/-**

**(JUSTICE TELAPROLU RAJANI)  
MEMBER (JUDICIAL)**

**VL**