

**S.No. 3**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
08.07.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE**

**CP(IB) No. 331/9/HYD/2020**  
*U/s 9 of IBC, 2016*

**IN THE MATTER OF:**

NSL Krishnaveni Sugars Ltd

**...Operational Creditor**

Vs

Trident Sugars Limited

**...Corporate Debtor**

**CORAM**

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

**SH.VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Orders passed vide separate sheets. In the result, the Company Petition is admitted and Corporate Debtor is put under Corporate Insolvency Resolution Process.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-1**

**CP (IB) No. 331/9/HDB/2020**

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

**In the matter between**

M/s.NSL Krishna Veni Sugars Ltd  
NSL ICON, 4<sup>th</sup> Floor, Plot No.1-4,  
Road No.12, Banjara Hills, Hyderabad- 500 034.

**... Operational Creditor**

**VERSUS**

M/s. Trident Sugars Limited,  
III Floor, Plot No.22, Survey No. 90/1,  
Trendz Eternity, Green Land Colony,  
Gachibowli, Hyderabad, Rangareddy,  
Telangana-500 032.

**... Corporate Debtor**

**Date of order: 08.07.2022**

**Coram:**

Dr N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)  
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

**Appearance:**

For the Petitioner : Shri. S.Keshava Rao, Advocate

For the Respondent: Shri M.Vazra Laxmi, Advocate.

**PER: BENCH**

1. Under consideration before us is the petition filed by M/s. NSL Krishnaveni Sugars Ltd / Operational Creditor herein stating that M/s. Trident Sugars Limited / Corporate Debtor committed default of Rs.3,22,17,993/- . Hence, this petition is filed under Section 9 of Insolvency & Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, commencement of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. **AVERMENTS:**

- 2.1 Operational Creditor is a Private Limited Company and is one of the most efficient integrated sugar Companies in South India and is part of NSL Group of Companies and is inter-alia engaged into the business of manufacture and supply of various varieties of sugar at its plant situated at Ramakrishnapur Village, Wanaprathi District.

- 2.2 Operational Creditor and Corporate Debtor had entered into an agreement dated 14.11.2019 for Molasses Purchase. Corporate Debtor has to supply Molasses to the tune of Rs.10,000 MT by the end of March, 2020 and further that, the Operational Creditor towards consideration amount should pay entire sale consideration price in advance by virtue of the terms of agreement.
- 2.3 Thereafter, the Operational Creditor made payment of Rs.5,20,00,000/- , also paid GST of Rs.58,24,000/- to the Corporate Debtor. Subsequently, both parties by modifying few terms of the original Agreement underwent an Addendum Agreement dated 20.11.2019.
- 2.4 It is averred that as per the agreement the Operational Creditor has performed its part of obligation in paying the entire amount where as Corporate Debtor had short supplied Molasses of 5051.715 MT against 10,000 MT.
- 2.5 It is averred that after several reminders and demands Corporate Debtor failed to supply the balance quantity of Molasses and hence breached the agreement. Operational Creditor further stated that as per Cl.No.9 of the Agreement, if Corporate Debtor fails to supply as per the terms agreed, balance advance amount should be refunded immediately

along with interest at the rate of 18% per annum from the date of advance payment made.

- 2.6 It is averred that due to short supply of 5051.715 MT the Operational Creditor had procured 3500 MT from the open market and hence Operational Creditor has right to claim further Additional Cost from the Corporate Debtor for rest of the quantity.
- 2.7 It is averred that the last date of supply was made on 14.03.2020 and further no supplies were made. Since Corporate Debtor had not come forward to make payments after repeated request, Operational Creditor issued demand notice under Section 8 of I&B Code, 2016 on 01.08.2020.
- 2.8 It is averred that after issuance of notice Corporate Debtor neither paid the amounts nor got issued any reply notice raising any dispute. Thus Operational Creditor is constrained to file the Application before this Tribunal under Section 9 of I&B Code to initiate CIRP against the Corporate Debtor.

### **3. Counter filed by the Corporate Debtor**

- 3.1 Corporate Debtor denied the averments made by the Operational Creditor and stated that the present application is not maintainable either on law or on merits and it is liable to be rejected.

- 3.2 It is averred that Corporate Debtor has supplied 3486.170 MT of Molasses by the end of January and supplied 599.140 MT in the month of February and 862.97 MT in the month of March, 2020. In spite of continuous supply from the Corporate Debtor the petitioner issued demand notice dated 18.02.2020 stating that there is shortfall of 5914.69 MT and they have procured 4000 MT from open market.
- 3.3 It is averred that as per the agreement the Corporate Debtor has to supply the agreed quantity by the end of the March, 2020 and the Operational Creditor purchased in the open market at his own and thus demanding for additional amount. It is averred that even after issuance of demand notice Corporate Debtor has supplied 862.975 MT of material.
- 3.4 It is averred that Operational Creditor has relied on Clause 9 of the agreement wherein it says that the default will occur when the Corporate Debtor fails to supply the agreed quantity as per the timeline. At the same time Clause 11 of the Agreement stipulates that both parties should discuss feasible options and to resolve the issues if any. Clause 12 of the agreement stipulates in case any dispute or difference arising under this agreement, the same shall be referred to a sole Arbitrator who shall be mutually appointed by both the parties.

- 3.5 The Operational Creditor filed the present application with an intention to drag the Corporate Debtor into insolvency which will be very detrimental to the Corporate Debtor and the employees.
- 3.6 It is averred that the entire quantity produced from the Corporate Debtor has been supplied to the Operational Creditor but due to Covid-19, pandemic, and due to lock down from 22<sup>nd</sup> March, 2020 the operations at the factory are completely closed.
- 3.7 It is averred that Section 10A has been inserted as per Insolvency and Bankruptcy Code(Amendment), Ordinance 2020, which is read as follows:

*Section 10A: Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of Corporate insolvency resolution process of a Corporate Debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of Corporate insolvency resolution process of a Corporate Debtor for the said default occurring during the said period. Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."*

- 3.8 As per the said amendment the Corporate Debtor states that the present petition is not maintainable. Thus the Corporate

Debtor submitted that CIRP is not intended to be adversarial to the Corporate Debtor but is aimed at protecting the interests of the Corporate Debtor and should not drag the solvent Companies into CIRP.

**4. Rejoinder by Operational Creditor:**

- 4.1 Operational Creditor by reiterating the facts in the application replied to the two preliminary objection raised by the Corporate Debtor.
- 4.2 The preliminary objection with regard to Section 10A of I&B Code ( Amendment) Ordinance 2020 is not applicable as the purchase Agreement dated 14.11.2019 and Addendum Agreement dated 20.11.2019 the Corporate Debtor was supposed to supply Molasses @5000 MT in December, 2019 to January 2020 and another 5000 MT of Molasses in February, 2020 to March, 2020. However, Corporate Debtor had failed to adhere to the terms of the Agreement and also purchase order and had only supplied a quantity of 3486.17 MT of Molasses by January, 2020 and thus there was short supply of 986.17MT of Molasses.
- 4.3 Since the default occurred prior to 25.03.2020, the Corporate Debtor can't take shelter behind the newly inserted Section 10A. Further Corporate Debtor has not even replied to the demand notice.



4.4 With regard to the Arbitration Clause in the Agreement, it is submitted that the Company Petition filed by the Operational Creditor is supported by Section 238 of IBC, 2016 and further IBC,2016 being a special enactment passed subsequent to Arbitration and Conciliation Act, 1996, the provisions of the Code shall along survive and the dispute interse can be adjudicated by this Adjudicating Authority and matter can't be referred to Arbitration.

4.5 Thus the present Company petition is liable to be admitted.

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5. In the above backdrop the point that emerges for consideration by this Tribunal is:

**Whether an Operational debt as claimed by the applicant is due and payable by the Corporate Debtor to the applicant? If so, whether the Corporate Debtor defaulted in payment of the said Operational debt?**

6. We have heard Shri Saini Kesava Rao , learned counsel for the Operational Creditor and Shri M.Vazra Laxmi, learned counsel for Corporate Debtor. Perused the record.

7. At the outset it is stated that during the hearing on 30.11.2021, Learned Counsel for Corporate Debtor filed memorandum of settlement entered between the parties. Both parties confirmed the MOU dated 27.10.2021. In view of settlement the Company Petition CP(IB)No.239/9/HDB/2017 has been disposed of as

withdrawn by giving liberty to the Operational Creditor to approach this Tribunal in the event of breach of terms of the MOU dated 27.10.2021.

8. In the above backdrop, the Operational Creditor was once again constrained to file IA No.189/2022, for revival of CP (IB) No.331/9/HDB/2020, as the Corporate Debtor breached the terms of the said Memorandum of Understanding dated 27.10.2021. However, Corporate Debtor has paid sum of Rs.75 Lacs from the date of MOU and failed to pay the balance amount of Rs.2,59,14,672/- .
9. While it was so, on 28.03.2022, IA No.189/2022 is restored and the matter was listed for orders or for reporting settlement by 25.04.2022. The Corporate Debtor on 25.04.2022 stated that a sum of Rs.50 Lacs is going to be paid by way of D.D and it will be handed over to the Operational Creditor today itself and thus prayed one week time to settle the matter. However, no payment has been made by the Corporate Debtor. Consequently, this Tribunal on 09.05.2022 reserved the matter for orders.
10. Learned Counsel for Operational Creditor filed memo dated 25.04.2022 stating that the Company Petition was filed by making claim of Rs.3,22,17,993/- and with regard to the settlement terms Corporate Debtor paid a sum f Rs.1,50,00,000/- and still Corporate Debtor is under default of Rs.1,72,19,993/-.

11. In the above factual backdrop, where Form-3 demand notice dated 01.08.2020 issued by the Operational Creditor demanding the Corporate Debtor to pay the total outstanding amount of Rs.3,22,17,993/-. Corporate Debtor neither paid the amount nor raised any dispute for the demand notice. Thus the Operational Creditor filed petition under Section 9 of I&B Code.
12. An analysis of the counter filed by the Corporate Debtor indicates that it has supplied the material even after issuance of demand notice but due to Covid-19 pandemic, and due to lock down, the operational at the factory are completely closed.
13. It is pertinent to note that even in the proceedings at the time of compromising the matter with the Operational Creditor, the Corporate Debtor has never raised any dispute in regard supply of material and payment. Thus, it is not a matter where existence of a pre-existing dispute is pleaded.
14. Therefore, in the light of our discussion, we find that the pleas as above, put forth by the corporate debtor as unsustainable and untenable. The operational debt is over Rs. One lack since not discharged by the corporate debtor, we find sufficient force in the contention of the operational creditor, that the petition for initiation of CIRP against the corporate debtor is liable to be admitted.
15. We are therefore satisfied from the record produced before us that the Corporate Debtor failed in discharging the operational debt.

When default of operational debt is explicitly clear, it is sufficient enough for the Tribunal to order initiation of CIRP against the Corporate Debtor.

16. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -
- (A) Corporate Debtor, M/s Trident Sugars 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.
- (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 Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one for the Insolvency Resolution Professionals as IRP. Accordingly, this Tribunal appoints Mr.Medi Yadaiah, having Registration No. IBBI/IPA-002/IP-N01039/2020-2021/13334 e-mail: yadmedi[at]gmail[dot]com as Interim Resolution Professional. As per the IBBI website, his AFA is v`alid upto 24.01.2023. The aforesaid IRP has no disciplinary proceedings pending against him. He shall file his written communication and all relevant papers immediately before the Registrar of this Adjudicating Authority but not later than three days. 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.

- (J) The operational creditor is directed to communicate this order to the IRP appointed in this case.
- (K) Accordingly, this Petition is admitted.
- (L) Registry to send a copy of this order to the Operational Creditor, IRP in this case.
- (M) Registry is directed to communicate this order to Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

**Sd/-**

**Veera Brahma Rao Arekapudi**  
**Member Technical**

**Sd/-**

**Dr. N.V.Ramakrishna Badarinath**  
**Member Judicial**

Pavani