

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

(Video Conference)

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)  
CORAM: SHRI SATYA RANJAN PRASAD, HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 25.05.2023 AT 10:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.750/9/HDB/2019
NAME OF THE COMPANY	NSL Mining Resources India Pvt Ltd
NAME OF THE PETITIONER(S)	Essar Constructions India Ltd
NAME OF THE RESPONDENT(S)	NSL Mining Resources India Pvt Ltd
UNDER SECTION	9 of IBC

**ORDER**

**Orders in CP 750/9/HDB/2019 pronounced, recorded vide separate sheets. In the result, this Company Petition is allowed. Corporate Debtor is put under CIRP and moratorium imposed.**

*- Sdt*

MEMBER (T)

*Sdt*

MEMBER (J)

Syamala

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

**CP(IB) No. 750/9/HDB/2019**  
*[U/s. 9 of IB Code, 2016]*

**In the matter of:**

M/s. Essar Construction India Ltd.  
Essar House, 11, Keshavrao Khadye Marg  
Mahalaxmi  
Mumbai – 400 034.

... Operational Creditor

**Vs.**

M/s NSL Mining Resources India Pvt. Ltd.  
Urmila Heights, 4<sup>th</sup> floor, above Ratnadeep Market  
Opp : Rainbow Hospital, Road No.10  
Banjara Hills  
Hyderabad – 500 034

... Corporate Debtor

**Date of Order: 25.05.2023**

**CORAM:**

**Hon'ble Dr. Venkata Ramakrishna Badarinath Nandula, Member (Judicial)**  
**Hon'ble Mr. Satya Ranjan Prasad, Member (Technical)**

**Counsels present:**

For the Operational Creditor : Mr. A. Venkatesh

For the Corporate Debtor : Mr. J.V. Ravi Shankar

**[PER: BENCH]**

**ORDER**

- I. This is an application filed by M/s. Essar Construction India Ltd, for short 'Petitioner/Operational Creditor', against M/s. NSL Mining Resources India Pvt. Ltd, for short 'Respondent/Corporate Debtor' seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor alleging that the Corporate Debtor committed default in discharging the debt claimed as due and payable to the Operational Creditor.
- II. **Briefly, the facts as mentioned in the application are as follows:**
  - i. The Corporate Debtor had placed Purchase Orders dated 30.07.2018 and 13.10.2018 to avail engineering services from the Operational Creditor. Accordingly, the Operational Creditor provided the required services and raised six invoices to that effect from July 2018 to February 2019. Despite being in receipt of the invoices, the Corporate Debtor failed to make payments and no dispute was raised by the Corporate Debtor with respect to the invoices or services rendered. However, the amount was not paid.
  - ii. The Operational Creditor, therefore, had issued a Demand Notice dated 16.05.2019 u/s 8 of IBC, 2016 to the

Corporate Debtor to its registered address, demanding the outstanding amount of Rs.47,21,249/- along with the interest @18% per annum. The said Demand Notice could not be delivered to the Corporate Debtor and was returned back on 27.07.2019 with an endorsement as “LEFT WITHOUT INSTRUCTIONS”. However, the demand notice sent to the Corporate Debtor’s company through e-mail dated 19.07.2019, has been served, as per the applicant.

- iii. The 2<sup>nd</sup> Demand Notice was sent through Speed Post on 06.09.2019 to the Corporate Debtor by the Operational Creditor has been delivered, and even after receiving the Demand Notice, the Corporate Debtor neither responded nor paid the outstanding amount to the Operational Creditor.
- iv. Hence this application, seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

**III. The gist of the Respondent’s brief in counter is -**

- i. It is contended that without filing any genuine proof by the Operational Creditor in support of its claim, the Petition is neither maintainable under law or on facts, hence the petition is liable to be dismissed in limini.

- ii. It is stated that the Operational Creditor wilfully suppressed all the material facts just with an intention to harass the Corporate Debtor and thereby to gain illegally.
- iii. The Operational Creditor has not filed any evidence in support of its claim, that it has provided the services to the Corporate Debtor. Further, the Operational Creditor not filed the “Work Completion Certificate” or “Work Satisfaction Certificate” and in the absence of the same, the present Petition does not survive and deserves to be dismissed. Hence, it is prayed that this Petition may be dismissed.

**IV. The Applicant filed a Rejoinder stating that –**

- i. It is denied that the present petition is filed without providing any genuine proof in support of the claim and thus is not maintainable and also denied that the Petition has been filed to harass the Respondent and that material facts have been suppressed.
- ii. It is denied that no evidence to support the claim of the Petitioner has been filed. The documents, such as, duly signed Purchase Order on the Letter Head of the Corporate Debtor have been annexed to the Petition proving that services were duly availed by the Corporate Debtor from the Operational Creditor and various correspondence

exchanged between the parties have been annexed to the Petition wherein the Corporate Debtor has accepted and acknowledged the services provided by the Operational Creditor and in fact had agreed to pay the outstanding invoices raised by the Operational Creditor. This clearly shows that the Corporate Debtor is intentionally making false and baseless averments in the Reply so as to harass the Operational Creditor.

- iii. Upon completion of the work as per the Purchase Order, invoices were raised by the Operational Creditor and the same have been accepted/approved without any dispute and/or demur by the Corporate Debtor and such acceptance on the part of the Corporate Debtor proves that services as provided by the Operational Creditor have been completed to the satisfaction of the Corporate Debtor. Also submitted that the Corporate Debtor had vide various emails accepted that the work was duly performed by the Operational Creditor. Further, on the request of the Corporate Debtor, the invoices were raised, which are still outstanding. Copies of the same are filed as **Exhibit “A”** of the application. Further, the Corporate Debtor has accepted the outstanding invoices, paid TDS amount and acknowledged vide email dated 25.03.2019 that they have paid the TDS on the outstanding Invoices. A copy of the same is filed as **Exhibit “B”** of the application. Copy of the email dated 25.03.2019 which

clearly shows that the work was duly completed to the satisfaction of the Corporate Debtor. The emails clearly demonstrates that the Corporate Debtor had acknowledged its liability and now making false averments in the Reply with ulterior motive and on this ground alone perjury proceedings should be initiated against Respondents, its directors and the person who have signed the Reply on behalf of the Respondent, thus deny that any “Work Completion Certificate” or “Work Satisfaction Certificate” is required to be annexed to the Petition. Further states that as per the terms and conditions of the Purchase Order issued by the Corporate Debtor, no such certificate was to be issued by the Corporate Debtor. Acceptance of the invoices by the Corporate Debtor amounts to sufficient proof of services being availed and its subsequent completion. Further, the Corporate Debtor has time and again acknowledged its liability to make payments towards the unpaid invoices. The invoices were raised from July 2018 to till date, no objection was raised by the Corporate Debtor till the date of filing of the Petition. In fact, the Corporate Debtor had not responded to the statutory notice issued by the Operational Creditor under the Insolvency and Bankruptcy Code. This clearly shows that all the averments made in the Reply is an afterthought and with ulterior motive.

V. In the light of the contest as aforementioned, the points that emerges for our consideration is –

1. Whether there is an operational debt as claimed by the Petitioner, payable by the respondent to the Petitioner? If so, whether the respondent *defaulted* in repayment of the same?
2. Whether there is a pre-existing dispute *between the parties or the record of the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?*

VI. We have heard the Learned Counsel for Financial Creditor, Mr.A. Venkatesh and Learned Counsel for Corporate Debtor, Mr. J.V.Ravi Shankar and perused the record.

Point.

Whether there is an operational debt as claimed by the Petitioner, payable by the respondent to the Petitioner? If so, whether the respondent *defaulted* in repayment of the same?

VII. Learned Counsel for the Petitioner placing reliance on the Offer Letter dated 24.05.2018 sent by the Respondent to the Petitioner, Purchase Orders dated 30.07.2018 issued by the Respondent in favour of the Applicant and the Invoices issued by the Applicant in favour of the Respondent, which are stated to have been received by the Respondent, *besides*, the letters and emails exchanged



between the parties, vehemently contended that the Respondent having availed the services of the Applicant in pursuance of the Offer Letter dated 24.05.2018 defaulted in repayment of the sum claimed under the invoices, as such, the Respondent committed default in repayment of the Operational Debt of a sum over Rs.1,00,00,000/- due and payable to the applicant by the respondent.

VIII. Learned Counsel relying on the letter dated 16.05.2019 and the emails exchanged between the parties which are available at page nos. 44 to 54 of the application, further contended that at no stage the Corporate Debtor has denied availing of services of the Petitioner or disputed the quality of the services that were rendered by the Petitioner to the Respondent. However, since the payment was not forthcoming, the Petitioner had issued a Demand Notice dated 06.09.2019 which has been received by the respondent, but the Respondent did not choose to send any reply nor pay the money.

IX. Thus, submitting the Learned Counsel for the Petitioner urged this Adjudicating Authority to admit this petition and order CIRP against the Respondent.

X. *Per contra*, the Learned Counsel for the Respondent firstly, contended that there is an iota of evidence placed by the Respondent that it had provided services to the

respondent and acknowledgement of the so-called services by the respondent. Nextly, it is contended that the petitioner failed to file work completion certificate or work satisfaction certificate issued by the Respondent to show that the petitioner had genuinely provided its services to the respondents. Thus, contending the Respondent prayed that the petition be dismissed.

- XI. Having carefully considered the submissions of the Id. Counsels for both sides, at the outset, we state that the Respondent having categorically pleaded that it has not availed any services from the petitioner, it is not open for the respondent to contend that the petitioner failed to file work completion or work satisfaction certificate issued by the Respondent as both the pleas are *self-contradictory*.
- XII. Be that as it may, the Respondent had not denied the receipt of the invoices submitted by the petitioner pursuant to the purchase order. The invoices the receipt of which has also been acknowledged, clearly refer to the purchase order and the services that were rendered by the petitioner in favour of the respondent. The letter dated 16.05.2019, available at page no.42 to 43 of the application wherein the petitioner demanded payment of the amount covered by the invoices is not *disputed*.
- XIII. I). The emails available at page nos. 44 to 45 of the application, exchanged between the parties more

particularly, the email dated 10.06.2019 from the Applicant to the Respondent clearly discloses as follows:

*“As advised by Mr.Glenn Sumpson of M/s.NSL and with reference to the trailing mail I want to meet you for the pending payments to M/s.ECIL. Please let me know the suitable time and place for the meet”.*

ii). The email dated 30.01.2019, clearly contains the details of the invoices that were raised and the amount due and payable by the Respondent.

iii). The email dated 09.05.2019, from the respondent to the petitioner states as below:

*“Thank you for the email.*

*Can you please update your outlook contacts to only use [finance@Indiore.com](mailto:finance@Indiore.com) if you want to email me, thank you. I will be getting into why this account is unpaid and also the extent of the accounts that have been rendered since the publicised cessation of the P3 Expansion on 18 December, 2018.*

*I will be in touch later next week to have dialogue with you in relation to this matter.”*

v). Therefore, is quite clear from the above emails that at no stage, the Respondent had disputed/denied availing of services from the Applicant.

vi). The Demand Notice dated 06.09.2019 was replied by the Respondent.

- XIV. Therefore, the defence that the Respondent has not placed any order and the Petitioner failed to place even a semblance of proof of rendering services, as put forth by the respondent is nothing but moon shine, baseless besides un established.
- XV. In the light of our discussion as mentioned and from the record that we referred supra, we are fully convinced that an Operational Debt for a sum of Rs.47,21,249/- is due and payable by the Respondent and the Respondent defaulted in payment of the same. The application also is in order. Therefore, the application deserves to be admitted and the same therefore hereby admitted.
- XVI. 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 the following directions: -
- i. 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;

- ii. 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.
- iii. 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.
- iv. 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.

- v. 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.
- vi. The Operational Creditor proposed the name of Mr. Kanak Jani as Interim Resolution Professional. As per the Insolvency and Bankruptcy Board of India (IBBI) website, Mr. Kanak Jani's Authorisation for Assignment is valid upto 21.12.2023. Accordingly, this Tribunal appoints Mr. Kanak Jani as Interim Resolution Professional, having Registration No. IBBI/IPA-001/IP-P-01757/2019-2020/12685. The IRP shall submit his consent in Form-2 within three days from the date of this order.
- vii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

Date of Order: 25.05.2023

- viii. 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.

**Sd/-**  
**SATYA RANJAN PRASAD**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**DR.N.V.RAMA KRISHNA BADARINATH**  
**MEMBER (JUDICIAL)**

**Syamala**