

S.No.4

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
11-09-2024 AT 10:30 AM**

CP(IB) No. 103/9/HDB/2024
u/s. 9 of IBC, 2016

IN THE MATTER OF:

M/s. Amogh Industrial Products

...Operational Creditor

AND

M/s. Mrichi Developers Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

Orders pronounced. In the result, **this company petition is rejected.** No costs.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

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

C.P. (IB) No.103/9/HDB/2024

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 OF

M/s. Amogh Industrial Products,
Registered Office at H.No: 10-5-23/1,
Allwyn Society Colony, Fatehnagar,
Hyderabad, Telangana – 500037

...PETITIONER/OPERATIONAL CREDITOR

VERSUS

M/s. Mirchi Developers Private Limited,
CIN: U45203TG2016PTC111797,
Registered office at H.No: 157/3, KPHB Colony,
Kukatpally, Hyderabad, Telangana – 500072.

...RESPONDENT/CORPORATE DEBTOR

Date of Order: 11.09.2024

Coram:

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

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Petitioner : Mr. Harsh Chowdary, Counsel

For Respondent : NA

PER BENCH**ORDER**

1. This is a Petition filed by 'M/s. Amogh Industrial Products', a Partnership Firm (represented by its Partner Mr. Amar Das) under Section 9 of 'The Insolvency and Bankruptcy Code, 2016' (hereinafter referred as 'IBC') against 'M/s. Mirchi Developers Private Limited', a company incorporated under The Companies Act, 2013. It was alleged that the Respondent defaulted in paying an operational debt exceeding one crore rupees to the Petitioner and sought for initiation of 'Corporate Insolvency Resolution Process' (hereinafter referred as 'CIRP') of the Respondent. The details of the default as stated by the Petitioner are as follows:

Principal Amount	:	Rs.1,15,29,388/-
Interest	:	Rs.25,51,742/-
Total	:	Rs.1,40,81,130/-
Date of Default	:	17.02.2022

CASE OF THE PETITIONER

2. It was submitted that the Petitioner is engaged in the business of providing labour/civil construction services with Identification Number 436 of 2017 and the Respondent is a Company engaged in real estate development services and investment services.
3. It was submitted that the Respondent issued a Work Order dated 11.11.2020 to the Petitioner and accordingly, the Petitioner provided labour services as and when required by the Respondent. It was submitted that in lieu of the services provided, the petitioner raised various invoices on different dates and that these invoices were acknowledged by the Respondent. It was submitted that the Respondent failed to honor the invoices and thereby defaulted to pay an amount of Rs.1,15,29,388/- on 17.02.2022.
4. It was submitted that even after several reminders, the Respondent failed to clear the defaulted amount. It was submitted that the Petitioner issued a Demand Notice dated 31.10.2023 in Form-3 to the Respondent asking to pay the outstanding dues. It was submitted that the Respondent received the Demand Notice on 01.11.2023, but failed to clear the outstanding dues of the Petitioner. In lieu of the

failure of the Respondent to honour the Demand Notice, the Petitioner approached this Tribunal by way of the present Petition. It was submitted that the Respondent owes an operational debt of Rs.1,15,29,388/- along with an interest of Rs.25,51,742/- (calculated @12% from 17.02.2022 to 16.11.2023). It was submitted that as the amount defaulted by the Respondent is above one crore rupees, the Respondent is to be put into CIRP.

5. On 03.07.2024, it was submitted that the Petitioner issued the notice of the present Petition to the Respondent through registered speed post and also through email. It was submitted that the notice by way of post was returned unserved with an endorsement “no such person in the address”, but that a reply was received on email from the Respondent seeking a copy of the present Petition.
6. This Tribunal held that the service through email is sufficient notice. As there was no representation, the Respondent was called absent and set *ex parte*.
7. In light of the above stated contentions, the following point arise for the consideration of this Tribunal:

Whether the present Petition is maintainable?

8. We have heard Ld. Counsel Mr. Harsh Chowdary for the Petitioner, and perused the record filed on behalf of the Petitioner.

THE SUBMISSIONS

9. Ld. Counsel submits that the Petitioner is a Partnership Firm engaged in the business of providing labour and civil construction services. Ld. Counsel submits that the Respondent issued a work order dated 11.11.2020 to the Petitioner seeking services of the Petitioner. Ld. Counsel further submits that basing on the work order dated 11.11.2020, the Petitioner provided labour services and raised invoices on different dates. Ld. Counsel further submits that the Respondent, though acknowledged these invoices as raised by the Petitioner, failed to pay the amounts mentioned therein.
10. Ld. Counsel further contended that the Respondent has defaulted in paying an amount of Rs.1,15,29,338/- as on 17.02.2022. Ld. Counsel submits that even after several reminders, the Respondent failed to pay the amounts to the Petitioner. Ld. Counsel submits that the petitioner issued a Demand Notice in Form-3 asking the Respondent to pay an amount of Rs.1,15,29,388/- along with an interest of Rs.25,51,742/- (calculated @12% from 17.02.2022 to 16.11.2023).

11. Ld. Counsel submits that the Respondent received this Demand Notice on 01.11.2023 but failed to honour the same. Ld. Counsel further submits that as there were no payments made by the Respondent to the Petitioner after the receipt of demand notice, the Petitioner filed the present Petition. Ld. Counsel submits that the Respondent defaulted an operational amount exceeding rupees one crore rupees and hence, it is appropriate to put the Respondent into CIRP.

OUR ANALYSIS & FINDINGS

12. We have perused the documents filed by Petitioner and find that Petitioner has not filed registration certificate showing that Petitioner is a registered Partnership Firm. In addition, the Petitioner also did not file register of the firms showing the names of the partners of the Petitioner. In view of the absence of the above documents, it cannot be established that Mr. Amar Das, the Authorized Signatory of Petitioner in the extant petition is a Partner of the Petitioner firm as on the date of filing of the present Petition. It is not in doubt that a Partnership Firm can bring a Petition under Section 9 of IBC as person includes a Partnership Firm under Section 3(23) of IBC and

Section 5(20) defines that operational creditor means a person to whom an operational debt is owed. But, before deciding the point before us, we feel it proper to refer Section 69(2) of The Indian Partnership Act, 1932 which reads as below:

“69. EFFECT OF NON-REGISTRATION

*.....
(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.”*

13. In lieu of Section 69(2) of The Indian Partnership Act, 1932, it is imperative on the Petitioner to show that the Petitioner is a registered firm and that the Authorised Signatory is shown as partner in the Register of Firms. In the absence of the compliance of Section 69(2) of The Indian Partnership Act, 1932, the Petition filed is not maintainable and is liable to be rejected.
14. Further, we find that tracking report of notice produced before us mentions that the item was received by one person named “RAJESH KUMAR (Addressee)” whereas the notice was addressed to the Respondent as per the photocopy of the postal receipt. To give a more comprehensive finding on this aspect, it is pertinent to rely on Rule

5(2) of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which is as follows:

“5. Demand notice by operational creditor

.....
(2) The demand notice or the copy of the invoice demanding payment referred to in subsection (2) of section 8 of the Code, may be delivered to the corporate debtor,-
(a) at the registered office by hand, registered post or speed post with acknowledgement due; or
(b) by electronic mail service to a whole-time director or designated partner or key managerial personnel, if any, of the corporate debtor.”

15. In the present case, since no acknowledgment was furnished by the Petitioner to show that the Demand Notice was served to the Respondent and also identity of Mr Rajesh Kumar, the recipient of the Demand Notice is not disclosed, we were not ready to accept proper service of notice on the Corporate Debtor. But on 03.07.2024, the Petitioner submitted that though notice issued through registered speed post was returned with endorsement "no such person in the address" but there was a reply received from the Respondent on the notice issued through email. Basing on this submission of the Ld. Counsel for Petitioner, we held that the service through email was a sufficient notice. As there was no representation for respondent, the Respondent was set *exparte*. But on perusal of the notice served by the

Petitioner through email, we find that the email id on which the notice was issued is – “mirchi_developers@yahoo.com” whereas the email id of the Respondent as available on the Ministry of Corporate Affairs website is - “mirchidevelopers12@gmail.com”. In lieu of the same, we hold that proper notice as per Rule 5(2) of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was not served on the Corporate Debtor.

16. Further, we observe that work order dated 10.11.2020 issued by Respondent states that “90% of RA bills shall be released within 15 days from the date of submission of invoices but subject to certification from the engineer of the Petitioner”. We find that Petitioner has failed to produce any document evidencing that invoices raised by the Petitioner were certified by an engineer in compliance with the work order. We further find that Petitioner has furnished tax invoices and not the original invoices which were actually acknowledged by the Respondent.

17. In the absence of any acknowledgement of the invoices by the Respondent, and also invoices not being certified by an engineer in

compliance with work order, we hold that Petitioner has not filed proper proof of debt and default thereon.

18. In the above background, we hold that this Petition is not maintainable on following grounds:

(a) Petitioner is not authorized to file this present petition because of non-compliance of Section 69(2) of The Indian Partnership Act, 1932.

(b) Proper notice as per Rule 5(2) of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was not served on the Corporate Debtor.

(c) Proper proof of debt and default is not filed with the petition.

19. Hence, the point is answered accordingly.

20. In lieu of the above discussion, we hold that the present Petition is liable to be rejected. Accordingly, the Petition is rejected, however without costs.

Sd/-
Charan Singh
Member (Technical)

Sd/-
Dr. Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Anil