

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

CP (IB)2694/MB/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

AHM Catering and Allied Services Private Limited

[CIN: U74900MH2011PTC222272]

311, Tulsian Chambers, Free Press Journal Marg, Nariman
Point, Mumbai 400021

... Operational Creditor/Applicant

Versus

Dolphin Offshore Shipping Limited

[CIN: U51900MH1990PLC057967]

1001, Raheja Centre, 214, Nariman Point, Mumbai,
Maharashtra 400021.

...Corporate Debtor/Respondent

Order Delivered on 06.07.2023.

Coram:

Hon'ble Member (Judicial) : Mr. Kishore Vemulapalli

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. Kirtanan Menon, Advocate.

For the Corporate Debtor : Ms. Geeta Lundwani, Advocate.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This is a Company Petition filed under section 9 Read with Rule 6 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (IBC) by **AHM Catering and Allied Services Private Limited** (“**the Operational Creditor**”), seeking to initiate Corporate

Insolvency Resolution Process (CIRP) against **Dolphin Offshore Shipping Limited ("the Corporate Debtor")**.

Brief Facts of the case:

2. The Operational Creditor has filed the present Application in view of the fact that despite specific admission of liability the Corporate Debtor has failed to pay a sum of Rs. 21,40,192.00. The above mentioned amount is payable under settlement agreement dated 03.12.2018 entered into between the Operational Creditor towards settlement of their entire outstanding dues payable towards provision of catering, laundry and Housekeeping Services on board the vessels owned/ managed by the Corporate Debtor.
3. Operational Creditor and the Corporate Debtor entered into an agreement on 29.11.2015 for provision of catering, laundry and Housekeeping Services on board the vessels. owned/ managed by the Corporate Debtor for a period of one (1) year. Thereafter, on 28.11.2015 Addendum entered into between the Operational Creditor and the Corporate Debtor for extension of the period of the abovementioned agreement.
4. Invoices raised by the Operational Creditor under the abovementioned agreement towards the goods supplied/ services rendered on board the vessels owned/ operated by the Corporate Debtor. However, five (5) of the invoices remains unpaid till date.
5. The Operational Creditor maintained a running ledger account in relation to the catering services provided to the Corporate Debtor with respect to several vessels and several contract with respect to each such vessel was entered into by them. Invoices were raised under each such contract. The said invoices were payable within 30 days of the last day of service in the previous month.

6. The Corporate Debtor on 12.06.2018 made a part payment for a sum of Rs.10,00,000/- (Rupees Ten Lakhs) towards the unpaid invoices, along with a payment voucher.
7. The Operational Creditor filed Company Petition seeking an amount of Rs.43,20,862/- filed as per the provisions of IBC, 2016. Thereafter, Parties entered into a settlement vide agreement dated 03.12.2018 and abovementioned petition was withdrawn.
8. In February 2019 Two Cheques for a total amount of Rs.20,00,000.00 payable under the Settlement agreement bounced.
9. The present petition is filed seeking total amount claim of Rs.21,40,192/- (Rupees Twenty One Lakhs Forty Thousand One Hundred and Ninety Two Only) and date of default stated to be 26.02.2019.
10. It is observed that none represented the Corporate Debtor on several occasions and the Corporate Debtor set *Ex-parte*. Adv. Geeta Lundwani represented the Corporate Debtor today without filing reply. Therefore, this bench taken on matter on its merits and available records as matter is of 2019.

Findings:

11. We have heard the submissions of Applicant as well as the Respondent and perused the records.
12. It is noted that vide Email dated 26.04.2018 the Corporate Debtor acknowledged the amount is due and payable to the Operational Creditor and thereafter made part payments as well. Therefore, this Bench is satisfied on point of existence of debt and default. Further there is nothing on record which indicates dispute among the parties pertaining to said amount.

13. We relied on the judgement of Mobilox Innovation (P) Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353 the law is settled on point of dispute that the Corporate Debtor shall bring to the notice of the Operational Creditor the pre-existence of dispute. In the matter in hand there is no Pre-existing dispute. Hence it is concluded that the amount is due and payable by the Corporate Debtor.
14. It is observed that the parties have entered into settlement agreement dated 03.12.2018 whereby parties contemplated consequence to breach of settlement terms in clause 4 of the agreement which is as follows:

“4. It is hereby agreed that failure to honour any of the abovementioned cheques shall amount to breach of the present settlement terms and the Operational Creditor shall have the right to initiate appropriate proceedings including but not limited to contempt proceedings against the Corporate Debtor for recovery of the remaining claim amount at the cost and consequence of the Corporate Debtor.”
15. The amount outstanding is above Rs. 1 lakh and since the present petition was filed before the amendment increasing threshold limit, the present petition is in compliance with section 4(1) of Insolvency and Bankruptcy Code, 2016.
16. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this

Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

17. The petition bearing **CP (IB) 2694/MB/2019** filed by **AHM Catering and Allied Services Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Dolphin Offshore Shipping Limited [CIN: U51900MH1990PLC057967]**, the Corporate Debtor, is **admitted**.
18. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
19. Notwithstanding the above, during the period of moratorium: -

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
20. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
21. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
22. **Mr. Kedar Pande**, Registration No. IBBI/IPA-001/IP-P-02763/2022-2023/14270, Email Id: kedarpande@gmail.com, Mobile No.: 7588661199, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
23. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession

and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

24. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
25. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
26. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
27. Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

06.07.2023

SAM/Neha

Sd/-

KISHORE VEMULAPALLI

Member (Judicial)