

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**CP 4697 (IB)/MB/2018**

Under Section 9 of the I&B Code, 2016

In the matter of

**Associated Road Carriers Limited**

...Operational Creditor/ Applicant

v/s

**Indsur Global Limited**

...Corporate Debtor

**Order Dated 24.09.2019**

**Coram:** Hon'ble Member (Judicial) Mr V.P. Singh  
Hon'ble Member (Technical) Mr Rajesh Sharma

**For the Applicant:** Adv. Hasmita Kapadia, Adv Pulkeet Sharma

**For the Respondent:** Adv. Nausher Kohli

*Per Rajesh Sharma (Technical)*

**ORDER**

1. This is an application being CP 4697/2018 filed by, **Associated Road Carriers Limited**, Operational Creditor or Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Indsur Global Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. This application is filed by Mr Lyju Antony, the DGM (Admin & Legal) Constituted Attorney of the Operational Creditor, authorized by Board Resolution dated 23.10.2018. The Application is filed claiming a default of ₹61,18,701/- (Rupees Sixty One Lakh Eighteen Thousand Seven Hundred and One Only). Copy of the Board Resolution is annexed to the Application.
3. The Applicant has rendered transportation services to the Corporate Debtor from 01.04.2015 to 30.06.2017. The Applicant raised invoices for the transport services rendered. Copy of the statement of dues of the Corporate Debtor as maintained by the

Applicant along with 'Submission of bills along with original signed acknowledgments' are annexed to the Application.

4. The total outstanding dues as per the Applicant is ₹61,18,701/- (Rupees Sixty One Lakh Eighteen Thousand Seven Hundred and One Only) and the same is stated in the Memorandum of Understanding dated 23.11.2017 where the Corporate Debtor has requested for a copy of the Ledger account to reconcile the same.
5. The Applicant has annexed the Ledger Account of the Applicant maintained by the Corporate Debtor for the period 01.04.2016 to 22.03.2017
6. The Applicant has annexed the following Balance Confirmation Letters to establish that the Corporate Debtor has acknowledged its liability to pay the amounts in default:
  - I. Balance Confirmation Letter issued by the Corporate Debtor admitting that a sum of ₹61,19,000/- (Rupees Sixty One Lakh Nineteen Thousand Only) is due as on 31.12.2017.
  - II. Balance Confirmation Letter dated 04.01.2018 issued by the Applicant to the Corporate Debtor stating that the amount due as is ₹61,19,000/- as on 04.01.2018 duly acknowledged and confirmed by the Corporate Debtor with the Company Seal and Signature.
7. The Applicant issued Demand Notice dated 08.06.2018 under section 8 of the I and B Code, 2016 in Form 3 and the same was duly served on the Corporate Debtor on the same day. Copy of the Demand Notice along with the proof of service is annexed to the Application.
8. The Applicant has filed an affidavit in compliance of section 9(3)(b) of the I&B Code stating that he has after service of notice he has neither received the payment nor any notice of dispute from the corporate debtor.
9. The Corporate Debtor issued Reply Letter dated 19.06.2018 requesting a meeting and has failed to point out any pre-existing dispute in respect of the services received or denying the outstanding amount.

10. The Applicant has filed an affidavit dated 13.12.2018 in compliance of section 9(3)(b) of the I & B Code, 2016 stating that the Corporate Debtor has agreed to settle the claim and has not made any payment.
11. It is on record that the court notice was duly served upon the Corporate Debtor, but the corporate debtor chose not to file any objections in its defence, even after providing ample opportunities to do so.
12. We have heard the parties and perused the records.
13. On perusal of the Bills which are duly acknowledged by the Corporate Debtor, the various balance confirmation letters, the Reply to the Demand Notice it is clear that there is no dispute that the services were rendered to the Corporate Debtor and the Corporate Debtor has failed to make payments towards the services received. The amounts due are operational debt as per section 5(21) of the I & B Code, 2016. The Corporate Debtor has not pointed out any pre-existing dispute in relation to the services received. On the contrary, the Corporate Debtor has admitted to its liability to repay a sum of ₹61,19,000/- as on 31.12.2017 which is more than the amount claimed in the Application.
14. It is seen that the debt and default are established by the conduct of the Corporate Debtor. The outstanding debt of more than Rs One Lakh is due and payable against the corporate debtor and corporate debtor has committed default in making the payment.
15. The application filed by the operational creditor is on proper form 5, as prescribed under the Adjudicating Authority Rules and application is complete.
16. The Applicant has proposed the name of **Mr Manish Sukhani**, a registered Insolvency Resolution Professional having Registration Number **[IBBI/IPA-001/IP-P00668/2017-18/11137]** as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.

17. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

**ORDER**

The application filed under Section 9 of I&B Code, 2016, by **Associated Road Carriers Limited** against the corporate debtor, **Indsur Global Limited**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- a) 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;
  - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any activity under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

- II. That 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.
  - III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
  - IV. 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
  - V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
  - VI. That this Bench at this moment appoints **Mr Manish Sukhani**, a registered Insolvency Resolution Professional having Registration Number **[IBBI/IPA-001/IP-P00668/2017-18/11137]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
18. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-**  
**RAJESH SHARMA**  
Member (Technical)

**Sd/-**  
**V.P. SINGH**  
Member (Judicial)

**24<sup>th</sup> September 2019**