

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

C. P. No. 1400/I&B/2019

Under section 8 & 9 of the
Insolvency and Bankruptcy
Code, 2016

In the matter of

Crab & Taur PTE Ltd.

101 Cecil Street# 20-02,
Tong ENG Building,
Singapore- 069533

.... Petitioner

v/s.

Mercator Oil & Gas Ltd.

3rd Floor, Mittal Tower,
B-Wing, Nariman Point,
Mumbai- 400021.

.... Respondent

Order delivered on 30.06.2021

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Nirman Sharma, Advocate

For the Respondent: Mr. S. Sadab Jan, Advocate

Per: Shri Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. This Company Petition is filed by Crab & Taur PTE Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Mercator Oil & Gas Ltd. (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 27.08.2015, 22.03.2016, 08.07.2018, 13.10.2018, 26.06.2015,

13.10.2015 in making payment to the extent of USD 152,477.00/- with interest of USD 63,867.04 @ 12 % p.a. aggregating to USD 216,344.04 by invoking the provisions of Sections 8 & 9 of I & B Code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The brief facts of the case are that the operational creditor is a 100% subsidiary of Crab & Tiar Engineers Pvt. Ltd. Which is an authorized channel partner of flowserve India Controls Pvt. Ltd. and is a packing contractor for various projects. Corporate Debtor issued 4 purchase orders upon the operational Creditor for the supply and delivery of components for ONGC Samrat conversion project at Abu Dhabi on terms and conditions.
3. Accordingly, the Petitioner has supplied the goods and raised the various invoices for supply of goods. The details of the invoices issued as under:

Invoice Nos.	Date	Invoice Value (USD)	Payment received (USD)	Amounts due (USD)
Invoice No. 001	26.02.2015	1,468,026.00	1,437,947.00	30,079.00
CTPL/CI/002/1 5-16	21.09.2015	88,152.00	29,065.00	59,087.00
CTPL/CI/001/1 7-18	31.07.2017	105,616.00	105,616.00	-
Debit Note CTPL/DN/001/ 18-19	07.07.2018	4,282.00	-	4,282.00
Invoice No. 002/13-14	06.06.2014	43,105.00	38,732.00	4,373.00
Invoice No. CTPL/CI/004	25.06.2015	51,558.00	-	51,558.00
Invoice No. CTPL/CI/002	18.05.2015	30,988.00	27,890.00	3,098.00
	Total	1,791,727.00	1,639,250.00	148,104.00

4. The Petitioner states that the after issuing the invoices the Corporate Debtor made part payments in favour of Operational Creditor. The Operational Creditor received USD 1,639,250.00 and a sum of USD 152,477.00 along with interest @ 12 p.a. and the outstanding principal amount is USD 148,104.00. The total outstanding amount as on 23.01.2019 is USD 152,477.00 along with interest of USD 63,867.04 outstanding balance payable by the Corporate Debtor.
5. In response to the demand notices, the Corporate Debtor vide an email dated 19.08.2018 acknowledged its liability and assured repayment of amounts due by way of six equal monthly instalments. The Petitioner by an email dated 19.08.2018 rejected the offer made by the Corporate Debtor.
6. The corporate debtor had shown willingness and assured the operational creditor to repay the outstanding on various occasions but despite of repeated acknowledgement of liability and promise to pay corporate debtor failed to make the payment.
7. Since the Corporate Debtor failed to repay the outstanding dues, the Petitioner issued Demand Notice in Form-3 under Section 8 of the Code on 23.01.2019 demanding for repayment of aggregating to USD 2,16,344.04 as on 19.01.2019. However, the Corporate Debtor failed to repay the aforesaid dues despite receiving 4 separate Demand Notices, nor replied to the notice same nor repay the outstanding amount.
8. The Petitioner enclosed the statements of Bank Account where deposits are made, or credits received by the Operational Creditor in respect of the debt of the corporate debtor. Issued by

Bank of India (Hong Kong), OCBC Bank to say that Crab & Taur PTE Ltd. has received payments from the Corporate Debtor in respect of the debt due, which are as follows;

- a. Bank Transaction details issued by Bank of India (Hong Kong) dated 23 May 2016 indicating payment of USD 1,160,092.89 by Mercator towards Invoice No. 001 dated 26 February 2015;
- b. Bank Transaction details issued by OCBC Bank dated 12 June 2014 indicating payment of USD 305,340.00 by Mercator towards Invoice Nos. 001 and CTPL/CI/002/15-16 dated 26 February 2015 and 21 September 2015 respectively;
- c. Bank Transaction details issued by OCBC Bank dated 28 July 2017 indicating payment of USD 105,566.00 by Mercator towards Invoice No. CTPL/CI/001/17-18 dated 31 July 2017;
- d. Bank Transaction details issued by OCBC Bank dated 28 April 2014 indicating payment of USD 38,732.00 by Mercator towards Invoice No. CTPL/CI/002/13-14 dated 6 June 2014; and
- e. Bank Transaction details dated 10 June 2015 indicating payment of USD 27,890.00 by Mercator towards Invoice No. CTPL/CI/002 dated 18 May 2015.

9. The Corporate Debtor filed reply praying for dismissal of the above company petition on the ground that a Scheme of Compromise filed by the Corporate Debtor is pending before this Tribunal and the Statement of Account relied upon by the petitioner are not certified as per the Banker's Books of Evidence Act and there was no proof of default. In the light of the above pleadings the question that falls for consideration is:

Whether the above company petition can be admitted?

10. Heard both sides and perused the records. It is the submission of the counsel appearing for the Corporate Debtor that the Corporate Debtor has admitted the existence of debt and default through various emails sent by them and in view of the above correspondence the debt and default in this case is establish and the above company petition is liable to be admitted. We have perused the various emails sent by the Corporate Debtor submitted before this tribunal by the petitioner and as rightly contended by the petitioner the debt and default stands proved in this case and all the pleas raised by the respondent in the reply to the main company petition are not legally sustainable and liable to be rejected. The petitioner also suggested the name Mr. Adesh Kumar Gupta as Interim Resolution Professional and enclosed the consent letter given by the proposed IRP in Form-2. The above company petition is complete in all respects.
11. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -1400(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Mercator Oil & Gas Ltd.
- b. This Bench hereby appoints **Mr. Adesh Kumar Gupta** Insolvency Professional, Registration No: IBBI/IPA-001/1P/P00747/2017-2018/11251 having office 404, Dheeraj Heritage, Milan Subway Junction, S.V. Road,

Santacruz (West) Mumbai- 400054 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)