

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/28(CHE)/2024

*(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, R/w, Rule 6 of
the Insolvency and Bankruptcy Rules, 2016)*

In the matter of M/s. P.S.T.S Logistics Private Limited

M/s. RANJIT AGENCIES,

Rep.by its Proprietor J. James Sebastian Ranjit

S/o. Mr. A.S. John,

Having office at:

No. 13/ 31, Seshachalam Street, Saidapet,

Chennai — 600 015.

... Petitioner / Operational Creditor

-Vs-

M/s. P.S.T.S LOGISTICS PRIVATE LIMITED

REGD OFF: 48, 2nd Floor, Wavoo Mansion,

Rajaji salai, Chennai - 600 001

... Respondent / Corporate Debtor

Order Pronounced on 01.05.2025

CORAM:

Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Applicant : Mr.Pravin, Advocate

ORDER

(Heard through Hybrid Mode)

This Application under Section 9 of IBC has been filed by Shri. J. James Sebastian Ranjit, proprietor of M/s. Ranjit Agencies, Petitioner / Operational Creditor herein against M/s P.S.T.S. Logistics Private Limited,

Respondent / Corporate Debtor herein for initiating Corporate Insolvency Process (CIRP) against the Corporate Debtor.

2. Part I of the Application contains the particulars of the Petitioner i.e. Shri. J. James Sebastian Ranjit, proprietor of M/s. Ranjit Agencies. Part II of the Application sets out the details of the Corporate Debtor. It was incorporated on 21.01.1991 having paid up share capital of Rs. 1,89,00,000/- and address at 48, 2nd Floor, Wavoo Mansion, Rajaji Salai, Chennai — 600 001, within the jurisdiction of this Tribunal. In Part III of the application, the Operational Creditor has proposed Mr. Muthuiah Thevar Rajapandian, having Registration No: IBBI/1PA-003/1P-N00090/2017-18/10854, as the IRP. Part IV of the petition sets out the details of the debt being Rs.1,34,01,750/- (Rupees one crores thirty four lakh one thousand seven hundred and fifty) with date of default as 19.05.2023. This petition has been filed on 08.08.2022.

3. It is averred in the Application that the Petitioner, during the year of 2020 has rendered supply of man power service in the Karaikal port for the Respondent company/ CD towards supply of labour for handling cargo on the vessel and in the plot in full for loading and unloading cargo as demanded by the Respondent and as in for the same, the Petitioner and the Respondent company had entered into an agreement of labor for supply of staff and laborers on 01.06.2020.

4. It is further submitted that a said service was rendered for a sum of Rs.1,34,01,750 and the same was promised to provide after the Respondent company/ CD receive the sum amount from Karaikal port which was said to be in pendency at first. Later, the Respondent company/ CD promised to pay the operational debt on their own and even though the amount was paid by the Karaikal port to the Respondent company/ CD, the amount due to for the services rendered by the Petitioner was not paid by the Respondent company/ CD stating various irrelevant reasons for delaying the payment.

5. It is submitted that further on 18.05.2023 the Respondent company/ CD provided an acknowledgement letter promising to pay the above said operational debt towards service rendered by the petitioner concern within 1 month.
6. It is also submitted that on 19.05.2023, the Petitioner has raised invoice for a sum of Rs.1,34,01,750 on the Respondent company/ CD but even on receipt of the same the Respondent company/ CD failed to remit the sum amount.
7. It is further submitted that a Demand notice in Form – 3 was issued to the Respondent company/ CD on 12.06.2023 demanding the payment within 10 days and the same was received upon the Respondent company/ CD on 14.06.2023 but no reply was made by them and thus they have evaded the repayment of the operational debt the Respondent company/ CD is indebted to the Petitioner.
8. We have heard Ld. Counsels for the parties.
9. There is no denial of the fact that the Petitioner had rendered the service to the Corporate Debtor and raised the invoices. The nature of transactions which happened between the parties clearly shows that the Petitioner is an Operational Creditor and not a Financial Creditor in view of Section 5(8) of IBC. The operational debt in the present case is more than one crore. The petition is within the limitation. No disputes have been raised by the Respondent / Corporate Debtor as to the quantity / quality of goods supplied by the Petitioner to the Corporate Debtor.
10. In this case, the respondent has been given several opportunities to represent the case and file the reply. The application has been served on 05.03.2024 and AoS has been filed vide SR No. 1534 dated 27.03.2024. Inspite of due service of application, the respondent did not appear no file any reply. The hearings were conducted on 08/04/2024, 11/06/2024, 08/08/2024, 27/09/2024, 26/11/2024, 20/01/2025 these dates and the respondent appeared

only on hearing held on 08.04.2024 wherein he was been directed to file reply within 2 weeks. Despite he was provided with directions to file reply within 20.04.2024, the respondent failed to comply with the same or submit any reasonable cause for non-compliance.

11. Therefore, the respondent has been set *exparte* on 27.09.2024 after duly stating in previous hearing on 08.08.2024 that the respondent will be set *exparte* if he fails to appear during next date of hearing.

12. Inspite of various opportunities, the respondent failed to make use of the same as provided under the principles of natural justice and *audi alterem partem*. The right to be heard is a core component of natural justice. However, when a party is given reasonable opportunities to present their case and fails to do so, it does not necessarily invalidate the proceedings.

13. The Hon'ble Supreme Court in various cases have consistently held that if a party is given multiple opportunities to defend themselves (as per the principles of natural justice) and they fail to use those opportunities, the case can still proceed, and the decision or action taken is not automatically invalidated. Since what is important is that the opportunities provided were reasonable, and the person had adequate notice and time to present their case. When the person fails to utilize those opportunities, it does not amount to a violation of natural justice.

14. In *Securities and Exchange Board of India (SEBI) v. Shri Subhash Chandra (2007) 10 SCC 211*, the Supreme Court reiterated the importance of the *right to be heard* under the principles of natural justice but also emphasized that if a party is given repeated opportunities to present its case and does not avail of those opportunities, the proceedings can continue.

15. Therefore, we are of the view that the petition meets all the requisites of Section 9 of IBC.

16. In the light of above discussions, we admit the petition and order for initiation of CIRP against the Corporate Debtor.

17. In the present case, the Operational Creditor has named the Insolvency Resolution Professional in Part – III of the Application but after careful consideration, this Tribunal appoints **Ms. Priya S. Anand** with **Registration No: IBBI/IPA-001/IP-P00421/2017-2018/10744** (**email id: priyaannand@yahoo.co.in**) who is having Authorization for Assignment till **31.12.2025** as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

18. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action 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 the possession of the respondent.*

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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 or a similar grant or right during moratorium period;

19. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

“(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.”

20. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

“(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.”

21. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/- (Rupees Two Lakhs only)** to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

23. Accordingly, **CP(IB)/28/(CHE)/2024** is **allowed** and **disposed of**.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)