

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

CP (IB) 2797/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of

M/s Karma Roadways (Regd)

3/11, Agrasen Nagar, Kundan Nagar,
Dapodi, Pune – 411 012.

...Operational Creditor/ Petitioner

v/s

**Greatweld Engineering Private
Limited**

Kunal Puram, 2nd Floor, Opp. Atlas
Copco Ltd, Mumbai – Pune Road, Pune
– 411 012.

...Corporate Debtor

Order Pronounced on: 29.01.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Kunal Chheda

For the Corporate Debtor: Adv. Avinash R. Khanolkar

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company Petition CP(IB)2797/MB/2019 is filed by **M/s Karma Roadways (Regd)**, Operational Creditor/Petitioner, under Section 9 of Insolvency & Bankruptcy Code, 2016 (**Code**) against

Greatweld Engineering Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

Submissions by the Petitioner:

2. This Petition is filed by Mr. Karamvir H. Sharma, Proprietor of the Petitioner duly authorised to file the present Petition.

3. The Petitioner has claimed an amount of Rs. 19,16,736/- including interest @ 24% p.a. from the Corporate Debtor.

4. A brief history of the transaction between the Petitioner and the Corporate Debtor is as follows:

The Petitioner is engaged in providing transportation services and had entered into one oral contract with Corporate Debtor at the instructions of Corporate Debtor. As per instructions of the Corporate Debtor, services were provided to the Corporate Debtor from time to time and the Petitioner raised 27 invoices for these services provided on Corporate Debtor. There was no default or dispute in services and the amount is not disputed. The Corporate Debtor admits the debt amount.

5. The Demand Notice was sent on 15.06.2019. The Corporate Debtor has failed to reply to the demand notice. The Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no notice of dispute given by the Corporate Debtor.

6. The Corporate Debtor had admitted the debt and has promised to repay the amount. The correspondence relating to the admission of the debt amount by the Corporate Debtor is attached to the Petition at Annexure – 3.

7. Initially the Petition was filed in the name of Proprietary concern, but subsequently the Petition was amended and "Karamvir H. Sharma", Proprietor of Karma Roadways, was included as

Petitioner. The amended Petition was served upon the Corporate Debtor on 11.12.2019.

Submissions by the Corporate Debtor:

8. During the ordinary course of business, the Corporate Debtor has come across the Petitioner who is involved in supply of transport services.

9. The Petitioner had issued various invoices with respect to transportation service provided by the Petitioner at different point of time starting from 30.06.2017 to 14.11.2018.

10. It is further submitted by the Petitioner that each invoice is having a separate date by which the Corporate Debtor ought to make payment to the Petitioner. If the Corporate Debtor has failed to do so then that date, as mentioned on the invoice, is to be treated as the date of default. However, in this Petition, the Petitioner has clubbed all the outstanding invoices in one joint Petition and therefore, there is no single date of default accrued for triggering CIRP as against the Corporate Debtor.

11. The Corporate Debtor submits that the Petitioner cannot file a combine/joint Petition for the various Work Orders having different dates of default and hence, the Corporate Debtor states and submits that this Petition preferred by the Petitioner under Section 9 is defective and therefore, deserves to be dismissed.

12. The Corporate Debtor has issued a letter dated 22.05.2019 in response to Demand Notice dated 29.04.2019 of Petitioner. The Corporate Debtor has agreed to pay principal amount only of Rs. 12,42,650/-. The point no. 5 of the said letter clearly states that the Corporate Debtor will not pay any interest amount to the Petitioner. The dispute on payment of interest amount was duly raised in the said letter. The Petitioner has failed to produce the said letter.

Findings:

13. This Petition is filed under Section 9 by the Petitioner, i.e., Karma Roadways Private Limited for providing transportation services to the Corporate Debtor, i.e., M/s. Greatweld Engineering Private Limited. The total invoices numbering 27 to the tune of Rs. 14,70,500/- were raised by the Petitioner upon the Corporate Debtor for the transportation services provided.

14. The Bench notes that the transportation services have been provided on 27 occasions by way of an oral arrangement between the parties. The Petitioner mentions that these services have been provided on the oral instructions from the Corporate Debtor.

15. It can be seen from the records produced before this Bench that the demand notice was sent to the Corporate Debtor by the Petitioner on 15.06.2019 and a copy each of all 27 invoices were sent along with a demand notice. However, the Bench notes that no reply was given by the Corporate Debtor. It is pertinent to note here that to an earlier demand notice/invoice sent by Petitioner to the Corporate Debtor on 19.04.2019, the Corporate Debtor had responded on 22.05.2019 and accepted the dues and had mentioned the following:

"1.

2. *It is pertinent to note that the Company has no dispute on the existence of amount of unpaid operation debt i.e. outstanding amount of Rs. 12,42,650/- mentioned by you in the Demand Notice. However, due to following factors the Company was unable to clear your outstanding dues:*

a. Due to overall market situation and industry slowdown, the turnover of the Company has fallen down to a large extent and has also affected the profit margins of the Company. Moreover, the cash flows of the Company are under stress as the

receivables have been piled up for more than 180 days. The Company is taking all the required efforts to regularize its cash flows and is confident to regularize the same by putting additional funds into the Company.

b.

c.

d.

e.

3. The above mentioned facts has affected the performance of the Company as well as cash flows of the Company. In fact, despite of resignation of our key Director on 1st September, 2018, you will appreciate that we have continued to do the business with you. This clearly shows our intention to keep sound relations with our esteemed Vendors like you."


16. Therefore, it can be seen from the above that the Corporate Debtor while accepting an outstanding amount of Rs. 12,42,650/- had mentioned that they do not agree for the interest amount of Rs. 3,98,236/-. In this regard the Bench takes note to the extract from the same letter dated 29.04.2019 wherein at para 5 the following has been mentioned:

"We therefore, request you not to initiate any further action like initiating corporate insolvency resolution process in NCLT."

17. The Bench has gone into the all the 27 invoices which has been produced by the Petitioner in his submissions. The Petitioner mentions that the basis for charging the interest rate is that the same has been mentioned in each of the invoices. However, a perusal of the invoices shows that there are several invoices where rate of interest of 24% has not mentioned. One such invoice from

many where interest rate has not been mentioned is reproduced below:

30



BILL
KARMA ROADWAYS (Regd.)
H.O. 3/11, Agrasen Nagar Kundan Nagar,
Dapodi, Pune-411012
Mob: +91 9323248048

ORIGINAL COPY/DUPLICATE COPY

GSTIN :- 27BMIP87210P1ZE


BUYER: GREATWELD ENGINEERING PVT. LTD.
PLTNO: A-18 FIVE STAR, M.D.C. LONI DEOKAR, INDAPUR, DISTT. PUNE.
STATE: MAHARASHTRA.

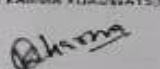
PAN NO.: BMIP87210P
BILL NO.: 00000
DATE: 09.09.2017
TRUCK NO.: MH14J94643

| Sl. No. | Product Description | HSN Code | UOM | Qty | Rate | Amount | Discount | Taxable Value | CGST | | SGST | | IGST | | Total |
|-----------------------------|-----------------------------|----------|-----|-----|------|--------|----------|---------------|-------------------------|--------|------|--------|------|--------|-------|
| | | | | | | | | | Rate | Amount | Rate | Amount | Rate | Amount | |
| 1 | Transportation | 996791 | NOS | 04 | 3200 | 51200 | | 51200 | 0 | 0 | 0 | 0 | 0 | 0 | 51200 |
| | Charges by Road | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | From MARKAL TO | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | (MAHARASHTRA) | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Under L.R. No. 2667 | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Number DR. 2017 | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Under your invoice | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Inv No. 2667 / VO 17.18/070 | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | Date DR. 08.08.17 | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | ACK 217 | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | TOTAL CHARGES | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | (HIGH), 15MM / 100X16 | | | | | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | | | | 04 | | 51200 | 0 | 51200 | 0 | 0 | 0 | 0 | 0 | 0 | 51200 |
| Total Bill Amount Inwards : | | | | | | | | | Total Amount before Tax | | | 51200 | | | |
| | | | | | | | | | Add: CGST | | | 0 | | | |
| | | | | | | | | | Add: SGST | | | 0 | | | |
| | | | | | | | | | Total Tax Amount | | | 0 | | | |
| | | | | | | | | | Total Amount after Tax | | | 51200 | | | |
| | | | | | | | | | GST on Revenue Charge | | | 0 | | | |

35 SEVENTYONE THOUSAND TWO HUNDREDS ONLY

Bank Details
Bank Name: ICICI BANK LTD
Bank A/C: 247805500642
Bank IFSC: IIC0001478


Common Seal

For KARMA ROADWAYS (Regd.)

Authorized signatory

18. In view of this, the Bench agrees to the contention of the Corporate Debtor that Principal amount is due, however, interest is not payable.

19. The Corporate Debtor while agreeing to the debt of the principal amount, however, mentions that clubbing of all outstanding invoices in one Petition by the Petitioner is not correct and therefore the Petition should be dismissed. To buttress his point, the Corporate Debtor made reference to Hon'ble *NCLAT Company Appeal (AT) (Insolvency) Order No. 77 of 2017 and also 72 of 2017* passed by a Common Order by NCLAT, wherein the NCLAT had upheld that the claim by the Operational Creditor regarding outstanding dues relates

to three different projects arising out of three separate Orders and therefore had upheld the following:

"10. We are of the view that different claim(s) arising out of different agreements or work order, having different amount and different dates of default, cannot be clubbed together for alleged default of debt, the cause of action is being separate. For the said reasons, we hold that the joint Petition preferred by appellant under Section 9 is defective, as distinct from incomplete, and, was not maintainable."

20. The Corporate Debtor while agreeing to the debt of the principal amount mentions that his case is also covered as per the above quoted NCLAT Order as a number of invoices have been raised. The Corporate Debtor mentions that each of the invoices pertains to separate agreement and therefore for each of these 27 invoices separate petitions should have been filed.

21. This Bench finds the above defence of the Corporate Debtor is untenable and does not in any way can be said to be covered by the above quoted NCLAT Order. In fact, in the above NCLAT Order, the claim relates to 3 projects viz. (1) "DS Toll Project", (2) "NK Toll Projects" and (3) "GF Toll Project". For each of these Projects, there is different Agreement or Work Order and, therefore, cannot be clubbed together. However, in the present case, there is only one 'oral agreement' and that is for transportation of goods from one place to the other and all the 27 invoices relates to this oral agreement of transportation of goods from one place to other. Therefore, this Bench finds it erroneous on the part of the Corporate Debtor to take the plea that his case is covered under above quoted NCLAT Order. Besides, in the above NCLAT Order of 01.08.2017 there are issues related to dispute of claim and some of the part of the claim is also hit by limitation. Therefore, this Bench reiterates

that these two cases are not similar in nature and therefore, the contention of the Corporate Debtor that he is covered by the above NCLAT order is not tenable.

22. The Bench notes that all the invoices have been raised in a proper manner and it has also not been denied by the Corporate Debtor that these amounts are not due. All these invoices have been raised as part of the same oral Agreement between the Corporate Debtor and the Petitioner which was for transportation of goods by the Petitioner from one place to the other from time to time between 30.06.2017 to 14.11.2018 based on oral Orders/ instructions from the corporate debtor. None of the invoices are time barred and are part of the same Oral Agreement between the parties, i.e., for transportation of goods from one place to the other. The Bench, therefore, finds the plea of the Corporate Debtor that for each of the invoices, a separate Petition should have been filed as incorrect and a moonshine defence.

23. The Bench also notes that the Corporate Debtor had not disputed the invoices raised by the Petitioner. However, what they have disputed is rate of interest applicable for non-payment of this amount.

24. This Bench notes that since the claim of the Petitioner is against services provided to the Corporate Debtor, the Petition is well covered within the definition of Petitioner. In this regard, the Bench would refer to section 5(20) and 5(21) of the code which is reproduced below:

"(20) "Petitioner" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a

debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

25. The Bench would refer to the judgment of Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (MANU/SC/1196/2017)*, where it was held that:

"25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the Petition shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the Petition would have to be rejected.

Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Petition, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

26. This Bench in view of the above is fully satisfied that the principal debt of Rs. 14,70,500/- is payable, however, the interest component on the same, the Bench notes, is disputed and the

Petitioner has also not been able to show that in each of the invoices the rate of interest of 24% is applicable.

27. In view of the above the Bench is satisfied that the Petitioner is entitled to principal amount of Rs. 14,70,500/- for the transportation services provided to the Corporate Debtor between 30.06.2017 to 14.11.2018 and that there has been a default in payment of the Petitioner's debt.

28. The Petition filed by the Petitioner is on proper Form 5, as prescribed under the Adjudicating Authority Rules and is complete.

29. The Petitioner has proposed name of Mr. Fanendra Harakchand Munot, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00515/2017-18/10916] as Interim Resolution Professional, to carry the functions of Interim Resolution Professional as mentioned under I&B Code.

30. The Petition under sub-section (2) of Section 9 of I&B Code, 2016 filed by the Petitioner for initiation of CIRP in prescribed Form 5, as per the Insolvency and Bankruptcy (Petition 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 Petition 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.

31. This Petition is filed under Section 9 of I&B Code, 2016, filed by **M/s Karma Roadways (Regd.)** through its Proprietor, Mr. Karamvir H. Sharma, against **Greatweld Engineering Private Limited**, for initiating Corporate Insolvency Resolution Process is **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 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 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. Fanendra Harakchand Munot, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00515/2017-18/10916] 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.
- VII. Having admitted the Petition, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
- VIII. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
- IX. The appointed IRP shall also comply the other provisions of the Code including Section 15 and Section 18 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report

within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.

32. The Petition is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

Sd/-

Chandra Bhan Singh
Member (Technical)

Sd/-

Suchitra Kanuparthi
Member (Judicial)