

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

C.P. No. 2066/IBC/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

**Masstrans Technologiies Private
Limited**

(CIN: U31907PN2018PTC180056)
Having registered office at: Gat No.
400, Hissa No. 14, Dehu-Alandi
Road, near MIDC Infotech IT Park,
Talawade, Pune 411062

.....**Operational Creditor**

Vs

**Gammon Engineers and
Contractors Private Limited**

(CIN: U24100GH2007PLC051697)
Veer Savarkar Marg, Prabhadevi,
Mumbai 400025

.....Corporate Debtor

Order delivered on: 09.07.2021

Coram:

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

For the Applicant: Mr. Rishabh Dhanuka

For the Respondent: Ms. Shwetha Venuturupalli

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

ORDER

1. This Company petition is filed by Mr. Vinay P Jain, Director of the Masstrans Technologiies Private Limited (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Gammon Engineers and Contractors Private Limited (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor for the provided by the petitioner to the Corporate Debtor. This petition has been filed by invoking the provisions of Section 8 and 9 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 94,23,410/-/- (Rupees Ninety-Four Lakhs Twenty-Three Thousand Four Hundred and Ten Only).
3. The case of the Operational Creditor is as follows:-
 - a. On 21.06.2016, Gammon Engineers and Contractors Pvt. Ltd. (the Corporate Debtor) issued a letter of Intent (“the LOI”) upon Masstrans Technologiies Pvt. Ltd. (“the Operational Creditor”) for subcontract works for design, supply, installation, testing and commissioning of Highway Traffic Management System of Gorakhpur Bypass Project on NH-28 in the State of Uttar Pradesh.
 - b. Pursuant to the LOI, on 27.06.2016, the Corporate Debtor had issued the Work Order bearing No. 8520/1383 upon

the Operational Creditor which was valued at Rs. 2,25,40,000/- (Rupees Two Crores Twenty-Five lakhs and Forty Thousand Only).

- c. Between 7.09.2016 and 27.06.2017, the Operational Creditor had raised various invoices upon the Corporate Debtor for the goods provided and services rendered by it, amounting to Rs. 2,25,40,000/- (Rupees Two Crores Twenty-Five Lakhs and Forty Thousand Only) (“the total amount of debt”). Out of the total amount of Debt, the Corporate Debtor has advanced a payment of Rs. 1,31,16,590/- (Rupees One Crore Thirty-one Lakhs Sixteen Thousand Five Hundred and Ninety Only) to the Operational Creditor leaving a balance amount of Rs. 94,23,410/- (Rupees Ninety-Four Lakhs Twenty-three Thousand Four Hundred and Ten Only) (“the amount in default) which is due and payable to the Operational Creditor by the Corporate Debtor.
- d. Between 05.02.2018 till 17.08.2018, the Operational Creditor had addressed various e-mails to the Corporate Debtor reminding it to repay the amount in default. However, the Corporate Debtor has failed to do so.
- e. Therefore, on 22.03.2019, the Operational Creditor had issued a Demand Notice upon the Corporate Debtor in accordance with the provisions of Section 8 of the Code. The said demand notice has not been responded to by the Corporate Debtor till the date of filing of the present petition.

4. The Corporate Debtor has on the contrary, denied all the averments and allegations raised by the Operational Creditor.

The contentions of the Corporate Debtor are summed up as follows:

- a. The Corporate Debtor stated that in the present case, though the letter of intent dated 21.06.2016 was issued and the work order dated 27.06.2016 was issued in respect of job being design, supply of materials, installation, testing and commissioning of Highway Traffic Management System of Gorakhpur Bypass Project on NH-28 in the State of Uttar Pradesh. This was issued by Gammon India Limited ("GIL") but in fact the actual work in respect of the said job was done by another company named Gammon Infrastructure Projects Limited (GIPL).
- b. The Corporate Debtor further stated that accordingly the actual work in respect of said job was done by Gammon Infrastructure Projects Limited (GIPL). Counsel for the Corporate Debtor further mentioned that this was done without the Corporate Debtor being liable in any manner to pay any amounts for the work done for GIPL by the Operational Creditor. The Corporate Debtor was nowhere in the picture for payment. Further, the correspondence emails annexed to the petitioner are between GIPL and Operational Creditor, where Operational Creditor has admitted that the actual work was done under the directions/suggestions of GIPL as communicated by GIPL to the Operational Creditor from time to time. The email dated 09.04.2018 from the Operational Creditor's representative to one Mr. Kishor Mohanty of GIPL, is self-explanatory in this regard. Further from the email dated 30.06.2018 addressed by the representative of the Operational Creditor to the representative of GIPL, it is clear that the representatives of the Operational Creditor had one

to one meetings with the representative of GIPL wherein discussion in respect of payment of amounts by GIPL to the petitioner took place.

- c. The Corporate Debtor stated that such communication in meeting between GIPL and Operational Creditor clears the fact that GIPL has admitted its liability to make payment to the Operational Creditor in respect of the work done and here, nowhere the Corporate Debtor is in picture with respect to the work done and respective payment and hence the question of respondent making any payment to the petitioner for the work done by GIPL never arose.
- d. The respondent submits that it is understood that from the copies of alleged bank statement that the payment received from GIPL to petitioner on completion of assigned work by petitioner.
- e. Further, the invoices received from the petitioner have been duly handed over by Respondent to GIPL for payment. It is thus clear that the respondent does not owe any amount and liability to the petitioner. It is respectfully submitted that the petitioner has not mentioned all these aspects in the petition and has suppressed the material facts from this forum.
 - f. The respondent further states that as per Section 8(20) of the Code, Operational Creditor inter alia is a person to whom an operational debt is owed. In order to fall under the category of operational creditor, firstly, the debt owed should be an operational debt and secondly, such operational debt should be owed to that person i.e. the liability of the corporate debtor to pay should arise pursuant to the operational debt. Here in present case from the above it is cleared that

petitioner has rendered the services on instruction of GIPL and also requested GIPL to make the payment, and here has no where role of GIL as corporate debtor. A corporate debtor defined under section 3(8) of Insolvency and Bankruptcy Code, 2016 is the Corporate person who owes a debt to any person. Here it seems and understood from the documents annexed to the petition that respondent does not owe any amount and liability to the petitioner.

- g. For the reason set out, the respondent submits that the present petition under section 9 of the Act shall be dismissed against respondent in interest of justice.

Findings

1. Heard both sides and perused the record. As mentioned above, the main contention of the Corporate Debtor in this case is that the original work order was issued by Gammon India Limited but the actual work was done by the Operational Creditor in respect of project site of Gammon Infrastructure Projects Limited and some of the bills were also paid by the Gammon Infrastructure Projects Limited and therefore there is no privity of contract between the Operational Creditor and the Corporate Debtor and thus the Corporate Debtor is not liable to pay the amounts claimed by the Operational Creditor.
2. In order to examine the above plea, it is important to look at the work order issued to the Operational Creditor. The Operational Creditor filed copy of the work order dated 06.07.2016 issued in its favour by the Gammon India Limited at page no. 84 under Annexure 'F' attached to this Company Petition. It is very clear from the said work order

that the work order has been issued and duly signed by the Gammon India Limited. The Operational Creditor also annexed copy of the order dated 22.03.2017 passed by this Tribunal in Company Scheme Petition No. 125/2017 jointly filed by Gammon India Limited and Gammon Engineers and Contractors Private Limited (Corporate Debtor) whereunder the scheme of transfer of Gammon India Limited as transferor company with Gammon Engineers and Contractors Private Limited as the transferee company was approved by this Tribunal under which all the assets and liabilities of the transferor company were taken over by the transferee company i.e. Corporate Debtor. Therefore, it is very clear from the above two documents that the Corporate Debtor being the transferee of Gammon India Limited cannot deny the unpaid bills of the Operational Creditor. Mere forwarding of the bills submitted by the Operational Creditor to Gammon Infrastructure Projects Limited by the Corporate Debtor does not absolve the Corporate Debtor from its liability. There was no dispute with regard to the debt and default in this case. The respondent has not sent any reply to the demand notice issued by the petitioner.

3. Thus, the above contention raised by the Corporate Debtor in the above petition is not legally sustainable and is liable to be rejected as it is an afterthought to avoid the liability of Operational Creditor. As stated above, the debt and default are clearly established and the application is complete in all respects and is well within limitation.
4. 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) -2066(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Gammon Engineers and Contractors Private Limited.
- b. Since the Operational Creditor has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Vasudev Ganesh Nayak Udupi** (uvnayak2004@yahoo.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00019/2016-17/10043 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.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour 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)**