

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

CP (IB) 2120/MB-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Bostock New Zealand Limited
...Operational Creditor

Versus

**Global Sourcing and Procurement
Consolidation Limited**
Corporate Debtor

Order Delivered on 22.10.2019

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Ms. Namrata Biyawat, I/b NB
Legal, Advocate
For the Corporate Debtor : No representation

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by Bostock New Zealand

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Limited ("the Operational Creditor"), a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Authorised Signatory, Prerak Hora, on the basis of a Board Resolution dated 14.03.2019 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Global Sourcing and Procurement Consolidation Limited ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares and incorporated on 07.10.2016 under the Companies Act, 2013, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U01100MH2016PLC286637. Its registered office is at Office No.53, Satra Plaza, Sector 19-D, Vashi, Navi Mumbai, Maharashtra 400703. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 04.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of US \$1,09,592.00 (United States Dollars one lakh nine thousand five hundred and ninety-two only) as principal as on 16.03.2018, which is the date of default.
4. The case of the Operational Creditor is as follows: -

- (a) The Corporate Debtor had approached the Operational Creditor for supply of fresh New Zealand apples for distribution in the Indian Market. The terms were agreed upon and signed under two Sales Contracts, dated 12.03.2018 (placed at Exhibit 'E' on p.35 of the petition) and 28.03.2018 (placed at Exhibit 'F' on p.36 of the petition). The two contracts specify the rate of the contract and the number of cartons. (para 1 of Part IV at page 13 of the Petition).
5. Invoices have been placed on record as **Exhibit 'C'** at pp.22-23. The invoices do not provide for interest in case of delayed payments. Bank statements are also attached as **Exhibit 'G'** at pages 37. The total debt due and payable to the Operational Creditor is US \$1,09,592.00 (United States Dollars one lakh nine thousand five hundred and ninety-two only), as mentioned at page 13 of the Petition.
6. The Operational Creditor had served a Demand Notice in Form 3 dated 19.03.2019 to the Corporate Debtor (**Exhibit 'N'**, pp.160-168) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice.
7. The Corporate Debtor has remained not submitted any reply in the matter.
8. We have heard the arguments of the Learned Advocate for the Operational Creditor and perused the records.

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9. It is clear from the documents placed on record that the Operational Creditor has supplied the goods in terms of the two contracts dated 12.03.2018 and 28.03.2018 placed at Exhibits 'E' (p.35) and 'F' (p.36) to the petition.
10. The consignments of apples were duly delivered to the Corporate Debtor through the Mediterranean Shipping Company S.A. The Bills of Lading bearing No.MSCUZF129507 at p.23 and No.MSCUZF147590 at p.29 of the Petition, Certificate of New Zealand Origin issued by the Auckland Regional Chamber of Commerce, evidencing loading at Napier (New Zealand) and their final destination at Nhava Sheva Port, are placed on record at pp.26 and 32 of the petition.
11. The two Certificates bearing No.NZL2018/BOSTOCKNZ/11180 dated 19.03.2018 and No.NZL2018/BOSTOCKNZ/14819 dated 04.04.2018 issued by the Ministry for Primary Industries, New Zealand, addressed to Plant Protection Organisations of India, placed at pp.27 and 33 of the petition, certify that the export is free from pests.
12. The email correspondence exchanged between representatives of the Operational Creditor and the Corporate Debtor placed at Exhibit 'D' on p.34 reveal an assurance from the Corporate Debtor about payment being made on 08.10.2018. In spite of the assurances, no payment has been made to the Operational

Creditor. The further correspondence at pp.119-146 also reveal that promises were made on various dates to clear the outstanding balances but were never fulfilled.

13. There is also a Letter of Comfort Bond for Repayment dated 16.08.2018 issued by the Corporate Debtor giving repayment schedule for clearing the outstanding amounts (Exhibit 'T' at p.147 of the Petition). But even these have not been honoured. Therefore, it is clear that the payment remains outstanding to the Operational Creditor.
14. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudging Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
15. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
16. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP(IB) 2120/MB-IV/2019** filed by **Bostock New Zealand Limited**, the Operational Creditor,

under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Global Sourcing and Procurement Consolidation Limited [CIN: U01100MH2016PLC286637]**, the Corporate Debtor, is **admitted**.

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Operational Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
 - (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, the IRP shall be appointed by this Adjudicating Authority by a separate order. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out her functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by

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Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

SD/-

RAVIKUMAR DURAISAMY
Member (Technical)

22.10.2019

SD/-

RAJASEKHAR V.K.
Member (Judicial)