

In the National Company Law Tribunal
Mumbai Bench.

C.P. (IB)-1620/MB/2017

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

Associated Road Carriers Ltd. : Petitioner/ Operational Creditor

V/s

Seam Industries Ltd. : Respondent/ Operational Debtor

Order delivered on: 28.12.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s) : 1. Mr. Pulkit Sharma, Advocate,
2. Ms. Hasmita D. Kapadia, Advocate,
3. Mr. Lyju Antony, i/b. Adv. K.G. Parmar.

For the Respondent(s) : 1. Mr. Rohitrao J. Jadhav, i/b. Shraddhanand Bhuttada.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. A Petition was filed on 16.11.2017 in Form No.5 by M/s. Associated Road Carriers Ltd., Mumbai Office at : Goregaon (East), Mumbai-400 063, in the capacity of "Operational Creditor" against M/s. Seam Industries Limited, Registered Office at 6th Floor, C-Wing, MET Educational Complex, Bandra Reclamation, Bandra (West), Mumbai-400 050 (Corporate Debtor) to initiate Corporate Insolvency Resolution Process to claim an outstanding Debt amount of ₹2,60,54,524/- (Principal Amount) Plus Interest @ 24% per annum from 22.07.2016 to 16.10.2017 (15.5 months) ₹80,76,902/-, i.e. total Debt of ₹3,41,31,426/-.

2. Background of the case in brief is as follows:-

SUBMISSIONS OF THE PETITIONER/ OPERATIONAL CREDITOR

2.1. The Petitioner/ Operational Creditor is in the business of transportation of goods by road. The Petitioner rendered transportation services to the Corporate Debtor by shifting their material from one station to another, as per their Work Order No.WOK4314F0001 dated 01/04/2014, annexed as Exhibit-II to the Petition. The Petitioner alleged that a balance transportation sum of ₹2,60,54,524/- is still due and payable by the Corporate Debtor on this account to the Petitioner, annexed as Exhibit-I to the Petition. The Petitioner had sent several Letters to the Corporate Debtor, placed on record as Exhibit-3, 6, 8, 10, 11, 12, 14 and 16.

2.2. The Corporate Debtor had allegedly confirmed the transactions and agreed to remit the outstanding dues by its letter dated 19.03.2015, Minutes of Meeting dated 03.05.2016, Letter dated 22.07.2016, 10.12.2016, 05.05.2017 and 01.06.2017.

2.3. Since the Corporate Debtor failed to make the payment of outstanding impugned Operational Debt of ₹2,60,54,524/-, the Petitioner/ Operational Creditor sent a Demand Notice dated 22.09.2017 by Speed Post A/D, copy by hand delivery in Form No.3 and 4 u/s. 8 of The Code, demanding the impugned Debt along with Interest @ 24% per annum from 22.07.2016 till payment. According to the Petitioner, even after receipt of the said Notice u/s.8, the Corporate Debtor neither made the payment nor replied to the Demand Notice. Accordingly, this Petition u/s. 9 of the Insolvency & Bankruptcy Code, 2016 has been filed before this Tribunal.

3. SUBMISSIONS BY THE CORPORATE DEBTOR

3.1. The Corporate Debtor stated that the claim of the Petitioner Creditor is genuinely and seriously disputed. To demonstrate the alleged dispute, the Corporate Debtor has relied Letters purportedly written to the Nagpur office of the Petitioner/ Operational Creditor dated 24.06.2014, 13.09.2014 and 11.05.2015 citing irregularities like mismatch and value difference in bills as per the rate contract, non- corrected Bills submitted and deviations.

3.2. The Corporate Debtor had submitted that there was strong suspicion of excess billing by the Petitioner, therefore, proposed to have a detailed inspection/ audit. Accordingly vide its Confidential Letter dated 11.04.2016, the Corporate Debtor issued a Letter to the Managing Director, Sunil Hitech Engineers Limited, Mumbai, evidence placed on record.

3.3. M/s. Sunil Hitech Engineers Limited issued its Confidential Review and Opinion Report dated 28.09.2017 to the Nagpur office of the Corporate Debtor, reproduced below:-

*"To
The Director
SEAM Industries Limited
Butibori
Nagpur – 441 122.*

Subject – Review of Audit Report submitted by Audit Team of SEAM Industries Limited for FY 2013-14 to 2015-16 (Quarter II). Dt 09 Jan 2017

Dear Sir,

We have review the Internal Audit Reports submitted with us of SEAM Industries Limited, Nagpur for the period from FY 2013-14 to 2015-16 (Quarter II) dt 09 Jan 2017 and on the basis of audit report and relevant documents shared with us we hereby would like suggest;

- 1. To recruit a person from audit background to vouch and verify day to day transactions.*
- 2. Weekly payment plan be prepared and should be submitted with management with due checking by Internal Audit person.*
- 3. Statutory payments including financial liabilities be intimated to the management will in advance to avoid the deadline and further defaults.*
- 4. Recovery should be initiated from the Associated Road Carriers Limited towards excessive billing of Rs.2.29 Cr.*
- 5. Action to be initiated against the employees involved in certifying the excess billing."*

3.4. As a consequence of the Auditor's Report, a Letter dated 09.11.2017 was issued to the Chief Financial Officer of the Nagpur Office of the Corporate Debtor as per the Board Resolution of the Corporate Debtor demanding explanation within one month as to why disciplinary action be not taken against Chief Financial Officer for misconduct.

In the *said Letter it was communicated as under :-*

"It has been reported that Seam Industries Ltd. has assigned ARC Ltd. a company engaged in the transportation activities to deliver/shift raw material/semi-finished goods/finished goods from one site to another and issued work orders in this behalf. The ARC Ltd. Submitted bills against work orders from time to time and same has been accounted by the company.

Upon inspection & verification of transactions of seam Industries Ltd. ('the Company') and ARC Ltd. ('Party'), physical inspection and verification of raw material/semi-finished goods/finished goods, delivered/shifted to site, it is observed that –

- 1. Bills raised by the Party are not as per work orders issued by the Company.*
- 2. Excess bills are booked/raised by party as compare to actual job allotted.*
- 3. No explanation called on other charges forming part of bill.*
- 4. Short delivery of material at site.*
- 5. Bills are accepted / booked without any inspection and verification of actual delivery of material at site.*

From the above inspection and verification it is understand that the bills booked by the Company in respect to Party are improper and without any physical inspection and verification of delivery of

material. The irresponsible act and lack of due diligence has been shown from your side which has resulted in undue cost to the Company."

4. **REJOINDER BY THE PETITIONER/ OPERATIONAL CREDITOR**

4.1. In the Rejoinder dated 16.04.2018, the Operational Creditor denied the receipt of Letters dated 24.06.2014, 13.09.2014 and 11.05.2015 purportedly issued by the Corporate Debtor.

4.2. Further stated that the Petitioner is an Operational Creditor, being "transporter" and is governed under the Carriage by Road Act 2007, (Old Act Carriers Act 1865). Any alleged "dispute" or claim from the Corporate Debtor should have been given in writing with acknowledged proof thereof to the Operational Creditor, as required u/s.16 of the Carriage by Road Act 2007, (Old Act section 10 of the Carriers Act, 1865). Section 16 of the Carriage by Road Act 2007, as quoted by the Petitioner, is reproduced below:-

"No suit or legal proceeding shall be instituted against a common carrier for any loss of, or damage to, the consignment, unless notice in writing of the loss or damage to the consignment has been served on the common carrier before the institution of the suit or other legal proceedings and within one hundred and eighty days from the date of booking of the consignment by the consigner."

4.3. The Petitioner also submitted that no such claim/ dispute had been lodged with the Operational Creditor by the Corporate Debtor within six months from the date of the alleged injury caused to the Corporate Debtor. For non-submission of any such claim, which is a mandatory requirement, the claim, if any, taken now is not legally maintainable.

FINDINGS

5. Considering the totality of the facts and circumstances of the case discussed *supra*, I am of the opinion that the default as defined u/s. 3(12) of The Code is established and accepted by the Debtor. On 19.03.2015 Director of Debtor Company had written a Letter to CMD of the Operational Creditor that, quote "*However, as the collection of payment from the customers have been gradually improving, we shall be releasing payment of ₹50,00,000/- to 75,00,000/- during this month and the balance payment shall also be progressively released from April, 2015 onwards*" unquote. Again, on 01.06.2017

a Letter was issued by General Manager (Operation Incharge) addressed to CMD of Associated Road Carriers (Operational Creditor) wherein annexed the outstanding confirmation Letter and also made it clear that trying best to release all outstanding payments as early as possible.

5.1. Evidences such as Work Orders issued by the Corporate Debtor are on record. Demand Notice has been issued to the Respondent Debtor, however, the Respondent Debtor has not raised any "dispute" of the outstanding claim within the 10 days' time prescribed u/s.8(2) of The Code. The "dispute" alleged by the Corporate Debtor is on flimsy ground and does not hold good. As on date, no alleged "default" on the services rendered by the Operational Creditor has been crystallized. Rather, vide a Letter of 10.12.2016 issued by the Debtor Company it is suggested that payment shall be released in equal instalments within due course of time with a request to understand the financial crisis of the Debtor Company.

6. As a consequence, keeping the admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/ Corporate Debtor, it is my conscientious view that this Petition deserves "Admission".

7. The Operational Creditor has proposed the name of the Interim Resolution Professional Mr. Manish Sukhani, Registration No. IBBI/IPA-001/IP-P00668/2017-18/11137, Address: B-213, Orchard Road Mall, Royal Palms, Aarey Colony, Goregaon (East), Mumbai – 400 065, email : ca.m.sukhani@gmail.com. The IRP has submitted his consent in Form No.2 and also certified that no Disciplinary Proceedings are pending against him. The proposed IRP is hereby appointed. Upon Admission of the Application and Declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is

granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

8. Having admitted the Petition/ Application the provisions of "**Moratorium**" as prescribed u/s. 14 of The Code shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "**Moratorium** Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

9. Accordingly, this **CP (IB)-1620/(MB)/2017 stood** Admitted.

10. The Corporate Insolvency Resolution Process shall commence from the date of this order.

Sd/-
M.K. SHRAWAT
Member (Judicial)

Date : 28.12.2018.
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