

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER

IA(IBC)No.256/JPR/2019
In IB No. 707(PB)/2018

IN THE MATTER OF:

M/S INDUS CONTAINER LINES PVT. LTD.

...Financial Creditor

VERSUS

JADOUN INTERNATIONAL PVT. LTD.

...Corporate Debtor

MEMO OF PARTIES

IA(IBC) No. 256/JPR/2019:

MR. AJIT KUMAR

*Resolution Professional for
M/s Jadoun International Pvt.
Ltd.*

...Applicant

VERSUS

SUSPENDED BOARD OF DIRECTOR

*Represented through Mr.
Sourabh Singh Jadoun
457, Ganesh Nagar, Niwaru
Road, Jhotwara, Jaipur- 302016*

...Respondent No. 1

SONEX MARMO GRANI PVT. LTD.

*419, Near Alok School, Sector-
11, Hiran Magri, Udaipur,
Rajasthan-313001*

...Respondent No. 2

FOR PETITIONER (S) : Ashish Saksena, Adv.

Sdr

Sdr

Order Pronounced On: 22.02.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. The present application bearing *IA No. 256/JPR/2019* has been filed by the Resolution Professional/Applicant under Section 60(5) read with Section 20 of the Insolvency and Bankruptcy Code ('IBC'/ 'Code') with the prayer that Respondent No. 2, namely, *M/s Sonex Marmo Grani Pvt. Ltd*, be directed to pay the outstanding amount of Rs. 41,07,291/- due to the Corporate Debtor.
2. Before we delve into the facts of the case, it is important to refer to the history of the matter. The Financial Creditor, *M/s Indus Container Lines Pvt. Ltd.*, had preferred an application under Section 7 of IBC seeking initiation of CIRP against *M/s Jadoun International Pvt. Ltd.* ('Corporate Debtor'). This Authority vide order dated 25.01.2019 initiated CIRP of the Corporate Debtor and appointed *Mr. Ajit Kumar* as the Interim Resolution Professional ('IRP'). Pursuant to the Order, the IRP made a public announcement in accordance with Section 15 of the Code on 29.01.2019. Along with the same, a letter was preferred to the Suspended Directors of the Corporate Debtor intimating them about the initiation of CIRP and declaration of moratorium.
3. The RP after scrutinizing the books of the accounts of the Corporate Debtor found that its assets are significantly insufficient to its liability. Hence, the present application has been filed on the following grounds:

Sd-

Sd-

3.1. The Applicant preferred a letter dated 18.03.2019 to Respondent No. 2 asking it to clear the outstanding dues owed to the Corporate Debtor amounting to Rs. 3,07,30,171/- for rendering the freight services. The outstanding amount was duly reflected in the books of accounts and ledger of the Corporate Debtor. In the said letter, the Applicant has stated that from the list of the Sundry Debtors as provided by the Corporate Debtor, an amount of Rs. 3,07,30,171/- is shown as debt in the name of Respondent No. 2.

3.2. Pertinently, the Corporate Debtor had raised several invoices against the freight services rendered to Respondent No. 2 and the ledger of the Corporate Debtor categorically reflected the amount due from 01.04.2016 to 25.01.2019. The details of the invoices are reiterated in a tabulated form as below:

<i>Sr. No.</i>	<i>Date</i>	<i>Invoice No.</i>	<i>B/L No.</i>	<i>Amount</i>
1.	04.10.2016	JIP/15005	ECK0127455A	7,94,886/-
2.	04.10.2016	JIP/15006	ECK0127455A	2,875/-
3.	04.10.2016	JIP/15007	HLCUIZ1160824991	6,37,204/-
4.	04.10.2016	JIP/15008	HLCUIZ1160824991	2,875/-
5.	04.11.2016	JIP/15089	HLCUIZ1160824991	69,000/-
6.	04.11.2016	JIP/15090	HLCUIZ1160824991	35,43,936/-
7.	04.11.2016	JIP/15091	HLCUIZ1160824991	7,34,597/-
8.	04.11.2016	JIP/15092	ECK0127455A	73,600/-

Sd/-

Sd/-

9.	04.11.2016	JIP/15093	ECK0127455A	89,95,060/-
10.	04.11.2016	JIP/15094	ECK0127455A	8,21,123/-
11.	05.11.2016	JIP/15095	ECK0127455B	7,45,205
12.	05.11.2016	JIP/15096	ECK0127455B	2,875
13.	05.11.2016	JIP/15097	ECK0127455B	69,000
14.	05.11.2016	JIP/15098	ECK0127455B	52,91,321
15.	05.11.2016	JIP/15099	ECK0127455B	7,56,895
16.	05.11.2016	JIP/15100	ISB0246335	1,29,601
17.	05.11.2016	JIP/15101	ISB0246335	2,875
18.	05.11.2016	JIP/15102	ISB0246335	18,400
19.	05.11.2016	JIP/15103	ISB0246335	1,80,747
20.	05.11.2016	JIP/15112	HLCUMER160900588	32,16,506
21.	07.11.2016	JIP/15106	HLCUMER160900588	5,15,223
22.	12.11.2016	JIP/15113	HLCUMER160900588	3,78,003
23.	12.11.2016	JIP/15114	HLCUMER160900588	2,875
24.	12.11.2016	JIP/15115	HLCUMER160900588	46,000/-
25.	12.11.2016	JIP/15116	HLCUMER160900588	36,99,489/-
			TOTAL	3,07,30,171/-

3.3. In response to the letter sent by the Applicant, Respondent No. 2 vide its letter dated 25.04.2019 submitted that it does not owe any amount to the Corporate Debtor. In its letter, Respondent No. 2 further stated that the Corporate Debtor has raised frivolous invoices against it, and as per the Books of Accounts of Respondent No. 2, there are no outstanding dues against the Corporate Debtor.

Sd/-

Sd/-

- 3.4. Due to the non-acceptance and refusal of payment of the outstanding dues by Respondent No. 2, the present application has been filed by the Applicant seeking directions against Respondent No. 2 to pay the outstanding debt.
4. The Applicant filed Proof of Service vide Diary No. 1998/2019 dated 19.09.2019 showcasing the service of the Interlocutory Application upon Respondent No. 2. Despite the completion of Service, Respondent No. 2 did not appear before this Tribunal and remained unrepresented.
5. In the present matter, the Resolution Plan was approved by this Adjudicatory Authority vide Order dated 16.07.2021 and the Successful Resolution Applicant was *Mr. Yusuf Khan*. The Resolution Professional was discharged vide Order dated 02.03.2022. Hence, the Successful Resolution Applicant filed Written Submissions vide Diary No. 3299/2022 dated 09.11.2022 which is summarized below:
- 5.1. It is mentioned that despite service of the instant IA upon Respondent No. 2, it has abstained from the proceedings and no reply or rebuttal has been filed on its behalf. Therefore, the Books of Accounts of the Corporate Debtor concerning the outstanding amount from Respondent No. 2 should be deemed to be admitted.
- 5.2. It is also mentioned that the issue of the instant application being pending before this authority had been considered in the 7th meeting of the CoC dated 22.11.2019, and the 8th meeting of the CoC dated

18.12.2019. After concurrence of the CoC, it became a part of the Resolution Plan and the said Resolution Plan was approved by this Authority on 16.07.2021. The Respondent neither challenged the CoC approval nor the order of the Authority. Moreover, no suit has been preferred by the Corporate Debtor against Respondent No. 2 in any Court of law.

6. We have heard the Ld. Counsels for the Applicant and perused the averments made in the Interlocutory Application along with the documents enclosed with the application.
7. Section 18 of the Code talks about the duties of the IRP including collection of all financial information relating to the Corporate Debtor, receipt and collation of debt claims, constitution of a Committee of Creditors etc. Section 20 on the other hand lays down that the IRP has to manage the affairs of the Corporate Debtor as a going concern to enable him to protect and preserve the value of the property of the Corporate Debtor. Further, Section 25 simultaneously sets out the duty of the Resolution Professional to preserve and protect the assets of the Corporate Debtor and lays down the functions to be performed for the same.
8. The duties imposed upon the RP/IRP by the aforementioned Sections do not entitle the Adjudicating Authority to exercise jurisdiction in matters where recovery of a particular amount is sought on behalf of the Corporate Debtor. For adjudication of disputes and recovery of sums, the RP is empowered to

Sdr

Sdr

approach competent authorities. At this juncture, we place reliance upon the Judgment of the Hon'ble Supreme Court in the matter of *Gujarat Urja Vikas Nigam Limited vs. Amit Gupta (2021) 7 SCC 209* wherein the following has been observed:

“65... Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.”

9. The Hon'ble NCLAT while relying on the *Gujarat Urja (supra)* in the matter of *Shri Ramachandra D. Choudhary vs. Bansal Trading & Ors.* vide Order dated 01.09.2022 held as below:

“Keeping in view the aforementioned ratio in ‘Gujarat Urja Vikas Nigam Limited’ (Supra), we hold that the remedy for recovery of debts, disputed or not, cannot be determined in summary proceedings and the Code does not contemplate adjudication of any such nature. Any such steps taken under Section 60(5) of the Code before the Adjudicating Authority, would tantamount to bypassing/short-circuiting the Judicial Proceedings. Keeping in view the submissions of the Respondents, to adjudicate whether the amount is due and payable by the ‘sundry debtors’ who have raised disputes, would require calling for evidence and cannot be proceeded under the Code. The Appellant is well within its powers to take appropriate steps to file legal proceedings, if the circumstances so warrant. The Code expressly provides for the Liquidator to institute or defend any Suit, Prosecution, or other

Sdr

Sdr

Legal Proceedings, Civil or Criminal, in the name or on behalf of the 'Corporate Debtor'.”

10. Moreover, it has been time and again held that NCLT is not a recovery forum. The Hon'ble Supreme Court vide Order dated 03.12.2019 passed in *M/s Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors.* (2020) 13 SCC 308 held as below:

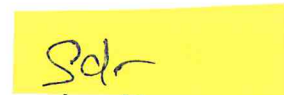
“The NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. Therefore, NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer.”

11. The Resolution Professional in the present matter has approached this forum for recovery of debt which is allegedly owed by Respondent No. 2 to the Corporate Debtor whereas it has forgotten the underlying principle which enunciates that this is not a debt recovery forum. There is no doubt that the Resolution Professional has ample powers to proceed and protect the debts of the Corporate Debtor, but it cannot do so by merely filing an Application under Section 60(5) of the Code in the pending CIRP of the Corporate Debtor. The Hon'ble Supreme Court in the matter of *Gluckrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors.*, on 19.05.2023 held:

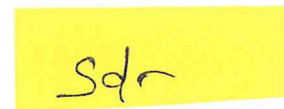
“We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law. The remedy against third party,

however, is not available under Section 66 of IBC, and the civil remedies which may be available in law, are independent of the said Section."

12. We are not delving into the merits of the case which has been presented by the Applicant. Although the Applicant has approached this Authority with the intention to protect the assets of the Corporate Debtor, the recovery of money as prayed in the Application cannot be granted. The Adjudicating Authority does not have the jurisdiction to allow the Application filed by the Resolution Professional. The Successful Resolution Applicant is at liberty to proceed against its debtors by filing an appropriate application with the competent court of law and for the purpose of the same, the period of this Application shall be excluded from limitation.
13. In view of the foregoing, the Application bearing *IA(IBC) No. 256/JPR/2019* is rejected and disposed off accordingly.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**