

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.6
CP(IB) 345 of 2020

Order under Section 9 IBC

IN THE MATTER OF:

Cold Chain Consultants Ltd

.....Applicant

V/s

Global Cold Chain Solution India Pvt Ltd

.....Respondent

Order delivered on ..27/04/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The matters were heard almost in the month of March but orders could not be pronounced because Technical Member was not available. Technical Member will not be available for another couple of weeks, hence, matter cannot be kept pending for pronouncement because hearing was concluded almost a month ago. Hence orders are pronounced invoking Rules 151 of NCLT Rules, 2016 with consent of other Member.

-Sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)


MADAN B. GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No.345 of 2020

*[An application for initiation of Corporate Insolvency Resolution Process under
Section 9 of the Insolvency & Bankruptcy Code, 2016]*

In the matter of:

M/s. Cold Chain Consultants Limited

CIN: BR 61809512-000-07-15-4

Having registered address at:

C/O, Rooms 1310-13, 16-20, 22-23,
13/F-Hollywood Plaza, 610 Nathan Road,
Mongkok, Kowloon, Hong Kong

....Operational Creditor

Versus

M/s. Global Cold Chain Solution India Private Limited

CIN: U25209GJ2012PTC070892

Having registered address at:

549/3, near Rakanpur Char Rasta,
Rakanpur, Kalol, Gandhinagar, Gujarat, India – 382 721

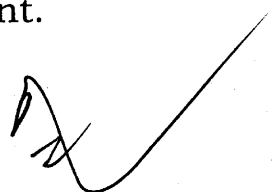
....Corporate Debtor

**Order reserved on 28.03.2022
Order pronounced on 27.04.2022**

**Coram: Madan B. Gosavi (Member Judicial)
Kaushalendra Kumar Singh (Member Technical)**

Appearance:

Ld. Counsel Mr. Yuvraj Thakore appeared for the Applicant.
Ld. Counsel Mr. Anmol Mehta appeared for the Respondent.



ORDER
[PER BENCH]

1. This application under Section 9 of the Insolvency and Bankruptcy Code, 2016 is filed by the Operational Creditor, M/s. Cold Chain Consultants Limited against M/s. Global Cold Chain Solution India Private Limited to initiate the Corporate Insolvency Resolution Process ("CIRP" in short) of the Corporate Debtor on the ground that the Corporate Debtor committed default in paying the Operational Debt of Rs.2,13,69,379/-.
2. The Operational Creditor states that it has sold and supplied the Corporate Debtor the raw material for all types of finished temperature sensitive materials and machineries. It has raised various invoices against the Corporate Debtor for the period in between 06.09.2018 to 21.07.2020. According to the Operational Creditor, the Corporate Debtor did not pay the outstanding amount despite repeated demands. It has served on the Corporate Debtor a demand notice dated 24.07.2020 under Section 8 of the Insolvency and Bankruptcy Code, 2016.
3. The Corporate Debtor received the notice on 24.07.2020 and replied the same vide letter dated 04.08.2020. The Operational Creditor stated that the Corporate Debtor raised false defense of some dispute and did not pay the debt. Hence, this application is filed to initiate the CIRP of the Corporate Debtor.
4. Notice of this application has been served on the Corporate Debtor. One of its authorized representative Mr. Jeshurun

Wycliffe Christian appeared and filed affidavit in reply. He contended that Mr. Andrew Keith Meyers ("Mayers" in short), who filed this application on behalf of the Operational Creditor has not been authorized to file the same though he holds 50% of the shareholding. According to the Corporate Debtor, a dispute is going on in between said Mr. Mayers and other shareholders / directors of the Operational Creditor, for which, the proceedings under Section 241-242 of the Companies Act, 2013 is also pending in between them.

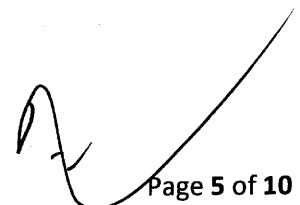
5. This application is filed with some malafide intention and it is not maintainable. He further contended that there is a pre-existing dispute between the Operational Creditor and the Corporate Debtor about the quality of goods supplied and related party transactions. This application is filed on the basis of some distorted version. In his detailed reply on behalf of the Corporate Debtor, Mr. Jeshurun Wycliffe Christian has given details of the share pattern held by Mr. Mayer and other shareholders of the Operational Creditors. He also contended that some shareholders of the Operational Creditor have filed criminal complaints against Mr. Mayer. According to him, on these grounds, this application is not maintainable.
6. We perused the pleadings, evidence and material available on record.
7. We heard the Learned Counsel appearing for the parties. In view of above, only point arises for our consideration is as follows with our findings and thereon and reasons thereof:

- (i) Whether there is any pre-existing dispute in between the Operational Creditor and the Corporate Debtor pending about the quality of goods supplied – No.

REASONS

8. There is no dispute to the fact that the Operational Creditor has sold and supplied certain types of goods to the Corporate Debtor. It is also not in dispute that the Corporate Debtor is liable to pay certain sum of money more than (in Indian Rupees) one Crore (threshold limit prescribed under Section 4 of the I.B. Code, 2016) to the Operational Creditor. The claim has also not time barred.
9. The Corporate Debtor has come out with two major defenses:
- (i) There is a dispute between the shareholders of the Operational Creditor and the proceedings under the Companies Act, 2013, so also Indian Panel Code, 1861 are going on between them. On that background, the Corporate Debtor contends that Mr. Mayer, who filed this application on behalf of the Operational Creditor, is not duly authorized to file the same.
- (ii) There is pre-existing dispute pending in between the Operational Creditor and the Corporate Debtor about the quality of goods supplied by the Operational Creditor.
10. At the outset, we make it clear that the dispute in between the directors /shareholders of the Operational Creditor cannot be a defense available for the Corporate Debtor for not paying the Operational Creditor its operational debt, which is otherwise payable under the Law.

11. We have only to consider, whether, one of the directors of the Operational Creditor; Mr. Mayer can file this application for and on behalf of the Operational Creditor.
12. It is not in dispute that Mr. Andrew Mayer Kenneth is one of the directors of the Operational Creditor holding 50% of the shares therein. He claimed that he is authorized signatory of the Operational Creditor. In support of his claim, he has produced number of documents. We perused all of them, including certificate of the origin of the Operational Creditor at page no.20. It discloses that the said Mr. Mayer is authorized signatory of the Operational Creditor. As against this, the Corporate Debtor came out with a defense that said Mr. Mayer is not authorized to file this application because of dispute in between the shareholders. However, no document is produced on record to show that Mr. Mayer's authority to sign the document and appearing on behalf of the Operational Creditor has been withdrawn by the Operational Creditor.
13. We have already made it clear that dispute in between directors/ shareholders of the Operational Creditor is no defense available to the Corporate Debtor to request this authority to dismiss this application. Section 11 of the I.B. Code, 2016 does not bar director of the Operational Creditor from initiating the CIRP against the Corporate Debtor under Section 9 of the I.B. Code. In view of material and evidence on record, we hold that Mr. Andrew Mayer, being an authorized signatory of the Operational Creditor has rightly filed this application.



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14. It takes us to consider second defense raised by the Corporate Debtor. It has been contended that there is a pre-existing dispute about the quality of goods supplied by the Operational Creditor and is still pending in between the Operational Creditor and the Corporate Debtor. To sustain this defense, Learned Counsel for the Corporate Debtor pointed out some emails, which are produced on record. More particularly, he pointed an email dated 23.01.2020 (Annexure 23) which was sent to the Operational Creditor by the Corporate Debtor raising some dispute prior the receipt of demand notice. We have perused this email. The Corporate Debtor in its e-mail dated 23.01.2020 has clearly stated that there was no dispute except agenda of paying money for the machinery and raw materials not ordered for. In short, dispute about quality of goods has never been raised by the Corporate Debtor at any point of time. The other emails produced on record do not pertain to the dispute of quality goods.

15. Considering evidence and various emails on record, we hold that the Operational Creditor has successfully established that the operational debt of rupees one crore (as per the threshold limit provided under Section 4 of the I.B. Code) is due and payable by the Corporate Debtor to the Operational Creditor and the Corporate Debtor, in-spite of receipt of demand notice did not pay the amount and has committed the default. There is no pre-existing dispute about the quality of goods or materials supplied. This application is free from defect. Hence, we allow the application admitting the Corporate Debtor in CIRP.

16. The Operational Creditor did not suggest the name of any Resolution Professional for the appointment of Interim Resolution Professional and left the matter at our discretion.
17. The present application is defect-free and complies with all the relevant provisions of the IBC 2016. The Operational Creditor has not proposed the name of Interim Resolution Professional (hereinafter referred to as “IRP”) in the application, therefore we appoint **Mr. Shivkumar Madanlal Baser** having registration **No. IBBI/IPA-001/IP-P-01263/2018-2019/12064,** email **ID: shivmbaser@gmail.com** as **IRP**. In view of the above observations the present application is allowed with the following directions;

ORDER

1. The Corporate Debtor, **M/s. Global Cold Chain Solution India Private Limited** is admitted in Corporate Insolvency Resolution Process (CIRP) under section 9 of IBC, 2016. The moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
- (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 action under the Securitisation 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 the possession of the corporate debtor.*

2. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under Section 31(1) or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
3. The Operational Creditor has not proposed the name of IRP in the application, therefore we appoint Mr. Shivkumar Madanlal Baser having registration no. IBBI/IPA-001/IP-P-01263/2018-2019/12064 and registered mail ID: *shivmbaser@gmail.com*, as an IRP.
4. The IRP shall perform all functions as contemplated, *inter-alia*, by Sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under a legal obligation under Section 19 of the IB Code to extend every

assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with the IRP, do not assist or co-operate, IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

5. This Adjudicating Authority directs the IRP to make a public announcement for initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
6. It is further directed that the supply of goods/service to the Corporate Debtor Company continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
7. The IRP shall be duty-bound to protect and preserve the value of the property of the Corporate Debtor Company and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
8. The Operational Creditor is directed to pay an advance of Rs. 50,000/- to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along

with First Progress Report.

9. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.
10. Accordingly, **CP (IB) No.345 of 2020** is allowed and stands admitted.

-Sd-

(Kaushalendra Kumar Singh)
Member (Technical)


(Madan B. Gosavi)
Member (Judicial)

Shweta Desai