

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.596/9/HDB/2019  
Under Section 9 of the IB Code, 2016,  
Read with Rule 6 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority) Rules, 2016.

**In the matter of:-**  
**M/s. TURBO MEGHA AIRWAYS PRIVATE LIMITED**

Avio Aviation (Asia Pacific) Pte Limited  
No.30 Old Toh Tuck Road,  
#05-01/02, Singapore – 597654

**...Operational Creditor**

**Versus**

M/s. Turbo Megha Airways Private Limited (Trujet)  
S-1, Phase-1 Tie,  
Balanagar, Hyderabad, Rangareddi,  
TG – 5000037, India

**...Corporate Debtor**

**Date of Order: 26.03.2021**

**Coram: Madan B. Gosavi, Member Judicial.**  
**Dr. Binod Kumar Sinha, Member Technical**

**Parties/Counsel(s) Presents:**

For the Operational Creditor : Mr. Venkat Challa, Advocate  
Mr. Anirudh Krishnan, Advocate

For the Corporate Debtor : Mr. V.M.M.Chary, Advocate  
Mr. Manoj Kumar, Advocate

**[Per Bench]**

**ORDER**

1. The present Application is filed under section 9 of IBC, 2016 by M/s. Avio Aviation (Asia Pacific) Pte Limited (The Operational Creditor) against M/s. Turbo Megha Airways Private Limited(Trujet) (The Corporate Debtor) to initiate Corporate Insolvency Resolution Process of the Corporate Debtor on the ground that the Corporate Debtor committed default in paying the Operational Debt of USD 212,936.07 equivalent to INR of

Rs.1,53,09,571.09/-(as per conversion rate applicable on 17.09.2019).

The last date of default is stated to be 30.06.2017.

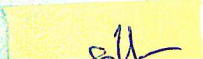
2. The following facts are not in dispute:-

- a. The Operational Creditor is the Service Provider of the Corporate Debtor. He used to provide service of repair and maintenance of some of the parts of aircrafts. The amount of debt is claimed towards the service charges and the price of those parts.
  - b. Operational Creditor submitted various invoices attached to Annexure A- 3 of the Application to show that it has provided the maintenance service and also supplied some of the parts of the aircraft.
  - c. The amount is claimed towards maintenance charges, interest thereon and also penalty there to.
3. The Operational Creditor states that since the Corporate Debtor committed default in paying the Operational Debt as claimed by it, it has sent notice U/s. 8 of IBC to the Corporate Debtor.
4. In spite of receipt of Demand Notice, the Corporate Debtor did not clear the debt nor replied to the notice pointing out any pre-existing dispute. Hence, the Operational Creditor filed this Application for initiation of CIRP of the Corporate Debtor.
5. Corporate Debtor has been served with the notice of this Application. They appeared. One of their Authorized Signatories, Mr. M. Waheedulla Baig filed affidavit in reply.
6. The Operational Creditor also filed rejoinder thereto.
7. We have gone through the pleadings of the parties.
8. It is seen from the record that the Corporate Debtor raised preliminary objection of maintainability of this Petition on the grounds that Demand Notice U/s. 8 of IBC has never been received by the Corporate Debtor.
9. In detailed affidavit in reply, the Corporate Debtor set out transactions in more details and contended that, in fact the Corporate Debtor is entitled

to receive a sum of USD 80,130 from the Operational Creditor. The Application was heard by the earlier Bench. Both Operational Creditor and Corporate Debtor have filed their respective written submissions.

10. Upon reconstitution of the Bench, we called upon both the Learned counsels to argue the matter. However, they submitted that this Adjudicating Authority may decide the Application on the basis of written submissions. Accordingly, we have gone through the record and proceedings.
11. At the outset, it is to be noted that there is no dispute to the fact that the Operational Creditor has provided the service of maintenance of some part of the aircraft and also sold spare parts to the Corporate Debtor. Various invoices have been raised. The defence the Corporate Debtor has raised is that nothing is due and payable by them.
12. It is mandate of Law that before filing of Application U/s.9 of IBC, the Operational Creditor has to serve notice to the Corporate Debtor U/s.8 of IBC and the Corporate Debtor within 10 days from receipt of notice either to show that payment as claimed has been made or there is a pre-existing dispute about the service rendered or goods sold. In this case, the Corporate Debtor has come out with the preliminary defence that it has not been served with the Demand Notice itself.
13. We have gone through the evidence on record.
14. The Demand Notice U/s.8 dated 05.04.2019 is recorded and annexed as Annexure A- 4. It was sent by speed post and in rejoinder the Operational Creditor has also produced on record the postal track report as Annexure-1 (Page No.18 of the rejoinder) which shows that the Demand Notice was sent at correct Registered address of the Corporate Debtor and it has been delivered to the Corporate Debtor.
15. In view of this evidence, we hold that the Demand Notice was served to the Corporate Debtor but Corporate Debtor did not reply to the notice either

 *all*

 *all*

by pointing pre-existing dispute or the fact that it has made payment of the amount of the debt as claimed by the Operational Creditor.

16. It is the defence of the Corporate Debtor that in fact some amount is receivable from them but we hold that defence of set off or counter-claim is not available under the IBC, 2016. We also make it clear that if Corporate Debtor had any defence, he certainly would have replied the Demand Notice within 10 days of its receipt. The fact that the Corporate Debtor did not reply the notice, we hold that the defence as raised in affidavit in reply appears to be an afterthought and we reject such defence in total.
17. Considering the evidence and material on record and written submissions made by the counsels, we hold that the Operational Creditor established that there is an Operational Debt more than Rs.1,00,000/- (as per Sec.4 of IBC, 2016) due and payable by the Corporate Debtor and Corporate Debtor committed the default in paying the same in spite of receipt of notice U/s.8 of IBC.
18. The Operational Creditor has not suggested name of any RP for appointment as IRP and left the matter at the discretion of this Adjudicating Authority and we hereby appoint Mr. Santosh Bhatia as IRP from the list provided by the IBBI against whom no departmental enquiry appears to be pending.
19. This Application is defect free.
20. This Adjudicating Authority is further satisfied that the Operational Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. The Operational Creditor has also placed on record of proof of sending notices to the Respondent/Corporate Debtor for their appearance and for making submissions also along with the requirements as stipulated under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied

with the submissions made by the Petitioner/Operational Creditor, this Adjudicating Authority is inclined to admit the instant Application.

21. This Adjudicating Authority hereby appoints Mr. Santosh Bhatia, having his Regn. No. IBBI/IPA-001/IP-P01750/2019-2020/12668 as IRP. He should file his written consent in Form-2 and Authorization for Assignment within three (3) days of this order. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
22. We direct the Operational Creditor to pay sum of Rs.50,000/- towards the advance fee of IRP, which shall be ratified later on by CoC.
23. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-
- 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 or 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 rights 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.*
  - e. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or*


*a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

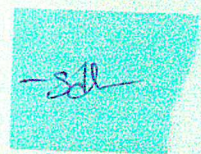
23. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.
24. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
25. The Petitioner/Operational Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

*Sd/-*

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26. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
27. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
28. The address details of the IRP are as follows:-
- Mr. Santosh Bhatia  
Regn. No. IBBI/IPA-001/IP-P01750/2019-2020/12668  
D 1101, Lodha Meridian, 4<sup>th</sup> Phase,  
KPHB Colony, JNTU, Kukatpally,  
Hyderabad, Telangana – 500072.  
Email: [casantoshbhatia@gmail.com](mailto:casantoshbhatia@gmail.com)
29. The present Company Application bearing CP (IB) No.498/9/HDB/2019 is hereby admitted.

  
**Dr. Binod Kumar Sinha**  
**Member Technical**

  
**Madan B. Gosavi**  
**Member Judicial**