(15)

NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 14.03.2019

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER :

PETITION NUMBER : CP/737/ (IB)/2018

NAME OF THE PETITIONER(S) : TRANS ASIAN SHIPPING SERVICES

NAME OF THE RESPONDENT(S) : SANDHYA SHIPPING SERVICES PVT LTD

UNDER SECTION : 9 RULE 6 OF IBC

S.No. NAME (IN CAPITAL)	DESIGNATION / REPRESENTATION BY WHOM	SIGNATURE
G. DERRICK SAM 9382986900	Advocate For Respondent	[signature]
Anita Thomas 9841224275	Counsel for Petitioner	[signature]

IN THE NATIONAL COMPANY LAW TRIBUNAL, SINGLE BENCH, CHENNAI

CP/737/IB/2018 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of **M/s. Sandhhya Shipping Services Private Limited**

M/s. Trans Asian Shipping Services Pvt. Ltd

... Operational Creditor

-vs-

M/s. Sandhhya Shipping Services Private Limited

... Corporate Debtor

Order delivered on 14th March, 2019

CORAM :

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Operational Creditor : Ms. Anita Thomas, Counsel

For Corporate Debtor : Mr. G. Derrick Sam, Counsel

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under Adjudication is CP/737/IB/2018 that has been filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy

(Application to Adjudicating Authority) Rules, 2016. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Heard the Counsel for the Operational Creditor, Counsel for the Corporate Debtor and perused the record placed on file.

3. The Operational Creditor has claimed an amount of Rs.5,73,423/- as outstanding against the Corporate Debtor including interest and costs, which the Corporate Debtor has failed to pay.

4. The brief facts of the case are that the Operational Creditor is engaged *inter alia* in the business of transport of goods, freight containers, steamer agency, freight forwarding, clearing agency, operating ships, chartering/hiring etc. The services covered door to door,

port to port shipment and consolidation and deconsolidation services wherein they offer an extensive network of officers and CFS for receiving and delivering freight. In the course of business, the Corporate Debtor has approached the Operational Creditor on 09.07.2009 for hire of 4 X 20' Dry Van Containers as per due booking request. Considering the request of the Corporate Debtor, the Operational Creditor provided 4 X 20DV' Containers. Thereafter, bill of lading dated 28.07.2009 was issued for the containers to be shipped to Port Klang, Malaysia. However, the Customs Dock Intelligence Unit seized the containers which contained Potash Urea instead of the declared Industrial salt. After many efforts, the containers belonging to the Operational Creditor were released by the Customs Dock Intelligence Unit on 21.09.2009. Subsequently, the Freight Memo Bill dated 06.11.2009 was issued by the Operational Creditor to the Corporate Debtor and also sent a letter dated 07.11.2009 demanding the amount but to no avail.

5. The Operational Creditor has filed Suit in OS No.50/2010 before the Court of the Subordinate Judge, Tambaram. The O.S.No.50/2010 filed by the Operational Creditor has been decreed and the Corporate Debtor was directed to pay an amount of Rs.3,18,720/- with subsequent interest @ 12% p.a. on 3,00,680/- and thereafter 6% p.a. and also costs of Rs.30,651/- and the total is amounting to Rs.5,73,423/-. Copy of the Decree is placed at pages 83 to 86 of the typed set filed with the Application.

6. The Operational Creditor has issued a Demand Notice dated 03.04.2018 under Section 8 of the I&B Code, 2016 to the Corporate Debtor, wherein the particulars of the operational debt due are mentioned, which has been delivered on 20.04.2018. Copy of Notice is placed at pages 23 to 26 of the typed set filed with the Application. Copy of postal receipts of sending the notice and track delivery report are placed at pages 27 and 28 of the typed set filed with the Application.

7. The Operational Creditor has complied with Section 9 (3) (b) & (c) of the I&B Code, 2016, by filing Affidavit, wherein under Paras 3 and 4, it has been deposed that no notice has been received by the Operational Creditor from the Corporate Debtor with regard to the existence of a dispute or a pendency of a suit or arbitration proceedings filed in relation to the unpaid operational debt. The Affidavit is placed at pages 19 to 21 of the typed set filed with the Application. The Bank certificate issued by the HDFC Bank is placed at page 22 of the typed set filed with the Application.

8. The Counsel for the Corporate Debtor has filed Counter raising objection that there is a dispute to the factual position with regard to delivery of consignment and also that the Operational Creditor is not the actual shipper in the case on hand, and therefore, the Corporate Debtor is not liable to pay the outstanding amount. But, these pleas were to taken by the Corporate Debtor before the Court of

the Subordinate Judge, Tambaram, which has passed the Decree in O.S.No.50/2010 on merits, as the Corporate Debtor has been contesting the case before the said Court. Therefore, this Authority cannot go into the details of the merits of the order and decree passed by the Civil Court.

9. The Counsel for the Corporate Debtor has further taken a defence that the claim made by the Operational Creditor is a time barred, as the same is pertaining to the year 2009, to which the Counsel for the Operational Creditor has submitted that the Decree is for recovery of money and the limitation provided for it is 12 years, and therefore, Application filed by the Operational Creditor under Section 9 of the I&B Code, 2016 is not barred by law of limitation. The submissions made by the Counsel for the Operational Creditor are legally sound.

10. It has further been submitted by the Counsel for the Corporate Debtor that the Counsel who has been appearing in the Suit before the Civil Court has not informed about

the Decree passed in favour of the Operational Creditor and they are in the process of filing an Appeal before the Appellate Forum, and the Decree passed by the Court of the Subordinate Judge, Tambaram has not attained finality. But, there is nothing on record to suggest that any Appeal has been filed against the said Order. Therefore, the argument of the Counsel for the Corporate Debtor seems to be hypothetical and the same stands rejected.

11. Finally, the Counsel for the Corporate Debtor has referred to the decision of Hon'ble NCLT, Principal Bench given in ***Deem Roll Tech Limited Vs. R.L. Steel & Energy Ltd.***, dated 31.03.2017, wherein it has been observed that *"in relation to the decree obtained from the Civil Court in relation to the amounts claimed, we are of the considered view that the petitioner is well within the rights to have it executed before the appropriate Civil Courts meant for execution and that this Hon'ble Tribunal cannot be converted*

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into an executing court of the above said ex-parte decree obtained."

12. In response to the submissions made by the Counsel for the Corporate Debtor, the Counsel for the Operational Creditor has submitted that the present Application is not an Execution Application, but for initiating CIR Process against the Corporate Debtor for the default committed in making the payment of the debt. So, the observation made in the said case is not applicable to the facts and circumstances of the case on hand. In the case on hand, there are no pleadings with regard to the execution of Decree. Therefore, there is no legal bar to invoke the provisions of Section 9 of the I&B Code, 2016, as the non-payment of decretal amount is a clear proof of default on the part of the Corporate Debtor. The submissions made by the Counsel for the Operational Creditor are plausible. Thus, the submissions made by the Counsel for the Corporate Debtor stands rejected.

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13. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Authority is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, Application is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

14. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is 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 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 (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.

15. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

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16. The Operational Creditor has not proposed the name of IRP, therefore, Mr. Rajagurusami Maheswaran, is appointed as IRP, whose name appears in the Panel of Insolvency Professionals recommended by the IBBI. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. 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 I&B 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.

17. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

18. The Operational Creditor and the Registry are 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.

19. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the concerned RoC. The address details of the IRP are as follows: -

Mr. Rajagurusami Maheswaran,
Reg.No. IBBI/IPA-001/IP-P00584/2017-2018/11025
Email ID: rgmaheswaran@gmail.com

20. Order is dictated and pronounced in open Court in the presence of the Counsels for the Operational Creditor and the Corporate Debtor.

[CH.MOHD SHARIEF TARIQ]
MEMBER (Judicial)

P.ATHISTAMANI

Certified to be True Copy

1/1/2020

N. SRIRAMASUBRAMANIAN
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