IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.(IB)No.180/BB/2018
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

Skyways Technics A/s
Lufthavnsvej 1B, 6400 Sonderborg,
Denmark. - Petitioner/Operational Creditor

Versus

M/s.Air Pegasus Private Limited
No.22 & 23 3rd Main,
Airview Colony, HAL P.O.,
Bangalore – 560 017. - Respondent/Corporate Debtor

Date of Order: 23rd August, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Lakshmy Iyengar along with Ms. Revathi Shivakumar

For the Respondent : Shri K.S. Vadivelu along with Shri Shyson Thomas

O R D E R

Per: Dr. Ashok Kumar Mishra, Member (T)

1. C.P.(IB)No.180/BB/2018 is filed by Skyways Technics A/s ('Petitioner/Operational Creditor') under Section 9 of the IBC, 2016 read with Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Air Pegasus Private Limited, on the ground that it has committed default for total

amount of USD 1,51,387.36 (US Dollars One Hundred Fifty One Thousand Three Hundred Eighty Seven and Cents Thirty Six Only).

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

(1) Skyways Technics A/s (herein after referred to as Petitioner/Operational Creditor) having CVR No.34472874 was incorporated on 01.04.2012 having its registered office at Lufthavnsvej 1B, 6400 Sonderborg, Denmark. The Operational Creditor engage in the business of sale of the goods namely aircraft spare parts etc.

(2) M/s.Air Pegasus Private Limited (herein after referred to as Respondent/Corporate Debtor) having CIN: U62100KA2007PTC044061 was incorporated on 08.10.2017 under the Companies Act, 1956. The Authorised Share Capital of the Company is Rs.12,00,00,000/- and Paid-up Share Capital of Rs.12,00,00,000/-.

(3) It is stated that the transaction between the Operational Creditor and the Corporate Debtor is based upon the sale of the goods namely aircraft spare parts as per Purchase Order Nos.AP-BLR-ENGG-PO-1500165, AP-BLR-ENGG-PO-1500145, AP-BLR-ENGG-PO-1500143, AP-BLR-ENGG-PO-1500142, AP-BLR-ENGG-PO-1500123, AP-BLR-ENGG-PO-1500119, AP-BLR-ENGG-PO-1500116, AP-BLR-ENGG-PO-1500111, AP-BLR-ENGG-PO-1500110, AP-BLR-ENGG-PO-1500095, AP-BLR-ENGG-PO-1500087, AP-BLR-ENGG-PO-1500093, AP-BLR-ENGG-PO-1500079, AP-BLR-ENGG-PO-1500080, AP-BLR-ENGG-PO-1500074, AP-BLR-ENGG-PO-1500045, AP-BLR-ENGG-PO-1500049 and AP-BLR-ENGG-PO-1500064 and particularly mentioned in the invoices, for a sum of USD 1,51,387.36/- towards Principal besides interest form

the invoice bearing No.1285193 dated 20.08.2015 for an amount of USD 1,018.75. The Corporate Debtor had failed to make the outstanding payment and is also liable to pay further interest @24% per annum till realization.

(4) The Operational Creditor has issued Demand Notice dated 11.07.2017 under Rule 5 of the I&B(AAA), 2016 by demanding the Corporate Debtor to pay and amount of USD 1,51,387.36 (USD One Lakh Fifty One Thousand Three Hundred Eighty Seven and Cents Thirty Six Only) equivalent to Rs.1,02,64,063/-(1 USD=67.80 INR as on 25.05.2018) within ten days of receipt of this notice. Corporate Debtor is also liable to pay further interest @24% p.a. Details of the relevant invoices are as under:

Sl. No.	Invoice No.	Invoice Date	Invoice Amount (USD)
1.	1285193	20.08.2015	1,018.75
2.	1285194	20.08.2015	5,551.00
3.	1285603	20.09.2015	521.25
4.	1285777	05.10.2015	4,439.90
5.	1285791	06.10.2015	180.00
6.	1285851	13.10.2015	320.00
7.	1285879	19.10.2015	350.00
8.	1285971	26.10.2015	187.80
9.	1286197	12.11.2015	11,200.00
10.	1286304	24.11.2015	1,850.00
11.	1286367	30.11.2015	2,000.00
12.	1286458	09.12.2015	1,407.15
13.	1286522	14.12.2015	2,200.00
14.	1286532	15.12.2015	371.77
15.	1286533	15.12.2015	1,494.00
16.	1286610	21.12.2015	260.70
17.	1286776	11.01.2016	8,236.45
18.	1286800	13.01.2016	2,919.85
19.	1286937	26.01.2016	23,282.65
20.	1286938	26.01.2016	23,282.65
21.	1286951	27.01.2016	1,931.20
22.	1286970	28.01.2016	55,913.38
23.	1287011	02.02.2016	6,575.00
24.	1287041	05.02.2016	101.45
25.	60000122	29.08.2016	21,451.76
26.	60000122	29.08.2016	325.00
27.	60000142	30.09.2016	3,783.94
28.	60000142	30.09.2016	65.00

29.	60000144	21.12.2016	9,906.71
30.	60000144	21.12.2016	260.00
		Total (USD)	**1,91,387.36**
		Payment remitted	**(-) 40,000.00**
		Balance (USD)	**1,51,387.36**

Though the Corporate Debtor had made part payment of USD 40,000.00/- out of USD 1,91,387.36/- leaving itself liable to pay the balance sum of USD 1,51,387.36/- besides interest. That though the Corporate Debtor received the goods as per the orders & instructions given by it to the Operational Creditor, but the Corporate Debtor did not remit the balance payment of USD 1,51,387.36/- even after expiry of the credit period, despite repeated demands and reminders by the Operational Creditor. The materials as above, were delivered at the places requested by the Corporate Debtor. Operational Creditor states that the Corporate Debtor agreed to pay interest @ 24% p.a. being commercial transaction for the delayed payment after the applicable credit period from the date of invoice. Accordingly, the Corporate Debtor issued a reply dated 17.07.2017 through their Counsel by inter alia denying the debt as incorrect and false.

(5) Mr. Manoj A.I. has filed notary affidavit dated 06.06.2018 by inter alia stating that the Operational Creditor has issued demand notice 11.07.2017 and reply dated 17.07.2017 was received from the Corporate Debtor. The transaction is based upon the sale of the goods namely aircraft spare parts, as particularly mentioned in the invoices to the Corporate Debtor for a sum of USD 1,51,387.36/- towards Principal besides interests. However, the Corporate Debtor denied the entire amount USD 1,51,387.36/- raised in the demand notice as false and frivolous disputes.

(6) It is further stated that the Operational Creditor have issued rejoinder to the reply dated 17.07.2017 through

Ref:23528/D/17/02 dated 01.08.2017 by inter alia stating that the Corporate Debtor's allegation is an afterthought. The Operational Creditor has filed Statement of Bank Account to show that they have not received outstanding amount in question.

3. The Company Petition is opposed by the Respondent by filing Statement of Objections dated 02.04.2019, by inter alia contending as follows:

   (1) It is stated that the Corporate Debtor had replied to the notice issued by the Operational Creditor, has disputed the amount claimed by the Corporate Debtor. On this ground too, the present petition is liable to be dismissed. The Corporate Debtor is a Private Limited Company incorporated under the Companies Act, 1956. It is classified as Non-government Company and is registered at ROC, Bangalore. It is involved in Scheduled air transport. The Corporate Debtor received its Air Operators Permit form the Directorate General of Civil Aviation (DGCA) on 24.03.2015 commenced its operations from 12.04.2015 with its inaugural flight form Bangalore to Hubli using its fleet of aircrafts. During its, operations, the Corporate Debtor was serving eight airports across South India with a hum at Kempegowda International Airport in Bangalore, using a fleet of three ATR 72-500 aircraft.

   (2) It is also stated that unfortunately, owing to reasons beyond the control of the Corporate Debtor, the operations of the Corporate Debtor were suspended on 27.07.2016. Subsequently, the DGCA suspended the flying licence of the Corporate Debtor on 22nd November 2016. The Operational Creditor claims to have provided goods to the Corporate Debtor. However, the self-attested invoices raised by the

Company are the sole documents relied upon by the Operational Creditor to further its claim. When the Operational Creditor issued notice to the Corporate Debtor, in terms of Form 3 of the IBC, 2016, on 11.07.2017 the Corporate Debtor was in the process of reviving the aviation license from DGCA. Considering the extremely narrow time fame provided for by the IBC, 2016, a brief reply was issued raising the disputed in the claim made by the Operational Creditor.

(3) It is further stated that the reply notice dated 17.07.2017 does not seek to address all the disputes in the present case between the parties but only intends to raise the point that the liability is not admitted by the Corporate Debtor and this is not a fit case for invoking the provision of the IBC, 2016. In the absence of a clear admission of debt and there being a notice of dispute issued with regards to the Notice issued under Form-3, the present case does not fall under the scope of a petition under the provisions of the IBC, 2016.

(4) It is stated that the Respondent, has, at no point of time admitted the alleged sum of money claimed by the Petitioner. The Managing Director of the Respondent had issued an email dated 18.12.2015 only stating that for the immediate payment demand of USD 20,000. The Corporate Debtor would be making a payment of USD 10,000. By no stretch of imagination, it can be construed as an admission of liability. Further, the invoices produced by the Operational Creditor are self-serving documents. There is no clear admission of debt, which is a *sine qua non* for the institution of the present petition. Further, the invoices produced by the Corporate Debtor need to be verified, scrutinized and upon clearance, the payment if any due is to be made. The dispute revolves

around the genuineness and the authenticity of the services claimed to be provided by the Operational Creditor.

(5) It is also stated that the dispute in the present case is of a kind that needs to be adjudicated before a Civil Court of competent jurisdiction in the form of a money recovery suit. The provisions of the IBC, 2016 cannot be misused and abused so as to arm twist the Respondent and bypass the established provisions of law. Without prejudice to the above, despite the fact that the Petitioner is not an Operational Creditor as there exists no operational debt in the present case, the Petitioner is keen on finding an amicable solution to the present dispute. The flying operations of the Corporate Debtor ceased during July 2016. However, the Petitioner has on 13.11.2017 executed an aircraft lease of an aircraft to commence it operations. The aircraft is being delivered to the Corporate Debtor and the Corporate Debtor is hopeful of restarting its operations very soon. With the introductions of the fleet and the commencement of the operations, the Corporate Debtor is optimistic of resolving all outstanding disputes with the Operational Creditor.

4. Heard Ms. Lakshmy Iyengar, learned Senior Counsel along with Ms. Revathi Shivakumar, learned Counsels for the Petitioner and Shri K.S. Vadivelu, learned Counsel along with Shri Shyson Thomas, Managing Director of the Respondent Company. We have carefully perused the pleadings of the parties and the extant provisions of the Code and the law.

5. The case is listed for admission on various dates viz. 15.10.2018, 22.10.2018, 26.10.2018, 26.10.2018, 28.11.2018, 17.12.2018, 31.12.2018, 21.01.2019, 05.02.2019, 21.02.2019, 12.03.2019, 10.04.2019, 25.04.2019, 30.05.2019, 31.05.2019, 30.05.2019,

13.06.2019, 27.06.2019, 16.07.2019, 31.07.2019, 01.08.2019 & 23.08.2019, and it was adjourned on these dates at the request of the Respondent to explore the possibility of the settlement of the issue in question. However, the Corporate Debtor failed to settle the issue, even though several opportunities have been afforded on the above dates. Therefore, there is no other alternative except to decide the case per merits. It is also relevant to point out here that three other cases bearing C.P(IB)222/BB/2018, filed against the Corporate Debtor for default amount of Rs.26,24,283.94/-,, in C.P.(IB)No.10/BB/2017 for default amount of Rs.36,06,929/- and in C.P.(IB)No.22/BB/2018 default amount of Rs.15,59,655/-. In these all cases also, the Respondent failed to settle the issue.

6. Shri Shyson Thomas the Managing Director of the Respondent Company, who is present, on all the occasions, has assured the Adjudicating Authority that they are exploring the possibility of settlement of the issue and thus taken time.

7. The instant Company Petition is filed in accordance with law, and also suggested a qualified Resolution Professional namely Ms.Shirley Mathew, with Registration No. IBBI/IPA-001/IP-P01043/2017-18/11716, who has also filed written Consent in Form-2 dated 01.08.2019, who is eligible to be appointed as IRP. Moreover, by reading of the Statement of Objection filed by the Respondent dated 02.04.2019, as briefly stated supra, and also reply to the demand notice dated 17.07.2017 makes it clear that the Respondent has not raised substantial dispute with regard to the debt and default in question. Since the efforts of Corporate Debtor failed, the Debt and default in question are in dispute. It is settled position of law that once debt and default is proved to the satisfaction of the Adjudicating Authority, the case has to be admitted to initiate CIRP, appointed

IRP. We are satisfied the reasons cited by the Petitioner to initiate CIRP.

8. In view of the above facts and circumstances of the case and the law, by exercising powers conferred on this Adjudicating Authority, U/s 9 (5)(i) of the Code, C.P.(IB) No.180/BB/2018 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Respondent/Corporate Debtor with the following consequential directions:

   1) **Ms.Shirley Mathew**, bearing **Registration No. IBBI/IPA-001/IP-P01043/2017-18/11716**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Petitioner/ Corporate Applicant to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;

   2) The following moratorium is declared prohibiting all of the following, namely:

      a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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;

e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;

f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;

h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.

3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Tribunal from time to time.

4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.

5) Post the case for report of IRP on **27.09.2019.**

(ASHOK KUMAR MISHRA) **MEMBER, TECHNICAL**	**(RAJESWARA RAO VITTANALA)** **MEMBER, JUDICIAL**

Puja