



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 1161/MB-IV/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

JSW Steel Limited

[CIN: L27102MH1994PLC152925]

...Operational Creditor/Applicant

V/s

Geetapuram Port Services Limited

[CIN: U63012MH1999PLC117964]

...Corporate Debtor/Respondent

Order Dated: 23.06.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Ahsan Allana i/b J. Sagar Associates,
Advocate.

For the Respondent(s) : Mr. Adnan Ansari i/b Mr. Sandeep
Ladda, Advocate.

ORDER

Per: Kishore Vemulapalli, Member Judicial



1. This is an Application being C.P. (IB) No. 1161/MB/C-IV/2022 filed on 15.10.2022 by Mr. Lancy Varghese, Company Secretary authorized by JSW Steel Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Geetapuram Port Services Limited, Corporate Debtor.
 - 1.1 The Operational Creditor has claimed a debt of an amount of Rs. 83,19,70,543/- (Rupees Eighty-Three Crores Nineteen Lakhs Seventy Thousand Five Hundred and Forty-Three Only), being the principal amount being the admitted acknowledged unadjusted advance, in terms of the Agreement (as amended) and the date of default is 31.03.2019 as submitted by the Operational Creditor in Part 4 of the Petition.
 - 1.2 The affidavit in relation to authority of person signing the application vide letter dated 08.09.2022 and the working of the debt claimed in default is placed before the Bench by way of an Affidavit dated 18.05.2023.
2. The Operational Creditor is engaged in the business of manufacturing steel and the Corporate Debtor is in the business of management of jetty operation including loading, unloading and transportation of material.
 - 2.1 On 20.06.2009, the Agreement was entered by and between Ispat Industries Limited (which was renamed as JSW ISPAT Steel and was later merged with the Operational Creditor) and the Corporate Debtor (which was amended on 20.06.2010 and 22.07.2010).



- 2.2 As per the terms of the Agreement, more particularly Clause 7, it was agreed between the parties that the Agreement shall be effective from April 1, 2009 and shall be valid for 10 years (i.e. April 1, 2009 to March 31, 2019) and the Corporate Debtor had agreed to provide certain services (as detailed in the Agreement) which included loading, unloading, transportation of materials to the Operational Creditor at the Jetty and operations and management of the Jetty on behalf of the Operational Creditor. The Service Agreement (as amended) was non-terminable and would remain in force till 31 March 2019.
- 2.3 On 06.09.2012, the Corporate Debtor addressed a letter to the Operational Creditor informing them that the Corporate Debtor and JSW Infrastructure Limited ("JSWIL") had arrived at an arrangement, wherein JSWIL would perform certain services on behalf of the Corporate Debtor, details whereof were set out in a draft agreement, which was enclosed with the letter. In this regard, the Corporate Debtor sought consent of the Operational Creditor qua the draft agreement to be entered by and between the Corporate Debtor and JSWIL and also for acceptance of the Performance Guarantee to be issued by JSWIL. On 07.09.2012, the Operational Creditor provided its consent subject to certain terms and conditions as stated therein vide a letter addressed to the Corporate Debtor. On 12.09.2012, an Agreement was entered between the Corporate Debtor and JSWIL.
- 2.4 In or around the year 2013, JSW Ispat Steel Limited (formerly known as Ispat Industries Limited) merged with the Operational Creditor. The scheme of merger was approved by the Bombay High Court vide its order dated 03.05.2013 and the



effective date of the said scheme was 01.06.2013. The Corporate Debtor was fully aware of the merger and had no objection to the said merger as evidenced by the amendment agreement dated 14.02.2015, executed amongst the Operational Creditor, the Corporate Debtor, JSWIL and JSW Dharamtar Port Private Limited.

- 2.5 As per the terms of the Agreement, the Corporate Debtor had agreed to provide certain services to the Operational Creditor at the Jetty. Under the Agreement, the Corporate Debtor had admittedly received an amount of Rs. 12,87,00,000/- from the Operational Creditor, towards advance payment for providing the agreed services but the Corporate Debtor failed to adhere to the terms and conditions of the Agreement after June 2017, despite several reminders / letters addressed by the Operational Creditor calling upon the Corporate Debtor to comply with its obligations under the Agreement.
- 2.6 On 30.03.2018, the Operational Creditor addressed a letter to the Debtor, wherein the Operational Creditor had highlighted the Corporate Debtor's failure to abide by the terms of the Agreement and called upon the Corporate Debtor to comply with the terms of the Agreement failing which the Operational Creditor would be forced to terminate the contract at Corporate Debtor's cost and risk, and unadjusted advances remaining in the books as on date will be debited to its account and the same would be recovered from it.
- 2.7 On 13.04.2018 Corporate Debtor addressed a letter to the Operational Creditor, acknowledging that an amount of Rs. 83,19,70,543/- was the unadjusted advance. After expiry of the Agreement on 31.03.2019, the Operational Creditor addressed



a letter On 14.05.2019 to the Corporate Debtor asking it to refund the outstanding unadjusted advance of Rs.83,19,70,543.45/-. Subsequently, on 06.06.2019, the Operational Creditor addressed a letter to the Corporate stating that they were "*undergoing a financial turmoil and were unable to refund the said advance.*"

2.8 The Corporate Debtor vide letters dated 06.06.2019 and 08.01.2020, acknowledged that the amount of Rs. 83,19,70,543/- was due and payable to the Operational Creditor.

2.9 Accordingly, on 02.01.2020, the Operational Creditor addressed a letter to the Corporate Debtor granting the Corporate Debtor a final opportunity to refund the advance of Rs. 83,19,70,543/-, within 7 days.

2.10 The Operational Creditor issued a Demand Notice vide RPAD on 26.08.2022 under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("Code"), in compliance with Rule 5(2)(b) of the Insolvency and Bankruptcy (Application of Adjudicating Authority) Rule, 2016, calling upon the Corporate Debtor to refund the advance of Rs. 83,19,70,543/- within the stipulated period of 10 days. However, the Corporate Debtor failed to respond to the Demand Notice under Section 8 of the Code, within 10 days from the receipt of the Demand Notice, i.e. 26.08.2022. The said Demand Notice was received by Corporate Debtor on 29.08.2022.

3. The Corporate Debtor, vide its reply dated 22.02.2023 stated that the claim amount of Rs. 83,19,70,543/- is due and payable to the Operational Creditor, which was also acknowledged by it vide letter dated 13.04.2018.



The Corporate Debtor requested for some additional time to be granted to refund the outstanding unadjusted advance.

4. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.

4.1 On perusal of the purported agreement, this bench finds that the date of default as mentioned in the Part 4 of the petition is 31.03.2019 i.e. the date on which the Agreement had expired and the unadjusted outstanding advance became due for refund to the Operational Creditor. However, this Bench finds that the Operational Creditor sent a letter dated 30.03.2018 to the Corporate Debtor informing it about the breach of agreement entered into between the parties by the Corporate Debtor, informing to the Corporate debtor if the breach is not cured within 15 days and no positive plan of action is proposed by the Corporate Debtor, the said agreement shall stand terminated at the cost and risk of the Corporate Debtor and unadjusted advances remaining in the books as on date were to be debited to the Corporate Debtor's account. Accordingly, in our view, the date of default would be after 14.04.2018.

4.2 The Corporate Debtor sent first acknowledgement vide letter dated 13.04.2018 and subsequently, the last acknowledgement of unadjusted outstanding balance of advance was sent by the Corporate Debtor vide letter dated 08.01.2020 thereby giving rise to a fresh period of limitation from that date i.e. 08.01.2020 as held by the Hon'ble Supreme Court in *Dena Bank (now Bank of Baroda) v/s. C. Shivakumar Reddy and Anr. CIVIL APPEAL NO.1650 OF 2020*. The limitation period therefore was to expire on 07.01.2023. The present petition is filed on 15.10.2022, which is well within the limitation period.



- 4.3 This Bench sought clarification on the basis of amount claimed in default in the present petition. The Operational Creditor filed ledger account statement of the Corporate Debtor in its books of account for the period from 01.04.2012 to 31.03.2019. The said ledger shows that an amount of Rs. 83,19,70,543.45/- is due from the Corporate Debtor to the Operational Creditor.
- 4.4 This Bench finds that the unadjusted advance recoverable from the Corporate Debtor is in relation to supply of services/goods, hence, the said advance is in the nature of an operational debt u/s 5(21) of the Code, as held by the Hon'ble Supreme Court in *Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions (P) Ltd., (2022) 7 SCC 164, on 04-02-2022*. The amount of said advance is more than Rs. 1 crore i.e. the threshold limit u/s 4 of the Code; there is no dispute in relation to the existence of this debt amount; and the Corporate Debtor has defaulted in the payment thereof. Further, the Application is within limitation and is complete in all regards.
- 4.5 In view of the above, this Bench finds that there exists an undisputed Operational debt within the meaning of Sec 5(21) of the Code exceeding Rs. 1,00,00,000/- and the Corporate Debtor is in default in payment thereof, this application deserves to be allowed.

ORDER

This Application being C.P. (IB) No. 1161/NCLT/MB/C-IV/2022 filed under Section 9 of I&B Code, 2016, filed by JSW Steel Limited, Operational Creditor/ Applicant against Geetapuram Port Services Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:



- I. That this Bench as a result of this prohibits:
 - 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 Securitization and Reconstruction of Operational 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.



- IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench hereby appoints Mr. Prakash V. Kukreja, a registered insolvency resolution professional having Registration Number - IBBI/IPA-001/IP-P-02599/2021-2022/13990 and Email Id.- kukrejavprakash@gmail.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- e) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.



- f) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
Prabhat Kumar
Member (Technical)
/LRA Akshata/

Sd/-
Kishore Vemulapalli
Member (Judicial)