

IN THE NATIONAL COMPANY LAW TRIBUNAL,

AT MUMBAI, BENCH-I

CP (IB) 190/MB/C-I/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Shiva Marine Salvors And Engineers

A-241, 24th Floor, Kalpataru Towers, Akurli Road, Kandivali (E), Mumbai – 400101.

...Operational Creditor

Versus

Kanishka Salvage and Underwater Services Private Limited

(CIN: U35113GA1997PTC002312)

F-1, Pereira Estate, B.B. Boarkar Road, Near St. Xavier Research Center, Alto Porvorium, Bandrez, Goa – 403521.

... Corporate Debtor

Order Delivered on 20.01.2023

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Ms. Anagha Tandel, Counsel i/b Vishwakarma Associates

For the Corporate Debtor : PCA Ayush J Rajani a/w Ms. Khushboo Shah i/b AKR Advisors

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. The present Company Petition is filed by **Shiva Marine Salvors and Engineers** (hereinafter referred to as the “**Operational Creditor**”) through Mr. Rajveer Singh Shekhawat, proprietor of Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against **Kanishka Salvage and Underwater Services Private Limited** (hereinafter referred to as the “Corporate Debtor”).
2. The Corporate Debtor is company incorporated under the Companies Act, 1956 and has its registered office at F-1, Pereira Estate, B.B. Boarkar Road, Near St. Xavier Research Center, Alto Porvorium, Bandrez, Goa –403521. Its Company Identification Number (CIN) is **U35113GA1997PTC002312**. Therefore, this Bench has the jurisdiction to entertain this Petition.
3. The **total amount of debt** claimed is **Rs.1,17,72,235/-** (Rupees One Crore Seventeen Lakh Seventy Two Thousand Two Hundred and Thirty Five Only), where the principal amounts to Rs.74,46,700/- and the

interest @ 26%p.a. amounts to Rs.43,25,535/-. The **date of default is 04.06.2018.**

Submissions made by the Ld. Counsel of the Operational Creditor by the way of Petition:

4. The Operational Creditor is engaged into maintenance, salvage and repair services especially underwater jobs related to ships salvage since the year 2011.
5. In a usual course of business, the Corporate Debtor contacted Operational Creditor and awarded sub-contract dated 19.02.2018 (“Contract”) to Operational Creditor for salvage and oil removal from tanks of a grounded vessel, “M.V. Qing” (“Vessel”) at WISL Jetty, Goa subject to the terms and conditions recorded therein. A copy of the Contract entered into between both the parties is annexed as Annexure-B to the Petition.
6. As per the Contract, the scope of work agreed between both the parties required the Operational Creditor to do the following (“Work”):
 1. Oil removal from tanks of the ship M.V. Qing, and
 2. Re-flotation of the vessel M.V. Qing.

7. In accordance with the terms of the contract, the Operational Creditor commenced its operation on 01.03.2018.
8. Accordingly, the Operational Creditor completed the Work assigned to it on 05.05.2018 within the time span stipulated in the Contract and the Vessel was successfully refloated.
9. Mr. V Seva, Director of Vmax Marine Private Limited (“**Salvage Master**”) prepared and issued a Final Report dated 13.05.2018 on the status of the Vessel as on that date after inspecting the Vessel and the Work done. In the Final Report, the Salvage Master while giving the details of the status of the Vessel from 01.05.2018 to 13.05.2018, has stated that the Vessel was safely refloated and remained in a safe and stable condition at the WISL Yard, Goa, India. A copy of the Final Report dated 13.05.2018 issued by the Salvage Master is annexed as Annexure-C to the Petition.
10. On 14.05.2018, the Salvage Master addressed an email to the client Shri Laxmi Scrap Traders with a copy to the Corporate Debtor and Operational Creditor thanking the Corporate Debtor and Operational Creditor for the seamless and supportive operational execution of the Work and successful refloating of the Vessel MV Qing. A copy of the

email dated 14.05.2018 addressed by the Salvage Master to Shri Laxmi Scrap Traders is annexed as Annexure-D to the Petition.

11. Another email of the same date i.e. 14.05.2018 was addressed by the Protection and Indemnity Insurance Inspector to the Operational Creditor acknowledging and appreciating the Operational Creditor's Work. A copy of the email dated 14.05.2018 addressed by the Protection and Indemnity Insurance Inspector to the Operational Creditor is annexed as Annexure-E to the Petition.
12. An email dated 23.05.2018 sent by the Corporate Debtor to the client Shri Laxmi Scrap Traders confirmed therein it has safely handed over the Vessel to the representatives of the Client at 11:45 hrs on 22.05.2018 in an upright floating and stable condition at WISL jetty, Goa. A copy of the email dated 23.05.2018 addressed by the Corporate Debtor to the client Shri Laxmi Scrap Traders is annexed as Annexure-F to the Petition.
13. Subsequently, the Operational Creditor raised an invoice dated 25.05.2018 bearing bill no. 017/05/18 for the balance amount of Rs.82,20,000/- (Rupees Eighty-Two Lakh and Twenty Thousand Only) inclusive of GST. A copy of the Tax invoice dated 25.05.2018 issued by the Operational Creditor is annexed as Annexure-G to the Petition.

14. The Corporate Debtor has issued a completion certificate dated 27.06.2018 bearing reference number 123/KC/C/2018 stating that the Vessel M.V. Qing which went aground at Goa is successfully salvaged by the Operational Creditor on 05.05.2018 and the Vessel has been refloated in a stable upright condition and to the satisfaction of all concerned (**“Completion Certificate”**). A copy of the Completion Certificate dated 27.06.2018 is annexed as Annexure-H to the Petition.
15. As per the Contract dated 19.02.2018, the Corporate Debtor was supposed to make complete payment of Rs.1,40,00,000/- (Rupees One Crore Forty Lakh Only) plus GST @ 18% amounting to Rs.25,20,000/- (Rupees Twenty Five Lakh Twenty Thousand Only) aggregating to a total of Rs.1,65,20,000/- (Rupees One Crore Sixty Five Lakh Twenty Thousand Only). However, the Corporate Debtor has till date only made part payment of Rs.90,73,300/- (Rupees Ninety Lakh Seventy Three Thousand and Three Hundred Only) plus interest as per the calculation at Annexure-A in the Petition.
16. After several reminders and follow up, Mr. G. Gonal of the Corporate Debtor mailed to Rajveer Singh Shekhawat of the Operational Creditor on 05.03.2019 stating that they have transferred the amount of Rs.60,00,000/- (Rupees Sixty Lakh Only) and to treat the same as full

and final settlement of dues and their obligations. Thus, subsequently the Operational Creditor vide its letter dated 19.03.2019 denied that all the dues are paid and stated that there is still a balance remaining on the part of the Corporate Debtor and therefore the Corporate Debtor cannot be released of its obligations under the Contract as alleged by the Corporate Debtor in its mail dated 05.03.2019. A copy of the email dated 05.03.2019 addressed by the Corporate Debtor to the Operational Creditor is annexed as Annexure-I to the Petition and a copy of the letter dated 19.03.2019 addressed by the Operational Creditor to the Corporate Debtor is annexed as Annexure-J to the Petition.

17. Thereafter, the Operational Creditor through his advocate issued a legal notice dated 30.04.2019 for the payment of the balance dues pending with the Corporate Debtor. The Corporate Debtor issued a reply dated 21.05.2019 through its Advocate denying any claims and stating that the Work was not completed by the Operational Creditor and he had to get it completed by some other company.
18. The Operational Creditor has submitted that the Corporate Debtor failed to raise any dispute before receiving the legal notice and has never informed the Operational Creditor about the appointment of some other

company for competition of the Work awarded to the Operational Creditor.

19. A demand notice in Form 3 was issued to the Corporate Debtor by advocate of Operational Creditor on 25.09.2019. A copy of the demand notice dated 25.09.2019 is annexed as Exhibit-O to the Petition. The reply to the aforesaid notice was sent by the Advocate of the Corporate Debtor along with a Cheque dated 30.09.2019 bearing No. 241222 for an amount of Rs.7,12,800/- (Rupees Seven Lakh Twelve Thousand and Eight Hundred) and deposited an amount of Rs.60,500/- towards TDS in acceptance of his debt. However, the remaining amount was not paid by the Corporate Debtor. The contents of the reply to the demand notice are denied by the Operational Creditor. A copy of the reply to Demand Notice dated 30.09.2019 is annexed as Annexure-P to the Petition.
20. The computation of claim is placed at Annexure A to the Petition.

Findings:

21. We have heard the submissions of the both parties and perused the records.
22. An opportunity was granted to the Corporate Debtor to file Reply vide order dated 04.08.2022. However, the Corporate Debtor chose not to file reply in compliance of the said order. Upon perusal of records it is

noticed that Corporate Debtor has replied to the Section 8 demand notice, contending as follows:

a) The Corporate Debtor has denied that debt is due and payable.

Further, he also submits that the Petitioner herein cannot be treated as an Operational Creditor within the meaning of the Code.

b) Moreover, the Corporate Debtor has raised the issue of maintainability of the Captioned Petition on the strength of the fact that the Petitioner herein cannot be treated as an Operational Creditor.

23. We observe that the Corporate Debtor has raised generic issues in the reply to the demand notice. There is no merit in the defences raised by the Corporate Debtor.

24. The Corporate Debtor has issued a work completion certificate to the Operational Creditor certifying that the work was completed by the Operational Creditor. Thus, the defence of the Corporate Debtor that the Work was not completed stands invalid.

25. It is noted that the Corporate Debtor has failed to make complete payment as per the terms of the agreement entered into between both the parties. Hence, there exists a debt and a default.

26. The Corporate Debtor has also failed to raise any pre-existing issue, hence all the defences raised are nothing but an after thought on the part of the Corporate Debtor.
27. The outstanding amount of **Rs.1,17,72,235/-** (Rupees One Crore Seventeen Lakh Seventy Two Thousand Two Hundred and Thirty Five Only) is above threshold limit, the present petition is in compliance with section 4(1). As the pre-requisites being debt, default and no pre-existing dispute for Section 9 Petition are satisfied by the Operational Creditor this Petition deserves to be admitted.
28. The Application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
29. The Operational Creditor has not proposed the name of a proposed IRP. Hence, this Tribunal is appointing Mr. Ram Ratan Kanoongo,

Registration No. IBBI/IPA-001/IP-P00070/2017-2018/10156 as the IRP.

30. The Petition bearing **CP(IB) 190/MB/C-1/2020** filed by the Proprietary Concern, **Shiva Marine Salvors And Engineers**, the Operational Creditor, under Section 9 of the IBC for initiating Corporate Insolvency Resolution Process (CIRP) against **Kanishka Salvage and Underwater Services Private Limited (CIN: U35113GA1997PTC002312)**, the Corporate Debtor, is **admitted**.
31. There shall be a moratorium under section 14 of the IBC, in regard to the following:
- 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 (SARFAESI) 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.

32. Notwithstanding the above, during the period of moratorium: -

e. 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;

f. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

33. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

34. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the

Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

35. The Tribunal hereby appoints **Mr. Ram Ratan Kanoongo**, having Registration No. **IBBI/IPA-001/IP-P00070/2017-2018/10156**, Email: rrkanoongo@gmail.com Mob. No.: 9821031996 as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
36. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
37. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh Only) with the IRP to meet the expenses arising out of

issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.

38. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
39. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
40. Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

20.01.2023

Priyal

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)