



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 70/KB/2023

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016.

IN THE MATTER OF:

CONSOLIDATED SHIPPING LINE INDIA PRIVATE LIMITED

... Operational Creditor/ Petitioner.

Versus

SUPREME AND COMPANY PRIVATE LIMITED

... Corporate Debtor/ Respondent.

Date of Pronouncement: June 05, 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Operational Creditor:

Ms. Sonal Shah, Adv.

Mr. Aniket Chaudhury, Adv.

For the Corporate Debtor:

Ms. Urmila Chakraborty, Adv.

Mr. Arkodeb Sinha, Adv.

Ms. Simran Moni, Adv.

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ORDER

Per: D. Arvind, Member (Technical)

1. The Court congregated through hybrid mode.

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2. We have heard the Learned Counsel for both parties.
3. The instant petition has been preferred under **Section 9** of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code", by **Consolidated Shipping Line India Private Limited**, hereinafter referred to as "**Petitioner**" or "**Operational Creditor**" against **Supreme and Company Private Limited**, hereinafter referred to as "**Respondent**" or "**Corporate Debtor**" seeking to commence the Corporate Insolvency Resolution Process, for brevity "CIR Process" in respect of the Corporate Debtor, Supreme and Company.

Factual Conspectus:

4. The Operational Creditor, Consolidated Shipping is engaged in freight forwarding services and allied cargo handling and transport related services. The Corporate Debtor, Supreme and Company had approached the Operational Creditor to provide the logistic support for various consignment orders. Accordingly, the Operational Creditor had provided the service to the Corporate Debtor and raised tax invoices upon the Corporate Debtor from time to time.

5. That, the Corporate Debtor had not released its outstanding debts towards the Operational Creditor of Rs. 2,95,20,933/- along with interest thereat at the rate of 24% per annum on and from the last date of on-account payment received against such services amounting to Rs. 1,04,48,871/- on October 10, 2022. Hence, this petition.

The Contentions of the Petitioner:

6. The Learned Counsel, Ms. Sonal Shah for the Petitioner submit that the Corporate Debtor has made the last on-account payment of Rs. 1,91,496/- against the services rendered by the Operational Creditor on

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October 10, 2022. After that, the Corporate Debtor has not paid any amount. The Learned Counsel has drawn our attention to the ledger maintained by the Operational Creditor, annexed at pages 387-400 to the application which gives an overview of the transactions between the parties and reflects that there were numerous invoices from November 2019 to September 2022 for supply of Services.

7. Further, it is submitted that the Corporate Debtor issued a balance confirmation on July 19, 2022, annexed at pages 401-407 to the petition, where it confirms a sum of Rs. 2,41,10,427.15/- and USD 24,336.63/- as due and payable to the Petitioner as on June 30, 2022. After that, further transactions have been made and the revised outstanding as on January 02, 2023, is Rs. 2,41,37,797/- and USD 65,648/- (equivalent to INR 53,83,136/-) being a total amount of Rs. Rs. 2,95,20,933/-.

8. That, the Statutory Notice of Demand as per Section 8 of the I&B Code, 2016 has been issued by the Operational Creditor on January 02, 2023, which is delivered to the Corporate Debtor on January 05, 2023. However, no reply is given to such Section 8 Notice by the Respondent.

Reply by the Respondent:

9. The Learned Counsel, Ms. Urmila Chakraborty for the Respondent per contra submits that the petition is not maintainable under Section 4 read with Section 10A of the I&B Code. She claims that the bills were raised from 10.04.2020 to 24.03.2021 amounting to Rs. 1.6 Crore during the prohibitive period as prescribed under Section 10A of the Code. Thus, if such an amount stands deducted from the principal amount claimed to be in default, the balance debt due will be less than the prescribed financial threshold limit as per Section 4 of the Code.

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10. Further, she submits that the ledger is for a period starting from 01.04.2019 to 02.02.2023, which starts with an opening balance as on April 01, 2019, of Rs. 1,17,28,413.30/-. There is no basis for such an opening balance as no bills or invoices have been provided concerning that opening balance of Rs. 1,17,28,413.30/-.

11. It is claimed that some sales transactions from 04.04.2019 to 31.10.2019 do not have any tax invoices or any documents to substantiate the transactions. However, concerning the entries made on and after 24.03.2021 in the ledger, the Petitioner has relied upon some tax invoices, but no documents are given to substantiate the service of those tax invoices upon the Respondent. Further, it is submitted that the Petitioner has furnished through the Supplementary Affidavit dated January 17, 2024, merely some tax entries in the GST Portal, not the relevant statement of the Electronic Cash Ledger or Electronic Liability Ledger of the Petitioner as per the GST Act, which would match the GST paid or set-off against the invoices as annexed to the petition.

12. Further, it is claimed that the Petitioner has not issued any separate chart for the tax invoices having foreign currency elements (in USD). Further, the basis of the conversion rate from USD to INR has not been disclosed.

13. It is alleged that the Section 8 Demand Notice issued by the Petitioner is not in proper form. The Petitioner has not annexed any tax invoices/ bills etc. to substantiate the transactions with the Respondent and to corroborate its claim. Thus, the petition is liable to be dismissed. Reliance is placed on the judgment rendered by the Hon'ble NCLAT in ***Neeraj Jain v. Cloudwalker Streaming Technologies Private Limited*** reported in **2020 SCC OnLine NCLAT 445, at para 48, 51.**

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14. Further, it is claimed that the purported confirmation of accounts annexed at pages 401-407 to the petition is forged and manufactured by the Petitioner to show the acknowledgement of the Corporate Debtor. The documents are on the letterhead of the Operational Creditor with merely a round stamp of Corporate Debtor. The alleged account confirmation documents have never been issued by the Corporate Debtor.

15. Further, it is submitted that the present petition has been preferred only with the intention to recover the money not to resolve the debtor company. The petition is a malicious proceeding preferred in abuse of the process of law. Reliance is placed on the decision in ***TATA Chemicals Limited v. Raj Process Equipments and Systems Private Limited*** passed by the NCLT Mumbai Bench in **CP 21/I&BP/NCLT/MAH/2018**.

Rejoinder to the Reply of the Respondent:

16. That, the provision of Section 10A will not be applied here as the default on the part of the Corporate Debtor has been committed prior to the period as prescribed under Section 10A of the Code. Even assuming that the provision under Section 10A would be applicable and the period as emanated under Section 10A need to be excluded then also the petition will be maintainable as per Section 4 of the Code, as:

- The total outstanding invoices (principal) claimed to be in default is Rs. Rs. 2,95,20,933/-.
- (Less) the outstanding invoices between the Section 10A period is Rs. 1,61,34,369/-
- Balance invoices outstanding will be **Rs. 1,33,86,564/-**, which is more than the threshold financial limit as per Section 4 of the Code.

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17. That, the details and relevant documents of each shipment as well as the invoices were sent to the Corporate Debtor to its emails i.e., arindam.shipping@supreme.in and ho.shipping@supreme.in to which no demur regarding the quality, quantity and/or receipt of the shipment has ever been raised. Further, all the invoices were raised upon the Corporate Debtor and the same were confirmed by the Corporate Debtor's director on the Balance Confirmation sheet.

18. Further, the Section 8 Demand Notice is in proper form and duly served upon the Corporate Debtor on January 05, 2023, at the office of Corporate Debtor situated at L.R. Sarani.

19. Further, some invoices are raised in USD and the currency exchange rate as on the date of raising the invoice in mentioned in the relevant invoices along with the other details, annexed at pages 337-386 to the Petition.

Analysis and Findings:

20. It is the claim of the Respondent that the bills were raised from 10.04.2020 to 24.03.2021 amounting to Rs. 1.6 Crore during the prohibitive period as prescribed under Section 10A of the Code. We have noted the counter submissions of the Petitioner that the default has been made on the part of the Corporate Debtor prior to the period as per Section 10A.

21. We note that if the outstanding invoices raised and became payable during the Section 10A period is deducted from the principal amount claimed to be in default, the outstanding amount will still be in excess of the prescribed threshold financial limit as per Section 4 of the I&B Code.

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22. Further, we have noted that the Section 8 Notice of demand has been issued on January 02, 2023, which has been delivered through India Speed Post January 05, 2023, and this petition has been preferred on 21.02.2023, which is well within the limitation period. Hence, the Petition is maintainable on threshold limit as well as on limitation.

23. We find that the argument taken by the Respondent with regard to opening Balance of the Corporate debtor in the books of the Operational creditor at this stage, without raising this point any time before, seems to be frivolous, particularly when Notice issued under section 8 of I&B Code was not answered. We also see that corporate debtor and operational creditor had long years of business relationship and therefore to question the opening balance without any valid evidence is not maintainable. This seems to be an afterthought to bring the debt below the threshold limit.

24. We also note that corporate debtor has taken a point that Operational creditor has not paid the GST amount to the government and consequently not entitled to recover the same from corporate debtor. Non-payment of GST by Operational creditor to the government would impact the Input tax credit of GST. Corporate Debtor is eligible to take credit of GST payable by the Operational creditor only when GST is paid to government.

25. GST is leviable on Supply of goods and Services and the same is recoverable from the recipients of service, being Indirect tax. In this case there is no dispute with regard to supply of services. We have noted from the additional document filed by the operational creditor, that invoices raised on the corporate debtor has been included in the GST returns filed by the operational creditor from time to time. Once a GST compliant

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Invoice is raised on the recipient of Service, upon supply of service, it is not open for the corporate debtor to claim that GST on such invoices would become payable only upon payment of GST on such Invoices by the operational Creditor. Once GST Return is filed by including the Invoices raised on the corporate debtor, the operational is liable to pay the amount to government and recover it from corporate debtor. If at all corporate debtor is impacted in terms of Input credit due to non-payment of GST by the operational creditor, he can take it up with the operational creditor separately and legally too. Therefore, we find no force in this argument and accordingly reject it.

Conclusion:

26. In the light of the enumerations supra, the application bearing **C.P. (IB) No. 70/KB/2023**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 9 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by the **Consolidated Shipping Line India Private limited, Operational Creditor** under **Section 9** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Supreme and Company Private Limited, Corporate Debtor**.
- ii.** As a consequence of this Application being admitted in terms of Section 9 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of

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the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- 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 asset 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 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 possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that 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, concession, clearances or a similar grant or right during the moratorium period;]

iv. 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.

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- v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Applicant has not proposed any name as the “IRP”. Hence, we appoint **Tripti Agarwal**, Registration no. IBBI/IPA-001/IP-P-02809/2023-2024/14316, Email ID: ip.tripti@gmail.com as the **Interim Resolution Professional (IRP)** of the Corporate Debtor, by invoking the provision under Section 16 (3) (a) of the I&B Code, 2016 to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.
- vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 9 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Operational Creditor shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

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- xii.** In terms of sections 9(5)(i) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), to whom the companies are registered with by all available means 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.
- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 27.** Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.

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28. Post the matter on **18/07/2024** for hearing the Periodical Progress Report by the IRP/RP.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 05th Day of June, 2024.

Bose, R. K. [LRA]