

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P (IB) No.958/KB/2019

In the matter of

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

And

In the matter of:

M/s Gypsy Logistics Private Limited, CIN: U60200WB2008PTC126696,
having its registered office at Mittal Complex, Sivok Road, Siliguri, - 734001.

... Operational Creditor

Versus

In the matter of:

M/s Epitome Petrochemical Private Limited, CIN:
U24249WB2007PTC117196, having its registered office at 7, Prafulla Sarkar
Street, Kolkata-700013, West Bengal .

...Corporate Debtor

Date of hearing : 04/03/2022

Order Pronounced on : 05/04/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Subodh Kumar Agrawal, PCA] For Operational Creditor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under section under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by **M/s Gypsy Logistics Private Limited**, through its Director namely, Mr. Manish Bansal vide Board Resolution dated 16/03/2019 (Annexure-5) (hereinafter referred to as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **M/s Epitome Petrochemical Private Limited, (CIN: U51109WB2008PTC122342)**, CIN: U24249WB2007PTC117196, having its registered office at 7, Prafulla Sarkar Street, Kolkata-700013, West Bengal (hereinafter referred as the Corporate Debtor).
3. It is submitted that the Operational Creditor had provided transportation service to the Corporate Debtor as and when required by the Corporate Debtor. The Operational Creditor had transactions with the Corporate Debtor for many years. On account of said service, the Operational Creditor raised invoices payment of which was made on adhoc basis and hence after adjusting the account on First in First Out basis, the date of invoice from which the debts became due is from 10th May,2016. It is submitted that the default occurred when the Corporate Debtor failed in making payment of the outstanding invoices as annexed with the petition as Annexure-7.
4. It is further submitted that the last payment was received and credited to the Bank account of the Operational Creditor, from the Corporate Debtor, on 20th October, 2016 and thereafter the Corporate Debtor failed to pay the unpaid operational debt to the Operational Creditor. So, the date of default is 10th May,2016.

5. The Operational Creditor placed on record a Bank Statement for the period 1st April,2018 to 31st March, 2019 in the account where the Operational Creditor received the amount from the Corporate Debtor (Annexure-9).

6. It is submitted that a Demand Notice in Form-3 was sent to the registered office of the Corporate Debtor on 5th February, 2019, the said Notice is annexed as Annexure-10.

7. In reply to the Demand Notice, (Annexure-11), the Corporate Debtor has not raised any dispute as regards outstanding amount.

8. It is submitted that the Corporate Debtor has committed default as defined under Section 3(12) of the IBC with regard to the operational debt owed by it to the Operational Creditor in excess of Rs.1,00,000/- as required under Section 4 of the IBC, 2016. (before amendment).

9. It is submitted that the total outstanding operational debt in default, against the various invoices is Rs.9,67,882/- (Rupees Nine Lakhs Sixty Thousand Eight Hundred Eighty Two only) as Principal amount, and a sum of Rs.3,07,534.60 (Rupees Three Lakhs Seven Thousand Five Hundred Thirty Four only) is interest accrued thereon @ 10% pa upto 31st March, 2019 Working computation sheet for the Amount in default is Annexure-6 to the petition. A copy of the Bank statement from 1st April, 2018 to 31st March, 2019 in the Union Bank of India is annexed as Annexure-9 to the petition.

10. The Operational Creditor has enclosed with the petition, a copy of the demand notice dated 5th February, 2019 sent to the Corporate Debtor under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 and a copy of the reply to the demand notice sent by the Corporate Debtor which was received by the Corporate Debtor on 14/02/2019 (Annexure-10 and 11 respectively)

11. ***On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.***

12. **In reply** to the petition, the Corporate Debtor through its Director and authorised Signatory , namely, Mr. Jay Prakash Bajoria, submitted that the petition is not maintainable in law and in facts. The Ld. Counsel for the Corporate Debtor submitted that the said application has been filed in gross abuse of process of law and the same is liable to be rejected in limine with exemplary costs. There is no debt owed by the answering Respondent to the alleged Operational Creditor and no proceedings could have been instituted under the provisions of the Insolvency and Bankruptcy Code, 2016 as against the Corporate Debtor.

13. It is submitted that the Corporate Debtor has fully paid off the invoices amount raised by the alleged Operational Creditor save and except a sum of Rs.50,000/- only. Hence, there is no operational debt or any debt whatsoever save and except a sum of Rs.50,000/- due to the alleged Operational Creditor.

14. It is submitted that the Operational Creditor has suppressed material facts before this Adjudicating Authority with an ulterior motive and malafide object to mislead this Adjudicating Authority into passing suitable orders in its favour. As such, it is evident that the alleged Operational Creditor has approached this Adjudicating Authority with unclean hands. On this ground alone, this purported application is liable to be rejected in limine with exemplary cost.

15. It is submitted that the Operational Creditor has not disclosed or

produced any documents with its purported Demand Notice dated 5th February, 2019. As such, the purported Demand Notice is not in such form and manner as prescribed under the Code and the relevant Rules and Forms framed thereunder. The purported Demand Notice of the alleged Operational Creditor does not disclose any cause of action against the Corporate Debtor and as such, it miserably and hopelessly fails the test as mandated by the Code. Therefore, the purported Notice of the alleged Operational Creditor is defective and such defect is incurable and fatal in nature.

16. It is submitted that the Operational Creditor has enclosed a purported summary of account which is alleged to be receivable from the answering Respondent to the alleged Operational Creditor. The Operational Creditor has purportedly claimed a sum of Rs.12,75,416.60 as outstanding. The Corporate Debtor has cleared all the outstanding amount save and except a sum of Rs. 50,000/- only.

17. It is submitted that the Operational Creditor is not entitled to receive any other amount or charges for the heads as mentioned in the purported summary of account, and thus, the purported claim of the Operational Creditor as demanded in the purported Demand Notice as well as the said Application is wholly mala fide, malicious, misconceived and unmeritorious.

18. It is submitted that there is pre-existing dispute with regard to the claim of the Operational Creditor and that it is evident from the documents and emails disclosed in this proceeding.

19. It is submitted that the Operational Creditor has suppressed material documents which clearly show that the Corporate Debtor Company was declared a Non Performing Asset sometime in the year ,2016 by the State Bank of India. It is submitted that there is no cause for admission of any insolvency petition against the Corporate Debtor. There is no liability and no

debt owed by the Corporate Debtor.

20. In the Rejoinder affidavit filed by the Operational Creditor through one of the Directors of the Operational Creditor, it is submitted that the affidavit of the Corporate Debtor contains false, frivolous and baseless allegations. It is submitted that no valid or justifiable grounds or defence exists and the Corporate Debtor has raised irrelevant and mala fide issues in the reply affidavit. It is submitted that the averments of the reply affidavit filed by the Corporate Debtor should be treated as denied. It is submitted that the Operational Creditor had provided the transportation service to the Corporate Debtor for many years and Rs.9,67,882/- is the total amount of debt on account of which default has been committed by the Corporate Debtor as regards various invoices.

21. It is submitted that the Ledger sheet of the Corporate Debtor in the books of Operational Creditor for the period from 1st April, 2015 to 6thApril,2019 evidencing transaction between the Operational Creditor and the Corporate Debtor which reflect the amount due from the Corporate Debtor and also the balance confirmation provided by the Corporate Debtor for the period from 1st April, 2016 to 31st March, 2017, are enclosed as Annexure-A to the petition. It is submitted that the Corporate Debtor has paid TDS (Form 26 AS) in the Financial Year 2013-2014 to 2016-2017 for transportation service which is annexed as Annexure-B. It is further submitted that the Corporate Debtor has mentioned that the outstanding debt has been paid by them except Rs.50,000/- but they have failed to submit the proof of payment, how they have made payment to the Operational Creditor. It is further submitted that the balance sheet has also been confirmed by the Corporate Debtor in the Financial Year 2017 as already stated above. The Operational Creditor has further submitted that the Corporate Debtor itself agreed to pay the remaining outstanding debt in instalments as the same has been stated in the letter dated 14th February,2019 (Annexure-C). It is denied that the application has been filed in abuse of process of law or it is not maintainable

in the eye of law or should be dismissed as alleged. It is submitted that the Corporate Debtor is merely trying to prolong the adjudication of the matter. The operational debt is very much due and in default, for which the present petition under section 9 of the IBC has been filed before this Adjudicating Authority.

22. It is submitted that the basic requisite elements like occurrence of default, delivery of Demand Notice of the unpaid operational debt and that the payment of the outstanding operational debt has not been received and no notice of any pre-existing disputes are proved in this matter and thus, the petition deserves to be admitted.

23. During the course of arguments, Ld. Counsel for the Operational Creditor submitted that the Operational Creditor provided transportation service to the Corporate Debtor and raised invoices but default in payment occurred as no payment was made. The Demand Notice was sent on 5th February, 2019 and the Corporate Debtor in its reply sent on 14th February, 2019 did not dispute the outstanding debt and the default committed by it in repayment of the loan.

24. The Ld. Counsel for the Operational Creditor further submitted that the Operational creditor has also filed affidavit under Section 9(3)(b) of the Code, Bank Statement, CIBIL Report, proof of TDS deposit, Form 26 AS to prove its case. It is submitted that a total outstanding operational debt is Rs.9,67,882/- which is inclusive of interest. The total amount to be recovered is Rs.12,75,416.60 after inclusion of interest already accrued on the date of filing of the petition.

25. There is no appearance for the Corporate Debtor on 25/08/2021, 25/10/2021, 30/11/2021, 25/01/2022 and even on 04/03/2022, so this matter was heard.

26. After hearing Ld. Counsel for the Operational Creditor and after

examining each and every documents and pleadings of the parties placed before us, we are of the view, that the Corporate Debtor has committed default in payment of the admitted operational debt.

27. The Operational Creditor proposed the name of **Ms. Meena Sureka**, to act as an IRP having Registration No. **IBBI/IPA-001/IP-P01422/2018-19/12163**, who has consented vide his affidavit and Form-2 and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.

28. The application is otherwise complete in all respects.

29. We, therefore, deem it fit to admit this petition and pass the following order:-

O R D E R S

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby admitted.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of

sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits 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 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) 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.

- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Ms. Meena Sureka, IRP** registered with Insolvency and Bankruptcy Board of India, having Registration No **IBBI/IPA-001/IP-P01422/2018-19/12163** and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Operational Creditor/Applicant is directed to deposit **Rs.50,000/- (Rupees Fifty Thousand only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

30. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
31. List the matter on **25/05/2022** for filing of **Progress Report**.
32. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on the 5th day of April, 2022

PJ.