

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

CP (IB) No. 1462/MB/2019

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

Krishna Auto Center

Plot No. 325, Ward 12/B, P.B. No. 77,
Gandhidham Kutch, Gujrat.

... Operational Creditor/Petitioner

Versus

M/s My Own Eco Energy Private Limited
[CIN: U40106MH2011PTC313276]

No.1, Madhu Hans Building, 263, Dr. Annie Besant Road,
Behind Union Bank of India, Mumbai – 400025.

...Corporate Debtor/Respondent

Order Delivered on: 30.01.2024

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical): Mr. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Siddharth Kaka, Advocate

For the Corporate Debtor : Mr. Prasad Sarvankar, Advocate

ORDER

Per: Justice V.G. Bisht, Member(Judicial)

1. The present Company Petition is filed by **Krishna Auto Center** (hereinafter referred to as “the Operational Creditor”) under Section 9

of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against **My Own Eco Energy Private Limited**, (hereinafter referred to as “the Corporate Debtor”).

2. The Respondent was incorporated on 12.10.2011 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U40106MH2011PTC313276. Its registered office is at No.1, Madhu Hans Building, 263, Dr. Annie Besant Road, Behind Union Bank of India, Mumbai – 400025. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

Brief facts:

3. The Petitioner is inter-alia engaged in business of transportation services for all types of Liquid and Gaseous Cargo from various loading bases in Gujarat State with the services of the expertise.
4. The Respondent had entered into an agreement with the Petitioner for the supply of transportation services in the year 2018-19. The Petitioner honored the work requirement of the Respondent Company and duly supplied the transportation services.

5. The Operational Creditor has raised several invoices amounting to Rs.30,28,275/- and invoices amounting to Rs.1,32,283/- raised by one M/s Agarwal Roadlines Private Limited on behalf of the Operational Creditor. Accordingly, the total amount debt claimed to be in default by the Operational Creditor is Rs.31,60,558/- comprising of Rs.30,28,275 and Rs.1,32,283/-. The date of default stated in Part IV of the Petition is 23.07.2018.
6. It is submitted that the Respondent had accepted all the invoices without raising any dispute however they failed to pay the undisputed debt amount. However, the Respondent failed to clear the outstanding amount of the Petitioner.
7. Therefore, the Petitioner on 18.01.2019 sent a demand notice to the Respondent Company under Section 8 of Insolvency and Bankruptcy Code read with Rule 5 of the Code calling upon the Respondent to pay the Outstanding amount of Rs 31,60,558/- along with interest @ 18% per annum, within 10 days of the receipt of the notice.
8. The Respondent Company has failed to reply to the said notice. Hence, the present Petition.

Submissions advanced by the Corporate Debtor vide Affidavit-in-Reply.

9. The preliminary defence raised by the Corporate Debtor is that they have not been served with the Section 8 Demand Notice and the Petitioner has failed to annexe documents evidencing service on the Corporate Debtor. It is submitted that the Petitioner has failed to annexe the tracking report and merely has placed on record the postal receipt.
10. Secondly, it is submitted that the Petitioner has filed a joint application wherein the Petitioner has claimed certain outstanding dues from one M/s Agarwal Roadlines Private Limited under part IV of the Petition. Moreover, the invoices raised by Agarwal Roadlines are also relied on by the Petitioner. The Corporate Debtor submits that the claim of two distinct entities cannot be combined for the purpose of maintaining a section 9 Petition.
11. Further, the Respondent submits that ledger account relied on by the Petitioner for the period between 01.08.2018 to 12.03.2019 reflects closing balance as on 12.03.2019 as 'Nil'.
12. The Corporate Debtor submits that there is pre-existing dispute between the parties as after two months from commencement of provision of transportation services, the Petitioner proposed that the parties should move to a new billing model wherein the Petitioner bill

at actuals for each tanker that it would deploy for transporting the Corporate Debtor/ Respondent's Biodiesel instead of charging at a fixed rate as was agreed to and incorporated in the Transportation Agreement.

13. The Petitioner proposed that 'at actuals' rate would be Rs. 1.7979 per tanker per Kilogram per Kilometer and that the Petitioner would charge at actuals from the month of August 2018. The Corporate Debtor/ Respondent agreed to the Petitioner's aforesaid proposal and requested the Petitioner to have the same incorporated in a new agreement which would be effective from 1 August 2018. The Corporate Debtor/ Respondent also requested the Petitioner to provide full details of the tankers deployed including the fuel load transported by the tankers and the Kilometers covered by the tankers for the month of May 2018 and June 2018 so that the Corporate Debtor/ Respondent would be able to make payment for the same as per the Transportation Agreement. The aforesaid proposal was communicated by the Petitioner to the Corporate Debtor vide email dated 02.08.2018.
14. The Respondent agreed to the said proposal and sent confirmation email dated 02.08.2018. The Corporate Debtor/ Respondent while having agreed to the aforesaid proposal, sent its comments on the draft agreement vide its email dated 9th October, 2018 whereby the

Corporate Debtor/ Respondent incorporated a term of minimum 6000 Km RTKM per month for tankers which were under five years old. The Corporate Debtor/ Respondent also raised certain concerns regarding the services being provided by the Petitioner like there being instances of delay by the petitioner in delivering the Corporate Debtor/ Respondent's Biodiesel as also the Petitioner deploying old tankers for delivery of the Biodiesel as against the terms of the Transportation Agreement. In the same email, the Corporate Debtor/ Respondent also made it a condition precedent for the Petitioner to submit proof of delivery or acknowledgement of delivery by the dealers to whom the Biodiesel was transported to by the Petitioner along with the Petitioner's invoice for making payment against the same.

15. The Corporate Debtor submits that the Petitioner has failed to provide acknowledgement of delivery by the dealers and has relied on the email communication between the parties to demonstrate pre-existing dispute with respect to billing method, services provided and acknowledgement receipt.

Findings

16. We have heard the submissions of both sides and perused the records.
17. At the outset, the Corporate Debtor contends that the Petitioner has filed a joint claim comprising of invoices raised by Petitioner and one

M/s Agarwal Roadlines Private Limited amounting to Rs.30,28,275/- and Rs.1,32,283/- respectively and therefore, the Petition cannot be considered. However, Part-IV of the Petition clearly stipulates that the invoices raised by the Agarwal Roadlines were on behalf of the Operational Creditor and even if we exclude the claim arising out of invoices raised by Agarwal Roadlines the claim of the Operational Creditor alone is above threshold limit.

18. Further, as far as the defense of the Corporate Debtor relating to discrepancy in the ledger account is concerned, we hold that the Operational Creditor maintains two ledger accounts viz. Account 1 in the name of “My Own Eco Energy Private Limited” and Account 2 in the name of “My Own Eco Energy Private Limited (GJ)”. Even if it seems that the Account 1 shows ‘nil’ balance, it can be seen from account 2 that closing balance as on 28.02.2019 reflects as Rs.30,28,275/-. Accordingly, it is clear that the Corporate Debtor owes Petitioner the outstanding amount.
19. Further, the Corporate Debtor has taken us through the email correspondence placed on record by the Petitioner, more particularly email dated 09.10.2018 wherein the Corporate Debtor has raised concerns with respect to services provided by the Operational Creditor and intimated the Operational Creditor that bills will be processed after

acknowledgement is received by dealers. Thereafter, the Petitioner on 09.10.2018 sent a detailed email addressing the concerns of the Corporate Debtor. From the last email dated 11.10.2018, it appears that there was meeting for finalization of fresh agreement. From the aforesaid correspondence it can be deduced that the grievance of the Corporate Debtor regarding the terms of the existing agreement was resolved, since the parties were in the process of entering into a fresh agreement. In the aforesaid circumstances, the contention of the Corporate Debtor that there is pre-existing dispute cannot be accepted and considered.

20. The Petition bearing CP (IB) 1462 MB/C-I/2019 filed by **Krishna Auto Center** the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) **against My Own Eco Energy Private Limited**, the Corporate Debtor, is admitted.
21. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;

- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
22. Notwithstanding the above, during the period of moratorium: -
- i. 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;
 - ii. 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;
23. 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.
24. 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.

25. Mr. Bharat Ramakant Upadhyay, having registered number: IBBI/IPA-002/IP-N00120/2017-2018/10289 Email Id: brupadhyay@hotmail.com, registered mobile no- 9833284483 is hereby appointed 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.
26. 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.
27. 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 (CoC).

28. 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.
29. 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.
30. Ordered accordingly.

Sd/-

PRABHAT KUMAR

Member (Technical)

30.01.2024

Sd/-

JUSTICE V.G. BISHT

Member (Judicial)