**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**MUMBAI BENCH, COURT -V**

**C.P. (I.B) No. 519/MB/2022**

**Under Section 9** of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**CEVA Logistics India Pvt. Ltd.**
Having its office at The Qube, A-902/903, M.V. Road, Marol, Andheri (East), Mumbai-400059.

**...Operational Creditor/Petitioner**

*Vs*

**M/s. Sapura Engineering & Constructions (India) Pvt. Ltd.**
Having its registered office at AFL House, 6th Floor, Lok Bharati Complex, Marol, Maroshi Road, Andheri (East) Mumbai- 400059.

**...Corporate Debtor/Respondent**

**Order Dated: 23.02.2024**

***Coram:***
Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

***Appearances:***
For Petition: Adv. Omprakash Parihar (VC)

For Respondent: Adv.C. Keshwani (PH)

**ORDER**

***Per: Reeta Kohli, Member (Judicial)***

**1.** This Company Petition is filed by **CEVA Logistics India Pvt. Ltd.** (hereinafter referred as "**the Operational Creditor/Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as **"CIRP"**) against **M/s. Sapura Engineering & Constructions (India) Pvt. Ltd.** (hereinafter called "**Corporate Debtor**") by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called "**Code**") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 2,25,40,707.31/-**. The date of default is stated to be from 27.11.2020 to 20.01.2022 and continues till date. Demand Notice dated 4th February 2022 and 13th February 2021 were sent by the Petitioner and the same were not replied by the Respondent. Hence the present petition.

**Brief Facts**: -

1. The Petition reveals that the Holding company of Respondent/ Corporate Debtor namely Sapura Fabrication SDN BHD approached the Petitioner for availing carrier services with respect to various air & sea shipments/consignments of the Corporate Debtor. Accordingly, services were provided on various export shipments from Nhava Sheva to Port Klang & Penang - Georgetown (Malaysia) & Ho-chi-minh City, Vietnam, Mumbai Port to Lumut, Malaysia, imports shipments from Singapore to Mumbai and third country export shipments from Dubai to Hanoi, Vietnam etc.
2. The Operational Creditor further submitted that initially the Petition was filed under Section 9 of IBC on 5th February 2022 bearing Transaction Reference No. 0502220005923 against M/s. Sapura Fabrication SND BHD, the holding company of the present Corporate Debtor. However, the registry of NCLT, Mumbai did not register the said Petition as the Operational Creditor could not provide the CIN Number of the holding company of the present Corporate Debtor i.e. Sapura Fabrication SDN BHD.
3. The Operational Creditor further submitted that the Holding company had an office in Mumbai and had FCRN

Number F06399 instead of CIN number, the same fact was brought to the knowledge of the registry and the bench on oral mentioning. However, the said Petition against the holding company was not registered because of the above reason. Hence the present Petition under Section 9 of the IBC came to be filed on 11th April 2022 against the present Corporate Debtor, which is the group company of the holding company.

4. It is further submitted by the petitioner that since the Holding Company of the Respondent was registered in Malaysia, the petitioner has been doing all the business dealing with their office at Andheri in Mumbai under the name of Sapura Fabrication SDN BHD as mentioned in the invoices attached with the petition.
5. The case of the Petitioner is that it has delivered the services as per the bill of lading issued against each shipments/consignments for the period from 27/11/2020 to 26/10/2021 and till date.
6. The Petitioner had issued various Invoices from 28th September, 2020 to 27th August, 2021 in favor of the Holding Company of the Respondent for the services. The amount of the said Invoices remained unpaid in spite of several follow ups with the Respondent of the Holding Company.
7. The petitioner further submitted that there has been no dispute of whatsoever nature with respect to the quality

and/or quantity. Yet the Respondent failed and neglected to pay the invoice amount. The Operational Creditor exchanged various correspondences via emails asking the Holding company of the Respondent to pay the amount due. Replying to the above emails the Petitioner received an email dated 3rd December, 2021 from the Holding company of the Respondent stating that the invoices are booked/uploaded in their system thus undertaking to make payment of outstanding amount of INR 2,03,03,161/- i.e. the principal amount. The email communication is reproduced as under-

**From:** Paresh Naik <paresh.naik@sapuraenergy.com>
**Sent:** 03 December 2021 10:16
**To:** Daxini, Mukesh <Mukesh.Daxini@Cevalogistics.com>
**Cc:** Karande, Yashwant <Yashwant.Karande@Cevalogistics.com>; Kulkarni, Bhooshan <Bhooshan.Kulkarni@Cevalogistics.com>; Manish Purohit <manish.purohit@sapuraenergy.com>; Florencio Andrade <florencio.andrade@sapuraenergy.com>; Sandeep Vishwasrao <sandeep.vishwasrao@sapuraenergy.com>
**Subject:** RE: Correction in invoice address and outstanding dues

**NOTE:** This message is from an EXTERNAL SENDER - be CAUTIOUS, particularly with links and attachments.
Please contact Information Security team for suspicious content/activity.

Dear Mukesh,

Check our records and all the mention invoices highlighted in floursent colour are uploaded in our system.

Regards,
Paresh Naik

**From:** Daxini, Mukesh <Mukesh.Daxini@Cevalogistics.com>
**Sent:** 03 December 2021 09:53
**To:** Paresh Naik <paresh.naik@sapuraenergy.com>; Manish Purohit <manish.purohit@sapuraenergy.com>
**Cc:** Karande, Yashwant <Yashwant.Karande@Cevalogistics.com>; Kulkarni, Bhooshan <Bhooshan.Kulkarni@Cevalogistics.com>
**Subject:** RE: Correction in invoice address and outstanding dues

**External Sender: Use caution with links / attachments.**

Dear Paresh

We refer below and amount payable by Sapura as per list give below along with your scan ID

The perusal of this above stated emails proves the acknowledgement of debt by the Respondent.

8. Even after the acknowledgment on the email, the amount was never paid by the Respondent.
9. The Petitioner subsequently issued Demand Notices on 4th February 2022 & 18th February 2021 demanding total payment of INR 2,25,40,707.31/- against the invoices issued/raised. No reply was received to the said notice by the Corporate Debtor.
10. Thus, the Operational Creditor filed the present application u/s 9(1) of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a total outstanding amount of INR 2,03,03,161/- (Principal amount) being due and payable by the Respondent along with interest @ 19% p.a. being an aggregate interest amount of INR 2,23,75,46.31/- thereby the outstanding aggregating to INR 2,25,40,707.31/-.
11. The Operational Creditor has submitted that only after filing the present petition the Corporate Debtor has objected regarding their Locus Standi in the present case. Whereas he had the opportunity to do the same after the issuance of Demand Notice at the first instance.
12. The Operational Creditor also made a reference to the copies of Work Order and the definition of "Group Buyer" clearly proves that the Corporate Debtor falls within the said definition and thus is legally liable for the due debt. The definition states "*Group Buyer means buyer, client its*

*and their affiliates directors, officers and employees*". Hence, the argument of the petitioner is that if the definition clause at page No. 73 is read and interpreted correctly, the present Corporate Debtor M/s. Sapura Engineering & Construction (India) Pvt. Ltd is a group of company of the holding company that is M/s. Sapura Fabrication SND BHD.

13. The Respondent in its reply to the present petition has denied all the claims, contentions and allegations made by the Petitioner. Further it has submitted that the perusal of the work order proves that none of the invoices in question has been addressed to them and they are not a party to the work order.

14. Further the Ld. Counsel for the respondent was submitted that the claim raised by the petitioner is based on the work order and the Bill of Ladings that has been admittedly executed between the Applicant and Supra Fabrication SND BHD (Holding Company). The Respondent/ CD is not a party to the contract and thus there exists no privity of contract between the petitioner and the Respondent. The general terms and conditions of the work order at clauses 3.2.1, 4 @ pg. 72 and 73 of the petitioner show that privity of contract is between the petitioner and Supra Fabrication SND BHD and not the Respondent/ Corporate Debtor. Further, the clause 4.2.1 (Invoicing instruction) clearly state that invoices/bills

must be raised on the recipient of the services i.e. Sapura Fabrication SND BHD as mentioned in the invoice.

15. The respondent further submitted that the Corporate Debtor is a subsidiary of the Holding Company and thus a distinct legal entity from that of its Holding Company. In this regard, it is settled law that the liabilities of the Holding Company are not attributable to that of the Respondent and vice-versa. Hence, merely because the Respondent/Corporate Debtor is a subsidiary of the Holding Company, does not makes it liable towards the outstanding dues of the Holding Company.

16. Owing to the above, it is further submitted that the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") make it necessary for an Operational Creditor to establish the existence not only of a 'debt' and 'default' but that the liability in question must arise out of a relationship of a "Operational Creditor' and a 'Corporate Debtor as defined under the Code. In the facts of the present matter, as seen from the above, the Petitioner has failed to place any material on record which would establish such a relationship, let alone that of a debt and default on part of the Respondent towards the Petitioner. It is submitted that owing to the aforesaid, the Respondent did not find the need to issue any response to the Demand Notice dated 04.02.2022 addressed by the Petitioner. It is submitted that no amount of debt is due

and payable by Respondent to the Petitioner. There is no enforceable and existing debt and/or liability of the Respondent towards the Petitioner.

17. It is further submitted by the Respondent that the so-called correspondence at Exhibit K to the petition and the mail with Mr. Paresh Naik enclosed in the rejoinder on their plain reading do not in any manner suggests that the content thereof can be read as an acknowledgement of liability by them. The Petitioner has merely on the basis of the Respondent being a subsidiary of the Holding Company has sought to render it liable for the dues allegedly owed by the Holding Company. Without prejudice to the above, it is submitted that the Petitioner at several instances in the petition has admitted that it approached this Hon'ble Tribunal due to the failure of the Holding Company in paying its outstanding dues.

18. Further it is submitted to be that this is a clear case where the applicant is seeking recovery of debt from SAPURA FABRICATION SND BHD and not them. Additionally, IBC is nor a debt recovery law and the applicant ought to be relegated to arbitration/civil remedies to recover its alleged dues from SAPURA FABRICATION SND BHD.

## Findings/Conclusion

We have heard the arguments of the Learned Counsel for Operational Creditors as well as the Corporate Debtor and have gone through the records placed before the Hon'ble Tribunal.

**19.** The case of the Operational Creditor is that since an amount of Rs.2,25,40,707.31/- is the debt due on account of services provided and the pending amount is due and payable. In the view of the fact that the Corporate Debtor has failed to make the payment, the present petition is filed by the petitioner. The date of default is stated to be 27.11.2020 to 20.01.2022 and continues till date. Demand Notice dated 4th February 2022 and 13th February 2021 was sent by the Petitioner and the same was not replied/responded by the Respondent.

**20.** From the perusal of the documents placed on record it is observed that the Bill of Lading and the Service order are addressed to the Holding Company of the Corporate Debtor i.e. Sapura Fabrication SDN BHD, but the said Bill of Lading and Service orders are Digitally signed by Mr. Paresh Naik of Sapura Engineering & Construction Private Limited i.e. the present Corporate Debtor. The said signed Service orders and Bill of Lading is reproduced as under-sapura energy

**SERVICE ORDER : 4100055272 / 04.11.2020**

Page : 2 of 13

| ITEM | SERVICE DESCRIPTION | ORDER QTY | UOM | PRICE PER UNIT (INR) | TAX Percentage | AMOUNT (INR) |
|---|---|---|---|---|---|---|
| | Suttati Gratings 5th Shipment<br>Sea freight Nhava Sheva to Port Klang | | | | | |
| | Delivery date : 06.11.2020 | | | | | |
| | **The item covers the following services:** | | | | | |
| 10 | 8100000075<br>TRANSPORT, SEAFREIGHT | 1.000 | AU | 70,900.00 | | 70,900.00 |

| | |
|---|---|
| **Sub Total (INR)** | **100,900.00** |
| **GST (INR)** | **5,400.00** |
| **Grand Total (INR)** | **106,300.00** |

The below summary is for the purpose of Malaysian GST only.

| GST rate | No.of Item | Total Amount (excludes GST) (USD) | GST (USD) | Total Amount (includes GST) (USD) | Exchange rate |
|---|---|---|---|---|---|
| *Input Tax Credit (IGST) 18% | 1 | 402.02 | 72.36 | 474.38 | INR = 1.34005 |
| **Input Tax code 0% | 1 | 950.10 | 0.00 | 950.10 | INR = 1.34005 |
| | | 1,352.12 | 72.36 | 1,424.48 | |

**Important Note/Instructions**
Above No. 4100055272, our Ref No must be stated on all correspondence, delivery orders and invoices to us.
Upon acceptance of this PO, the Supplier agrees to Sapura Fabrication SDN BHD (India Project office) standard terms and conditions (as per page 3 of * of this document or per attached). The company shall be entitled to treat any other terms and conditions introduced by or on behalf of the Supplier as having no effect.

**For Sapura Fabrication SDN BHD**

Paresh Naik
Digitally signed by Paresh Naik
DN: cn=Paresh Naik, o=Sapura Engineering & Construction I Pvt Ltd, ou=Logistics, email=paresh.naik@sapuraenergy.com, c=IN
Date: 2020.11.05 18:02:41 +05'30'

Girish S Jagtap
Digitally signed by Girish S Jagtap
Date: 2020.11.05 18:20:22 +05'30'

**Authorized Signatory**

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**BIMCO LINER BOOKING NOTE**
**CODE NAME: "CONLINEBOOKING 2000"**

Agents (full style and address)
BCL PUYVAST INDIA PVT LTD.,
# 6, BENSON TOWN,
HARRIS ROAD,
BANGALORE - 560046

Date
31ST MARCH 2021

Vessel
M.V. GENIUS STAR IX OR SUB

Carrier (full style and address)
PYRAMID LINES LTD
LEVEL 54; HOPEWELL CENTRE
183 QUEEN'S ROAD EAST
HONG KONG,
PEOPLE'S REPUBLIC OF CHINA

Laycan
10-20 APRIL, 2021

Port of Loading*
1sph MUMBAI, INDIA

Port of discharge
1sph SAPURA JETTY (LUMUT PORT), MALAYSIA

Merchant
SAPURA FABRICATION SDN BHD
6TH FLOOR,AFL HOUSE.LOK BHARTI COMPLEX,
MAROL MAROSHI ROAD,ANDERI(ESAT)
MUMBAI-400 059

Merchant's representatives at loading port (full style and address)
SAPURA FABRICATION SDN BHD
6TH FLOOR,AFL HOUSE.LOK BHARTI COMPLEX,
MAROL MAROSHI ROAD,ANDERI(ESAT)
MUMBAI-400 059
T: +91 22 4089 5855 DT: +91 22 4089 5845 M: +91 9840141114
Mr. Paresh Naik, Logistics Coordinator

| Container No./Seal No./Marks and Numbers (if available) | Number and Kind of packages, description of cargo | Gross weight, Mts (if available) | Measurement, Frt (if available) |
|---|---|---|---|
| | TANKS<br>DIMENSIONS AS PER THE PACKING LIST<br><br>83 PKGS<br><br>MINIMUM 1200 to 1250 CBM<br>actual as per Packing list | 153 | 1300 |
| | TOTAL | 153 | 1300 |

Freight details and charges
As per PO terms
LINER TERMS BASIS HOOK TO HOOK
(NET TO NET)

Special terms, if agreed
AS PER RIDER CLAUSES 1 TO 21 ATTACHED TO FORM AN INTEGRAL PART OF THIS BOOKING NOTE

Freight (state prepayable or payable at destination)
FREIGHT PREPAID

It is hereby agreed that this Contract shall be performed subject to the terms contained on Page 1 and 2 hereof which shall prevail over any previous arrangements and which shall in turn be superseded (except as to deadfreight) by the terms of the Bill of Lading.

CEVA LOGISTICS INDIA PVT LTD
As agent for and on behalf of
M/S. PYRAMID LINES LTD
HONG KONG, PEOPLE'S REPUBLIC OF CHINA
Carrier

SAPURA FABRICATION SDN BHD
Merchant Florencio Andrade

* As defined hereinafter (Cl. 1)
** or so near thereunto as the Vessel may safely get and lie always afloat

As agents and on behalf of pyramid lines

Paresh Naik

21. The perusal of the above document makes it clear that there exist a privity of contract between the Corporate Debtor and the Petitioner as Mr. Paresh Naik from the Corporate Debtor have digitally signed both the documents.

22. Thus this acknowledgement in itself reveals that the present Corporate Debtor has availed the services from the Petitioner. Further the mail dated 03.12.2021 by Mr. Paresh Naik stating "*check our records and all the mention invoices highlighted in floursent colour are uploaded in our system"* substantiates that there exists a debt due on the part of the CD i.e. M/s. Sapura Engineering & Construction (India) Pvt. Ltd and the same stands acknowledged vide this email

23. Thus in our opinion the two essential ingredient required for admission under Section 9 of the IBC, i.e., the existence of **debt** and **default** in this case are proved. There is a clear default, and in terms of the objectives of the IBC 2016, the case deserves to be admitted to CIRP. In view of the above stated the present Company Petition stands admitted.

## ORDER

24. The above Company Petition No. 519/IBC/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Sapura Engineering & Construction (India) Pvt. Ltd.
25. Udaykumar Bhaskar Bhat having registration No IBBI/IPA-001/IP/P-0145/2018-2019/12234, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
26. The Petitioner shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
27. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

28. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
29. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
30. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
31. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
32. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

33. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

34. Accordingly, **CP (IB) No. 519 of 2022** is admitted.

| | |
|---|---|
| SD/- | SD/- |
| **MADHU SINHA** | **REETA KOHLI** |
| **MEMBER (TECHNICAL)** | **MEMBER (JUDICIAL)** |

/Aakansha/