



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 324/Chd/Hry/2019

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

In the matter of:

Raj Road Carriers

Through Prop. Mr. Raj Bala Bansal
Office No.121, 1st Floor,
Apsara Cinema Complex, Delhi-UP. Boarder,
P.O.: Chikamberpur, Ghaziabad, U.P.

...Petitioner-Operational Creditor

Vs.

1. Hambro Tech India Pvt. Ltd.

Khata No.402/413 Mitrol Deeghot Road,
Village Deeghot, Tehsil Hodal Palwal
Faridabad HR 121105
CIN No. U74140HR2015PT056243

2. Raj Kumar Gupta

Director
H.No.795 Sector-14 Faridabad
Haryana-121007

3. Amit Kumar

Managing Director
104, 1st Floor Omax Hight Palwal
Haryana-121102

4. Karamvir

Director
Village Deeghot Palwa,
Haryana 121105

5. Vishweshwar Kumar Mani

Director
H.No.2215, Ground Floor, Sector-3,



Ballabgarh Faridabad, Haryana-121004

...Respondent-Corporate Debtor

Judgement delivered on: 06.12.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner : Mr. Nahush Jain, Advocate
Mr. Alok Kumar Kuchhal, Advocate

For the Respondent : Mr. Arora Vishwas Kumar, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Raj Road Carriers (for brevity 'Operational Creditor' / 'Petitioner')**, represented through its proprietor Mr. Raj Bala Bansal, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Hambro Tech India Pvt. Ltd. (for brevity 'Corporate Debtor' / 'Respondent').

2. The Corporate Debtor, namely, Hambro Tech India Pvt. Ltd., is a Company incorporated on 30.07.2015 under the provisions of Companies Act, 2013 with CIN No. U74140HR2015PT056243 with its registered office at Office Khata No.402/413, Mitrol Deeghot Road, Village Deeghot, Teshil Hodal Palwal, Faridabad-121105. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure I.

3. The facts of the case, briefly, as stated in the petition are that the corporate debtor approached the operational creditor for providing transport



services for the movement/loading/unloading of the goods all over India and various invoices were issued. However, corporate debtor stopped making payments for the services availed by them. The operational creditor continues to provide the services despite non-receiving of payment on the basis of good mutual business relationship but no payments were received. The operational creditor sent a demand notice on 15.03.2019.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 1,17,06,299/- (Rupees One Crore Seventeen Lakhs Six Thousand Two Hundred Ninety Nine Only) plus 24% interest p.a. and it is deposed by way of affidavit vide Diary No.00147/3 dated 22.11.2022 that the default occurred on 17.01.2019 i.e. the last date of payment from the running ledger account maintained by the operational creditor in its books along with the last invoice issued by the operational creditor to the corporate debtor dated 17.01.2019. Copy of pending invoices (Annexure-A), ledger (Annexure-B), bill (Annexure-C), a certificate from the bank to certify that no funds have been received (Annexure-D), bank statement (Annexure-E) is attached with the main petition.

5. A demand notice in Form 4 is stated to be issued by the operational creditor on 15.03.2019 and the same has been delivered to the corporate debtor as the corporate debtor sent a notice of dispute dated 22.04.2019, whereas the corporate debtor raised the dispute.

6. Accordingly, order dated 12.07.2019 notice of this petition issued to the corporate debtor to show cause as to why this petition be not admitted. The Affidavit of service was filed vide Diary No.6465 dated 20.11.2019. The corporate debtor has filed reply vide diary No.1045 dated



07.02.2020, wherein it is stated that the applicant is demanding a sum which was already disputed. The applicant has no locus standi to file the present application. There are clear instances of dispute between the applicant and respondent and the applicant is trying to hide the said email communication. The applicant has attached invoices which are not related to the respondent since they are not raised in the respondents name. The copies of invoices attached to the application are false, frivolous and fabricated and cannot be considered as the criminal complaint is still pending before the concerned police authorities.

7. The petitioner operational creditor submitted in its rejoinder vide Diary No. 2102 dated 17.03.2020 wherein it is stated that the claim of applicant is correct and no amount of claim has ever been disputed by the corporate debtor. There were no pre-existing disputes between the parties. The emails through which the corporate debtor is trying to make the Hon'ble Bench believe that the present matter is a pre-existing dispute and hence is liable to be dismissed is actually nothing but an afterthought just to hide their carelessness and to cover up their losses from the applicant even after taking back all the material from the warehouse which can be verified from the letter dated 30.03.2019 and from the various emails which were sent to the Corporate Debtor. The short written submission has been filed by the applicant vide Diary No.00147/2 dated 03.08.2022.

8. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 4 dated 15.03.2019 was properly served. The demand notice was



received (Annexure-F of the main petition) as a reply to the notice of dispute dated 22.04.2019 sent by the corporate debtor wherein it is stated that the amount of Rs. 1,17,06,299/- is a disputed amount. The company does not owe any amount. All invoices issued are under dispute as they are manipulated, not even a single invoice has been accepted and passed by the company due to difference in amount. Many a times discussions had taken place regarding the differences in invoices issued and the applicant had promised to rectify the invoices timely but not a single invoice has been rectified. In view of the same, it is held that the demand notice has been duly served. In view of the same, it is held that the demand notice has been duly served.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is submitted by the petitioner in rejoinder that the claim of the applicant is correct and no amount of claim has ever been disputed by the corporate debtor. Although, respondent/corporate debtor issued notice of dispute dated 22.04.2019 but that is of no value as demand notice dated 15.03.2019 was already served upon the respondent/corporate debtor. There were no pre-existing disputes between the parties. It was submitted by learned counsel for the respondent-corporate debtor that, he does not want to press for any of the defense, as the respondent is going under a severe financial crisis and is unable to pay its debt as recorded in order dated 31.10.2022 by this Bench.

11. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 15.03.2019 in Form 4 attached as Annexure-F was duly served on the corporate debtor.



Therefore, the period of limitation would begin from the date of default i.e. 17.01.2019 i.e. the last date of payment from the running ledger account maintained by the operational creditor in its books along with the last invoice issued by the operational creditor to the corporate debtor dated 17.01.2019. Copy of pending invoices (Annexure-A), ledger (Annexure-B), bilty (Annexure-C), certificate from the bank to certify that no funds have been received (Annexure-D), bank statement (Annexure-E) is attached with the main petition. This application was filed on 06.06.2019 vide Diary No. 2845. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 1,17,06,299/- (Rupees One Crore Seventeen Lakhs Six Thousand Two Hundred Ninety Nine Only) plus 24% interest p.a. The operational creditor provided transport services for the movement/loading/unloading of the goods all over India and various invoices were issued. Copy of pending invoices (Annexure-A), ledger (Annexure-B), bilty (Annexure-C), certificate from the bank to certify that no funds have been received (Annexure-D), bank statement (Annexure-E) is attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

13. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above mentioned facts that the liability of the corporate debtor



is undisputed and admitted. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Hambro Tech India Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 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.

16. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

17. The order of moratorium shall have effect from the date of this order till 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.

18. In Part-III of Form No. 5, the proposed IRP became ineligible due to the fact that the RP was disqualified on account of unforeseen disciplinary proceeding pending against him. Subsequently, through IA No. 994/2022, Ms. Anjali Yadav Khan was proposed as IRP, however, she withdrew her consent. Thereafter, through IA No.1702/2022 no IRP has been proposed by the petitioner. In view of the above, we appoint Mr. Harjinder Singh, Registration No. IBBI/IPA-001/IP-P-02356/2021-2022/13543, E-mail: corporatesar@gmail.com, Mobile No. 9896247175 as the Interim Resolution Professional with the following directions:-



i.) The term of appointment of Mr. Harjinder Singh shall be in accordance with the provisions of Section 16(5) of the Code subject to the written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6



of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required



under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying



constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

19. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

21. This petition is accordingly admitted.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

December 06, 2022
SD/TB