

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 1895/MB-IV/2019

Under Section 9 of the I&B Code, 2016

In the matter of:

GALLEON SHIPPING LIMITED

[CIN: U61100MH1994PLC079306]

...Operational Creditor/Applicant

V/s

ASHPEARL SHIPPING SERVICES

PRIVATE LIMITED

[CIN: U61100MH2015PTC268397]

...Corporate Debtor/Respondent

Order Dated: 28.04.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Sneha Panchmukh a/w Ms. Deepa
Mani i/b DM Legal Ventures, Ld.
Counsel.

For the Respondent(s) : None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application being CP (IB) No. 1895/MB-IV/2019 filed on 22.05.2020 by GALLEON SHIPPING LIMITED, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against ASHPEARL SHIPPING SERVICES PRIVATE LIMITED, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The total amount claimed by the Operational Creditor as specified in the Part 4 of the Company Petition is Rs. 31,51,701.10/-, alongwith interest @18 % per annum (from 04.05.2019 till further realisation on Principal sum of Rs.27,96,754/-). The date of default is not specified in Part IV of the petition.
 - 2.1. The Operational Creditor and Corporate Debtor had executed a "Time Charter Fixture Note" dated 07.02.2018 in which Corporate Debtor had agreed to take the Operational Creditors Ship viz. MV Guru Kripa on time Charter inter alia on the following terms: -
 - i. Time Period: February 2018 till end April, 2018+ 7 day from the date of Delivery
 - ii. Location: Between Jaigarh and Dharamtar ports.
 - iii. Consideration: Rs. 97,000/- per day pro-rata + taxes.
 - iv. Payment Terms: Every 15 days, in advance.
 - v. Other key terms: The Corporate Debtor being the Charterer is responsible for any damage caused to the vessel while it is hired by the Corporate Debtor and is also responsible to leave the ship hold in "clean swept condition.
 - 2.2. On 09.02.2018 the Applicant handed over the vessel M.V. Guru Kripa to the Corporate Debtor and raised Invoice I for an amount of INR 17,16,900/- (Rupees Seventeen Lakhs Sixteen Thousand and Nine

Hundred only) (towards charter hire for 15 days from 09.02.2018) and another Invoice II for an amount of Rs. 12,09,757/- (Rupees Twelve Lakhs Nine Thousand Seven Hundred and Fifty-Seven only), (towards delivery of bunker). On 24.02.2018 the Applicant raised Invoice III for an amount of Rs.17,16,900/- (Rupees Seventeen Lakhs Sixteen Thousand and Nine Hundred only) (towards charter hire from 24.02.2018 to 11.03.2018). On 10.03.2018 the Applicant raised Invoice IV for an amount of INR 17,35,486/- (Rupees Seventeen Lakhs Thirty-Five Thousand Four Hundred and Eighty-Six only) (towards charter hire from 11.03.2018 to 26.03.2018). On 26.03.2018 the Applicant raised Invoice V for an amount of Rs. 17,23,096/- (Rupees Seventeen Lakhs Twenty-Three Thousand and Ninety-Six only) (towards charter hire from 26.03.2018 to 10.04.2018). All the invoices were accepted by the Corporate Debtor without any protest or demur.

2.3. On 13.02.2018, the cheque issued by the Corporate Debtor to the Applicant for an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) (towards security deposit) was dishonoured upon deposit and the same has been intimated by the Applicant to the Operational Creditor. The Corporate Debtor has made certain part payments towards invoices raised by the Operational Creditor and the same transaction between the parties is reflected in the statement of Accounts.

2.4. On 04.03.2018 the Master of M.V. Guru Kripa issued a Note of Protest, for damage caused to the vessel due to the Corporate Debtor's callousness. The damage in question was a 5-inch vertical crack in the engine room compartment. The said damage was the responsibility of the Corporate Debtor as it was caused due to unsafe berth.

- 2.5. On 08.03.2018, the Master of M.V. Guru Kripa had issued another Note of Protest on the Corporate Debtor for loss of three fenders and damage to ship rails and side, caused when the Corporate Debtor had berthed the vessel in an open- sea berth during a high swell. The said damage was directly caused by the Corporate Debtor and the Corporate Debtor is solely responsible for the same.
- 2.6. In spite of making payments of the above raised invoices, on 10.03.2018, the Corporate Debtor sought to raise false and baseless allegations that M. V. Guru Kripa was not being loaded with cargo to its full capacity and claimed to have suffered losses of an amount of INR 91,425/- (Rupees Ninety-One Thousand Four Hundred and Twenty-Five only) on account of short-loading.
- 2.7. On 11.03.2018 the Master of M.V. Guru Kripa refuted the Corporate Debtor's false claims and reiterated that the vessel was loaded to the capacity of "summer draft" at least. Furthermore, the sea swell at Jaigarh port caused the vessel to roll, thereby making it very difficult to read the actual draft. At any rate, the vessel was under the control of the Corporate Debtor who had never been stopped by the Master or anyone else from loading the vessel to the extent that the Corporate Debtor desired.
- 2.8. On 14.03.2018 the Corporate Debtor had promised via e-mail addressed to the Operational Creditor that it would make a part payment to the Operational Creditor for an amount: of Rs.25,00,000/- (Rupees Twenty-Five Lakhs only) towards long outstanding charter fees, within five working days and to pay off the rest of the debt of an amount of Rs 49,24,043/- (Rupees Party Nine Lakhs Twenty-Four Thousand and Forty-Three only) in the next few weeks. In order to demonstrate Corporate Debtor bona-fides, Corporate Debtor had handed over two

post-dated cheques to the Applicant, being: Cheque dated 21.03.2018 bearing No. 000008 drawn on HDFC Bank, Matunga Branch for an amount of Rs.25,00,000/- (Rupees Twenty-Five Lakhs only) and Cheque dated 28.03.2018 bearing No.000009 drawn on HDFC Bank, Matunga Branch for an amount of Rs. 24,24,043/- (Rupees Twenty-Four Lakhs Twenty-Four Thousand and Forty-Three only). The said cheques were returned unpaid by the Corporate Debtor's bank with the remark "Payment Stopped by Drawer" and the same was subsequently intimated by the bank to the Operational Creditor vide its memo dated 13.06.2018.

- 2.9. On 27.03.2018 the Operational Creditor issued notice to the Corporate Debtor calling upon to pay the long outstanding charter hire charges amounting to Rs. 66,47,139/- (Rupees Sixty Six Lakhs Forty Seven Thousand One Hundred and Thirty Nine only), failing which the Operational Creditor would be forced to take action against the Charterer.
- 2.10. On 28.03.2018 the Corporate Debtor addressed an e-mail to the Applicant requesting some more time to make a part- payment of INR 25,00,000/- (Rupees Twenty-Five Lakhs only). By the said e-mail the Corporate Debtor assured that "I will promise u. U will get your payment on time in future."
- 2.11. On 28.03.2018 Corporate Debtor made a part payment of only Rs. 15,00,000/- (Rupees Fifteen Lakhs only) the Operational Creditor and stated that the Corporate Debtor would make further part-payment of an amount of INR 10,00,000/- (Rupees Ten Lakhs only) by 03.04.2018. On 17.04.2018 the Corporate Debtor made a part payment of an amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) to the Applicant.

- 2.12. On 11.04.2018 the Operational Creditor addressed an e-mail to the Corporate Debtor intimating that despite repeated assurances and reassurances, the Corporate Debtor has failed to pay the longstanding dues, amounting to Rs.53,70,235/- (Rupees Fifty-Three Lakhs Seventy Thousand Two Hundred and Thirty-Five only) as on the said date after another charter hire fee had become due.
- 2.13. On 23.04.2018 the Operational Creditor addressed an e-mail to the Corporate Debtor advising the Corporate Debtor to conduct Corporate Debtor's own survey of the ship, in the event that Corporate Debtor wished to dispute the Operational Creditor report of damage caused to the vessel due to the Corporate Debtor's callousness. It was further mentioned in the said email that under the circumstances, the Corporate Debtor is deemed to have accepted the Operational Creditor report on damage to the vessel and Corporate Debtor cannot dispute or question the same. Corporate Debtor neither replied to the said e-mail nor did it appoint its own surveyor. On 23.04.2018 the Corporate Debtor surrendered the vessel M. V. Guru Kripa to the Applicant.
- 2.14. On 27.04.2018 the Operational Creditor received an e-mail from the next charterer of the vessel one SANGHI INDUSTRIES LTD., informing that the holds of the vessel contained were unclean and "unacceptable quantity of previous cargo, ammonium phosphate, in both the cargo holds." The vessel was required to be shifted to inner anchorage to get the holds cleaned. It Was Corporate Debtor's responsibility as per Clause 18 of the Time Charter Fixture Note to clean the holds, which the Corporate Debtor have failed and neglected to do.
- 2.15. On 04.05.2018 the Operational Creditor had issued a final Hire Statement to the Corporate Debtor via e-mail, being the total outstanding

payable by the Charterer including repair cost for damage and hold cleaning. The total outstanding amount due was Rs.27,96,754/- (Rupees Twenty-Seven Lakhs Ninety-Six Thousand Seven Hundred and Fifty-Four only). The said Hire Statement was accepted by Corporate Debtor without any protest or demur.

2.16. The Corporate Debtor had promised to make the payment within a day or two but kept delaying the same, on some flimsy pretext or the other. However, at no point of time did the Corporate Debtor purport to SHIPPIN deny that Rs.27,96,754/- (Rupees Twenty-Seven Lakhs Ninety-Six Thousand Seven Hundred and Fifty-Four only) was in fact due and payable by the Corporate Debtor to the Operational Creditor. Even when the Operational Creditor sent a reminder e- mail dated 11.05.2018 to the Corporate Debtor, the Corporate Debtor did not dispute that the same was payable.

2.17. On 15.05.2018 the Corporate Debtor's Director, one Mr. Ajit Bhole, visited the Operational Creditor office and expressed his inability to clear all outstanding and requested some time to make the payment. The Operational Creditor reluctantly agreed to accept staggered payments as per the below schedule suggested by the said Mr. Ajit Bhole:-

i. 21.05.18 INR 5,00,000/-

ii. 01.06.18 INR 5,00,000/-

iii. 10.06.18 INR 8,00,000/-

iv. 20.06.18 INR 9,96,754/-

2.18. The Operational Creditor also agreed to adjust from the last payment, any monies spent by the Corporate Debtor on crane and fresh water

expenses. This agreement was reduced to a writing on Rs.200/- stamp paper as a Letter of Undertaking and the same has been signed by Corporate Debtor's Director Mr. Ajit Bhole.

- 2.19. On 19.05.2018 the Corporate Debtor addressed an e-mail to the Applicant, purporting to resile from the Letter of Undertaking and claiming some losses on account of short- loading and denying responsibility for the unclean holds and damage to the vessel. By the said e- mail the Corporate Debtor admitted that the Corporate Debtor owed a sum of Rs. 15,21,582/-(Rupees) Fifteen Lakhs Twenty-One Thousand Five Hundred and Eighty-Two only) to the Applicant.
- 2.20. On 21.05.2018 the Operational Creditor replied to the Corporate Debtor's e-mail dated 19.05.2018 refuting all the baseless charges raised by Corporate Debtor and expressing Corporate Debtor's shock and surprise that these issues were being raised belatedly, after already executing the Letter of Undertaking dated 15.05.2018 wherein Corporate Debtor had agreed to pay the dues of INR 27,96,754/-(Rupees Twenty Seven Lakhs Ninety Six Thousand Seven Hundred and Fifty Four only), excepting only crane and fresh water charges.
- 2.21. On 21.05.2018 the Corporate Debtor failed/neglected to make the first payment of an amount of Rs.5,00,000/- (Rupees Five Lakhs only) as agreed.
- 2.22. On 24.05.2018 the Operational Creditor via its e-mail addressed to the Corporate Debtor, pointed out to the Corporate Debtor that the Corporate Debtor had failed to make the first payment of an amount of Rs.5,00,000/- (Rupees Five Lakhs only) as per the Letter of Undertaking, despite repeated verbal assurances that the payment was being made.

- 2.23. On 25.05.2018 the Corporate Debtor's Director Mr. Ajit Bhole by his e-mail addressed to the Operational Creditor purported to deny the Letter of Undertaking signed by him. He claimed that the same was a forged document and not binding on the Corporate Debtor.
- 2.24. As the Corporate Debtor has neither paid the amount admitted under the Letter of Undertaking i.e. Rs. 27,96,754/- (Rupees Twenty Seven Lakhs Ninety Six Thousand Seven Hundred and Fifty Four only) nor the lower amount admitted by him in his e-mail dated 19.05.2018 i.e. Rs.15,21,582/- (Rupees Fifteen Lakhs Twenty One Thousand Five Hundred and Eighty Two only), the Operational Creditor had issued a notice to the Corporate Debtor on 21.08.2018 calling upon the Corporate Debtor to pay an amount of Rs.27,96,754/- (Rupees Twenty Seven Lakhs Ninety Six Thousand Seven Hundred and Fifty Four only).
- 2.25. Further, a Demand notice dated 20th February, 2019 issued by the Operational Creditor called upon the Corporate Debtor to make the payment of an amount of Rs. 30,50,531/- (Rupees Thirty Lakhs Fifty Thousand Five Hundred and Thirty-One only) along with interest @ 18% p.a. from the date of receipt of the notice dated 20th February, 2019 till further realization thereof. The said notice was issued to the Corporate Debtor under the Insolvency Bankruptcy Code, 2016. The said notice was not replied by the Corporate Debtor.
3. The Corporate Debtor in its reply to the present petition dated 04.02.2020 has as per para 18 has stated that "*I state that, after the above losses were conveyed to the Operational Creditor and that the same was settled over a verbal agreement that the amount of Rs. 15,21,582/- was remaining to be paid to the Operational Creditor.*" which clearly shows that there is an admission of Liability on the Part of Corporate Debtor.

4. The Operational in its rejoinder has stated that “Corporate Debtor till dated has not made any payments towards the outstanding amount or towards the admitted amount of Rs.15,21,582/- and rather the Corporate Debtor has always evaded making any payment either towards outstanding amount and towards the admitted amount.”

Findings:

5. We have heard the arguments of the Corporate Debtor/Applicant.
- 5.1. This bench finds that there is a clear admission of debt amounting to Rs Rs.15,21,582 and same has not been paid despite such admission of the liability the Corporate Debtor has not raised any dispute.
- 5.2. As per the material on record this Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.
6. In view of the above, we find that the present case deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

7. The petition bearing CP (IB) No.1895/MB-IV/2019 filed by GALLEON SHIPPING LIMITED (“the Operational Creditor”), under section 9 of the

IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against ASHPEARL SHIPPING SERVICES PRIVATE LIMITED., (“the Corporate Debtor”) is **Admitted**.

- I. That this Bench as a result of this prohibits:
 - 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;

- b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints Ms. Manisha Sanjay Agarwal, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-003/IP-N00241/2019-2020/12836 Email: m_taiyal@yahoo.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- VII. 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.

- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- IX. 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.
- X. 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.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
28.04.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)