NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

1.C.P.(IB)-1666(MB)/2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **07.12.2021**

NAME OF THE PARTIES: Freight Wings Pvt Ltd

V/s

Slipcon Engineering Pvt Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

None appeared on either side. Order pronounced vide separate order. In the result, CP 1666/2019 is allowed and Mr. Tushar Ashar is appointed as an IRP.

Sd/-	Sd/-
CHANDRA BHAN SINGH	H.V. SUBBA RAO
Member (Technical)	Member (Judicial)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) NO. 1666 OF 2019

APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER CHAPTER II OF PART II OF THE CODE.

(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)

In the matter of
Freight Wings Private Limited.
Registered Office at 309, Rex Chambers,
W.H. Marg, Ballard Estate,
Mumbai-400 038.

.... Operational Creditor

Versus

Slipcon Engineering Private Limited
New Bina Khaparkheda,
Tah. : Saoner, Dist. : Nagpur,
Maharashtra – 441 102.
Also having corporate address at :
21 & 22, Gorewada Ring Road, Nagpur,
Maharashtra-495 674.

.... Corporate Debtor

Order dated: 07.12.2021

Coram: Hon'ble H.V. Subba Rao, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

Appearance :

For the Petitioner : Adv. Raujesh Kandelwal i/b SC Legal,

For the Respondent : Adv. Nitin Lalwani,

Per : Hon'ble H.V. Subba Rao, Member (Judicial)

ORDER

1. The above company petition is filed on 26.04.2019 by M/s. Freight Wings Private Limited (hereinafter called as /'Operational Creditor') against M/s Slipcon Engineering Private Limited (hereinafter called as respondent 'Corporate Debtor') under Section 9 of the Code for ordering initiation of Corporate Insolvency Resolution Process against the corporate debtor for resolution of an Operational debt of Rs. 51,17,425/-.

BRIEF FACTS OF THE CASE ARE AS FOLLOWS:

2. The Operational Creditor is the Company registered under the Companies Act, 1956 with the CIN U63090MH1982PTC028508 as Certificate of Incorporation issued by the Registrar of Companies, as annexed in the Memorandum and Articles of Association of the Petitioner Company herein. The business of the Operational Creditor is as per the object clause in the memorandum of Association of the Operational Creditor Company. The Operational Creditor Company is law abiding and follows the law.

3. The Corporate Debtor was awarded the contract of Erection of chimney components in CPCL refinery situated in Manali, Chennai by Bharat Heavy Electricals Limited (BHEL) (hereinafter referred to as "Guarantor"). The Corporate Debtor was in urgent need of hiring the lifting equipment from another company and accordingly the Corporate Debtor entered into hiring contract with the Applicant/Operational Creditor, vide its revised work order dated 14^{th} July, 2017 having order number BHEL/SEPL/017/789/REV-1. After getting order from the Corporate Debtor, this Corporate Creditor had taken guarantee letter dated 27^{th} July, 2017, bearing reference no.

BHEL:CPCL:F1001:961 from Guarantee as assurance of payment in case of any default by the corporate debtor.

4. On assurance of the Guarantor, Operational Creditor/Applicant transported its equipment as agreed in work order with the Corporate Debtor for Chennai Petroleum Corporation Limited ("hereinafter referred as CPCL") site on 17th August, 2017. As per the contract, a rental period starts from the day equipment is dispatched from this Applicant's workshop, Mumbai and seizes upon arrival day of some equipment back to Mumbai. Hence rental was started form 17th August, 2017 when the Applicant dispatched its equipment to CPCL site. According to the terms contained in the work order, the Operational Creditor was entitled to a payment of Rs. 13,00,000/- (Rupees Thirteen Lakhs Only) exclusive of applicable taxes, for the hiring services provided by Operational Creditor from the Corporate Debtor.

5. The Operational Creditor raised timely invoice on the Corporate Debtor as per the terms of payment. The contract price was agreed for Two (2) months which started from the date of dispatch of materials from the Applicant's godown and extra one month time was given as rental free period to the Corporate Debtor. It was further agreed between the parties that, if rental period exceeds 3 months time then Corporate Debtor shall be liable to pay Rs. 14,500/- (Rupees Fourteen Thousand Five Hundred Only) per day along with applicable taxes, till the date of arrival of material at the Applicant's godown. The Applicant raised its first invoice dated 27th July, 2017 on Corporate Debtor amounting to Rs. 2,95,000/- out of which only Rs. 2,50,000/- was being paid and the tax amount was pending as unpaid. The second invoice vide letter dated 22nd August, 2017 including taxes of Rs. 2,95,000/- was raised, the Corporate Debtor did not clear the payment and

therefore the Guarantor cleared the payment on 19th October, 2017 on behalf of the Corporate Debtor as per the Guarantee letter (Comfort letter dated 27th July, 2017 by the Guarantor).

6. In or around the first week of December, 2017, the Corporate Debtor completed the erection and installation of the first chimney at CPCL's refinery. As per the payment schedule, the Applicant vide its letter dated 8th December, 2017 raised another invoice for Rs. 4,72,000/- upon the Corporate Debt for third payment along with applicable taxes within 7 days from completion of erection and installation of first chimney ("third invoice"). The Corporate Debtor did not clear the payment, hence the Guarantor cleared the payment on 27th December, 2017. On 16th November, 2017, initial contract period of three months was completed. Hence, the charges of extended period started from 17th November, 2018 as per the agreement

7. Upon completion of contract, the Applicant consistently emailed to the Corporate Debtor for confirmation of schedule and reinstatement of application of detention charges. However, the Corporate Debtor did not reply to any e-mail of the Applicant. Later on, by email dated 23rd January, 2018, the Corporate Debtor had confirmed the usage of equipment till 23rd January, 2018. However, the Corporate Debtor did not release the equipment of the Applicant on completion of its work without any reason and not attributable to the Applicant. The corporate Debtor released the Applicant's equipment from CPCL site on 26th July, 2018 and the same arrived at the Applicant's godown on 3rd August, 2018. After arrival of equipment at the Applicant's godown, the Applicant revised Forth invoice for Rs. 4,72,000/- (including taxes vide letter dated 5th September, 2018. As per the revised work order, the Applicant is also entitled for the extra

usage charges for period extending 3 months from date of dispatch of equipment to the Corporate Debtor. Hence, total number of days for which equipment was used over the contract period are 2609 days (Extra days = from 17th November, 2017 to 3rd August, 2018). As per the work order, the Applicant raised the 2 invoices for detention vide letter dated 5th September, 2018 for Rs. 44,48,600/-

8. The Applicant had issued demand notice (in Form 3) dated 4th October, 2018, on its own letter head to the Corporate Debtor. But no reply. Later through the Advocate, the Operational Creditor has sent the Statutory notice dated 27th December 2018 to the Corporate Debtor and the Guarantor which the Corporate Debtor replied through its reply letter dated 25th February, 2019 and did not the paid the pending dues.

9. Hence aggrieved by the Corporate Debtor act, the Operational Creditor has approached this Hon'ble Bench for justice as the Operational Creditor has performed the contract and has asked for the proper amount as per the terms of contract. The Operational Creditor is hereby filing this Insolvency Resolution Process Application to initiate Corporate Insolvency Resolution Process in respect of Slipcon Engineering Private Limited 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. Hence this petition.

10. The above company petition was first listed on board on 28.05.2019 and thereafter from time to time. The Corporate Debtor even after receiving notice did not choose to appear and accordingly, the corporate debtor right to file reply was forfeited on 30.08.2019. Subsequently, the counsel appearing for the petitioner took adjournment on 16.04.2021 stating that the

respondent has approached the petitioner for settlement within 3 months. On 26.11.2021 Mr. Nitin Lalwani, counsel appearing for the respondent and Mr. Vinayak Shankar Palande, counsel appearing for the petitioner appeared and requested time by making a joint statement before this bench that settlement talks are going on between the parties.

11. Thereafter, the matter was adjourned to 29.11.2021 high on board. On 29.11.2021 the counsel appearing for the corporate debtor made a statement before this bench that both parties entered into an agreement for payment of Rs. 20 lacks as full and final settlement payable in two tranches of 10 lacks each through post dated cheques dated 27.01.2022 and 27.02.2022 respectively and since the director of the corporate debtor was out station the signed cheques could not be delivered to the operational creditor. The counsel appearing for the corporate debtor except making the above statement did not choose to argue anything in the above matter nor dispute the claim of the operational creditor.

12. In the light of the above conduct of the corporate debtor this bench has no hesitation in holding that the corporate debtor is admitting the debt and default in this company petition. Since the invoices are of the period 2017 the above company petition being filed on 26.04.2019 is well within limitation.

13. Therefore, this bench is of the considered opinion that the above company petition satisfies all the legal requirements for admission and deserves to be admitted.

14. Accordingly the above company petition is admitted by passing the following:

ORDER

(a) The above Company Petition No. (IB) -1666(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against the corporate debtor i.e. M/s Slipcon Engineering Private Limited.

(b) Since the applicant has not suggested the name of any Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list of Insolvency Professionals furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints Mr. Tushar Ashar (tushar.ashar@icai.org), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P02322/2021-2022/13527 as the Interim Resolution Professional (IRP) to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016

(c) The Operational Creditor shall pay an amount of Rs. 2 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(i) 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.

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

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	**Sd/-**
CHANDRA BHAN SING	**H V SUBBA RAO**
Member (Technical)	**Member (Judicial)**