

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

CP (IB) - 4793/I&BP/MB/2018
Under Section 9 of the I&B Code, 2016

In the matter of

Markolines Traffic Controls Pvt. Ltd,
502, A Wing, Shree Nand Dham,
Sector 11, CBD Belapur
Navi Mumbai, Mumbai – 400 614

.... Petitioner

Vs.

Damoh-Jabalpur Toll Roads Limited,
513/A, 5th Floor, Kohinoor City,
Kiroli Road, Kurla (West),
Mumbai – 400 070

.... Corporate Debtor

Order delivered on: 17.12.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shyam Babu Gautam, Member (Technical)

For the Petitioner: CNS Juris

For the Corporate Debtor: MDP & Partners

Per: Shyam Babu Gautam, Member (Technical)

ORDER

1. This Company Petition is filed by Markoline Traffic Controls Pvt. Ltd, (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Damoh-Jabalpur Toll Roads Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment to the extent of Rs. 1,06,49,416/- by invoking the provisions of Sections 8 & 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. In support of the contentions made by the learned counsel for the petitioner, the documents have been annexed and placed reliance upon which are as follows:
 - a. Copy of Board Resolution dated 11.04.2018.
 - b. Copy of Demand Notice dated 05.05.2018.
 - c. Copy of Work Order dated 14.10.2015, 29.03.2016 and 29.03.2016.
 - d. Copies of Invoices dated 18.12.2015, 04.01.,2016 and 05.01.2016.
 - e. Copies of various Debit notes raised by the Petitioner.
 - f. Copy Legal Notice dated 21.11.2017 sent by Petitioner to Corporate Debtor.
 - g. Copies of Email dated 16.03.2017 and 18.01.2018.
 - h. Copy of reply to legal notice dated 13.12.2017
 - i. Copies of Bank statement.

BRIEF FACTS OF THE CASE

3. The Petitioner submits that they were engaged by the Corporate Debtor as a Contractor for carrying out Road Maintenance Services vide a Work Order dated 14.10.2015 valuing Rs. 2,48,51,040.50. The Petitioner submits that they executed the work order providing services to the Corporate Debtor from December 2015 till January 2016 for which they also raised invoices.
4. Thereafter it is submitted that the Corporate Debtor delayed the payments due & payable to the Petitioner, on account of which Corporate Debtor is also liable to pay interest. The Petitioner raised various demands, reminders and debit notes on the Corporate Debtor. It is pointed out that the Corporate Debtor never denied either the interest or the amount due, but they still never paid the amount due.
5. It is stated that during the month of the March 2017, there were settlement talks between the Petitioner and Corporate Debtor. On 16.03.2017, an email was sent by the Corporate Debtor admitting that an amount of Rs. 1,06,49,416 was payable. The said email has been annexed with the petition. Even though

promises were made by the Petitioner, however, the payments were not made.

6. Seeing that there was no response from the Corporate Debtor, the Petitioner had no other option but to send a Legal Notice dated 21.11.2017 seeking the release of Rs. 1,33,73,325/- inclusive of interest. However, instead of making payment, the Corporate Debtor replied to the notice vide their letter dated 13.12.2017, denying the amount due and payable along with the interest accrued.
7. On insistence of the Corporate Debtor, there was another settlement meeting held wherein the parties reconciled their accounts. Vide an email dated 18.01.2018, the Corporate Debtor again admitted the amount payable i.e. Rs. 1,06,02,401/-, but again failed to make the payments. Therefore, the Petitioner was constrained to send a demand notice dated 05.05.2018.
8. The Corporate Debtor has filed his Reply and Additional Affidavit, wherein he has denied all the averments and claims of the Petitioner. The Corporate Debtor vide his reply has raised various objections with regards to the maintainability of the petition and has said that the same is defective. Following are the technical defences taken by the Corporate Debtor:
 - i. Petition filed is not in accordance with Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016.
 - ii. Demand notice issued by the Petitioner under section 8 of the code is not in proper format.
 - iii. There is no affidavit filed stating that no notice of pre-existing dispute was received by the Corporate Debtor.
 - iv. There is no working sheet calculating the alleged claim amount attached with the petition, which is mandatory was per Form 5.
 - v. No affidavit with the Petition verifying that the said petition is filed by the Petitioner.
 - vi. No Form – 2 filed with the Petition.

9. Moving on, following are other objections on merits raised by the Corporate Debtor, vide their pleadings and arguments:

- i. There are pre-existing disputes between the parties, therefore, rendering this Petition not maintainable under the code. Herein, reference is drawn to the reply to legal notice sent by the Corporate Debtor on 13.12.2017.
- ii. The emails put on record by the Petitioner are unilateral and have only been placed on record to create evidence.
- iii. Demand Notice sent by the Petitioner is incomplete and is not in compliance with the Code and respective rules.

The Corporate Debtor therefore pleads for this petition to be dismissed.

FINDINGS:

10. We have gone through the pleadings and arguments raised by the counsels at length. In response of the said technical allegations raised, the Petitioner filed an amended Form 5 on 23.04.2019, therefore, the argument of the Corporate Debtor regarding the petition being defective fails. Vide the said Amended Form 5, the Petitioner fulfilled all the technical objections raised by the Corporate Debtor as well. Coming to the other objection raised by the Corporate Debtor, that, these defects ought to have been cured within 14 days of filing the said petition, this argument is not tenable since it is a very well settled law that time limit of 14 days prescribed in the statute is merely directory in nature and not mandatory. Therefore, this Tribunal may allow the curing of defects even if the same is done after 14 days of the filing of the petition.
11. We have observed that the defences raised by the Corporate Debtor seems to be fragile and sound like stories of fiction, without any supporting evidence to it. On the other hand the petitioner which show existence of debt and default.

12. Furthermore, an email dated 18.01.2018, received from on Mr. Shashi Kant, an official of the Corporate Debtor is brought to our notice, as per this email the Corporate Debtor has acknowledged the reconciled statements as well as the amount due and payable to the Petitioner. The Corporate Debtor has denied sending this email, however, this averment of the Corporate Debtor has no merit since the email sent by the Corporate Debtor never bounced back and was received by the Petitioner. On further probing, it is revealed that, the Corporate Debtor could not produce a shred of evidence to support their vague and fragile statement whereby he said that the said email was sent out without their knowledge from their email account. Furthermore, the Corporate Debtor is surprisingly silent with regards to its email dated 16.03.2019, wherein, as per their email they have admitted that the net payable amount to the Petitioner is Rs. 1,06,49,416/-. Also, the argument regarding a pre-existing dispute cannot be considered since, there is an undeniable acceptance of debt vide an email as mentioned above in this paragraph.
13. Therefore, all the arguments of the Corporate Debtor failed because it is a well settled principle of law that correlation does not simply imply causation. The Corporate Debtor has simply woven a vivid story, without supporting the same with any proof. They have failed to legitimately deduce a cause-and-effect relationship between the stories
14. that they have knitted in their pleadings. The Corporate Debtor has time and again failed to counter the arguments advanced by the Petitioner by any evidence.
15. Based on the above it is clear that there is an existence of debt and that there is default committed by the Corporate Debtor in repayment of such debt to the Petitioner. Therefore, this petition deserves to be admitted.
16. Therefore, this Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy

Code admits this Application declaring moratorium with the directions as mentioned below:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) That the order of moratorium shall have effect from 17.12.2019 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.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Milind Kasodekar, Office at 77 Vijayanagr Colony, 2147, Sadashiv Peth, Pun - 411 030 having Registration No. IBBI/IPA-002/IP-N00116/2017-2018/10285 as an interim

resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

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

Sd/-
Shyam Babu Gautam
Member (Technical)

Sd/-
Bhaskara Pantula Mohan
Member (Judicial)

/PT/