BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III

IB-3370/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

M/s Norvic Shipping North America Inc.
Reg. Office at:-
SSQ Place, 110 Sheppard Avenue East,
Suite No. 309, Toronto, Ontario,
M2N 6Y8 Canada ...Applicant/Operational Creditor

Versus

M/s Sharda Ma Enterprises Private Limited
Regg. Office:
14-D, Atmaram House I, Tolstoy Marg,
New Delhi-110001

...Respondent/Corporate Debtor

Delivered on 08.04.2022

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Virendra Kumar Gupta
Hon'ble Member (Technical)

Appearances:
Operational Creditor : Adv Aman Nandrajog
Corporate Debtor: Adv. KKR. Das

ORDER

Per: Bachu Venkat Balaram Das, Member (Judicial)

1. Under consideration is IB-3370/ND/2019 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditors, Norvic Shipping North America Inc., seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') of the Corporate Debtor viz., M/s Sharda Ma Enterprises Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -

a. It is the case of Operational Creditor that the debt originates from the Charter Party dated 25.02.2016, entered between the Operational Creditor and the Corporate Debtor. The Operational Creditor sublet its vessel 'MV. Beks Nazik' to the Corporate Debtor on a voyage as evidenced by the Charter Party dated 25.02.2016. As per Clause 43 of the Charter Party dated 25.02.2016, balance 5% of freight together with demurrage less despatch (if any) is payable by charterers within thirty days of completion of discharge, on submission of invoice along with supporting documents. The Corporate Debtor discharged the cargo at the discharging port on 2nd May 2016. Subsequently, an invoice bearing No. DFR-16-037-2 dated 30.05.2016 for USD 157,234.17 was issued by the Operational Creditor along with supporting documents, to the Operational Debtor, in terms of Clause 43 of the Charter Party. Admittedly, an amount of USD 157,234.17 was due and payable by the Corporate Debtor to the Operational Creditor in terms of Clause 43 of the Charter Party dated 25.02.2016.

b. It is submitted that a Settlement Agreement dated 25.01.2019 was entered into between the Operational Creditor and the Corporate Debtor, subsequently. It is stated that the Operational Creditor had engaged the services of a Debt Collection Agency- United Credit Solutions Pvt. Ltd (in short "UCS") to assist in the recovery of the outstanding debt.

c. It is further submitted that as per the terms of the Settlement Agreement dated 25.01.2019, Corporate Debtor had to pay USD 157,234.17 in 13 installments in full and final settlement of the outstanding amount as per the payment schedule to the Operational Creditor. It is stated that the Corporate Debtor has only paid the first two installments, amounting to only USD 25,000 as per the payment schedule. Thereafter, the Corporate Debtor did not pay the third installment that had become due on 31.03.2019 despite repeated reminders from UCS on behalf of the Operational Creditor. The Corporate Debtor has not made any further payments as per the payment schedule. The Operational Creditor sent a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") in Form 3 prescribed under the Code to the Corporate Debtor demanding payment of USD 132,234.17 along with 18% interest from the date when the amount became due i.e., 31st March 2019 till the date of payment/realization.

d. It is averred that the respondent replied the notice and raised the frivolous issue that the corporate debtor entered into settlement agreement dated 25.01.2019 with operational creditor, wherein the corporate debtor has admitted the debt of USD 15,72,34.17 is due and payable to operational creditor was executed under coercion, however, not even an iota of evidence has been placed on record to substantiate such averment. Another objection raised by the Corporate Debtor that the arbitration is pending. In this regard, it is submitted that though an arbitration was initiated at the instance of the Operational Creditor, the proceedings were also terminated vide Termination Order dated 20.09.2017 passed by the Arbitrator in the matter between Norvic Shipping North America Inc. and Sharda Ma Enterprises Private Limited for terminating the Arbitration Proceedings. Thus, as of today, there is no suit or arbitration proceeding pending between the parties. Furthermore, the Settlement Agreement has been executed much after the arbitration proceedings were terminated. Therefore, the operational debt of USD 132,234.17 arising out of the Settlement Agreement and the Invoice is a valid and duly payable debt. The said stand was explicated in the Rejoinder dated 06.11.2019 sent by the Operational Creditor to the Corporate Debtor.

3. There is no reply filed by the Corporate Debtor, however, the counsel on behalf of the Corporate Debtor appeared and sought time to settle, we are not inclined to give time at this stage.

4. During arguments, it is submitted by the Operational Creditor that the Corporate Debtor has failed to comply with terms of settlement agreement dated 25.01.2019 as it failed to pay the amount as per payment schedule mentioned in the above said agreement and only paid first two instalments. It is further argued that the petition is filed

within limitation and no dispute exist with respect to the claim, therefore, the present case is fit for admission.

5. **During the course of hearing, Learned Counsel for the corporate debtor took a plea that the claim consisted of demurrage which could not categorized as operational debt. On going through the breakup of outstanding amount, it was found that after ignoring the amount of demurrage, the outstanding undisputed amount was still more than the threshold limit as specified in section 4 of IBC, 2016. When this position was confronted to the said counsel, he could not controvert this factual position, hence, for the present moment, we not consider it necessary to deal with his contention as regard to nature of demurrage.**

6. **We have perused the Pleadings and arguments advanced by both the parties. It is clear from the pleadings that the corporate debtor has admitted its liability by entering into the settlement agreement dated 25.01.2019, however, failed to act on the terms of settlement agreement, hence, there is default in payment in respect of debt which is due and payable, both in law and in fact. Furthermore, there is no pre-existing dispute. The amount of default is more than the threshold limit. Demand notice u/s 8 of IBC, 2016 has been delivered. The moment above conditions are fulfilled, this Adjudicating Authority has to admit the section 9**

petition and in the present petition above conditions are fulfilled. It is also pertinent to mention that the Notification regarding the enhancement of minimum amount of default to one crore for the purpose of Section 4 was issued by the Ministry of Corporate Affair on 24th March, 2020 and the amount defaulted by the Corporate Debtor and filing of present petition was much before that, since any notification issued by the Government are generally Prospective in nature unless specifically expressed, hence the notification is not applicable to the present case. Considering the facts and circumstances and applicable legal position thereto, this Adjudicating Authority is inclined to initiate the CIR Process of Corporate Debtor, therefore, the captioned petition is admitted.

7. The Applicant has not proposed the insolvency resolution professional. This Tribunal, hereby, appoints Insolvency Professional namely, **Mr. Vaneet Bhatia** having Registration Number IBBI/IPA-002/IP-N00908/2091-20/12942 (Email ID- vaneetbhatia4@gmail.com) as Interim Resolution Professional from the list provided by IBBI. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.

8. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

   a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

   d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

9. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.

10. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his functions under section 20 of the IBC, 2016. The Operational Creditor is directed to immediately pay an amount of Rs.2,00,000/- for complying with the above-mentioned provisions read with relevant regulations.
11. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016
12. The Registry is directed to serve a copy of this order on Registrar of Companies, Delhi & Haryana for appropriately updating the status of Corporate Debtor on M/o Corporate Affairs website for information of general public. The RoC as aforesaid shall then file a compliance report in this regard with this Adjudicating Authority
13. The order is pronounced by this Adjudicating Authority in virtual Hearing

-Sd-

(Bachu Venkat Balaram Das)
Member (Judicial)

-Sd-

(Virendra Kumar Gupta)
Member (Technical)