IN THE NATIONAL COMPANY LAW TRIBUNAL,

COURT-I, MUMBAI BENCH

C.P. No. 444/IBC/MB/2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016
In the matter of

JALDHI OVERSEAS PTE. LTD.
Company Registration No. 200414910Z
Having registered office at:
101, Ceco; Street, #25-06, Tong Eng Building, Singapore – 069 533.
.... Operational Creditor/Petitioner

Vs.

RKB Global Limited
(CIN: U28100MH2013PLC251485)
Having registered office at –
1st floor, Sugar House, 93/95, Kazi Sayed Street, Masjid Station, Mumbai, Mumbai City MH 400 003 IN.
..... Corporate Debtor/Respondent

Order delivered on: 24.01.2024

Coram:
Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearance :-

For the Operational Creditor	:	Mr. Zal Andhyarujina, Senior Advocate a/w
		Ms. Revati Desai, Advocate
		Mr. Rishi Murarka, Advocate
		i/b Mr. Ashwin Shankar, Advocate
For the Corporate Debtor	:	Mr. Chetan Kapadia, Senior Advocate i/b
		Mr. Hemant Sethi, Advocate
		Mr. Sailesh Shukla, Advocate
		Mr. Rohan Agarwal, Advocate

ORDER

[Per: Justice (Retd.) V. G. Bisht, Member (J)]

1. This is an application filed by Operational Creditor/Petitioner under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as "IB Code" for short) against Corporate Debtor/Respondent, for initiating Corporate Insolvency Resolution Process ("CIRP" for short).

Brief facts:-

2. The case of Operational Creditor is that at the behest of the Corporate Debtor it provided its vessel MV SUN LUCIA for carriage of cargo under Charter Party ("Exhibit-A") dated 22.04.2019 for a voyage from Port Redi to Port Rizhao.

3. Pursuant to completion of the voyage, the Operational Creditor raised an invoice ("Exhibit-B") dated 26.07.2019 for an amount of USD 424,191.13 for outstanding freight, demurrage and anchorage dues relating to the vessel MV SUN LUCIA. Since no payment was forthcoming from the Corporate Debtor towards the outstanding amount of USD 424,191.13, the Operational Creditor addressed and served the notice ("Exhibit-C1") dated 08.01.2020 under Section 8 of I & B Code, 2016. On 17.01.2020 the Corporate Debtor made part payment of USD 34,285 via its broker, Globe Chart. After accounting for the part-payment made by Corporate Debtor, the total outstanding amount due and payable by the Corporate Debtor to Operational Creditor is USD 389,906 i.e. INR 3,21,94,343.47/- as on the date of invoice dated 26.07.2019.

4. It is the further case of the Operational Creditor that additionally, vide email and letter dated 09.03.2020 ("Exhibit-C2") the Corporate Debtor responded by not disputing the debt, but in fact admitted

their liability. Their only concern was that invoice debit note was not sent on time, and they required the same for their internal audit/as per RBI guidelines. The Operational Creditor on its part responded vide e-mail ("Exhibit-D1") dated 19.03.2020 and again called upon the Corporate Debtor to make payment in full by 27.03.2020. The Corporate Debtor on the same date responded vide its e-mail ("Exhibit-D2") stating that the Municipal Commissioner has shut down the office on account of Covid-19, and they will further discuss the topic once their office re-opened.

5. According to the Operational Creditor, since no response was forthcoming from the Corporate Debtor, the Operational Creditor issued a legal notice ("Exhibit-E") dated 11.10.2022 through its Advocate and called upon the Corporate Debtor to make payment of outstanding amount. However, the Corporate Debtor vide its reply ("Exhibit-F") dated 17.10.2022 gave excuses which was responded thereto vide letter dated 08.11.2022 by Operational Creditor denying the contents. This was again responded by the Corporate Debtor re-iterating the same excuses.

6. The Operational Creditor thereafter re-served the Form-3 demand notice dated 08.01.2020. The Corporate Debtor by its letter dated 10.01.2023 and 21.02.2023 responded to the Form 3 demand notice and raised baseless defences. Therefore, the present petition.

7. The Corporate Debtor has resisted the petition by filing its affidavit-in-reply. It contends that the charterer is a fellow who has taken the vessel on hire thus becoming the commercial operator of the vessel. When the shipper loads his goods the Bill of lading is issued by the Charterer (Corporate Debtor) and not the shipowner. In the

present case, another cargo was loaded by one Tulip Polychem Private Limited ("Tulip") and the Operational Creditor being owner of the vessel had issued Bill of Lading ("Exhibit-A") dated 20.05.2019 to Tulip. This clearly shows that the purported Charter Party dated 22.04.2019 was never acted upon or performed by the Operational Creditor.

8. According to it, Operational Creditor has suppressed that it had been dealing with one Samruddha Resources Limited ("Samruddha") and on regular basis cargoes were exported by Samruddha through the Operational Creditor. The freight was negotiated and finalized by Samruddha with the Operational Creditor/Globechart Ltd./Bulk-Chart. The material was exported to BST (HK) LTD ("BST") which is associated with Globechart.

9. From the day one Globechart the agent of the Operational Creditor was aware of the fact that the Corporate Debtor was not going to utilize the cargo load to the full extent of the vessel. This fact is evident from the e-mail dated 13.05.2019 ("Exhibit-B) of Christine Samuel addressed to the Redi Port Authority including Mohnish Nair of Bulk-Chart.

10. Despite that, on 03.06.2019 Mr. Mohnish Nair, sent the purported invoice dated 21.05.2019 for an amount of USB 8,82,188.15 to the representative of Samruddha (Christine Samuel). In the said purported invoice the Operational Creditor had purportedly charged the freight for the entire vessel load to the Corporate Debtor with demurrage and anchorage. The Corporate Debtor therefore by its letter e-mail dated 03.06.2019 immediately pointed out the said Christine Samuel of Samruddha requesting him to revise invoice for the material quantity of 27500 MT exported and also disputed the charging of demurrage and anchorage in view of

the fact that the loading was completed within validity period. This clearly demonstrates that there is a pre-existing dispute with regard to the purported invoices.

11. According to the Corporate Debtor, nothing is due and payable to the Operational Creditor. The entire case advanced by the Operational Creditor is based on the frivolous invoice dated 26.07.2019 which was never received by it and demand notice is bad in law. The demand notice was dully responded by it pointing out the existing dispute between the parties.

12. In the aforesaid circumstances, alleged claim of the Operational Creditor being disputed, same is beyond the purview of Section 9 of I & B Code. The present petition is therefore liable to be dismissed with exemplary costs, urges the Corporate Debtor.

13. Heard Mr. Zal Andhyarujina, learned Senior Counsel for the Operational Creditor. Learned Senior Counsel has filed on record the list of dates in tabular form. Perused.

14. Mr. Chetan Kapadia, learned Senior Counsel appeared for the Corporate Debtor. Apart from oral submissions learned Counsel has also filed written submission along with judgments in support thereof. Perused.

15. The Operational Creditor has come with a very specific case that on 12.04.2019 the Charter party ("Exhibit-A") was executed by and between the Operational Creditor and Corporate Debtor under which the Operational Creditor provided its vessels MV SUN LUCIA for carriage of cargo from Port Redi to Port Rizhao.

16. As against above, the Corporate Debtor has its own version and according to it, firstly, the Charterer is a fellow who has taken the

vessel on hire thus becoming the commercial operator of the vessel and when the shipper loads his goods the Bill of lading is issued by the charterer and not the shipowner. Further, in the present case, another cargo was loaded by one Tulip Polychem Private Limited ("Tulip") and the Operational Creditor being the owner of vessel had issued Bill of Lading dated 20.05.2019 to Tulip. This clearly shows that the purported Charterparty dated 22.04.2019 was never acted upon or performed by the Operational Creditor. Secondly, according to the Corporate Debtor it has been suppressed by the Operational Creditor that it had been dealing with one "Samruddha" and on regular basis Cargo were exported by Samruddha through the Operational Creditor. Further more, the freight was negotiated and finalized by Samruddha with the Operational Creditor/Globechart Ltd./Bulk-Chart. From day one Globechart the agent of the Operational Creditor was aware of the fact that Corporate Debtor was not going to utilise the Cargo load to the full extent of the vessels and despite that the Operational Creditor in its purported invoice dated 21.05.2019 charged the freight of the entire vessel load to the Corporate Debtor with demurrage and anchorage this invoice therefore disputed by the Corporate Debtor. According to the Corporate Debtor, nothing is due and payable to the Operational Creditor and entire case advanced by the Operational Creditor is based on the frivolous invoice dated 26.07.2019 which was never received by it and demand notice is bad in law.

17. From the above, what emerges is that the Corporate Debtor has primarily assailed the execution of the Charter party ("Exhibit-A") dated 22.04.2019. To set the controversy at rest, it is desirable that we should first go through Charterparty ("Exhibit"A) which is at page 32 of the petition. A minute perusal of the Charterparty

dated 22.04.2019 would reveal that it recorded Operational Creditor as owner, Corporate Debtor as Charterer and Bulkchart as shipbroker. Strikingly enough this document is signed on behalf of the Operational Creditor i.e. Jaldhi Overseas Pte. Ltd. and Corporate Debtor i.e. RKB Global Limited. There is absolutely no dispute regarding the signatories of this very document which has formed the basis of the litigation.

18. Now, according to the Operational Creditor on 21.05.2019 freight invoice raised by Operational Creditor for an amount of USD 882,188,15 for freight, demurrage @ Port Redi and anchorage dues relating to the vessel MV SUN LUCIA was forwarded by the Bulkchart (as the shipbroker) to the Corporate Debtor vide Bulkchart's email dated 03.06.2019. That invoice ("Exhibit-D") is filed at page 16 of the reply of the Corporate Debtor.

19. Before we go further, it may be noted that the freight date invoice was raised on 21.05.2019 which according to the Operational Creditor was erroneously mentioned instead of 26.07.2019.

20. Thereafter, invoice dated 31.05.2019 (page 24 of the rejoinder) and final invoice dated 26.07.2019 ("Exhibit-B") at page 46 of the petition were raised by the Operational Creditor on Corporate Debtor. The final invoice was to the tune of USD 424,191.13 towards outstanding freight, demurrage and anchorage dues relating to the vessel MV SUN LUCIA. However, no payment was forthcoming from Corporate Debtor.

21. It appears from the record that ultimately the demand notice (Exhibit-C1 at page 48 of the Petition) under Section 8 of the I & B Code came to be issued by the Operational Creditor in respect of an amount of USD 424,191.13, copy of which is available at page

49 of the petition. Before we look into the notice we make it clear that, the learned Counsel in its list of dates and as also during the course of argument submitted that said notice erroneously mentions date of invoice as 21.05.2019 instead of 26.07.2019.

22. It appears from the record and as per the contention of the Corporate Debtor that on 17.01.2020 the Corporate Debtor made part payment of USD 34,285 via its broker, Globechart. However, the balance amount, being the total outstanding amount due and payable by the Corporate Debtor to the Operational Creditor aggregated to USD 389,906. In the meantime, on 09.03.2020 the Corporate Debtor responded to the demand notice via its reply at (Exhibit-C2 at page 53 of the petition). On perusal of the reply, it would suggest that the Corporate Debtor *inter alia* acknowledged the part payment and admitted its liability to pay the balance freight dues. It also made a request to Operational Creditor to provide debit note. It reads, "*Vessel freight is payable by us & we have paid the partial amount, for balance amount, you have to raise a debit note, as per RBI guidelines".* As far as demurrage was concerned it said that they and broker had not confirmed the same and requested to arrange the meeting and settle the issue.

23. What is most significant is that the invoice dated 21.05.2019 read as 26.07.2019 (in view of explanation given by the Operational Creditor) was not in any manner disputed by the Corporate Debtor. It nowhere raised the defence, as is specifically pleaded in the affidavit-in-reply, that they were not concerned with the invoice and that Samruddha or Tulip, as the case may be, was responsible in respect of the transaction. In short, the defence raised in the reply was nowhere advanced to counter the demand notice including the invoice issued by the Operational Creditor.

24. On the contrary, there is an admission of fact in respect to the due and debt amount as raised in the invoice. Even the Corporate Debtor went a step ahead and stated in the reply that they are not interested to raise dispute but demand should be submitted to them at the time of shipment effected and time limit should be indicated. This short of admission closes all the doors for the Corporate Debtor.

25. It is then seen that this reply was duly responded vide e-mail (Exhibit D-1) dated 19.03.20220 and again called upon the Corporate Debtor to make payment in full by 27.03.2020. In the light of admitted liability in the reply (of Corporate Debtor) dated 09.03.2020 i.e. (Exhibit-C2). It is interesting to note that there was again no protest and dispute much less the serious dispute against the said reminder but vide e-mail (Exhibit -D2) dated 19.03.2020 the Corporate Debtor responded by stating that the Municipal Commissioner has shut down the office and they will further discuss the topic once their office had re-opened. This also puts the Corporate Debtor in a bad light.

26. Eventually the Operational Creditor then served a legal notice (Exhibit-E) dated 11.10.2022 calling upon the Corporate Debtor to make payment of said outstanding amount. The Corporate Debtor on its part vide its letter (Exhibit-F) and reply (at page 62 of the Petition) dated 17.10.2022 for the first time raised issue of involvement of Samruddha in the transaction and for the first time took a new defence in the following words –

> "*We also inform to Samruddha Resources Ltd. & BST (HK) LTD. for this outstanding payment & as per our knowledge, payment has already made by Samruddha Resources Ltd., against our credit with Samruddha Resources Ltd. BST (HK) Ltd. & Samruddha Resources*

Ltd., both are handling Iron Ore-A/c & the vessel payment."

27. At the cost of repetition, we again say that this defence was not raised at the first available opportunity that is to say when the Corporate Debtor for the first time replied the earlier demand notice (Exhibit-C1) along with invoice at page 51 on 09.03.2020. Still the Operational Creditor denied the contents of the letter dated 17.10.2022 issued by the Corporate Debtor and again raised the demand of outstanding amount to be paid forthwith vide its letter dated 08.11.2022 (page 68 of the petition).

28. The Corporate Debtor again raised the issue of Samruddha Resources Pvt. Ltd. vide its letter dated 19.11.2022. Left with no alternative the Operational Creditor again re-served form 3 demand notice dated 08.01.2020 on the registered e-mail ID on 19.12.2022 and at the registered address on 21.12.2022 (Exhibit-I-1 & I-2). The Corporate Debtor on its part replied by letter dated 10.01.2023 and 21.02.2023 raising the same issue of Samruddha and also that there is pre-existing dispute between the parties. This was seriously controverted by the Operational Creditor and pointed out that the Corporate Debtor is deflecting its liability on the third party.

29. From the record it is more than clear and above all its questionable conduct of the Corporate Debtor which we think in our considered opinion needs to be questioned seriously by all means that despite having all the material facts within their knowledge, if we may say so having regard to their pleadings, then we are at a loss of words to understand what prevented the Corporate Debtor to raise serious dispute about their role in the whole transaction by pointing out to the Operational Creditor that the other party namely Tulip and Samruddha were having more concern with the

transaction in question then they are. Rather in reply to the first demand notice it admitted its liability in an un-equivocal term and therefore now it does not lie in its mouth to turn around and take a different position under the garb of alleged and unfounded existence of dispute between the parties. We absolutely find no substance and rather it appears to be a hollow claim (of pre-existing dispute).

30. We have carefully gone through the judgments relied on by the learned Senior Counsel for the Corporate Debtor viz namely Rajratan Babulal Agarwal Vs. Solartex India (P) Ltd., Civil Appeal No. 2199/2021 dated 13.10.2022 (2023)1 SCC 115 and Mobilox Innovations(P) Ltd. Vs. Kirusa Software (P) Ltd., Civil Appeal No. 9405/2017 dated 21.09.2017, (2018)1SCC 353 and Kay Bouvet Engineering Limited Vs. Overseas Infrastructure Alliance (India) Pvt. Ltd. Civil Appeal No. 1137/2019 dated 10.08.2021 (2021) 10 SCC 483 deals with application for initiation of the CIRP by the Operational Creditor needs to be rejected when there is pre-existing dispute between the parties. We have already held in the aforesaid paragraphs about the non-existence of pre-existing dispute. Similarly, the ratio laid down in the case of Ramjas Foundation Vs. Union of India has no bear to the case in hand and the same is distinguishable the fact.

31. For all the aforesaid reasons it is duly proved that there is debt in the sum USD 389,906 (INR 3,21,94,343.47 @ INR 82.57 per USD) on Corporate Debtor and therefore, we are of the considered view that present petition under section 9 of the code filed by the Operational Creditor to initiate CIRP in the matter of the corporate debtor deserves consideration and accordingly stands **admitted** under section 9(5)(I) of the I & B Code.

32. We, therefore, pass the following order.

ORDER

This Application being C.P.(IB) No. 444/2023 filed under Section 9 of the I & B Code, 2016, filed by **JALDHI OVERSEAS PTE LTD.**, Operational Creditor/applicant against **RKB GLOBAL LIMITED** Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I & B Code with consequential directions as mentioned below:

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. That this Bench hereby appoints **Mr. Anuj Bajpai**, a registered insolvency resolution professional having **Registration number**- **IBBI/IPA-001/IP-P00311/2017-2018/10575** and Email ID- anuj19603@yahoo.co.in as Interim Resolution Professional to carry out the functions as mentioned under I & B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VII. The operational creditor shall deposit a Sum of Rs. 5,00,000/- (Rupees Five Lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC). The Remuneration of Interim Resolution Professional shall be Rs. 1,00,000/- p.m. till the constitution of CoC and decision of CoC in relation to remuneration of IRP/RP, in case it is not fixed by the operational creditor so far.

VIII. A copy of this order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the corporate debtor.

IX. The Registry is directed to immediately communicate this order to the operational creditor, the corporate debtor and the interim resolution professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today**.

Sd/-	**Sd/-**
PRABHAT KUMAR	**JUSTICE VIRENDRASINGH BISHT**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Sapna