

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-I**

**CP (IB) 406/MB/2022**

Under section 9 of the Insolvency and Bankruptcy Code,  
2016

**TRANSOLUTIONS INDIA INCORPORATION**

Having Office at B-504, Green Ash,  
Vasant Gardens Township Swapna Nagri,  
Mulund (West), Mumbai - 400080

...Operational Creditor/Petitioner

Versus

**PROTOCOL MARINE SERVICES PRIVATE LIMITED  
[CIN: U63090MH2001PTC133857]**

Reg. Office- 1502/A, 15th Floor Universal Magestic,  
P.L. Lokhande Marg, Chembur (W)  
Mumbai MH 400043.

...Corporate Debtor/Respondent

**Order Delivered on 07.10.2022**

***Coram:***

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

***Appearances:***

For the Operational Creditor : Adv. Amir Arsiwala, Counsel.

For the Corporate Debtor : None Present.

**ORDER**

***Per: P.N. Deshmukh, Member (Judicial)***

1. This Company Petition is filed under section 9 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by Ms. Munni Surendra Chauhan of **Transolutions India Incorporation, a Proprietary Concern**

("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Protocol Marine Services Private Limited ("the Corporate Debtor")**.

2. The Corporate Debtor was incorporated 05.11.2001 under the Companies Act, 1956. The registered office of the Corporate Debtor is situated at 1502/A, 15th Floor Universal Magestic, P.L. Lokhande Marg, Chembur (W) Mumbai- 400043. Therefore, this Bench has jurisdiction to deal with this petition.

**Brief Facts of the case:**

3. The Operational Creditor is carrying on business as shipping Agents, Clearing and Forwarding Agents, Ship Managers, Ship Brokers, Cargo Services Consultants, Cargo Commission Agents, Shippers, Tug Owners, trawler owners, trailer owners and water-ways and ship store merchants, exports and import agents transport commission agents.
4. The present petition was filed on 06.04.2022 before this Adjudicating Authority (AA) on the ground that the Corporate Debtor failed to make payment of a sum of INR 1,20,64,000 (Rupees One Crore Twenty Lakhs Sixty-Four Thousand Only) as principal amount. The date of default is 19.11.2021.

**Submissions made by Operational Creditor:**

5. It is submitted that the Operational Creditor issued various Invoices upon the Corporate Debtor amounting to INR 1,20,64,000.00 (Indian Rupees One Crore Twenty Lakhs Sixty-Four Thousand Only) for the transport services provided by the Operational Creditor. Details of the Invoices are given in Exhibit – D annexed to the Petition (Pg. 42-43). Copy of Invoices

issued by the Operational Creditor to the Corporate Debtor are annexed as Exhibit – F (Pg.45-62).

6. The Corporate Debtor sent email dated 19.11.2021 to the Operational Creditor confirming the outstanding balance in the books of the Corporate Debtor, is annexed as Exhibit – G (Pg.63—64). Copy of the Ledger Extract of the Corporate Debtor in the books of the Operational Creditor for the F.Y.2020-21 is annexed hereto and marked as Exhibit – H (Pg.65-70).
7. The Operational Creditor issued demand notice to the Corporate Debtor in Form 3 on 25.01.2022 demanding the payment in respect of unpaid operational debt as required under the IBC, 2016, however, the Corporate Debtor failed to make the payment. Copy of the demand notice along with the acknowledgement is annexed as Exhibit – I (pg.71-75) to the Application. The Operational Creditor has also annexed Bank Statement of IDFC First Bank for the financial years 2020-2021 and 1.4.2021 to 22.01.2022 as Exhibit – J (Pgs. 76 to 95).

**Submissions made by Corporate Debtor by way of affidavit in Reply:**

8. It is observed from the records that the Corporate Debtor has been given multiple opportunities to appear before this Tribunal and plead his case. The Counsel Mr. Piyush Deshpande appeared for the Respondent on 12.04.2022 and sought time for settlement. At his request, the hearing was fixed from time to time on Board, but none appeared on behalf of the Respondent. The Corporate Debtor chose not to appear and plead his case though filed his reply on record. The same is taken on record.

9. The Corporate Debtor submitted its reply vide affidavit dated 07.06.2022 that business of the Corporate Debtor has taken a hit since first wave of Covid'19 Pandemic and are facing severe financial crisis. The business of the Corporate Debtor has come to standstill since the year 2020 due to sluggish market conditions. The Corporate Debtor further submits that it is making every attempt to revive the business operations despite the unfavourable market conditions. The Corporate Debtor states that it tried to resolve the issues with the Operational Creditor, however, the consistent losses suffered by the Corporate Debtor has broken the backbone of the company very seriously and there are various other creditors to whom the payments are due.
10. The Operational Creditor despite the knowledge of the circumstances faced by the Corporate Debtor, has filed the present Petition against the Respondent seeking payment of the entire outstanding.
11. It is admitted by the Corporate Debtor that it has purchased goods and services from the Operational Creditor and it owes the payment to them. The Corporate Debtor further submits that it agrees to pay the entire credit amount with interest to the Operational Creditor but at the current scenario, as the situation has worsened due to the ongoing Covid-19 pandemic and the company had to suffer irretrievable losses, the Corporate Debtor is unable to pay the debt amount of INR 1,20,64,000.00 (Indian Rupees One Crore Twenty lakh Sixty-four thousand only)

**Findings:**

12. We have heard the submissions of the Counsel appearing for the Operational Creditor and perused the records.

13. In the present matter, debt is admitted by the Corporate Debtor and from the records annexed to the petition, it is observed that debt amount is not re-paid therefore, there exists debt and default. Further, it is noted that no dispute had been raised by the Corporate Debtor for debt amount or services provided by the Operational Creditor.
14. The amount outstanding is INR 1,20,64,000.00 (Indian Rupees One Crore Twenty Lakh Sixty-Four Thousand Only) and since amount involved in the present petition is above threshold limit, the present petition is in compliance with section 4(1). As the pre-requisites being debt, default and no dispute for section 9 petition are satisfied by the Operational Creditor this Petition deserves to be admitted.
15. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
16. The Operational Creditor proposed the name of **Mr. Rajan Garg**, Registration No. IBBI/IPA-001/IP-P-02397/2021-2022/13624 as IRP. However, on perusal of documents it was found that the authorisation of the proposed IRP has expired on 14.06.2022. Hence, this Tribunal is appointing **Mr. Swapnil Mukund Agrawal**, Registration No. IBBI/IPA-001/IP-P00845/2017-2018/11429 as the IRP.
17. The Petition bearing **CP(IB) 406/MB/2022** filed by the Proprietary Concern, **Transolutions India Incorporation**, the Operational Creditor,

under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Protocol Marine Services Private Limited (CIN: U63090MH2001PTC133857)** the Corporate Debtor, is **admitted**.

18. There shall be a moratorium under section 14 of the IBC, in regard to the following:
- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) 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.
19. Notwithstanding the above, during the period of moratorium: -

- a. 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;
  - b. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
20. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
21. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
22. The Tribunal hereby appoints **Mr. Swapnil Mukund Agrawal**, Registration No. IBBI/IPA-001/IP-P00845/2017-2018/11429, Email: [swapnil.ip845@gmail.com](mailto:swapnil.ip845@gmail.com) Mob. No.: 9371455299 as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

23. 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.
24. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three 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).
25. 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.
26. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, 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.
27. Ordered accordingly.

**Sd/-**  
**SHYAM BABU GAUTAM**  
**Member (Technical)**  
07.10.2022  
DSB / Jenny

**Sd/-**  
**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**