

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

C.P. (IB) No. 666/MB/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

Top India Logistics

GSTIN:27AAPFT9663D1ZL

...Operational Creditor/Applicant

V/s

RNGLAB (India) Private Limited.

[CIN: U24303PN2020PTC192014]

...Corporate Debtor/Respondent

Order Dated: 16.05.2023.

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Jasveen Bindra, PCS, Ld,
Authorised Representative.

For the Respondent(s) : None.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an Application being C.P. (IB) No. 666/MB/2022 filed on 31.05.2022 by Top India Logistics, the Operational Creditor/Applicant, under Section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of RNGLAB (India) Private Limited, Corporate Debtor.
 - 1.1. The Applicant Operational Creditor has claimed that the Corporate Debtor is in default of a sum of Rs. 2,50,00,000/-. The date of default is 22.08.2021.
2. The Operational Creditor is engaged in the business of providing services of warehousing and logistics, and acts as a clearing and forwarding agent in India. The Corporate Debtor is a private company engaged in the business of manufacturing and marketing of pharmaceutical, natraceutical, dermaceutical and cosmetic products and provides third party manufacturing facilities to other companies.
 - 2.1. The Corporate Debtor was into the manufacturing and marketing of a vegetarian form of liquid Omega-3 health supplement in the name and style of 'Co-Wise'.
 - 2.2. The Operational Creditor and the Corporate Debtor had entered into a Warehousing & Logistics Partner Agreement dated the 27th day of May, 2021 for the appointment of Top India Logistics, the Operational Creditor, as a clearing and forwarding agent for Maharashtra to distribute and store the product 'Co-Wise' of the Corporate Debtor.

- 2.3. In accordance with the terms of the Agreement, the Operational Creditor was, inter alia, required to maintain a minimum stock of 2,50,000/- units of the product 'Co-Wise' for the initial period of six months from the date of commencement of the Agreement.
- 2.4. Pursuant to the said clause of the Agreement, the Operational Creditor transferred a sum of INR 2,00,00,000 (INR Two Crore only) and INR 50,00,000 (INR Fifty Lakh only) on May 31, 2021 and June 10, 2021 respectively.
- 2.5. The Operational Creditor failed to receive even a single unit of the product 'Co-Wise' from the Corporate Debtor during the tenure of the subsistence of the Agreement.
- 2.6. Thereafter, upon the failure of the Corporate Debtor in providing the goods, the Operational Creditor sent an email dated August 21, 2021 to the Corporate Debtor expressing its intention to discontinue the said Agreement and requesting the Corporate Debtor to return the advance given by it in respect of 2,50,000 units of the product Co- Wise of the Corporate Debtor.
- 2.7. The Corporate Debtor issued several cheques in favour of the Operational Creditor but all the cheques issued by the Corporate Debtor bounced due to insufficiency of funds.
- 2.8. The Operational Creditor and the Corporate Debtor entered into a Memorandum of Understanding on September 6th 2021 in accordance with which the Corporate Debtor acknowledged the payment of INR 2,50,00,000 (INR Two Crore Fifty Lakh only) towards the procurement of goods by the

Operational Creditor and agreed to repay the entire amount by honouring the cheques issued by it, but has failed to do the same.

- 2.9. Demand Notice (Form 3) under Insolvency and Bankruptcy Code, 2016 dated 18th February 2022, was sent to the registered office of the Corporate Debtor on 24th February 2022, by way of Speed Post. The Demand Notice was attempted to be delivered on several dates but the same could not be delivered since the Registered Office of the Company was locked.
- 2.10. However, the Demand Notice (Form 3) was sent to the email ID of the Company as registered with the Ministry of Corporate Affairs (MCA) vide email dated 23rd February 2022 and the same was duly delivered to such email ID. The Demand Notice (Form 3) was also served upon the Directors of the Company since the Registered Office of the Company is not operational.
- 2.11. The Operational Creditor has obtained certificate from HDFC Bank dated 12th April 2022 verifying that no amount has been received by the Operational Creditor from the Corporate Debtor from the period 1st April 2019 to 31st March 2022. Further, the Operational creditor has obtained Chartered Accountant's Certificate certifying that the relevant unpaid Operational Debt is due in the Books of Accounts of the Operational Creditor.
3. The Corporate Debtor was granted two weeks' time to file reply vide order dated 03.11.2022 but no reply was filed and the right to file reply was forfeited vide order dated 04.01.2023. The Corporate Debtor has not filed any application seeking recall of order dated 4.1.2023.

Findings:

4. This bench has carefully gone through the documents and pleadings available on record and considered the arguments.
 - 4.1. Based on the documents placed on record it is clearly evident that the Corporate Debtor received a sum of Rs. 2,50,00,000/- under Clearing & Forwarding Agreement, whereby the Corporate Debtor was to supply the goods to the Operational Creditor, but failed to do so. Further in the facts and circumstances as set out, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and is in default of the amount claimed in the petition.
5. As per the material on record this Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, this Bench finds it a fit case for initiation of CIRP in the case of the Corporate Debtor.
6. The petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.
7. Considering the facts placed before us, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process is initiated against the Corporate Debtor and this petition is **allowed**.

ORDER

1. The petition bearing C.P. (IB) No. 666/MB/2022 filed by Top India Logistics, the Operational Creditor/Applicant, under Section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of RONGLAB (India) Private Limited, Corporate Debtor is **Admitted**.
 - 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. The bench hereby appoints Mr. Ashok Mittal, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P-02549/2021-2022/13889 Email: ashokhmittal2020@gmail.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- VII. 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.

- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- IX. 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.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
16.05.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)