



**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CP(IB) No.81/Chd/Hry/2020

(An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

Martin Consulting LLC

Through its CEO/Authorized Representative
Registered Office at: C171, 17th Floor, DLF New
Town Heights Sector 86, Gurugram, Haryana

.....Applicant/Operational Creditor

Versus

Bird ExecuJet Airport Services Private Limited

Through its Managing Director
Registered Office at:422, Udyog Vihar Phase III,
Gurugram, Haryana

.....Respondent/Corporate Debtor

Order delivered on: 07.11.2025

**Coram: MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)
MR. KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)**

Present:

For the Applicant : Mr. Vishav Bharti Gupta, Advocate

For the Respondent : Mr. Aditya Bhardwaj, Advocate



ORDER

1. The present Petition is filed by an Authorised Representative on behalf of **Martin Consulting LLC** (hereinafter referred to as “**Operational Creditor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “Code”) for initiation of Corporate Insolvency Resolution Process (CIRP) against **Bird ExecuJet Airport Services Private Limited** (hereinafter referred to as “**Corporate Debtor**”), through its Authorised Signatory for an amount of Rs. 54,03,581 /-(Fifty Four Lakhs, Three Thousand Five Hundred and Eighty One) inclusive of GST and net of TDS as per Ledger Balance plus interest charged at 15% per annum on the outstanding balance The date of default, as mentioned in the Petition, is February 2019 when the Operational Creditor completed its performance of the Consulting Agreement dated 01.03.2018 and Corporate Debtor failed to make the complete payment of dues to the Operational Creditor.


2. Brief facts of the case as well as contentions raised by both sides of the parties and narrated by their Learned Counsel are summarised hereunder:

(i) The Operational Creditor, Martin Consulting LLC, and the Corporate Debtor, M/s Bird ExecuJet Airport Services Private Limited (registered office in District Gurugram, Haryana), entered into a Consulting Agreement dated 01.03.2018 whereby Operational Creditor was engaged to develop, establish and deploy specialist capability for design and development of an apron, a business/corporate aviation terminal (Fixed Base Operator terminal),



an aircraft hangar for repair, maintenance and overhauling of aircraft and helicopters and for development of suitable offices at Indira Gandhi International Airport, New Delhi. The agreement provided for payment on a cost-plus basis with a 15% mark-up and an additional 15% success fee on completion of deliverables within the stipulated timelines; Clause 9 of the said agreement prescribed the invoicing mechanism and required monthly invoices to be accompanied by proof of actual costs under the heads of People Cost, Project Cost and Hard Cost. The agreement set out a phase-wise monthly payment schedule (Annexure-3) as follows: Phase I (first seven months) ₹9,64,658 per month; Phase II (month 8 to 11) ₹7,89,283 per month; Phase III (month 12 to 15) ₹4,55,783 per month. The Operational Creditor is invested in technology, ERP, hardware, virtual reality etc. at considerable expense and mobilized a highly qualified and competent team including expats and delivered its part of the agreement to the complete satisfaction of the Corporate Debtor.

(ii) The Operational Creditor alleges that from the outset Corporate Debtor delayed monthly payments, that it repeatedly sought payment and ultimately served a notice of default dated 12.09.2018 (Annexure A-5). A part payment of Rs.5,00,000 was made by the Corporate Debtor in January 2019, but by then Operational Creditor asserts a total of Rs.58,80,572 remained due and payable (this figure being described in the petition as including



Rs.8,97,036 as GST paid by the Operational Creditor to be reimbursed, three months' retainer and a completion bonus).

(iii) On 05.03.2019, the Corporate Debtor requested the Operational Creditor to close the Project Management Office and provide a final settlement for amicable closure, by which time the Operational Creditor had completed all technical documentation for the project. The Operational Creditor responded on 12.03.2019 agreeing to terminate the Consulting Agreement amicably and provided a draft Termination Agreement outlining the amounts due. However, the Corporate Debtor took no action on termination and failed to pay the dues despite repeated requests and submission of proof of expenses and salary details. The Corporate Debtor never disputed the payment obligation but continued to delay settlement.


(iv) Operational Creditor avers that it completed performance under the Agreement by February 2019 and, based on ledger and bank statements certified by its auditors, claims an outstanding sum of Rs.54,03,581 (Fifty-four lakhs, three thousand five hundred and eighty-one) inclusive of GST and net of TDS, together with interest at 15% per annum. A Demand Notice in Form 3 dated 26.11.2019 was issued (Annexure A-10) and is recorded as having been delivered; the Corporate Debtor's reply dated 10.12.2019 is annexed as Annexure A-11. The Corporate Debtor in its reply dated 10.12.2019 makes a bald and vague assertion that the Operational Creditor did not abide by the terms of Clause 9 of the Agreement and that the Operational Creditor never submitted any proof of actual cost along with



invoices. Operational Creditor submits that after the expiry of the period of 10 days from the date of delivery of the demand Notice dated 26.11.2019 demanding payments, the Operational Creditor has not received payments from the Corporate Debtor and no payment has been made by the Respondent-Corporate Debtor against the outstanding amount. Operational Creditor contends that, apart from the response of 10.12.2019, no valid dispute was raised and therefore the present petition against Corporate Debtor has been filed for recovery of the outstanding operational debt.

(v) The Respondent/Corporate debtor files its reply through its authorised signatory pursuant to a board resolution dated 30.04.2019 (Annexure-R1). The Corporate Debtor is the concessionaire for provision of Fixed Base Operator (FBO) and MRO services at Indira Gandhi International Airport, New Delhi pursuant to a concession agreement dated 21.01.2016 with Delhi International Airport Limited (DIAL) for a term of twenty-one years.

(vi) For the development of an integrated facility comprising an FBO terminal, MRO hangar, apron and associated offices on the 25-acre parcel behind New Udaan Bhawan, the Corporate Debtor entered into a Consulting Agreement dated 01.03.2018 with the Operational Creditor under which the Operational Creditor was engaged as the “knowledge partner” to establish and manage a Project Management Office (PMO) and to prepare designs, drawings, maps and technical documentation, to be completed within fifteen months. The fee was agreed on a cost-plus model with



reimbursement of actuals under three heads (People Cost, Project Cost and Hard Cost), a 15% mark-up and a further success fee of 15% on timely completion; monthly invoicing was to be accompanied by supporting documents as per Clause 9(e) of the Agreement (Annexure-R2 and Annexure-1/3). The Corporate Debtor pleads that from the outset the Operational Creditor raised invoices on the basis of estimates without furnishing the required supporting documents. No attendance sheets were produced to substantiate People Cost, no retail invoices or payment proofs were produced for Hard Cost, and the Project Cost claimed by the Operational Creditor is said to be untenable because the construction phase did not commence and the work was subsequently re-allocated by DIAL to another agency. Despite repeated demands for authentic bills, invoices and reconciliations, the Operational Creditor failed to comply and, on occasions, threatened suspension of work unless interim payments were released. The Corporate Debtor asserts that it nonetheless made payments on the basis of assurances and estimates in furtherance of the project.

(vii) The Corporate Debtor places on record that payments aggregating Rs.95,39,743 were made to the Operational Creditor till November 2019 (head-wise breakup in Annexure-R3 being People Cost Rs.46,73,935; Project Cost Rs.20,02,058; Hard Cost Rs.5,29,938; total cost Rs.72,05,931; margin @15% ₹10,80,890; cost + margin Rs.82,86,821; GST @18% Rs.14,91,628; gross total Rs.97,78,448; payments made by BEAS Rs.86,45,236; TDS deducted




& deposited Rs.8,94,507; aggregate amount paid Rs.95,39,743). The Corporate Debtor contends that certain invoices remain disputed (notably an amount of Rs.3,52,426 for November 2019) for want of supporting documentation, and it asserts that a balance of Rs.2,38,705 is itself disputed. The Corporate Debtor further alleges that the Operational Creditor submitted incomplete, false and/or forged supporting documents in support of its claimed heads, and that despite receiving reimbursement for Hard Cost items the Operational Creditor failed to hand over the purchased equipment but retained the same, amounting to misappropriation. The Corporate Debtor states that it provided site office space, furniture, stationery and printing facilities at the project site and therefore many of the claimed reimbursements (printing, landline, travel) were unjustified or contingent upon prior approval and supporting vouchers which were not furnished. The Corporate Debtor accordingly denies liability to the extent of claims unsupported by documentary proof and maintains that several invoices were rightly declared disputed by its finance department (Annexure-R12).

(viii) The Corporate Debtor alleges breach of confidentiality by the Operational Creditor, relying upon a Hindustan Times publication dated 30.01.2019 and on communications received from the Airport Operator/DIAL (Annexure-R4), which, it is said, show that confidential perspectives and renderings were shared with the media in violation of Clause-7 of the Agreement. On account of non-performance, timeline breaches and the alleged confidentiality




breach, the Corporate Debtor terminated the Consulting Agreement by email/letter dated 05.03.2019 (Annexure-R5) and engaged M/s Mahimtura Consultants Pvt. Ltd. to prepare fresh structural designs and drawings which were subsequently submitted to DIAL and DGCA and used in the construction process. The Corporate debtor further points out that the Operational Creditor's subsequent application dated 03.12.2019 for registration of designs under the Copyright Act is inconsistent with Clause 18 of the Agreement which, the Corporate Debtor submits, vests exclusive rights in the client. Related civil and criminal proceedings instituted by the Operational Creditor are identified (CS (Comm.) 56/2020; criminal complaint before PS Domestic Airport and ensuing proceedings) and copies of relevant orders are produced (Annexure-R6 to R9).

(ix) The Corporate Debtor further alleges tax and accounting irregularities: it submits that many GST invoices relied upon by the Operational Creditor were never uploaded to the GST portal and that the Chartered Accountant's certificate relied upon by the Operational Creditor (dated 28.12.2019 by Rajesh Sareen & Associates) is unauthorised and unverified since GST returns were not filed since April 2018. The Corporate Debtor highlights inconsistent figures presented by the Operational Creditor across documents (variously Rs.58,80,572; Rs.54,03,581; Rs.70,58,164; Rs.95,39,744) and notes a discrepancy of Rs.4,76,991 which has not been explained. On the combined grounds of defective notice, pre-existing disputes evidenced by correspondence (including the e-mail exchange dated



19.08.2019), pending civil/criminal proceedings and accounting irregularities.


(x) The parties' written submissions set out divergent accounts with respect to payments, documentation, and reconciliation of accounts. The Operational Creditor relies upon its ledger and bank statements (Annexures A-9 and A-13) to submit that total payments received aggregate to Rs.70,58,164 only, leaving an unpaid operational debt of Rs.54,03,581, which it seeks to recover by initiation of the Corporate Insolvency Resolution Process (CIRP). The Corporate Debtor, on the other hand, produces its own payment chart recording aggregate disbursements of Rs.95,39,743, net receipts of Rs.86,45,263 as per the Operational Creditor's own ledger, and disputed invoices for November 2019 of Rs.3,52,426, contending that no default arose in February 2019 as alleged. The Corporate Debtor highlights multiple inconsistent figures deployed by the Operational Creditor across proceedings namely Rs.58,80,572, Rs.54,03,581, Rs.70,58,164 and Rs.95,39,744 and notes that the variance of Rs.4,76,991 remains unexplained. Each party attributes the discrepancies to the other's conduct and documentation: the Operational Creditor asserts full performance of the contract and compliance with the Agreement, contending that no bona fide dispute was raised within the stipulated 15-day contractual period; while the Corporate Debtor asserts that genuine disputes existed as to quantification and entitlement, that supporting vouchers were not provided in accordance with Clause 9



of the Agreement, and that the insolvency proceedings have been misused as a recovery mechanism rather than a bona fide insolvency remedy.

(xi) In addition to the foregoing factual contentions, both sides have placed on record their respective parallel proceedings. It is recorded that civil and criminal actions were instituted by the Operational Creditor (CS (Comm.) 56/2020 and a criminal complaint before the learned Magistrate at PS Domestic Airport), that certain criminal proceedings were dismissed while others remain pending, and that relevant orders have been exhibited by the Corporate Debtor. The Operational Creditor relies upon contractual clauses, certified ledgers, auditor certificates and bank statements in support of its claimed dues, whereas the Corporate Debtor seeks dismissal of the petition on the grounds of (i) procedural non-compliance with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and Section 9(3)(c) of the Code, (ii) absence of any record from an Information Utility, (iii) a defective Form-3/Demand Notice lacking invoices, (iv) existence of pre-existing disputes evidenced by contemporaneous correspondence, (v) alleged falsity or incompleteness of supporting documents and GST non-compliances, and (vi) inconsistent claim amounts.

(xii) The pleadings and written arguments thus reflect competing factual matrices concerning performance, payments, and documentation, material discrepancies in the amounts asserted and received, an allegation of confidentiality breach followed by



termination of the Consulting Agreement on 05.03.2019 by the Corporate Debtor, and the pendency of parallel civil and criminal proceedings. Both sides have produced their respective ledgers, bank statements and Chartered Accountant certificates. The Operational Creditor prays for initiation of CIRP under Section 9 of the Code for recovery of its outstanding operational debt, while the Corporate Debtor prays for dismissal of the petition with costs on the grounds detailed above.

3. We have heard the submissions made by the Learned Counsel for Applicant Operational Creditor as well as the Respondent Corporate Debtor and have gone through the material available on record carefully, along with the extant provisions of the Code and the settled position of law on the subject issue.

4. At the outset, the Corporate Debtor has raised preliminary objections regarding the maintainability of the petition, alleging that Form 5 is defective and non-compliant with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. On examination, it is found that the Application contains the requisite particulars, annexures, and supporting documents necessary for consideration. The procedural requirements prescribed are directory in nature and intended to ensure orderly filing, and in the absence of any defect that goes to the root of maintainability, the petition cannot be rejected on this ground alone.

5. The Corporate Debtor further objects that the Operational Creditor has not annexed the certificate from its financial institution as contemplated under Section 9(3)(c) of the Code. We note that the Hon'ble



Supreme Court in *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.* has settled the position that the requirement under Section 9(3)(c) is directory, not mandatory. Hence, failure to annex such a certificate cannot defeat a valid petition where the debt and default stand established through other credible documentary evidence. In the present case, the Operational Creditor has furnished invoices, correspondence, bank statements, and auditor-certified ledgers to substantiate its claim, which sufficiently demonstrate the existence of operational debt and default.

6. The Corporate Debtor's contention regarding non-filing of records from an Information Utility is also not sustainable. Section 9(3)(d) of the Code mandates submission of such records "where available," implying that non-availability does not render the petition defective. In the present matter, the Operational Creditor has submitted substantial contemporaneous evidence including the Consulting Agreement, invoices, payment details, and communication exchanged between the parties. Therefore, the objection of non-furnishing of Information Utility records fails.

7. On the merits of the claim, the Corporate Debtor contends that the Operational Creditor failed to comply with Clause 9 of the Consulting Agreement, which required invoices to be supported by proof of actual cost. The Operational Creditor, however, maintains that the project was governed by a cost-plus model, and the payments were to be made on pre-agreed terms as reflected in Annexure-3 of the Agreement. The record discloses that the Operational Creditor shared cost details and supporting information during the project execution and that payments were made by



the Corporate Debtor without raising any contemporaneous objection regarding the quality or extent of work. Emails and correspondence show acknowledgment of services and efforts toward amicable closure, rather than a denial of liability. The belated invocation of Clause 9 appears to be an afterthought and does not evidence a bona fide dispute under Section 8(2) of the Code.

8. The Corporate Debtor has also alleged inconsistencies in the claim figures furnished by the Operational Creditor across proceedings. Upon examination, it is noted that the variations in figures relate primarily to adjustments arising from interest computation, tax treatment, or reconciliation of part payments, and do not alter the core claim of operational debt. Such numerical discrepancies, when supported by documentary proof of invoices, ledgers, and bank statements, do not discredit the fundamental existence of debt and default.

9. The Corporate Debtor's plea that the Operational Creditor breached confidentiality obligations or that the petition is premature due to ongoing settlement discussions is also untenable. The documents produced before this Tribunal have been filed solely for the purpose of substantiating the claim and fall within the permissible scope of judicial disclosure. The record also indicates that despite repeated reminders and requests for payment, the Corporate Debtor failed to clear admitted dues within the stipulated period following the statutory demand notice. The pendency of settlement discussions does not bar initiation of proceedings once default has occurred.



10. We observe that the reply dated 10.12.2019 filed by the Corporate Debtor to the statutory demand notice merely makes a general assertion of non-compliance with contractual terms without furnishing any supporting material or evidence of a genuine pre-existing dispute. No contemporaneous correspondence prior to the issuance of the demand notice demonstrates any substantive disagreement over the quality, completion, or scope of work. On the contrary, the communication dated 05.03.2019 from the Corporate Debtor seeking closure and final settlement indicates acknowledgment of completion and liability.

11. On cumulative assessment of the material placed on record, it stands established that an operational debt exceeding the statutory threshold exists and that default has occurred due to non-payment by the Corporate Debtor despite due demand. The preliminary objections raised by the Corporate Debtor are devoid of merit in view of the settled position of law, and the alleged disputes are found to be neither bona fide nor substantiated by contemporaneous evidence.

12. We are of the considered view that the present petition satisfies the necessary conditions under Section 9(5)(i) of the Code. Accordingly, we admit this application and order as under:

- i. Corporate Debtor – Marshall Machines Limited is admitted in the Corporate Insolvency Resolution Process under section 9 of the Code.
- ii. The moratorium under section 14 of the Code is declared for prohibiting all of the following in terms of Section 14(1) of the Code.




- 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 Act, 2002;*
- d. *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

iii. 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Code, as the case may be.

iv. We appoint **Mr. Ankur Bansal** having registration No. IBBI/IPA-003/ICAI-N-00370/2021-2022/13820; Email - ip.caankur@gmail.com to act as an IRP under Section 13(1)(c) of the IBC, 2016 in respect of the CIRP of the corporate debtor. IRP shall conduct the Corporate Insolvency Resolution Process of the corporate debtor as per the provisions of the Code read with Regulations made thereunder.

v. The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.



vi. 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. The corporate debtor provides effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

vii. The IRP shall perform all functions as contemplated, inter alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

viii. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Code.

ix. The Operational Creditor is directed to pay an advance of Rs. 4,00,000/- (Rupees Four Lacs only) to the IRP to meet out the initial CIRP cost within two weeks from the date of receipt of this order for smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating



Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per Rules.

x. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven working days and upload the same on website immediately after pronouncement of the order.

xi. The IRP shall also serve a copy of this order to various departments such as Income Tax, GST, State Trade Tax and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/ employee's associations so that they are timely informed about the initiation of CIRP against the Corporate Debtor.

xii. The commencement of the Corporate Insolvency Resolution process shall be effective from the date of this order.

13. As a result, the Company Petition bearing **CP (IB) No.81/Chd/Hry/2020** stands allowed.

Sd/-

Kaushalendra Kumar Singh
Member (Technical)
Jashan

Sd/-

Khetrabasi Biswal
Member (Judicial)