



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

CP (IB) No.3888/NCLT/MB-IV/2019

Under Section 9 of the IBC, 2016

In the matter of

VS & B Container (L.L.C.)

[IN: AFUMP4868B]

...Operational Creditor

v/s.

Opal Asia Line (India) Private Limited

[CIN: U63020MH2007PTC172207]

...Corporate Debtor

Order Delivered on: 03.11.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Ms. Payoja Gandhi, Advocate.

For the Respondent : None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by VS & B Container L.L.C., (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Opal Asia Line (India) Private Limited (“the Corporate Debtor”), [CIN: U63020MH2007PTC172207].



2. The Corporate Debtor is a company incorporated on 10/07/2007 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U63020MH2007PTC172207. Its registered office is at 601, Sabari Samridhi, opp. Union Park, Sion - Trombay Road, Chembur, Mumbai, Maharashtra-400071. Therefore, this Bench has Jurisdiction to deal with the present Petition.
3. The present petition was filed on 05.11.2019 by Mr. Sheshank Sharma, Associate Manager of the Operational Creditor vide its Board Resolution dated 22.07.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of Rs.13,85,50,361.37/- (Rupees thirteen crore eighty-five lakh fifty thousand three hundred sixty-one and thirty-seven paise only).
4. The date of default as mentioned in the Petition is 21.09.2019. The Petition is filed on 05.11.2019.
5. The case of the Operational Creditor is as under:
 - a) Operational Creditor is engaged in managing marine cargo equipment including Containers and also provides the equipment used for the purpose of transport of goods through vessels on lease or hire to various vessels involved in shipment of goods.
 - b) In December 2012m the Corporate Debtor approached the Operational Creditor and represented that it was desirous of hiring certain equipments consisting of containers to use in sea-fearing vessels from the Operational Creditor.



- c) The Operational Creditor agreed to lease out the containers to the Corporate Debtor on the mutually agreed terms and conditions which was recorded in Memorandum of Undertaking (Master Lease Agreement, General Terms and Conditions (GTAC) for the said purpose, which set forth the General as well as Commercial Terms and Conditions dated 01.04.2012 along with 8 amendments.
- d) The said Agreement was entered into for the Lease of 20DV, 40DV, HC GP, 20OT, 40FC, 40OT, 40FC, 20GP, equipments on rental basis by the Operational Creditor to the Corporate Debtor.
- e) The Operational Creditor as per the Agreement raised numerous invoices of which the Corporate Debtor made part payments till 12.09.2018. However, it stopped making any further payments against invoices due.
- f) A Credit Period of 30 days from the date of Invoice generated was agreed upon by both the parties as per clause 2.2 of the Agreement.
- g) Six Outstanding Invoices for Transport Charges, thirty Outstanding Invoices for Repair Charges, thirty-four for Lease Rentals. One for Depreciation Replacement Value and one for Tax Debit Note for Interest are the Outstanding Invoices.
- h) The total amount in default of the above-mentioned Outstanding Invoices from 12.09.2018 is Rs.12,86,01,705.88 (Rupees twelve crore eighty-six lakh one thousand seven hundred five and eighty-eight paise only) plus interest at 36% per the Clause 2.2 of GTAC, Rs.99,48,655.49 (Rupees ninety-nine lakh forty-eight thousand six hundred fifty-five and forty-nine only) as on 21.09.2019 at the rate 1\$ = Rs.71.02.



- i) The Operational Creditor had sent consistent reminders through emails to the Corporate Debtor from December 21, 2017 to May 28, 2018 requesting to make payment for the outstanding amount due.
- j) Following documents were entered between the Financial Creditor and the Corporate Debtor:
- i. A Rental Lease Agreement (General Terms and Conditions) for leasing of cargo containers was entered between the Operational Creditor and Opal Asia Logistics (India) Private Limited on 01.09.2017;
 - ii. A Memorandum of Understanding (Master Lease Agreement) (Amendment to Commercial Terms and Conditions) for leasing of cargo containers was entered between the Operational Creditor and Corporate Debtor for a period of 12 months on 01.04.2017;
 - iii. A Memorandum of Understanding (Master Lease Agreement) (Amendment to Commercial Terms and Conditions) for leasing of cargo containers was entered between the Operational Creditor and Corporate Debtor for a period of 12 months on 01.04.2018;
 - iv. A Memorandum of Understanding (Master Lease Agreement) (Amendment to Commercial Terms and Conditions) for leasing of cargo containers was entered between the Operational Creditor and Corporate Debtor for a period of 12 months on 01.06.2018;
6. The Operational Creditor has issued Demand Notice dated 23.09.2019 to the Corporate Debtor in Form 3 under section 8 of the Code claiming the total outstanding of Rs.13,85,50,361.37/- (Rupees thirteen crore eighty-five lakh fifty thousand three hundred sixty-one and thirty-seven paise only). The



Demand Notice was served upon Corporate Debtor on 28.09.2019. The Corporate Debtor vide its reply dated 24.10.2019 has replied to said Demand Notice taking lame excuses.

7. The Operational Creditor has filed Invoices which is at pp 70-116 as Exhibit 'D' of the Petition. The Invoices does not have provisions of interest for delayed payment. The Memorandum of Understanding (Master Lease Agreement) dated 01.09.2017 is placed at pp 28-69 as Exhibit 'C' of the Petition.
8. The Operational Creditor has filed an Affidavit dated 16.10.2019 under section 9(3)(b) of the IBC to the effect that there is no notice given by the Corporate Debtor relating to any prepaid dispute in the unpaid operational debt which is at pp 734A-740 as Exhibit 'O' of the Petition.
9. The Corporate Debtor did not appear in the matter.

Findings/Observations:

10. We have heard the arguments of Learned Counsel for Operational Creditor and perused the records.
11. It is observed by the Bench that the matter was listed on 11.12.2019, the Court Notice was issued to the Corporate Debtor to file reply in the matter. The said Court Notice was delivered upon the Corporate Debtor on 24.12.2019. Vide order dated 25.01.2020, this Bench directed to issue Personal Notice to the Corporate Debtor for effective service to file reply in the matter. In compliance of the order dated 10.02.2020, the Operational Creditor has served Notice of Hearing upon the Corporate Debtor through speed post on 27.02.2020 and by E-mail on 25.02.2020.



12. Despite various service by all available means upon the Corporate Debtor, the Corporate Debtor failed to appear in the matter and hence, the matter was listed on 06.09.2022 for final hearing and was Reserved for Orders.
13. It is observed by the Bench that the Operational Creditor supplied certain containers to the Corporate Debtor on lease/rent. For which the Operational Creditor and Corporate Debtor entered into a Rental/Lease Agreement dated 01.12.2013. The said Agreement was amended and extended from time to time.
14. The last date of Invoice is 09.08.2019. Hence, as per the last invoice, the debt fell due on 10.08.20219. However, the Operational Creditor has considered the date of default as 21.09.2019. In any of the case there is no dispute as to the limitation hence, this Bench finds this Petition well within limitation.
15. Therefore, the Petition 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 of One Lakh Rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and this is fit case for admission into CIRP.
16. The Operational Creditor has proposed Mr. Vinod Radhakrishnan Nair as Interim Resolution Professional (IRP) in the matter.

ORDER

17. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP (IB) 3888/MB-IV/2019** filed by VS & B Container L.L.C., the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to



Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Opal Asia Line (India) Private Limited, the Corporate Debtor, is **admitted**.

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) 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;



- (ii) 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;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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.
- (e) 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.
- (f) This Bench appoints Mr. Vinod Radhakrishnan Nair, registration No. IBBI/IPA-001/IP-P01352/201-19/12083, Contact: 7039500000, as Interim Resolution Professional 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.
- (g) 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.



- (h) 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).
- (i) 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.
- (j) 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/-

Manoj Kumar Dubey
Member (Technical)
03.11.2022

Sd/-

Kishore Vemulapalli
Member (Judicial)