

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-II, CHENNAI**

IBA/417/2020 filed under Section 9 of  
the Insolvency and Bankruptcy Code,  
2016 read with Rule 6 of the Insolvency  
and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016.

**In the matter of M/s. Hava Win India Private Limited**

**M/s. Sanghvi Movers Limited**  
Survey No. 92, Tathawade,  
Taluka-Mulsi, Pune,  
Maharashtra-411033

**---Operational Creditor**

Vs.

**M/s. Hava Win India Private Limited**  
[CIN: U74999TN2017PTC114868]  
New No. 15, Old No. 14, 2<sup>nd</sup> Street,  
Thiru Nagar, Vadapalani,  
Chennai-600026.

**---Corporate Debtor**

**CORAM**

**R. SUCHARITHA, MEMBER (JUDICIAL)**

**B. ANIL KUMAR, MEMBER (TECHNICAL)**

For Operational Creditor : *Shri. D.R. Raghunath, Advocate*  
*Shri. M. Sivavarthanan, Advocate*  
*Shri.T. Senthil Kumar, Advocate*

For Corporate Debtor : *Shri.D. Peruman Saranyan, Advocate*

**ORDER**

**Per : R. SUCHARITHA, MEMBER (JUDICIAL)**

**Order pronounced on: 29.04.2021**

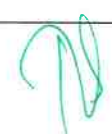
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IBA/417/2020

In the matter of M/s. Hava Win India Private Limited

Under consideration is an application filed pursuant to Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (Rules) by M/s. Sanghvi Movers Limited (hereinafter referred to as “Operational Creditor”) for initiation of Corporate Insolvency Resolution Process (in short “CIRP”) against M/s. Hava Win India Private Limited (hereinafter referred to as “Corporate Debtor”) on the ground that Corporate Debtor defaulted in payment of an amount of Rs.42,02,000/- together with interest at the rate of 24% per annum as on 27.09.2019 towards claim for an Operational Debt. This application was filed on 07.02.2020. At that relevant point, this Adjudicating Authority had jurisdiction to entertain ‘debt’ of rupees one lakh and above.

2. In Part-IV of the application, the learned counsel for the Applicant submits that the Applicant Company is carrying on business of supply of cranes on a hire/rental basis for various companies. The Corporate Debtor is engaged in the business of



installing Wind Turbine Generators. During the course of its business, the Corporate Debtor approached the Operational Creditor for the purpose of renting cranes for their project site at TVH Energy Resource Private Limited, Theni Wind Farm Site, Theni District. After negotiations, the Corporate Debtor placed work orders as follows:

S.No.	Work Order No.	Crane Model	Date
1.	No.0018/19-20	Crane Model- LR 1400/2	27.05.2019
2.	No.0049/19-20	Crane Model- LR 1400/2	17.07.2019

3. For supply and deploying of 3 cranes to their site for 26 days as per the terms of work order; the amounts due shall be paid to the operational creditor within 30 days from the date of completion of work and submission of invoice. Since the work order had expired on 16.07.2019, the corporate debtor requested extension of work order for 15 days and this work order was dated as 17.07.2019 and the above work order was issued for 26 days for which invoice was raised on 27.08.2019.

4. It is further submitted that the Corporate Debtor used the cranes for executing their work at the designated site at Theni



Wind Farm Site. Thereafter, the Operational Creditor continued to raise invoices -(i) No.1920/TN/SL/00071 on 07.08.2019 for Rs.28,32,000/- and (ii) No.1920/TN/SL/00124 on 27.08.2019 for Rs.23,60,000/- plus TDS Credit note received Form-AS Rs.1,000/- totalling an amount of Rs.52,02,000/- payable by the Corporate Debtor towards hire charges pursuant to the aforesaid work orders. However, the Corporate Debtor paid only a sum of Rs.10,00,000/- (on 26.05.2019, 26.06.2019 and 27,06,2019) towards outstanding debt. Statement of Account by Saraswat Bank showing that no credit has been received during the period from 28.06.2019 is placed at page 34. The Operational Creditor had sent e-mail on 29.08.2019 demanding repayment of balance outstanding amount of Rs.42,02,000/-. The Corporate Debtor has neither responded nor paid the debt due. On 05.10.2019, the Operational Creditor had issued Demand Notice and the same was received by the Corporate Debtor on 08.10.2019 as reflected in the postal acknowledgement filed. The Operational Creditor was maintaining a running account in respect of invoices raised



against the Corporate Debtor and the last invoice raised by the Operational Creditor was on 27.08.2019.

5. According to the Applicant, demand notice was sent to the Corporate Debtor on 05.10.2019 demanding payment in respect of unpaid operational debt of Rs.42,02,000/- as on 27.09.2019. The Corporate Debtor failed and neglected to pay the outstanding dues. In response to the legal notice, the corporate debtor has admitted that there is no dispute with regard to invoice dated 07.08.2019 and that for the invoice dated 27.08.2019, the corporate debtor is ready to pay hire/rental charges only for 5 days out of 26 days since the crane has been used only for 5 days. According to the Applicant, work orders and invoices are issued/raised based on the hiring/rental charges of the cranes and the same are not issued/raised for usage of cranes and therefore, the operational creditor is not concerned whether the Corporate Debtor has used the cranes or not during the hiring/rental period.

6. In the *reply* filed on 21.12.2020, Learned counsel for Corporate Debtor submits that the Corporate Debtor issued work



order dated 27.05.2019 stating that they require (i) 400 MT Crawler Crane (ii) 100.t/80mt Telescopic Crane and (iii) 40 MT Telescopic Crane for 26 days and the price was fixed at Rs.28,32,000/-as per the terms and conditions. Without giving any information, the operational creditor had withdrawn main supporting crane on 11.07.2019 which is mandatorily required to run the other two cranes to complete the work within the agreed 26 days. The Corporate Debtor made part payment of Rs.13,00,000/- towards invoice dated 07.08.2019.

7. It is further submitted that it is mandatory to prepare the Log Book on daily basis and the first log book was prepared by the operational creditor and it was authorized from our side on daily basis. Copies of Tax Invoice on 07.08.2019 along with Log Book for 3 cranes are enclosed at page.12 to 17. Since the operational creditor had withdrawn crane before 16.07.2019, the corporate debtor was compelled to extend crane hiring for another 15 days from 16.7.2019 to 30.07.2019. On 29.08.2019, operational creditor had orally informed that they require hard

copy of the work order with seal and sign after a gap of more than 15 days and it was sent on the same day by the corporate debtor. During the month of September 2019, the operational creditor sent a tax invoice dated 27.08.2019 for 26 days for an amount of Rs.23,60,000/-totally disregarding the fact that the cranes were utilized only for 5 days. The certified log sheets for 2 cranes viz. LR1400/2 and AC 80/1 for the period July-August 2019 (page.22 to 26) evidence the fact that the cranes were under operation for 5 days only.

8. Pursuant to the demand made by operational creditor 08.10.2019, the corporate debtor sent emails on 08.08.2019 and 17.08.2019 questioning as to on what basis the claim was made from 21.07.2019 to 16.08.2019 though the work was completed as early as 21.07.2019 and thereby denied liability arising out of the second work order dated 17.07.2019. The operational creditor has not furnished the reason for the claim on the aforesaid period. The operational creditor had manipulated second log book by



forging signatures and compelled the authorized person of the corporate debtor to sign in the manipulated log book.

9. On 17.11.2020, the corporate debtor sent a reply legal notice (page 29 to 32) denying the liability to the tune of Rs.42,02,000/- as claimed by the operational creditor. In spite of raising disputes over the second tax invoice by email communications, the operational creditor filed an affidavit on 21.01.2020 before this Tribunal stating that the corporate debtor has not raised any dispute with respondent in respect of the debt.


10. Upon perusal of pleadings and documents, it is clear that there is outstanding debt due and payable by Corporate Debtor to Applicant towards hiring charges of cranes. The terms and conditions in work order do not say that only if the cranes are put to use, the hiring charges shall be paid. Once based on work order, the equipment on rental basis is availed by respondent and also acknowledged by respondent, the respondent ought to settle the outstanding dues, irrespective of the fact whether the equipment was under utilisation or not.



11. Hence, based on discussion supra, 'debt' and 'default' is proved by the Applicant.

12. Accordingly, this application IBA/417/2020 stands **admitted** and consequently Corporate Insolvency Resolution Process is initiated.

13. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints **Mr. G. Gunasekaran, Regn. No [IBBI/IPA-001/IP-P00681/2017-2018/11178] Email: [cagunasekar@yahoo.com](mailto:cagunasekar@yahoo.com)** as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as



envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. *The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.*

14. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

- (1) *The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

(2) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

15. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(3) *The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:*

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

16. The Operational Creditor is directed to pay a sum of **Rs.50,000/- (Rupees Fifty Thousand Only)** to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the

provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. In terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry.

**-sd-**  
**(ANIL KUMAR B)**  
**MEMBER (TECHNICAL)**

**-sd-**  
**(R. SUCHARITHA)**  
**MEMBER (JUDICIAL)**

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