

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

C.P. (IB)No.1924/NCLT/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of:

Associated Road Carriers Limited

...Operational Creditor/ Applicant

V/s

Health Secure (India) Private limited

...Corporate Debtor / Respondent

Order Dated: 10.01.2020

Coram: Mr Rajesh Sharma

Hon'ble Member (Technical)

Mr Bhaskara Pantula Mohan

Hon'ble Member (Judicial)

For the Applicant: Mrs. Hasmita Kapadia i/b Adv. K.G. Parmar

For the Respondent: None Present

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being C.P. (IB) No. 1924/NCLT/MB/2019 filed by **Associated Road Carriers Limited**, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Health Secure (India) Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process(**CIRP**).
2. The Application is filed by Mr. Lyju Antony, authorised signatory of Operational Creditor, claiming a total default of 27,24,973/- (Rupees Twenty-Seven Lakh Twenty-Four Thousand Nine Hundred and Seventy-Three Only) and interest thereon at 24% p.a. The statement for particulars of claim amount is annexed to the Application.

3. The Applicant submitted that it rendered transportation services from Vashi -Mumbai and One Consignment from Dewasto the Corporate Debtor between 25.06.2016 to 30.06.2017 and raised bills and consignment Note for the same upon the Corporate Debtor. Further the Applicant submitted that the Copy of bill showing interest @24% p.a. Copies of the said Submission of bills and consignment Note are annexed to the Application.
4. The Applicant submitted that Applicant sent demand letter dated 26.03.2018 requesting to release outstanding amount pending against transportation of material. Further the Applicant submitted that the Corporate Debtor has admitted the transaction and confirmed the liability vide letters dated 27.03.2018, 28.08.2018 and 01.09.2018 and assured to pay the amount Up To 28.02.2019.
5. The Applicant submitted that the Corporate Debtor has admitted its liability towards outstanding amount vide its letter dated 01.09.2018.
6. The Applicant submitted that even after assurance and admission of liability, the Corporate Debtor defaulted in making payment of the outstanding bills. Therefore, the Applicant issued Demand Notice dated 12.11.2018 to the Corporate Debtor under Section 8 of the I&B Code demanding payment of outstanding amount of Rs.27,24,973/- and interest thereon at 24% p.a. The Corporate Debtor did not reply to the Demand Notice.
7. The Applicant filed present Application on 10.05.2019. The Applicant was directed to serve the Court Notice to the Corporate Debtor vide our Order dated 20.06.2019. The Applicant filed its Affidavit of Service of Notice on 14.08.2019. Thus, it is on record that the court notice was duly served upon the Corporate Debtor however, the Corporate Debtor chose not to file any objections in its defence and has already admitted its liability vide its letter dated 01.09.2018.
8. There was no representation on behalf of the Corporate Debtor during hearing. We have heard the Applicant and perused the records.

9. On perusal of the documents submitted by the Applicant, it is clear that Applicant has provided transportation services more than ₹1,00,000/- (Rupees One Lakh Only) of which the Corporate Debtor has failed to make payment. Therefore, operational debt of more than Rupees One Lakh is due and payable by the Corporate Debtor which is also admitted by the Corporate Debtor vide its Letter dated 01.09.2018.
10. The Applicant, having provided services to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not raised any dispute in respect of the goods and the amount to be paid to the Applicant. The Corporate Debtor chose not to file any reply to the petition. Thus, the debt amount of more than Rupees One Lakh and default by the Corporate Debtor has also been established and there is no pre-existing dispute.
11. The Application is complete and has been filed under proper form. Copy of the Demand Notice dated 12.11.2018 along with postal track report reflecting due receipt of Notice by Corporate Debtor and Affidavit in compliance of section 9(3)(b) dated 04.05.2019 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed with this Bench.
12. The Applicant has proposed the name of Mr Manish Sukhani, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00668/2017-18/11137] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2, the proposed IRP has declared that there are no disciplinary proceedings pending against him.
13. The Application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 9 of I&B Code, 2016, presented by **Associated Road Carriers Limited**, Operational Creditor / Applicant against **Health Secure (India) Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

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 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 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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. That this Bench appoints **Mr Manish Sukhani**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P00668/2017-18/11137]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

14. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA

Member (Technical)

10.01.2020

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)