IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.4663/MB.IV/2018

Under section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Avia Xpert Private Limited
[CIN: U74900DL2010PTC207178]

…Operational Creditor

Versus

Sovika Aviation Services Private Limited
[CIN: U74910MH2007PTC175582]

… Corporate Debtor

Order pronounced on : 16.07.2020

Coram:

Mr. Rajasekhar V.K.	:	Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy	:	Hon'ble Member (Technical)

Appearances:

For the Operational Creditor	:	Mr Sumeet Shukla a/w Mr Rahul Jain i/b M/s Alpha Chambers, Advocates
For the Corporate Debtor	:	Ms Samruddhi Chothanii/b M/s Vashi & Vashi, Advocates

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section9 of the Insolvency and Bankruptcy Code, 2016 (IBC)by Avia Xpert Private Limited*(Operational Creditor)*[CIN: U74900DL2010PTC207178],a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Director, Mr Jitendra Agarwal, on the basis of a Board Resolution dated 03.10.2018,seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Sovika Aviation Services Private Limited*(Corporate Debtor)*.

2. The Corporate Debtor is a private company limited by shares and incorporated on 01.11.2007 under the Companies Act, 1956,with the Registrar of Companies (RoC), Maharashtra, Mumbai.Its CIN is U74910MH2007PTC175582. Its registered office is at B-2, Parekh Mahal, No.80, Veer Nariman Road, Churchgate, Mumbai 400020, in the State of Maharashtra.Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 12.12.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹85,69,052.00 (Rupees eighty-five lakh sixty-nine thousand and fifty-two only) as principal and ₹76,77,131.21 (Rupees seventy-six lakh seventy-seven thousand one hundred and thirty-one and twenty-one paise only) as interest as on 14.08.2017, which is stated to be the date of default.

4. The case of the Operational Creditor is as follows: -

(a) The Operational Creditor is a company engaged in the business of providing ground handling services to airlines at various airports. In 2016, a tripartite agreement was entered into between the operational creditor, corporate debtor and Go Airlines (India) Limited for providing ramp equipment services and manpower services at IGI Airport. This agreement was effective from 16.7.2016 to 31.01.2018. In terms of this Tripartite Agreement, Go Airlines (India) Limited appointed the Corporate Debtor as its official Cargo Agent. The Corporate Debtor, in turn, appointed the Operational Creditor as its handler for handling cargo operations at IGI Airport, New Delhi;

(b) After accounting for all payments received, a total of four invoices - all dated 30.06.2017 - remain to be partially paid. For a further three invoices, interest alone has been calculated in view of the delayed payments.

5. Invoices have been placed on record as Exhibit 'A' at pp.40-48. The invoices provide for interest in case of delayed payments, to be charged at the rate of 2% per month. Bank statements are attached as Exhibit 'DD & FF' at pp.164-182. The total debt due and payable to the Operational Creditor is ₹1,62,46,183.21 (Rupees one crore sixty-two lakh forty-six thousand one hundred and eighty-three and twenty-one paise only), as mentioned at page 183-186 of the Petition.

6. The Operational Creditor had served a Demand Notice in Form 3 dated 03.04.2018 to the Corporate Debtor (Exhibit 'W', pp.113-114) in terms of section 8 of the IBC. The Corporate Debtor has sent a reply, whereinthey have stated that the parties are engaged in settlement discussions and the same are at an advanced stage; and time for appointment was sought to finalise the settlement and work

out the modalities. The reply has been annexed at Exhibit 'CC' at pp.163 of the Petition. Necessary affidavit of No Dispute in terms of section 9(3)(b) of the IBC has been placed at p.30.

7. MsSamruddhiChothanii/b M/s Vashi & Vashi, Learned Counsel appeared on behalf of the Corporate Debtor and made his submissions.

8. In its reply dated 27.11.2019, the Corporate Debtor has set up the following defence:-

(a) The petition was filed for an alleged sum of Rs.1,62,46,183.21, but the petitioner took no steps to pursue the petition and even failed to appear before this Adjudicating Authority on various occasions. (paras A & B at page 2 of the Reply);

(b) On 23.07.2019, more than seven months after the filing of the petition, the petitioner filed a commercial suit being Commercial Suit No.10484/2019 before the learned District Judge, Patiala House, Delhi, for recovery of an alleged amount of Rs.1,35,20,512/- along with interest, based on the same Tripartite Agreement dated 16.07.2016. Therefore, the petitioner is guilty of forum shopping and the petition is liable to be dismissed on this ground alone. This evidences existence of a dispute between the parties. (paras C, D & E at page 2-3 of the Reply);

(c) The petitioner is prosecuting its alleged claim in the petition for a sum of Rs.1,62,46,183.21 contrary to its alleged claim in the commercial suit for a sum of Rs.1,35,20,512/-. Therefore, this gives rise to another bona fide dispute between the parties. (para G at page 4 of the Reply);

(d) The respondent reserves its right to file a detailed further affidavit if this Adjudicating Authority finds merit in the petition. (para 5 at page 5 of the Reply).

9. We have heard the arguments of both sides and perused the records.

10. There is no pre-existing dispute between the parties. On the contrary, all the email correspondence placed on record only point to the fact that the Corporate Debtor has been asking for some more time to settle the outstanding dues.After having provided services as per the Tripartite Agreement, the Operational Creditor cannot be expected to wait indefinitely for payments.

11. The defence that the Operational Creditor indulged in forum shopping is untenable, since the rights available under the IBC is independent of and in addition to, the rights available to the petitioner under other law. Also, the defence that there is suppression of facts in the present petition cannot be countenanced, since the commercial suit came to be filed later. There was no reason for the Corporate Debtor not to file a detailed defence in case there was anything to be said on merits. It is pertinent to mention that the reply itself came to be filed on 27.11.2019, *i.e.,* about a year after the filing of the present petition.

12. The application 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 at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

13. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.

14. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing CP (IB) No.4663/MB/C-IV/2018 filed by Avia Xpert Private Limited, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Sovika Aviation Services Private Limited [CIN: U74910MH2007PTC175582], 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 Adjudicating Authority 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) Since the Operational Creditor has not proposed the name of any IRP in the matter, this Adjudicating Authority hereby appoints Mr Jagdish Ratanlal Ahuja, Registration No.IBBI/IPA-002/IP-N00401/2017-2018/11175, having address at C/o JR Ahuja & Co., UG-329, Dreams Mall, LBS Road, Bhandup (West), Mumbai, 400078 [email: pcsjrahuja@gmail.com, Mobile: 9323144390] as the IRP. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 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 IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP of the Corporate Debtor.

(i) The Operational Creditor shall deposit a sum of ₹3,00,000/- (Rupees three 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).

(j) In terms of section 9(5)(i) of the IBC, the Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

(k) A copy of this Order be also 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/-	Sd/-
Ravikumar Duraisamy	Rajasekhar V.K.
Member (Technical)	Member (Judicial)

16.07.2020