



**THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT-V**

C.P. No. 4776/IBC/MB/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Markolines Infra Private Limited

Having registered office at: 502, A Wing Shree NandDham, Sector 11, CBD Belapur, Navi Mumbai, Mumbai – 400 614

.....Operational Creditor

Vs

Sion Panvel Tollways Private Limited

[CIN: U45203PN2009PTC134473]

Having registered office at: “IVRCL House”, 35 Suyojana, C.H.F. Koregaon Park, Pune – 411 001

.....Corporate Debtor

Order Reserved On: 07.02.2023

Order pronounced on: 17.03.2023

Coram:

Hon’ble Kuldip Kumar Kareer, Member (Judicial)

Hon’ble Prabhat Kumar, Member (Technical)

For the Petitioner: Mr. Murtaza Chherawala, (Advocate)

For the Respondent: Mr. Rushab Chopra, Ms. Tasneem Zariwala
i/b Vidhi Partners(Advocate)

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by **Markolines Infra Private Limited**, (hereinafter referred as **Operational Creditor**), seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Sion Panvel Tollways Private Limited** (hereinafter referred as **Corporate Debtor**) by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 63,60,231/-.

Facts of the Case

2. The Petitioner submits that it was appointed by the Respondent vide work order no. PO/STPL/14-15/016, dated 12.06.2014 as Toll Operator/Contractor for the purpose of carrying out "Toll Collection Operations" at Sion-Panvel Highway. Subsequently a revised work order was raised on sister concern of the Petitioner namely, Markoline Traffic Controls Private Limited ("**Sister Concern**"). The Petitioner submits that several invoices were issued upon the Respondent but the latter failed to make payments of the said invoices.
3. The Petitioner submits that around March, 2017 settlement talks were on going between the parties. In this regard the Respondent had issued an email dated 16.03.2017, wherein the Respondent admitted the amount of Rs. 27,96,397/- was due and payable by it. Despite admitting the outstanding amount, the Respondent has failed to pay the same. Consequently, the Petitioner issued a legal notice dated 18.11.2017 for recovery of outstanding dues. The Respondent had responded to the same denying the amount claimed to be in default.
4. The Petitioner submits that the Respondent, with a view to settle the outstanding debt, approached the Petitioner and further admitted



outstanding debt of Rs. 39,88,542/- vide email dated 18.01.2018. Thereafter the Petitioner issued several Debit Notes towards the interest accrued on the delayed payments.

5. The Petitioner, in view of inability of the Respondent to clear the outstanding dues, issued a demand notice dated 05.05.2018 under Section 8(5) of the Code, but despite notice no payment has been received from the Respondent. Hence this Petition.

Reply by the Respondent

6. The Respondent has filed an affidavit in reply controverting the allegations against it.
7. The Respondent has denied that the amount of Rs. 63,60,231/- is due and payable by it. According to the Respondent, there is a pre-existing dispute between the parties. Apart from that, the Petitioner is not entitled to claim any interest since there is no contract between the parties. With regards to the payment of interest the Petitioner is levying interest under the provision of Interest Act. However, this Tribunal is not empowered to grant interest under the Interest Act.
8. The Respondent submits that the demand notice issued by the Petitioner is not in the format prescribed in under the Code and thus the same is not valid. It is further stated that the Respondent was unable to reply to the said demand notice due to some cogent reason. Therefore, merely because the notice was not responded to by the Respondent cannot be considered as admission of debt.
9. The Respondent had approached the Petitioner to settle the dispute. However, the settlement talks failed as the Petitioner was not inclined to settle. Therefore, it can be seen that there were pre-existing dispute between the parties. The Petitioner got issued a legal notice dated



18.11.2017 which was duly responded to by the Respondent on 06.12.2017.

10. In view of the pre-existing dispute between the parties, the Respondent has prayed that the Petition is liable to be dismissed.

Findings: -

11. We have heard the Counsel for the Parties and have through the record.

12. During the course of arguments, it has been contended on behalf of the Corporate Debtor that the Petition is not maintainable on the ground that the Petitioner has claimed an exorbitant amount as Operational Debt. The claim has been inflated by adding interest whereas there has been no contract between the Parties with regard to interest. Thus, the Operational Creditor was not entitled to charge any interest, and on this ground, the Petition is liable to be dismissed.

13. Secondly, it has been argued on behalf of the Corporate Debtor that the Operational Creditor has been rendering deficient and defective services and due to poor working of the toll operations by the Operational Creditor, the Corporate Debtor suffered huge losses. The Corporate Debtor time and again pointed out the deficiency in the services being provided by the Operational Creditor but the issues were never resolved. Apart from that, the Operational Creditor never reconciled the accounts in respect of the transactions. Thus, there has not only deficiency on the part of the Operational Creditor but also there is a pre-existing dispute between the parties due to which the instant Petition cannot be entertained.

14. Thirdly, it has been argued on behalf of the Corporate Debtor that the demand notice issued by the Operational Creditor is defective as the same was not issued on the appropriate format given under the IB Code and as



such, the same is no notice in the eyes of law. On this ground also, the Petitioner deserves to be non-suited.

15. We have thoughtfully considered the above contentions raised on behalf of the Corporate Debtor and have also gone through the records.
16. So far as the objections with regard to wrong charging of interest is concerned, it would be suffice to say that even if the amount of interest is not taken into reckoning, the Corporate Debtor owes a sum of Rs. 39,88,542/- as has been candidly admitted by the Corporate Debtor which is more than the threshold limit of Rs. One lac. Thus, the Corporate Debtor had acknowledged its liability in respect of the Operational Debt owed to the Petitioner. Therefore, the Petitioner cannot be non-suited on this ground.
17. From the reply as well as the documents filed by the Corporate Debtor, there appears to be no pre-existing dispute between the parties so far as the claim of the Petitioner is concerned. Admittedly, no reply was sent on behalf of the Corporate Debtor in response to the demand notice dated 05.05.2018. The Respondent had not placed on record any other correspondence which might have been exchanged between the parties prior to the demand notice dated 05.05.2018 whereby the Corporate Debtor might have raised some genuine dispute with regard to its liability towards the Operational Creditor. It is a settled proposition of law that if no dispute is raised by the Corporate Debtor at any point of time prior to the demand notice, the dispute subsequently raised cannot be said to be real dispute existing in the eyes of law. In the reply filed by the Corporate Debtor, no substantive disputes have been raised. It has only been alleged that the Operational Creditor has been rendering deficient services and the acts and omissions of the Operational Creditor has caused losses to the Corporate Debtor in terms of revenue, reputation and business. However, it has not been specified anywhere in the reply as to how the services provided by the Operational Creditor were deficient and what



were the acts and omissions on the part of the Operational Creditor which caused loss to the Corporate Debtor. Thus, the allegations made in the reply are quite vague and ambiguous and the same cannot be equated with a genuine pre-existing dispute between the parties.

18. Lastly, it has been argued that the demand notice dated 05.05.2018 is defective in nature inasmuch as it does not contain the essential information required under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Even this contention raised on behalf of the Corporate Debtor does not appear to be tenable considering the fact that the demand notice dated 05.05.2018 has been issued in accordance with Section 8(1) read with Rule 5 of Insolvency and Bankruptcy Code, 2016. The complete particulars of the Operational Debt are shown to have been given in para 2 of the notice and all the necessary documents such as work orders, invoices, debit notes, emails etc. were annexed with the notice. Therefore, it cannot be said by any stretch of imagination the notice in question is defective in nature nor on this ground any adverse inference can be drawn against the Petitioner/Operational Creditor.

19. No other points have been raised on behalf of the Corporate Debtor.

20. As a corollary to the above discussions, we are of the considered view that the Operational Creditor has been able to make out a case of Operational Debt of more than Rs. One Lac outstanding against the Corporate Debtor in respect of which the default has been committed by the latter. The present Petition also seems to have been filed within the period of limitation. Therefore, the instant Petition under Section 9 of the Code deserves to be admitted. It is ordered accordingly in the following terms.

ORDER

- A. The above Company Petition No. (IB) 4776 of 2018 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Sion Panvel Tollways Private Limited**
- B. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Anand Pravin Pande**, Insolvency Professional, Registration No: IBBI/IPA-003/ICAI-N-00374/2021-2022/13914, having Email id appande@gmail.com as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- C. The Operational Creditor shall deposit an amount of Rs. (2) Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- D. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor



where such property is occupied by or in the possession of the Corporate Debtor.

- E. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- F. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- G. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- H. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- I. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- J. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- K. Accordingly, the **C.P.(IB) 4776 of 2018** is admitted.



L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)