IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-153/(ND)/2020

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. VS & B Domestic Container Solutions Pvt. Ltd.
Registered Office at:
Suit No. 508, 5th Floor, MA Business Centre,
113 Park Street, Poddar Point Building,
Kolkata-700016

...Applicant/Operational Creditor

Versus

M/s. Maple Logistics Pvt. Ltd.
Registered Office at:
E-40/3, Okhla Industrial Area,

Phase-2
New Delhi – 110020

...Respondent/Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)
SHRI.RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant: Abhinav Hansaria
Counsel for Respondent: Prashant Mehta, Raghav Marwaha

ORDER

Per SH.RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 25.04.2022

1. This is an application filed by the Applicant M/s. VS & B Domestic Container Solutions Pvt. Ltd. seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code') of the Respondent M/s. Maple Logistics Pvt. Ltd. for the alleged default on the part of the Respondent in clearing the debt of Rs. 50,06,662 (Rupees Fifty Lakhs Six Thousand Six Hundred and

Sixty Two rupees) including interest @ 36% p.a. calculated till 19.09.2019 i.e. the date of issue of demand notice as alleged by the Applicant. During the pendency of the present petition, the Respondent had returned some containers to the Applicant, against which the Applicant had issued credit notes and raised invoices for on hire charges as per the terms of the agreement. Thus, as on date, out of the total of 40 containers for which DRV Invoices were issued, the Applicant has returned 19 containers and on account of the return of the containers and issuance of credit notes, the outstanding amount as regards the DRV Invoices was revised to Rs. 22,73,239.32/-(Rupees Twenty Two Lacs Seventy Three Thousand Two Hundred and Thirty Nine and Thirty Two Paise) and the revised interest amount was Rs. 3,70,538/- (Rupees Three Lacs Seventy Thousand Five Hundred and Thirty Eight). The details of transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:

i. That the Petitioner Company is into renting and leasing of containers. The Petitioner Company and Respondent Company entered into a Rental Lease Agreement for renting of certain marine cargo container equipments dated 1st January 2014.

ii. That the Petitioner Company raised numerous invoices out of which 15 invoices were outstanding for renting of Containers being raised in the name of Maple Logistics Private Limited which was unpaid by the Respondent Company.

iii. That the total amount in default of the abovementioned outstanding invoices from 05/04/2019 to 11/09/2019 was Rs. 44,20,936.39/- (Rupees Forty Lakh Twenty Thousand Nine Hundred Thirty Six Rupees Forty Four Lakh Twenty Thousand Nine Hundred Thirty Six and paise Thirty Nine only) and interest of Rs. 5,85,68.11 (Rupees Five Lakh Eighty Five Thousand Six Hundred Eighty Eight and Nineteen Paise only).

iv. That the Petitioner Company was in receipt of last payment on 05.04.2019 and thereafter there was no payment by the Respondent Company for the balance amount of Rs. 44,20,936.39(Rupees Forty Lakh Twenty Thousand Nine

Hundred Thirty Six Rupees Forty Four Lakh Twenty Thousand Nine Hundred Thirty Six and paise Thirty Nine).

v. That the total debt outstanding as on 19.09.2019 (date of issue of Demand notice) was Rs. 44,20,936.39/- along with interest Rs. 5,85,688.11 @ 36% per annum as per the terms of the contract amounting to total aggregate claim of Rs. 50,06,662.45/-.

vi. That the Petitioner Company had sent consistent reminders through e-mails to the Respondent Company from 4th January 2019 to 12th August 2019 requesting to make payment for the outstanding amount due.

vii. That the Petitioner Company served the Demand Notice to Respondent Company dated 19.10.2019 which was delivered to one of its directors on 24.10.2019 to make the payment within ten days from the date of receipt of the notice i.e., by 04.11.2019 under the Insolvency and Bankruptcy Code, 2016.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor stating as below:

i. That the Respondent specializes in handling transportation of Heavy cargo and is involved in auxiliary transport activities. The respondent commands immense goodwill in the market and the Applicant is attempting to damage the reputation of the respondents by filing vexatious, malicious and frivolous claims before this Tribunal.

ii. That the present petition is barred by existing dispute between the parties on account of deficiency in services as entailed under the General Term and Conditions dated 01.01.2014, Commercial Terms and Conditions along with amendments dated 01.01.2014, 01.01.2015 and 01.01.2017. The terms and conditions in the agreement are one-sided, unfair and unjust towards the lessee/ Respondent.

iii. That the Supreme Court had, in the case of *Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan 2019 5 SCC 725* and *Pioneer Urban Land & Infrastructure Ltd. Vs.*

Geetu Gidwani Verma & Anr. Consumer Case No.238/2017, held that a builder cannot seek to bind a buyer with one-sided and unfair contractual terms of an Apartment Buyer's Agreement ('Agreement').

iv. That on 12.04.2019 the Respondent through email informed the Applicant that they are not using its containers and have offered container at different locations. The Applicant accepted containers only in 3-4 locations which resulted in delay in the handover process. As per the agreement under clause 2.2 the Lessor reserves the right to hire to Lessee containers that have not been picked up after 30 days from the date of the on-hire survey.

v. That in term of the lease agreement as per clause (6), it was agreed between both parties that if the cost to repair the equipment exceeds the Depreciated Replacement Value (DRV), the equipment will be considered "destroyed". The Applicant arbitrarily and fraudulently increased the repair cost of the container to charge exorbitant DRV charges. The Applicant had arbitrarily computed the DRV charges without any substantial explanation for such calculations.

vi. That on 12.04.2020 the respondent had informed Applicant that container was taken in cargo worthy condition and there was no IICL 5 survey at the time of on-hire but the Applicant fraudulently charged high repair estimate as per IICL 5 conditions.

vii. That the Respondent Company had paid total lease rent Rs. 3,50,00,000 (Rupees Three Crore Fifty Lacs) against actual cost of total containers amounting to Rs. 2,50,00,000 (Rupees Two Crore Fifty Lacs) (Except Non-Usage) and also paid more than Rs. 20,00,000 (Rupees Twenty Lacs) on repair charges to the Applicant during the lease period.

viii. That the alleged claims raised by the Applicant are false and fictitious as the invoice raised by the Applicant was not accepted by the Respondent Company.

ix. That the respondent had duly intimated to the applicant that it is ready and willing to return the containers as the said containers are not being used by the respondent for a long time. Knowing very well that the said containers are completely obsolete, and in order to raise the frivolous invoices as being claimed to the present petition, the applicant refused to take delivery of the said containers on the false pretext that the same have to be delivered to the designated 3–4 places appointed by the applicant. The said conduct of the applicant was completely contrary to the contractual terms as well as the normal trade usage in the industry.

x. That the termination of the contract was completely illegal by the applicant and therefore as well the present petition is liable to be dismissed as the same shows that there was pre existing dispute.

xi. That the present petition is not maintainable as the applicant never served the demand notice as contemplated under Section 9(3) of the Insolvency & Bankruptcy Code.

3. The Operational Creditor has filed rejoinder to the reply of the Corporate Debtor stating that:

i. That there exists no dispute between the parties with respect to the amount due and payable by the Respondent to the Applicant. The contract was entered into between the parties in the year 2014, which was subsequently extended and amended in the following years. It is completely baseless to even suggest that the said terms and conditions are one sided and cannot bind the Respondent, let alone the fact that the Respondent has never ever raised the said issue prior to the filing of the reply.

ii. That the judgment of the Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. vs Govindam Raghavan and Pioneer Urban Land & Infrastructure Ltd. vs Geetu Gidwani Verma & Anr* have no application to the present case, whatsoever, as the said judgment solely discusses the relationship between a homebuyer and a developer and does not apply to any other commercial transaction and relationship.

iii. That the Applicant has raised the invoices strictly in terms of the terms and conditions agreed between the parties. As on 04.01.2019, a total of 65 containers were leased to the Respondent. Due to non - payment of the lease rentals since August, 2018, the Respondent was in breach of clause 2 of the General Terms and Conditions dated 01.01.2014 ("GTAC") and thus a notice for termination under Clause 19 of the GTAC was issued upon the Respondent on

04.01.2019. Having not received the total outstanding payment from the Respondent, the Applicant issued repeated reminders by way of emails dated 13.02.2019, 27.02.2019 and 11.03.2019. Thereafter, the Applicant issued an e-mail dated 23.03.2019, whereby the Applicant again sought the payment of the outstanding dues. The Applicant also stated that it is still awaiting approvals with respect to the repair estimates shared with the Respondent in respect of the 13 containers which were returned by the Respondent since January, 2019 and that with respect to the 50 remaining containers, DRV (Depreciated Replacement Value) Invoices would be issued in case the containers are not returned by 31.03.2019. Even after the receipt of the aforementioned email dated 23.03.2019, the Respondent only returned 10 more containers, and accordingly, the Applicant issued DRV Invoices with respect to the remaining 40 containers in terms with Clause 18.2 of the GTAC.

iv. That clause 2.2 of the agreement has no bearing or relevance in the present circumstance, as the same deals with a situation where after entering into the agreement, the lessee does not pick up the containers after 30 days of conducting the on - hiring survey. In the present case, the containers were duly picked up and thus there is no relevance of clause 2.2 of the agreement.

v. That Clause 18.2 of the agreement does not make it evident that the Respondent reserved the right to deliver the container in any location and pay for the same. It is denied that the Respondent by way of email dated 12.04.2019 had offered to return the containers at certain locations and the Applicant refused to accept the same due to the obsolete condition of the containers. As per the Redelivery Schedule Addendum of the Commercial Terms and Conditions (@Page 41 of the Application), the parties had agreed Delhi and Mumbai to be the off - hire locations. However, in good faith and by incurring additional charges, the Applicant had accepted the containers at other locations as well, being Kolkata and Mundra.

vi. That it is denied that the Applicant had arbitrarily computed the DRV charges without any substantial explanation for such calculations. It is submitted that the Respondent had never raised an issue prior to the issuance of the present reply and thus is prohibited from raising any such issues at this stage. The DRV invoices in the present case were not raised due to high repair cost as provided under Clause 6 of the agreement, but under Clause 18.2 of the agreement on account non - return of the containers and thus the corresponding submissions of the Respondent has no relevance whatsoever.

vii. That the Respondent has raised baseless contentions simply in order to deny its legal liability towards the Applicant. It is submitted that by way of email dated 12.04.2019, the Respondent had admitted its liability and sought time to return the containers and clear the outstanding amount on account of financial difficulty. The Respondent had never raised an issue as regards the ledger or the amount outstanding towards the Applicant and is raising the present frivolous allegations in order to mislead this Tribunal. The Applicant had shared its ledger with the Respondent by way of an email dated 01.07.2019 and the

Respondent had not denied the same. On the contrary, the Respondent has made part payment and returned some containers thereafter.

viii. That during the pendency of the present petition, the Respondent had further returned some containers to the Applicant, against which the Applicant had issued credit notes and raised invoices for on hire charges as per the terms of the agreement. Thus, as on date, out of the total of 40 containers for which DRV Invoices were issued, the Applicant has returned 19 containers and on account of the return of the containers and issuance of credit notes, the outstanding amount as regards the DRV Invoices was revised to Rs. 22,73,239.32/-(Rupees Twenty Two Lacs Seventy Three Thousand Two Hundred and Thirty Nine and Thirty Two Paise) and the revised interest amount was revised to Rs. 3,70,538/- (Rupees Three Lacs Seventy Thousand Five Hundred and Thirty Eight only.

4. We have heard the Ld. Counsels for the Operational Creditor and Corporate debtor and perused the averments made in the application as well as the documents enclosed with the application.

5. From the daily order dated 11.04.2022, it is clear that the Counsel for the Corporate Debtor has submitted that the efforts to resolve the matter did not materialize and although in the written reply they had not specifically admitted the debt, they are now admitting the debt and submitted to the Tribunal to pass appropriate orders. The counsel for the Corporate Debtor, on instructions of his client, has therefore admitted the debt and default.

6. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor as well as the Learned Counsel for the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and accepted the said default. The Corporate Debtor had, before accepting the default, contended that there exists a pre existing dispute as the terms and conditions in the agreement were one-sided, unfair and unjust towards the Respondent. However, the Corporate Debtor had himself signed the contract in the year 2014, which was subsequently extended and amended in the subsequent years. The Corporate Debtor never raised any dispute w.r.t the terms of the contract before the filing of this petition. Therefore, in the absence of any preexistence of dispute, this tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect:

1. The interim resolution professional ("IRP") proposed by the Applicant, Mr. Vinod Radhakrshnan Nair, (Mobile No. - 7039500000), Reg. No: IBBI/IPA-001/IPP01352/2018-19/12083 is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench. Mr. Vinod Radhakrshnan Nair has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of

the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 30.10.2019.

2. Section 16(3)(b) of the Code mandate that the Resolution Professional proposed by the Operational Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Vinod Radhakrshnan Nair has submitted the declaration in Form 2 dated 30.10.2019.

3. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

(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.

4. The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

5. 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.

6. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under Section 31(1) 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.

7. The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

7. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

(SH.RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

(SH. P.S.N. PRASAD)

MEMBER (JUDICIAL)