



**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**  
**COURT III**

1. C.P.(IB)-518(MB)/2018

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)  
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **10.06.2022**

NAME OF THE PARTIES:        Lim Fa Pte Ltd.

V/s

Staunch naturals Resources Pvt. Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

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**ORDER**

Counsel for the Respondent, Mr. Atishay Jain is present through virtual hearing. None appeared for the Petitioner.

**C.P.518/2018**

Order pronounced vide separate order in the open court. In the result, CP. 518/2018 is allowed.

Sd/-  
CHANDRA BHAN SINGH  
Member (Technical)  
//Rajeev//

Sd/-  
H.V. SUBBA RAO  
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 518/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*

**Lim Fa Pte Limited**

A Company Incorporated under the  
Laws of Singapore;

Having its Registered Office at: 284,  
Jalan Besar, Singapore - 208947

**.....Operational Creditor  
Vs**

**Staunch Natural Resources Private  
Limited**

A Company incorporated under the  
Companies Act, 1956;

Having its Registered office at: 701-  
702, Nestor Court, Adj to Vinayak  
CHS, CTS-985 Baji Prabhu  
Deshpande Marg, Vile Parle (West),  
Mumbai – 400056.

**.....Corporate Debtor**

**Order delivered on: 10.06.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)



**For the Applicant:** Mr. Sahil Mahajan, Advocate

**For the Respondent:** Mr. Kunal Kanungo, Advocate a/w Ms. Tanushee Sogani, Advocate and Mr. Atishay Jain, Advocate

**Per: Shri H.V. Subba Rao, Member (Judicial)**

1. This Company petition is filed by *Lim Fa Pte Limited* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Staunch Natural Resources Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Operational Creditor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for an unresolved Operational Debt of USD 8,52,311.43 (United States Dollar Eight Lakhs Fifty Thousand Three Hundred Eleven and Forty Three Cents) to the Operational Creditor.
2. **The brief facts of the case are as follows:-**
  - i. The Operational Creditor is a company incorporated under the laws of Singapore, carrying the business of trading and supply of ball bearing, metal scrap, palm oil etc.
  - ii. The Corporate Debtor is a company registered under the Companies Act, 1956 and is a company engaged in wholesale of non-agricultural intermediate products, waste and scrap in the name and style of “**Staunch Natural Resources Private Limited**”.
  - iii. The Corporate Debtor as per the Sale Contracts entered into between the Operational Creditor and the Corporate Debtor accepted all the bills of the Pipavav & Nhava Sheva



Port at India and accepted all the issued bills without raising any dispute and objection.

All the issued bills are in the following manner:

Sr. No.	Sales Contract Ref. No.	Dated
1.	PC/LF/045-16	30.01.2016
2.	PC/LF/046-16	30.01.2016
3.	PC/LF/050-16	31.01.2016
4.	PC/LF/097-16	01.03.2016
5.	PC/LF/099-16	01.03.2016
6.	PC/LF/100-16	15.04.2016
7.	PC/LF/131-16	10.05.2016

- iv. As per the books of accounts maintained by the Corporate Debtor, the Corporate Debtor failed and neglected to pay the amount of CFR Value USD 8,50,311.43 (United States Dollar Eight Hundred Fifty Thousand Three Hundred Eleven and Forty Three Cents only). The following are the details of the said invoice:

Sr. No.	Dated	Invoice Number	Invoice Amount USD
1.	24.02.2016	PC/LF/045-16	30,495.6/-
2.	24.02.2016	PC/LF/046-16	32,010.28/-
3.	01.03.2016	PC/LF/050-16	44,720/-
4.	17.04.2016	PC/LF/097-16	2,25,412/-



5.	19.04.2016	PC/LF/099-16	2,29,064/-
6.	19.05.2016	PC/LF/100-16	1,38,733.05/-
7.	13.06.2016	PC/LF/131-16	1,49,876.5/-
	Total		\$ 8,50,311.43/-

- v. The Operational Creditor sent various letters and emails to the Corporate Debtor for payment of outstanding amount of the invoices to the Operational Creditor which were duly acknowledged, but the Corporate Debtor failed and deliberately neglected to pay the outstanding amount of the Operational Creditor.
- vi. The Operational Creditor issued Demand Notice dated 05.01.2018 whereby to the Corporate Debtor to pay a sum of USD 10,69,857.23/- (United States Dollar Ten Lakhs Sixty Nine Thousand Eight Hundred Fifty Seven and Twenty Three Cents Only) being the balance amount of invoices and the amount of USD 2,19,545.80/- (United States Dollar Two Lakhs Nineteen Thousand Five Hundred Forty Five Hundred and Eight Cents only) being the interest amount calculated @ 18% per annum from the due date of the invoices till 30.12.2017 within ten days of receipt of the notice. The said Demand Notice was duly received by the Corporate Debtor on 08.01.2018 but was no reply was duly received for the said Demand Notice.
- vii. The Operational Creditor further states that in spite of the repeated requests and reminders, the Corporate Debtor till date failed and neglected to repay the outstanding dues of the Corporate Debtor thereby giving rise to a cause of action to this present application.



viii. Hence, the present petition be admitted, and corporate insolvency resolution process be initiated against the Corporate Debtor.

3. The Corporate Debtor filed affidavit in reply dated 15.02.2019 of Mr. Hardik Narendra Kumar Shah, the authorized representative of the Corporate Debtor opposing the above Company Petition. The Corporate Debtor mainly raised his defences in Para. 8, Para. 10, Para. 12 and Para. 13 of the reply which are extracted here under:

Para. 8

The Corporate Debtor state that there is no amount outstanding in the accounts of the Corporate Debtor payable to the Applicant. The Corporate Debtor further state that the Corporate Debtor has already made payment of the entire amount payable towards the goods that had been dispatched by the applicant, especially, in relation to the invoices forming subject matter of the present application.

Para. 10

The Corporate Debtor deny that the Corporate Debtor failed and neglected to pay the amount of CRF value \$ 8,50,311.43/- (United States Dollar Eight Hundred Fifty Thousand Three Hundred Eleven and Forty Three Cents Only). The Corporate Debtor further states that there has been no agreement between both the parties in relation to the rate of interest to be charged on account of delay, if any, and therefore the same cannot be claimed to be operational debt as contemplated under the code and thus cannot be considered as purported amount of default. In view of the same, the Operational Creditor also suffers from the defect of depicting incorrect amount purported to be in default.

Para. 12

The Corporate Debtor also states that the documents relied by the Operational Creditor namely sales contract, tax invoices along with Bill of Lading, Packing List, Certificate of Origin, Certificate of Weight, Declaration are all documents evidencing the nature of goods proposed to be shipped, but however, none of the documents evidence delivery of goods. On the contrary, upon inspection, it is observed that the said Bill of Lading and corresponding containers are shipped by some other entities, to other importers and during some other duration.

Para. 13

The Corporate Debtor deny that the Operational Creditor had issued Demand Notice dated 05.01.2018 under the Insolvency and Bankruptcy Code, 2016, whereby called upon the Corporate Debtor to pay a sum of \$ 10,69,857.23/- (United States Dollar Ten Lakhs Sixty Nine Thousand Eight Hundred Fifty Seven and Twenty Three Cents Only). The Corporate Debtor state that the notice dated 05.01.2018 issued by the Operational Creditor does not qualify as a demand notice as contemplated and envisaged under the provisions of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor states that it is a settled proposition of law, that no Insolvency Application is maintainable in absence of issuance of duly complied Demand Notice as directed under the provisions of Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application of Adjudicating Authority) Rules, 2016.

4. In response to the above reply filed by the Corporate Debtor the Operational Creditor also filed rejoinder dated 13.03.2019



contradicting the pleas raised by the Corporate Debtor in their reply. The relevant Para's contradicting the rejoinder are as follows:

Para. 5

The Operational Creditor states that the Operational Creditor had sent a packet to the Corporate Debtor Company containing the original documents viz. the sales contracts, invoices, bill of lading, packing list, Certificate of Origin and the Certificate of Weight. The said documents were sent to the Corporate Debtor company to enable them to take delivery of goods shipped to them via sea. The Operational Creditor states that the Operational Creditor has Proof of Delivery of the packets sent to the Corporate Debtor with respect to the invoices at Sr. No. 3 to 7 in the following table:

SERIAL NO.	DATE	INVOICE NUMBER	INVOICE AMOUNT (US DOLLAR)
1.	24.02.2016	PC/LF/045-16	30,495.6/-
2.	24.02.2016	PC/LF/046-16	32,010.28/-
3.	01.03.2016	PC/LF/050-16	44,720/-
4.	17.04.2016	PC/LF/097-16	2,25,412/-
5.	19.04.2016	PC/LF/099-16	2,29,064/-
6.	19.05.2016	PC/LF/100-16	1,38,733.05/-
7.	13.06.2016	PC/LF/131-16	1,49,876.5/-
		TOTAL	8,50,311.43/-

Para. 6

The Operational Creditor has sent letters to the Corporate Debtor reminding them that payment for the invoices therein was due and requested the Corporate Debtor to settle the amount immediately. The Operational Creditor annexed a copy of the letter dated 20.06.2016 with respect to Invoices Nos. PC/LF/045-16, PC/LF/046-16 and PC/LF/050-16 to the rejoinder. The Operational Creditor also annexed the copy of the letter dated 01.08.2018 with respect to Invoice No. PC/LF/97-16 and No. PC/LF/99-16 and a copy of letter dated 30.08.2016 with respect to Invoice No. PC/LF/100-16 and also a copy of letter dated 13.09.2016 with respect to Invoice No. PC/LF/131-16 to the rejoinder affidavit which were duly acknowledged by the Corporate Debtor.

Para. 7

The Operational Creditor says that Mr. Hardik Shah, Director of the Corporate Debtor had written an email dated 12.10.2016 to the Operational Creditor apologising for delay in non-payment of the legitimate dues of Operational Creditor. By the said email, Mr. Shah had given a proposal for making the payment of the outstanding dues of the Operational Creditor within one month in three instalments and also request to support the Corporate Debtor Company for healthy future relationship.

Para. 8

The Operational Creditor further submits that by another email dated 18.10.2016, Mr. Hardik Shah, Director of the Corporate Debtor had forwarded an email dated 17.10.2016 of Mr. Kshitij Shah, an authorized signatory of the Corporate Debtor whereby the Corporate Debtor Company had given a proposal of \$2.3 million owed to four companies including the Operational Creditor.

Para. 9

Mr. Hardik Shah, Director of the Corporate Debtor by his letter dated 01.08.2017 had admitted the liability of the Operational Creditor.

Para. 10

The Operational Creditor says that in order to show its bonafied, the Corporate Debtor had given a blank cheque to the Operational Creditor.

Para. 16

The Operational Creditor deny that there is no amount outstanding from the Corporate Debtor Company to the Operational Creditor Company. He further denied that the Corporate Debtor has made any payment towards the goods that had been dispatched by the Operational Creditor. Operational Creditor further says that the Corporate Debtor had annexed Statement of Account affidavit-in-reply, a Statement of Account from the Union Bank of India from 04.04.2015 to 24.04.2015. Whereas, the invoices that are the subject-matter of the Petition have been issued on a later date. The following are the details of the said Invoices:

SR. NO.	DATE	INVOICE NUMBER	INVOICE AMOUNT (US DOLLAR)
1.	24.02.2016	PC/LF/045-16	30,495.6/-
2.	24.02.2016	PC/LF/046-16	32,010.28/-
3.	01.03.2016	PC/LF/050-16	44,720/-
4.	17.04.2016	PC/LF/097-16	2,25,412/-



5.	19.04.2016	PC/LF/099-16	2,29,064/-
6.	19.05.2016	PC/LF/100-16	1,38,733.05/-
7.	13.06.2016	PC/LF/131-16	1,49,876.5/-
		TOTAL	8,50,311.43/-

5. In the response to the above rejoinder the Corporate Debtor filed surrejoinder dated 02.09.2021 once again retracting the plea of discharge and non delivery of goods apart from retraction of the above two pleas the Corporate Debtor also raised certain new pleas with regard to the authorization of Mr. Pratik D. Shah of the Operational Creditor and the defective verification clause of the Company Petition etc.,.

#### **FINDINGS / OBSERVATIONS**

6. It is very clear from the above pleadings that the Corporate Debtor initially in their reply dated 15.02.2019 mainly contented that the Corporate Debtor had already made payment of the entire amount payable towards the goods that had been dispatched by the Applicant specially in relation to the invoices forming subject matter of the present application. With the same breath the Corporate Debtor has raised the plea of non-receipt of goods under the subject matter of invoices both in the reply as well as in the sur-rejoinder. It is a well settled principle of law that a respondent/ corporate debtor in a legal proceeding can raise any number of pleas opposing the case filed against them but not contrary pleas which are destructive to each other. The Operational Creditor in their



rejoinder at Para. 16 specifically mentioned that the statement of account of the Union bank of India produced and relied by the Corporate Debtor in proof of the alleged plea of discharge relates to the period from 04.04.2015 to 24.04.2015 and where as the subject matter of invoices relates to the period from February, 2016 to June, 2016. The Operational Creditor along with their rejoinder annexed Email dated 18.10.2016 which is subsequent to June, 2016 where under the Corporate Debtor has given the break up figures of the outstanding dues payable by them to 4 (four) companies in which the outstanding dues of the Operational Creditor is also clearly mentioned. Apart from the above Email the Operational Creditor also filed copy of the letter dated 01.08.2017 addressed by the Corporate Debtor to the Operational Creditor acknowledging their outstanding dues along with interest. The Operational Creditor also annexed copy of blank cheque given by the Corporate Debtor to the Operational Creditor as security for repayment. The Operational Creditor also annexed the Proof of Delivery of the original documents namely the Sales Contract, Invoices, Bill of Lading, Packing List, Certificate of Origin, Certificate of Weight of the subject matter of invoices through courier. In fact the Corporate Debtor also certified the weight of the material by counter signing the certificate. The Corporate Debtor did not dispute the authenticity of the above documents filed by the Operational Creditor along with their affidavit and rejoinder. All the above documents relied by the Operational Creditor in their rejoinder pertains to the subsequent dates of the invoices and he ought not have addressed such letter as a prudent business entity if goods were not delivered to the Corporate Debtor. Therefore it is very clear from the above evidence that the



defences raised by the Corporate Debtor does not inspire any confidence.

7. The Corporate Debtor also raised the issue of non-receipt of Demand Notice in their reply. However the Operational Creditor annexed the copy of the postal receipt and track report evidencing the dispatch and delivery of the Demand Notice on the Corporate Debtor. In addition to this, the Corporate Debtor in their sur rejoinder raised certain new pleas with regards to the authorisation Mr. Patik D. Shah authorised representative of the Operative Creditor and defective verification clause in the Company Petition which are clearly hit by the Doctrine of “Constructive Resjudicata”.
8. This bench notes that the Operational Creditor has successfully proved the existence of “debt” and “default” in this case. The above Company Petition being filed on 28.03.2018 is well within 3 (three) year from the date of subject matter of the invoices and is well within limitation.
9. For the aforesaid reasons this Bench is of the considered opinion that the above defences raised by the Corporate Debtor in the present Company Petition are out and out falsehood invented only for the purpose of avoiding the liability and no inference of “pre-existence of dispute” can be drawn from the above pleas raised by the Corporate Debtor. The bench is also of the considered opinion that no further investigation or evidence is required to reject the above pleas of the Company Petition.



10. In view of the above observations, this Bench is of the view that the above Company Petition satisfies all the legal requirements for admission and deserves to be admitting. Accordingly this bench admit the above Company Petition by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) – 518/MB/2018 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Staunch Natural Resources 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. Mukesh Khathuria** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01216/2018-19/11925, having E-mail Address: khathuria@hotmail.com and having Phone No: (+91) 9769691105 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. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.



- 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, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**  
**CHANDRA BHAN SINGH**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**