

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

**C.P. 1116/IB/MB/2021**

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*

**Marguisa Shipping Line**

Paseo de la Castellana St. 141- Build IV,  
Floor 17, Door A, Madrid, Spain

**..... Operational Creditor/  
Petitioner**

**Vs**

**Simon Shipping Pvt. Ltd.**

M-1, Dev Prayag, Bhakti Mandir Road,  
Panch Pakadi, Thane [West]  
Maharashtra 400602.

**..... Corporate Debtor**

**Order Pronounced On: 10.07.2023**

**Coram:**

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

*Appearances (via Videoconferencing)*

**For the Petitioner:** Adv. Yash Pandya

**For the Respondent:** None present

*Per: Shri. Kuldip Kumar Kareer, Member (Judicial)*

**ORDER**

1. The above Company Petition is filed by **Marguisa Shipping Line** hereinafter called as the ("**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Simon Shipping Pvt. Ltd.** hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 1,93,47,787/- including interest.
2. The Operational Creditor i.e. M/s Maritime United Operator [now changed Marguisa Shipping Line SLJ is in Madrid, Spain. They are in the business of Deep- Sea transportation of cargo to and from Foreign Ports.
3. The Operational Creditor mentioned that the Corporate Debtor, M/s Simon Shipping Pvt Ltd is in the business of providing total logistics and specialized in movement of all types of Cargos and Containers.
4. The Operational Creditor further mentioned that the Corporate Debtor and the Operational Creditor entered into an Agency Agreement on 24.06.2016, whereby, the Operational Creditor appointed the Corporate Debtor as its Agent in India.
5. Pursuant to the Agency Agreement, the Corporate Debtor used the shipping services of the Operational Creditor for transportation of merchandise.
6. The Operational Creditor further mentioned that during the period between 1st July 2016 to 31st July 2017 it had raised several Invoices to the tune of USD 188,093 for freight charges after adjusting the amount of commission payable to the Corporate Debtor.
7. The Operational Creditor further mentioned that out of the aforementioned total payable amount, USD 45,473 was received by way of various payments/adjustment of credit vouchers.

8. The Corporate Debtor provided a payment schedule for the repayment of the pending amount and according to that the instalments were to begin in the third week of June 2017.
9. Considering the failure on the part of Corporate Debtor in meeting its own commitment, the Operational Creditor vide Email dated 19.06.2017, informed the Corporate Debtor about the cancellation of the Agency Agreement with effect from 01.07.2017. Aggrieved by non-payment of the debt, the Operational Creditor issued two legal notices to the Corporate Debtor through its advocate on 23.10.2017 and 25.01.2018 respectively.
10. The Operational Creditor has further mentioned that the vide its reply dated 06.02.2018, though the Corporate Debtor has admitted the amount payable to the Operational Creditor, they expressed their inability to do so due to financial constraints that they have been facing. Due to continuous failure on the part of Corporate Debtor in clearing the dues, the Operational Creditor was constrained to invoke the arbitration clause, as provided in the Agency Agreement.
11. The parties entered into a Settlement Agreement dated 28.06.2019 whereby Corporate Debtor admitted its liability and a payment plan was devised for payment of the debt in instalments.
12. However, the Corporate Debtor committed breach of the Settlement Agreement of 28.06.2019. Therefore, on 14.08.2019, the said Settlement Agreement has also been cancelled by Operational creditor.
13. In view of the aforementioned facts and circumstances, as on 31.12.2020, the Corporate Debtor has to pay an amount of USD 1,42,620 to the Operational Creditor plus interest component of USD 1,22,287 calculated up to 31.12.2020. On conversion of USD amount of 264,907 into INR as per the prevailing exchange rate as at 31.12.2020, it comes to total dues of INR 1,93,47,787.
14. In the above backdrop, a Demand Notice [Form 3] under Insolvency & Bankruptcy Code, 2016 was issued on behalf of the Operational Creditor on 26.11.2019. In response, the Corporate Debtor had replied vide its letter dated

06.12.2019. In the reply, though they have vehemently denied any amount due to the Operational Creditor, they have admitted that an Agency Agreement was entered into between the Corporate Debtor and the Operational Creditor on 24.06.2016.

**Reply filed by the Corporate Debtor: -**

15. In the reply, the Corporate Debtor denies each and every averments and/or submissions made in the present Application which is contrary to and inconsistent with the averments made and facts stated in the present reply.
16. It is submitted that the Operational Creditor and the Corporate Debtor had originally entered into an Agency Agreement dated 24.06.2016 and pursuant to the same, the Corporate Debtor utilized the Shipping services of the Operational Creditor for transportation of merchandise. Accordingly, for the services rendered by the Operational Creditor, various Invoices were raised as early as on 1st July 2016 to 31st July 2017.
17. It is averred in Part IV of the Application that the Operational Creditor has informed the Corporate Debtor about the cancellation of the Agency Agreement with effect from 01.07.2017 and called upon the Corporate Debtor to regularize the accounts. However, to the contrary, it is seen that after cessation of the Agency Agreement and expiry of 10 months, the Operational Creditor has raised an Invoice dated 31.05.2018 for a sum of USD 6,120 as against the Corporate Debtor.
18. It is further submitted that the Operational Creditor has sent a legal notice to the Corporate Debtor as early as on 23.10.2017 demanding payment of a sum of USD 148,115.92 from the Corporate Debtor. It is pertinent to note that in the said legal notice at para 3, it has been stated that the Corporate Debtor as early as on 01.06.2017 had disputed the Invoice No. A000001331 dated 12.05.2017 for a sum of USD 7,850 and further stated that the Corporate Debtor has not received the three Invoices Nos. 51730103 dated 26.01.2017 for

the sum of USD 5,200; Invoice 51730536 dated 10.04.2017 for the sum of USD 4,500; and Invoice No. 51730727 dated 05.05.2017 for a sum of USD 3,420; and that only a sum of USD 86,940 was only due and outstanding and payable by the Corporate Debtor. The said self-evident statement as reflecting In the Legal Notice dated 23.10.2017 would go on to show that there existed a dispute between the parties as early as in the month of June 2017.

19. It is further submitted that after terminating the Agency Agreement, the Operational Creditor invoked the Arbitration Clause in the said Agency Agreement and appointed its own Arbitrator. Since the Respondent had not appointed the Arbitrator, Mr. Mark Hamsher became the sole arbitrator. It is true that prior to serving particulars of the claim, the parties had entered into negotiations and a Settlement Agreement dated 28.06.2019 was entered into between the parties and the settlement amount was arrived at USD 125,000 as full and final settlement in 12 instalments commencing from July 2019. Subsequently, the said Settlement Agreement was cancelled by the Operational Creditor vide notice dated 14.08.2019.

20. The Respondent had pointed out that on 20.01.2020, de hors the dispute which is pending between the parties, the Corporate Debtor has remitted a sum of USD 15,000 to the account of the Operational Creditor. However, the amount was returned since the account of the Operational Creditor had already been closed.

21. Under such circumstances, since there is a dispute which exists between the parties, prior to the issuance of the Demand Notice, the Corporate Debtor prays that this Hon'ble Adjudicating Authority may be pleased to dismiss the present Petition.

**Findings: -**

22. We have heard the Counsel for the Parties and have gone through the record.

23. It is not disputed that the Corporate Debtor entered into an agency agreement with the Operational Creditor on 24.06.2016 (Annexure-3) and under the said

agency agreement, the Corporate Debtor utilised shipping services of the Operational Creditor for transportation of merchandize. As claimed by the Operational Creditor, during the period from 1<sup>st</sup> July, 2016 to 31<sup>st</sup> July 2017, several invoices to the tune of USD 188,093 on account of freight charges, were raised by the Operational Creditor after adjusting the amount of commission payable to the Corporate Debtor. Against the aforesaid payable amount, a sum of USD 45,473 was received by the Operational Creditor and at the time of filing of the present Petition, a principal sum of USD 1,42,620 (Rs. 1,04,18,391) was outstanding.

24. On the other hand, in the reply filed by the Corporate Debtor, the execution of the agency agreement dated 24.06.2016 has not been disputed. The Corporate Debtor has further candidly admitted in the reply that it has been utilizing the shipping services of the Operational Creditor for transportation of merchandize for which invoices from 1<sup>st</sup> July 2016 to 31<sup>st</sup> July 2017 were raised. The only point raised by the Corporate Debtor in the reply is that there was a pre-existing dispute between the parties. According to the Respondent/Corporate Debtor, the Operational Creditor itself has admitted in the legal notice dated 23.10.2017 that the Corporate Debtor had disputed invoice No. A000001331 dated 12<sup>th</sup> May, 2017 for a sum of USD 7,850. Besides, the Corporate Debtor had also not received the Invoice No. 51730103 dated 26.01.2017 for the sum of USD 5,200, Invoice No. 51730536 dated 10.04.2017 for the sum of USD 4,500 and Invoice No. 51730727 dated 05.05.2017 for a sum of USD 3,420.

25. However, in response to the notice dated 23.10.2017, no communication was addressed by the Corporate Debtor to the Operational Creditor. Simply because there is a mention about non-receipt of three invoices by the Corporate Debtor, as mentioned in notice dated 23.10.2017, it cannot be said that there was some genuine pre-existing dispute between the parties.

26. The Corporate Debtor has not claimed in the reply that the said three invoices were not received by it nor the services mention in the said invoices were not rendered by the Operational Creditor.

27. It is pertinent to mention that subsequent to the notice dated 23.10.2017, the Operational Creditor issued another notice (Annexure-8) dated 25.01.2018. The Corporate debtor replied to this notice vide letter dated 06.02.108 (Annexure-9) wherein it was simply mentioned that payments were not denied though the same were delayed. It is further mentioned that due to some financial constraints, the payment got delayed. In the reply dated 06.02.2018, the Corporate Debtor has not raised any dispute with regard to the three invoices or invoice dated 12.05.2017 for a sum of USD 7850.
28. Further, the Petitioner/Operational Creditor issued statutory demand notice (Annexure-12) on 26.11.2019. In its reply dated 05.12.2019 to the demand notice, the Corporate Debtor has again admitted the execution of the agency agreement dated 24.06.2016 and it has simply been claimed that no amount is pending or due. In this context, it is worthy of mention that on 28.06.2019, a settlement agreement was executed between the parties whereby the Corporate Debtor agreed to pay a sum of USD 1,25,000 by way of 12 instalments of USD 1041.66 each starting from July 2019. It is mentioned in the settlement agreement itself that in case of breach by the Corporate Debtor of the terms of settlement, the same will be rendered null and void and the Corporate Debtor would be liable to pay full amount due to the Operational Creditor. Therefore, the argument raised on behalf of the Corporate Debtor that there was some pre-existing dispute pales into insignificance when the Corporate Debtor while entering into the settlement agreement dated 28.06.2019 candidly admitted its liability and agreed to pay the reduced amount of USD 1,25,000 instead of USD 1,48,115.92. Since a default was committed in respect of the settlement terms by the Corporate Debtor by not paying the instalments, the Operational Creditor was well within its right to cancel the settlement agreement and claim the entire payment of USD 1,48,115.92 which comes to more than Rs One Crore in Indian currency.
29. No other point has been raised by the Counsel for the Corporate Debtor.

30. Keeping in view the foregoing discussion, we are of the considered view, that the Operational Creditor has been able to establish the existence of an Operational Debt and default committed by the Corporate Debtor in payment of the said debt.
31. Accordingly, the above Company Petition is '**admitted**' by passing the following:

**ORDER**

- A. The above Company Petition No. (IB) 1116 of 2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Simon Shipping Pvt. Ltd.**
- B. Since the Operational Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench hereby appoints **Mr. Snehal Arvind Kamdar**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00415/2017-18/10738, having Email id [snehal.kamdar@jjkandco.com](mailto:snehal.kamdar@jjkandco.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) 1116 of 2021 is **admitted**.



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

**Sd/-**  
**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**