

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.174
CP(IB) 203 of 2020

Order under Section 9 IBC

IN THE MATTER OF:

FM India Supply Chain Pvt Ltd
V/s
IMP Powers Ltd

.....Applicant

.....Respondent

Order delivered on ..29/03/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in the open court, vide separate sheet.


KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)


MADAN B GOSAVI
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
DIVISION BENCH
COURT-1**

CP (IB) No.203/9/NCLT/AHM/2020

In the matter of :

FM India Supply Chain Pvt. Ltd.
Previously Spear Logistics Pvt. Ltd.
7th Floor, A.G. Technology Park
Server Space
Off. ITI Road, Aundh
Pune-411 007

..... Applicant

Versus

1. IMP Powers Limited
CIN: L31300DN1961PLC000232
Sr. No.263/3/2/2
Sayli Village
Umer Kuin Road
Silvasa (U.T.)
Dadara & Nagar Haveli
Silvasa DN 396 230

.....Respondent

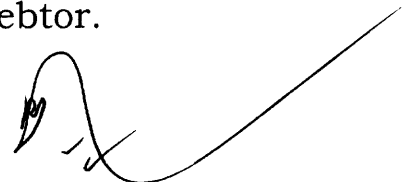
2. The Secretary
Ministry of Corporate Affairs
Government of India
Shastri Bhawan
Rajendra Prasad Road
New Delhi 110 001

..... Deleted
(as per the order of Hon'ble NCLAT)

Appearance:

Mr. Ravi Pahwa, Advocate along with Advocate, Mr. Yash Tandon, for the Applicant.

Mr. Dev Upadhyaya, Advocate, for the Corporate Debtor.



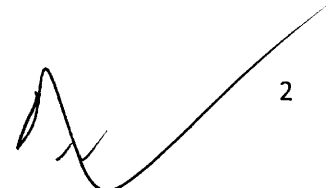
Order Reserved on : 09.03.2022
Order Pronounced on : 29.03.2022

**Coram: Madan Bhalchandra Gosavi, Member (Judicial)
Kaushalendra Kumar Singh (Technical)**

ORDER

[Per: Madan Bhalchandra Gosavi, Member (J)]

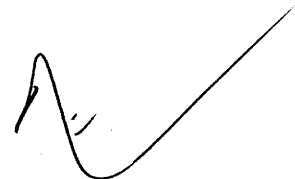
1. This Application is filed by M/s. FM India Supply Chain Pvt. Ltd. (hereinafter referred to as “the Operational Creditor”), under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) to initiate Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of M/s.IMP Powers Ltd. (hereinafter referred to as “the Corporate Debtor”) on a ground that Corporate Debtor committed default in paying an Operational Debt to the tune of Rs.40,33,500/- (as principal debt due). The date of default is stated to be 15.11.2019. This application is filed on 06.03.2020, i.e. prior to the Notification of the Ministry of Corporate Affairs, New Delhi, dated 24th March, 2020, whereby the default amount is raised up to Rs.1,00,00,000/- (Rupees One Crore) from Rs.1,00,000/- (Rupees One Lakh) as per Section 4 of the IBC.
2. It is noted that in view of the order dated 22.11.2019 passed by the Hon’ble NCLT, Principal Bench, New Delhi, in



Oriental Bank of Commerce vs. M/s. Sikka Papers Ltd. & Ors. the Applicant has impleaded MCA as Respondent No.2 in the present application. However, the Hon'ble NCLAT vide order dated 22.05.2020 had set aside the said order of Hon'ble NCLT Principal Bench. In view thereof, the present application is considered to be filed only against the Corporate Debtor.

3. The following facts are not in dispute:-

- (i) The Operational Creditor deals in transportation, co-packing, in the field of logistics and warehousing. In between 21.09.2018 to 15.02.2019 the Corporate Debtor availed transportation services from the Operational Creditor. The Operational Creditor raised various invoices. The invoices are collectively on record as Annexure-5.
- (ii) The Operational Creditor stated that the Corporate Debtor paid certain sum of money but did not clear entire outstanding leaving an amount of Rs.40,33,500/- to be unpaid. In spite of repeated demands, the Corporate Debtor failed and neglected to clear the outstanding amount. Hence, on 22.04.2019 the Operational Creditor served Demand Notice under Section 8 of IBC to the Corporate Debtor. The Corporate Debtor replied to the notice raising falls defence therein and did not clear the debt. Hence, this



application is filed to initiate the CIRP of the Corporate Debtor under Section 9 of the IBC.

- (iii) The Corporate Debtor has been served the notice of this application. One of its authorized representatives, Mr. Dilip Kumar Yadav, appeared in the proceeding. He filed affidavit in reply.
- (iv) In para-7 of the affidavit in reply, the Corporate Debtor contended that the Operational Creditor failed to perform and comply with the terms and conditions of the work order. In para-8, it is contended that the Corporate Debtor has totally paid a sum of Rs.51,28,140/- to the Operational Creditor. Again in para-11 of the affidavit in reply, the Corporate Debtor contended that an email dated 12.04.2019 the Operational Creditor claimed an outstanding amount of Rs.43,38,500/-. In para-13, it is contended that an amount of Rs.5,00,000/- was paid through RTGS to the Operational Creditor. The Corporate Debtor gave details of account of each Invoice in order to demonstrate that nothing is now due and payable by it to the Operational Creditor. Hence, Corporate Debtor prayed that this application to be rejected.
- (v) The Corporate Debtor filed additional affidavit in reply. After reiterating its earlier defence that there is pre-existing dispute pending between the Corporate



Debtor and the Operational Creditor and nothing is due and payable to the Operational Creditor, etc., the Corporate Debtor in para-8 of its additional affidavit in reply stated that it has offered the Operational Creditor a sum of Rs.12,38,397/- towards the full and final settlement and, thereafter, prayed for rejection of the application.

- (vi) The Operational Creditor filed rejoinder thereby producing on record the account confirmation letter dated 05.04.2019 whereby the Corporate Debtor admitted and acknowledged the sum of Rs.43,48,950/- due, another balance confirmation letter dated 08.05.2019 admitting the same amount and one more balance confirmation letter dated 08.05.2019 admitting a sum of Rs.38,48,950/- due and payable to the Operational Creditor.

4. We heard the Ld. Counsel for the Operational Creditor and Ld. Counsel for the Corporate Debtor. Although during oral submissions, Ld. Counsel for the Corporate Debtor submitted that his client admits the Operational Creditor's claim and requested to pass necessary orders. But since the Corporate Debtor raised some defence in its affidavit in reply, we thought fit to decide this case on merit.



5. We have gone through the evidence and material on record, the Corporate Debtor raises two defences, i.e. (i) that there is pre-existing dispute pending in between them; and (ii) nothing is due and payable to the Operational Creditor.
6. At the outset, we note that it is not necessary for us to go into the meticulous calculation put forth by both the parties so as to decide what would be the debt amount (if any) payable by the Corporate Debtor to the Operational Creditor. If the outstanding operational debt amount goes beyond Rs.1,00,000/- (threshold limit provided under Section 4 of the IBC prior to notification dated 24th March 2020) and if there is no pre-existing dispute, then we have to admit the Corporate Debtor in Corporate Insolvency Resolution Process (CIRP).
7. It is not in dispute that the Corporate Debtor had received Demand Notice dated 04.04.2019 (Annexure-6). It is also not in dispute that the Corporate Debtor replied the same (Annexure-8). The Corporate Debtor in para-5 of its reply to demand notice stated that **“final outstanding amount payable to the Operational Creditor as on 12.04.2019 is Rs.17,38,397/-”**. This notice reply does not speak about any pre-existing dispute relating to deficiency of service as has been raised as a defence in additional affidavit in reply by the Corporate Debtor. We hold that such defence being after thought cannot be considered. Moreover, there is absolutely no material evidence produced by the Corporate



Debtor on record to substantiate its defence relating to deficiency of service, etc. We reject this defence in toto.

8. The second defence of the Corporate Debtor raised against the claim that nothing is due and payable by it to the Operational Creditor. But there are number of documents produced by the Operational Creditor as well as the Corporate Debtor to show the futility of this defence. In reply to the Demand Notice, the Corporate Debtor admitted that on 12.04.2019 an amount of Rs.17,38,397/- was due and payable by the Corporate Debtor to the Operational Creditor towards the transport charges. In para-8 of the additional affidavit in reply, the Corporate Debtor contended that it has offered the Operational Creditor a sum of Rs.12,38,397/- towards full and final settlement. If according to the Corporate Debtor, nothing was due and payable by it to the Operational Creditor then for what it has offered above amount towards settlement? The Corporate Debtor has no reply.
9. The Operational Creditor has filed on record certain documents. They show that on 05.04.2019, the Corporate Debtor admitted and acknowledged that a sum of Rs.43,48,950/- was due and payable by the Corporate to the Operational Creditor. On 08.05.2019 the Corporate Debtor again admitted and acknowledged sum of Rs.43,48,950/- due and payable to the Operational Creditor. Again the same day, the Corporate Debtor issued

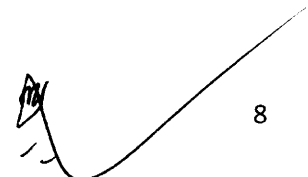


another Balance Confirmation letter thereby admitting the outstanding of Rs.38,48,950/- to be payable to the Operational Creditor. The Corporate Debtor did not dispute all above Balance Confirmation Letters issued by it in favour of the Operational Creditor.

10. It appears to us from evidence on record that there may be dispute about the actual amount due and payable by the Corporate Debtor to the Operational Creditor but one fact is proved from the evidence on record that the Corporate Debtor has to pay a sum of Rupees more than One Lakh (as per threshold limit of Rs.1,00,000/- under Section-4 of the IBC, prior to the Notification dated 24.03.2020) to the Operational Creditor and the Corporate Debtor has committed default in paying the sum in spite of receipt of Demand Notice. This Application is defect free. The Operational Creditor did not suggest the name for appointment of Insolvency Resolution Professional (IRP) to conduct the CIRP of the Corporate Debtor. Hence, we appoint the IRP from the list provided to us by IBBI. With this, we admit the Corporate Debtor in CIRP by following order:-


ORDER

- 1) The Corporate Debtor, viz., M/s. IMP Powers Limited is admitted in Corporate Insolvency



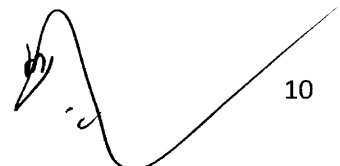
Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.

- 2) The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - a) 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;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation 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 corporate debtor.
- 3) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or



passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

- 4) We hereby appoint **Mr. Mukesh Verma**, having Registration No.IBBI/IPA-001/IP-P01665/2019-2020 / 12522, Mobile No.9820789105, Email ID: ip.mukeshverma@gmail.com (as suggested by the Operational Creditor) to act as an IRP under Section 13(1) (c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Regulation made thereunder:
- 5) The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.



- 6) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
- 7) It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs.1,00,000/- (Rupees One Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.
- 8) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate

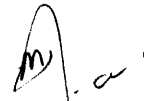


Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

11. Accordingly, CP(IB) No.203/9/NCLT/AHM/2020 is allowed. However, Insolvency Resolution Professional / Resolution Professional to file progress report through IA so that which can be taken on record by this Adjudicating Authority.



**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**

Sudha