IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP/IB/121/CHE/2023

(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s. Cargowings Logistics Limited***

Vinay R
Proprietor: Sri Panchamukhi Fuels,
(Service Provider) Indian Oil,
COCO Retail Outlet, Dobbaspet,
Bangalore Rural,
Karnataka – 562 111 … *Operational Creditor*

-Vs-

Cargowings Logistics Limited,
No.18, Kodambakkam High Road,
1st Floor, Lokesh Towers,
Nungambakkam,
Chennai – 600 034 …*Corporate Debtor*

Order Pronounced on ***17th November, 2023***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Operational Creditor : Mr. P.Ulaganathan, Advocate
For Corporate Debtor : Ms. C.Sangamithirai, Advocate

O R D E R

Per: **SANJIV JAIN, MEMBER (JUDICIAL)**

(Heard through video conferencing mode)

This Application has been filed by the Applicant namely **Vinay R,** Proprietor of Sri Panchamukhi Fuels, (hereinafter referred to as **'Operational Creditor'**) under Section 9 of the Insolvency &

Bankruptcy Code 2016 (in short, 'I & B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Cargowings Logistics Limited** (hereinafter referred to as **'Corporate Debtor'**) to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. Part-I of the Application gives the correspondence address of the Operational Creditor i.e., COCO Retail Outlet, Dobbaspet, Bangalore Rural, Karnataka – 562 111.

3. Part-II of the application gives the details of the Corporate Debtor from as per which the Corporate Debtor having Identification No. U60231TN2012PLC086461 was incorporated on 22.06.2012 and has registered office at No.18, Kodambakkam High Road, 1st Floor, Lokesh Towers, Nungambakkam, Chennai – 600 034.

4. Part-III of the application provides the name of the proposed Insolvency Professional viz., Mr. S.R.Shekher Shriraam.

5. Part-IV of the application shows the details of the operational debt that is amount of Rs.1,08,69,144/-(Rupees One Crore Eight Lakhs Sixty Nine Thousand One Hundred and Forty Four Only) due as on

23.03.2023. Part-V of the application contains the details of the documents submitted with the application.

6. It is stated that the Operational Creditor was into the business of supply of fuel to the lorries and trucks of the Corporate Debtor since 2015. An amount of Rs.1,04,83,114/- (Rupees One Crore Four Lakh Eighty Three Thousand One Hundred and Fourteen Only) become due and outstanding against the Corporate Debtor for which the Operational Creditor sent a letter dated 31.12.2022 seeking confirmation of the balance, which confirmation was given by the Managing Director of the Corporate Debtor vide letter dated 31.12.2022.

7. It is stated that there was an agreement between the parties that all the transactions would be carried out on an open current running account basis. For this reason, bill to bill payment was not settled and the account was maintained as a running account.

8. It is stated that as on date of filing this application, an amount of Rs.1,08,69,144/- (Rupees One Crore Eight Lakhs Sixty Nine Thousand One Hundred and Forty Four Only) become outstanding from the Corporate Debtor.

9. It is alleged that the Operational Creditor time and again requested the Corporate Debtor to finalise the outstanding payment. However, no payment was made by the Corporate Debtor. It then served upon a demand notice under Section 8 of the Insolvency & Bankruptcy Code, 2016 on 27.03.2023 upon the Corporate Debtor, but despite notice, the Corporate Debtor did not make the payment which made the Operational Creditor file this application.

10. On getting the notice of the application, the Respondent/Corporate Debtor filed the reply stating that the Corporate Debtor is a logistics company and in the business transportation of automobiles for the car manufacturing companies from their manufacturing plants to their distributors and dealers across India. The Corporate Debtor has a fleet of trucks to execute the work orders by car manufacturing companies.

11. It is admitted that the Corporate Debtor has been getting diesel from the Operational Creditor on a regular basis for the trucks on credit. The Operational Creditor was paid on a running account basis and not on invoice basis, wherein the Operational Creditor was paid at intervals and the payment made was deducted from the consolidated

outstanding balance in the Corporate Debtor's account maintained by the Operational Creditor.

12. It is stated that the business was running smoothly till the onset of Covid-19. However due to COVID-19 Pandemic, negative cascading effect came on cash flow of the Corporate Debtor's business as the revenue generation had stopped. The economic activity after COVID-19 started sometimes in early 2021 and the Corporate Debtor was under a lot of stress to make all trucks operational.

13. It is stated that the Corporate Debtor has been facing huge financial crunch and due to lack of working capital, it could not make the payment.

14. In reply, it is stated that the Corporate Debtor did not dispute its liability regarding payment of Rs.1,04,83,114/-(Rupees One Crore Four Lakh Eighty Three Thousand One Hundred and Fourteen Only) excluding interest which is due and payable by the Corporate Debtor. It rather admitted that it had received the notice dated 27.03.2023. It is stated that upon receiving the notice, the Corporate Debtor personally requested the Operational Creditor and apprised its difficult financial

situation seeking time to make the payment within two years, but it was declined by the Operational Creditor.

15. We have heard the arguments advanced by Ld. Counsel for the parties and perused the documents and the report.

16. It is an admitted case of the petitioner that the Operational Creditor used to supply fuels to the Corporate Debtor since 2015 and had maintained the running account payment. As seen from the statement, a sum of Rs.1,04,83,114/- (Rupees One Crore Four Lakh Eighty Three Thousand One Hundred and Fourteen Only) became due and outstanding against the Corporate Debtor as on 31.12.2022.

17. The Operational Creditor had sent a letter dated 30.12.2022 apprising the Corporate Debtor about the huge outstanding over one crore seeking confirmation of the outstanding balance, which was confirmed by the Respondent/Corporate Debtor by its letter dated 05.01.2023 stating that as on 31.12.2022 a sum of Rs.1,04,83,114/- (Rupees One Crore Four Lakh Eighty Three Thousand One Hundred and Fourteen Only) is outstanding from the Corporate Debtor to the Operational Creditor. It is seen that the Operational Creditor time and again requested the corporate debtor for finalizing the outstanding

payment, however there was no payment or any substantial part payment from the corporate debtor.

18. Looking into the statement of accounts and the correspondences as referred above, the Corporate Debtor either in the confirmation letter or in reply to the Application has not disputed its liability to pay the dues which is above Rs.1 crore which is the threshold limit as provided under Section 4 of the Insolvency & Bankruptcy Code, 2016. The date of default and debt is not disputed by the Corporate Debtor. It has rather sought time to make payment stating that due to financial crunch on account of covid-19 pandemic, it could not make in time limit.

19. It is also seen from the statement of accounts that during the period from 25.03.2020 till 24.03.2021 i.e., COVID-19 pandemic period, there was no default rather over payment was made to the extent of Rs.52,72,533.29 that being the position, there was no default during the pandemic period. The payments used to be made by maintaining a running account. The statement clearly shows that as on date of filing of the petition, a sum of Rs.1,08,69,144/- become due and payable by the Corporate Debtor, which includes interest.

20. In this case, debt and default is proved by the Operational Creditor, the application is within the limitation. No substantial defence has been raised by the Corporate Debtor as to the existence of dispute.

21. Having gone through all the facts and circumstances, we find that it is a fit case to admit this application for CIRP.

22. In the light of the above, we admit the Corporate Debtor viz., ***M/s. Cargowings Logistics Limited*** into Corporate Insolvency Resolution Process (CIRP).

23. ***Mr. S.R. Shriraam Shekher,*** *Reg.No.IBBI/IPA-03/IP-N000144/2017-2018/11598,* e-mail ID: ***shekhershriraam@gmail.com*** is hereby appointed as the Insolvency Resolution Professional (IRP). The written consent in Form-AA of the IRP dated 17.04.2023 is attached as Annexure-H at page No.153 of the Application. Upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 05.11.2024. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the

Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

24. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

25. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and mange the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

26. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

> (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:
>
> Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 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.

27. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** *(Rupees Two Lakhs only)* to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd- -Sd-

(VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (JUDICIAL)