

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

CP (IB) 102/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of

**Transport Corporation of India
Limited**

For its division TCI Freight

Flat No. 306 and 307. 1-1-8-201-203, 3rd
floor, Ashoka Bhoopal Chambers, SP Road,
Secunderabad, Telangana – 500 003.

...Operational Creditor/ Petitioner
v/s

**Thakkarsons Roll Forming Private
Limited**

507, Windfall Sahar Plaza, J. B. Nagar,
Andheri (east), Mumbai – 400 059.

...Corporate Debtor

Order Delivered on: 19.02.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Operational Creditor/Petitioner: Amit Kakri i/b Ajay Law
Associates, Advocate.

For the Corporate Debtor: Adv. Sandeep Kumar Singh

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is an application CP(IB)102/MB/2019 filed by **Transport Corporation of India** through its Regional Manager Mr. Rajesh Agarwal, Operational Creditor/Petitioner, under section 9 of Insolvency & Bankruptcy Code, 2016 (**Code**) against **Thakkarsons Roll Forming Private Limited**,

Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

SUBMISSIONS BY THE PETITIONER

2. The Petitioner has claimed an amount of Rs. 19,06,536/- including interest from the Corporate Debtor.

3. The Petitioner mentions that it is engaged in the business of transportation of goods for its various clients. The Corporate Debtor approached the Petitioner seeking transportation services for their consignments.

4. After providing transportation services to the Corporate Debtor, the Petitioner raised various Invoices and Bills on the Corporate Debtor from time to time. The Petitioner mentions that despite clear undertaking and assurances as to the terms of payment within 30 days, the Corporate Debtor did not make timely payments.

5. On 12.04.2018, the Corporate Debtor made last payment of Rs. 1,30,560/- leaving an outstanding balance of Rs. 16,48,130/-. Despite several reminders by the Petitioner, the Corporate Debtor did not make the balance payment.

6. Thereafter, on 26.10.2018 the Petitioner issued Demand Notice demanding a sum of Rs. 16,48,130/- along with interest @18% p.a. under Section 8 of the Code. However, there was no reply from the Corporate Debtor for the Demand Notice and the Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no notice of dispute given by the Corporate Debtor.

SUBMISSIONS BY THE CORPORATE DEBTOR IN REPLY

7. The Corporate Debtor filed a reply to the petition stating that the Corporate Debtor is engaged in the manufacturing of the cold rolled formed section (CRF) like metal crash barrier system (guard rail), module mounting structures (MMS) for solar power projects etc. during the course of its business the company had required the transportation services to delivered goods to its customers as per their

requirements. The Corporate Debtor used to place order to the Petitioner, to transport its goods at its customers destinations as it as conditions of the goods. The Corporate Debtor is taking services of the Petitioner for two years. Sometimes if the goods were not reaching on time and in good condition the Corporate Debtor had to pay liquidated damages to its customers.

8. The Corporate Debtor mentions that the amount claimed by the Petitioner in this petition is not payable to the Petitioner by the Corporate Debtor.

9. It is submitted by the Corporate Debtor that the Corporate Debtor has made a payment of Rs. 1,30,560/- on 12.04.2018. The said payment was full and final for the entire dues till 12.04.2018. Since there was deficiency in the service by the Petitioner in transportation by not delivering the goods on time at destinations and some damages caused during the transit it was decided by the Petitioner and the Corporate Debtor that Rs. 1,30,560/- which has already been paid on 12.04.2018 is full and final settled amount. Therefore, now there is no any amount due to the Petitioner by the Corporate Debtor.

10. The Corporate Debtor further states that due to non-delivery of goods on time by the Petitioner and that too in damaged condition, the Corporate Debtor has to pay not only the liquidated damages to its customers but also the same has caused damages to the goodwill in the market amongst its customers. The Corporate Debtor further mentioned that considering the above said factor the Petitioner and the Corporate Debtor were arrived on the settlement amount of Rs. 1,30,560/-, and the said payment has been made to the Petitioner.

SUBMISSIONS BY THE PETITIONER IN REJOINDER

11. The Petitioner refutes and rejects the arguments of the Corporate Debtor stated in its submissions and submits that there is absolutely no prior correspondence or record annexed to the present reply to show that there was any pre-existing dispute between the

parties. The Petitioner has provided high level of services to the Corporate Debtor and there was never any complaint recorded by Corporate Debtor against the Petitioner.

12. The Petitioner denies the Corporate Debtor's allegation of the alleged deficiency of service and the full and final settlement alleged reached and entered into by the parties to the present Petition. The Petitioner further denies non-delivery or damage to the Corporate Debtor's goods. The Corporate Debtor's averments are entirely vague and have no substance whatsoever. The Petitioner submits that the Corporate Debtor has acknowledged receipt of last Payment of Rs. 1,30,560/- averred by the Petitioner but has failed to annex a single correspondence where this so called full and final settlement was recorded. Without prejudice to what is fore stated, even otherwise, the Petitioner has duly annexed the Corporate Debtor's ledger account in Annexure F of the petition. And has also produced Bank Certificate in Annexure E of the petition, which confirm receipt of the aforesaid payment. Furthermore, the Ledger Account annexed duly records the outstanding principal amount of Rs. 16,48,130/- claimed in the present petition.

13. The Petitioner denies the false averments of alleged mishandling and damage to the solar power project and guard rails made therein. The Petitioner submits that the aforesaid have been made for the first time in the above said reply.

FINDINGS

14. The matter was listed on several occasions. On 17.12.2019 the Counsel for the Corporate Debtor had appeared before this Bench and took time to file reply and then the matter was listed on 01.01.2020. Thereafter on 01.01.2020 and 20.01.2020 the counsel for the Corporate Debtor was present and took time to file sur-rejoinder. Time was granted by this Bench and the matter was listed on 29.01.2020. On 29.01.2020 Mr. Sandeep Kumar Singh, the Counsel for the Corporate Debtor sought further time to file sur-rejoinder and also submitted that arguing counsel was not available today. Time was granted by this Bench with a direction that if the sur-

rejoinder was not filed by 27.01.2020 as directed, the right to file sur-rejoinder is forfeited and the matter was listed on 06.02.2020.

15. Thereafter from 06.02.2020 the matter was listed on seven occasions i.e. 25.02.2020, 12.03.2020, 04.11.2020, 11.11.2020, 08.01.2021, 15.01.2021 and 12.02.2021, but on all occasion the Corporate Debtor choose to remain absent before this Bench.

16. From the above submissions it is clear that the Corporate Debtor used to place Order on the Petitioner to transport its goods to customer's destinations. The Corporate Debtor is taking services of the Petitioner for 2 years.

17. The Bench also notes that the Corporate Debtor has acknowledged receipt of last Payment of Rs. 1,30,560/- claimed by the Petitioner but there is not a single correspondence where any full and final settlement was recorded. Further, no correspondence has been produced by the Corporate Debtor regarding mishandling and damage to the solar power project and guard rails.

18. The Bench would like to make a reference to the Hon'ble Supreme Court's judgement of "*Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*" wherein it has been held that:

"..... all that the adjudicating authority is to see at the stage of admitting/rejecting the application, is whether there is a plausible contention that requires further investigation and that the dispute is not potently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster....."

19. The application filed by the Operational Creditor is in proper Form 5, as prescribed under the Adjudicating Authority Rules and is complete.

20. The Applicant has proposed name of Mr. S. Gopalkrishnan, a registered Insolvency Resolution Professional having Registration Number

[IBBI/IPA-002/IP-N00151/2017-18/10398] as Interim Resolution Professional, to carry the functions of Interim Resolution Professional as mentioned under I&B Code.

21. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the Operational Creditor for initiation of CIRP in prescribed Form5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

22. This application is filed under Section 9 of I&B Code, 2016, filed by **Transport Corporation of India** through its Regional Manager Mr. Rajesh Agarwal, against **Thakkarsons Roll Forming Private Limited**, for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 activity 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 possession of the corporate debtor.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints Mr. S. Gopalkrishnan, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00151/2017-18/10398] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
- VIII. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

- IX. The appointed IRP shall also comply the other provisions of the Code including Section 15 and Section 18 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
- X. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

Sd/-

Chandra Bhan Singh
Member (Technical)

Sd/-

Suchitra Kanuparthi
Member (Judicial)