

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No. 3580/MB/C-IV/2018

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

M/s Fairdeal International

...Operational Creditor

Versus

Sacos Indigo Private Limited

[CIN: U24222MH1985PTC214671]

...Corporate Debtor

Order pronounced on 26th May 2020

Coram:

Mr. Rajasekhar V. K. : Hon'ble Member (Judicial)

Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Mr. Kaustubh Gupta i/b Ethos
Legal Alliance, Advocates

For the Corporate Debtor : Ms. Sunita Sonawane, Advocate.

ORDER

Per: Rajasekhar V. K. Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Fairdeal International (*Operational Creditor*), a partnership firm incorporated represented by its authorised signatory, Mr Sharad Nair (Head-Finance & Accounts), duly authorised on the basis of authorisation letter, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Sacos

Indigo Private Limited [CIN: U24222MH1985PTC214671] (“the Corporate Debtor”). A copy of the authorisation letter has been placed as Exhibit B at p.12 of the Petition.

2. The Corporate Debtor is a company incorporated on 25.04.1985 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at No.220, Mahavir Industrial Estate, Opposite Mahakali Caves Road, Andheri (E), Mumbai-400093 within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹66,07,741.36 (Rupees sixty-six lakh seven thousand seven hundred and forty-one and paise thirty-six only) as principal amount and ₹35,27,660.41 (Rupees thirty-five lakh twenty-seven thousand six hundred and sixty and paise forty-one only) as interest at the rate of 18% p.a. (*at pp.237-238 of the Petition*) against 68 invoices raised between the period 12.04.2015 to 17.04.2016. The date of default is taken to be 16.06.2016.
4. The case of the Operational Creditor is as follows: -
 - (a) The Operational Creditor is engaged in the business of providing Transportation / Logistics services. The Corporate Debtor and its group companies are engaged in the business of sale of polypropylene woven fabric and allied products.
 - (b) The Operational Creditor issued sales invoices from 12.04.2015 to 17.04.2016, for the services rendered to the Corporate Debtor.

- (c) The Operational Creditor raised 68 invoices upon the Corporate Debtor for freight and carrier services opted by the Corporate Debtor.
- (d) The outstanding invoices for the services provided by Operational Creditor, between 12.04.2015 and 17.04.2016 amount to ₹66,07,741.36 (including Tax Deducted at Source paid on account of the Corporate Debtor to the Income Tax department). The total number of invoices and their details are tabulated in a computation chart which has been placed at pp.237-238 of the petition. Copies of the sales invoices are placed as Exhibit D at pp.15-238 of the Petition.
- (e) The Operational Creditor has been providing Clearing and Forwarding (C&F) services to the Corporate Debtor and its group companies. The entire group has defaulted in making payments to the Operational Creditor.
- (f) The Operational Creditor has sent follow up emails to the parent company of the group requesting for payment of the outstanding amount, providing details of the default amount of each company in the group. The copies of these emails are placed as Exhibit F at pp. 503-508 of the petition.
- (g) The Operational Creditor issued a Demand Notice dated 06.07.2018 to the Corporate Debtor under section 8 of IBC. A copy of the said Demand Notice is placed as Exhibit G at pp.509-751 of the petition. There was no reply to the Demand Notice.
- (h) Affidavit under section 9(3)(b) of the IBC stating there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt is placed at pp.754-756 of the petition.
- (i) Copies of the bank certificate and bank statement of the Operational Creditor for the period 15.07.2016-31.08.2018 as Exhibit E at pp.239-502 of the petition.

5. Ms. Sunita Sonawane, Advocate, appeared on behalf of the Corporate Debtor and made her submissions.
6. In its reply dated 06.12.2018, the Corporate Debtor submitted as follows:
 - (a) The Corporate Debtor and the group of companies of Neo Corp International Limited (Parent Company) are engaged in the business of sale of polypropylene woven fabric and related products. Other group companies under the parent company other than the Corporate Debtor include, Sacos Indigo Private Limited and Tech Textiles.
 - (b) The Operational Creditor is part of group of companies which include Pegasus Inland Container Depot Private Limited, which are engaged in the business of transportation.
 - (c) The Parent Company of the Corporate Debtor in the month of January 2015 gave the freight contract for all group companies to the Operational Creditor and its group of companies to transport containers internationally.
 - (d) The Operational Creditor and its sister concerns filed seven petitions under the IBC claiming a total amount of ₹3,16,60,961.03 against the Corporate Debtor and its group of companies. The Corporate Debtor and its group of companies dispute the claim as they suffered a loss of ₹1,51,09,100/- due to delay in shipment of containers as per para 3 at p.2 of the reply.
 - (e) The Corporate Debtor submits that the Operational Creditor charged heavy freight charges as compared to the market rates. The issue of heavy freight charges and losses incurred by the Corporate Debtor due to delay in shipment was conveyed to the Operational Creditor by an email dated 07.07.2015 as per para 4

at p.2 of the reply. A copy of the email is placed as Exhibit B at p.9 of the reply.

- (f) The Corporate Debtor through various emails dated 25.05.2015, 17.08.2015 and 25.08.2015 requested the Operational Creditor to not hold their containers and if the containers are still kept on hold then the Corporate Debtor would not pay for the Inland Container Depot detention and the Shippers Load detention charges. Copies of these emails are placed as Exhibit C (Colly) at pp.11-13 of the reply.
 - (g) The Corporate Debtor *vide* its email dated 11.08.2015 informed the Operational Creditor that the freight charges were high and hence the Corporate Debtor is unable to continue with the services. A copy of the email is placed as Exhibit D at p.14 of the reply.
 - (h) The Corporate Debtor faced loss due to delay in shipment to their customers in USA and UK. These customers did not accept the delayed shipment and asked the Corporate Debtor to arrange for to get the material back to India and raised Debit Notes of USD 80,000.00 and GBP 87,000.00 respectively. The Corporate Debtor has sent many emails to the Operational Creditor regarding the issued faced by them and also the customer complaints received by them due to delay in shipment. Copies of the emails and debit notes are placed as Exhibit B-1 at p.10 and Exhibit D to Exhibit M at pp.15-29 of the reply.
 - (i) Calculation of the loss suffered by the Corporate Debtor due to delay in shipment is placed as Exhibit N at p.30 of the reply.
7. The Operational Creditor rebutted all the defences by the Corporate Debtor in its rejoinder.

8. The Operational Creditor denies receiving email dated 07.07.2015 mentioning issue of heavy freight charges and losses incurred by the Corporate Debtor due to delay in shipment. It was also submitted that the containers were kept on hold by the Operational Creditor due to non-clearance of previous dues by the Corporate Debtor. A copy of email dated 18.05.2015 requesting the Corporate Debtor to release outstanding amount is placed as Exhibit A at pp.12-13 of the rejoinder.
9. The Operational Creditor submitted that the Corporate Debtor did not raise any pre-existing dispute even on receipt of the Demand Notice under IBC. The Corporate Debtor did not reply to the Demand Notice.
10. A Confirmation of Accounts statement dated 01.04.2017 sent by the Operational Creditor to the Corporate Debtor and it was duly acknowledged by the Corporate Debtor. A copy of the confirmation of accounts statement duly acknowledged by the Corporate Debtor is placed as Exhibit C, at pp.36-38 of the additional affidavit dated 01.04.2019.

Findings:

11. We have heard the arguments of both the sides and perused the records.
12. There is no provision for charging interest on the unpaid or delayed invoices. No material has been placed before this Bench to support the claim for interest.

13. The Operational Creditor has provided C&F services to the Corporate Debtor for which the Corporate Debtor has failed to make payments. The Corporate Debtor has also failed to reply to the Demand Notice and has not raised any disputes prior to the filing of Reply to the present petition. Hence, the contentions raised by the Corporate Debtor are not tenable and hence rejected.
14. The Corporate Debtor has not established any pre-existing dispute with respect to the debt claimed in the present petition.
15. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than the minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
16. The Operational Creditor has not proposed the name of Interim Resolution Professional (IRP) in the matter.
17. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing CP (IB) No. 3580/MB/C-IV/2018 filed by Fairdeal International, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP)

against Sacos Indigo Private Limited [CIN: U24222MH1985-PTC214671], the Corporate Debtor, is admitted.

- (b) There shall be a moratorium under section 14 of the IBC, regarding the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:
- (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter. Since the Corporate Debtor is a subsidiary of the Neo Corp International Limited, Mr. Santanu T. Ray [Reg No. IBBI/IPA-002/IP-N00360/2017-18/11055], having address at 301, A Wing, BSEL Tech Park, Sector 30-A, Opposite Vashi Railway Station, Vashi, Thane, Navi Mumbai 400705 [email: santanutrayer@aaainsolvency.com; Mobile: 9167086977], RP of Neo Corp International Limited, is hereby appointed as IRP of the Corporate Debtor so that the CIRP can proceed smoothly. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP/RP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the

Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Operational Creditor shall deposit a sum of ₹3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The IRP/RP shall submit periodical reports to this Adjudicating Authority indicating the progress of the CIRP.
- (j) The Registry is directed to communicate this Order to the IRP, Operational Creditor and the Corporate Debtor by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-

Ravikumar Duraisamy
Member (Technical)

Sd/-

Rajasekhar V. K.
Member (Judicial)