

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

CP(IB) 457 of 2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.11.2019

Name of the Company: Pacific Gulf Shipping (Singapore) Pte. Ltd.
V/s.
S.R.K. Chemicals Ltd.

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.

2.

ORDER


None for the Parties.

The present case is taken up for pronouncement of order.

The detailed order recorded separately, vide separate sheet.

The petition is admitted by declaring Moratorium in respect of the Corporate Debtor Company viz. SRK Chemicals Ltd.

CA Mr. Sunit Shah, is appointed as RP.


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 27th day of November, 2019.



**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 457/9/NCLT/AHM/2018

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)

In the matter of:

M/s. Pacific Gulf Shipping (Singapore) Pte. Ltd,
10-Anson Road,
#16-06, International Plaza,
Singapore-079903,

(Authorised Signatory)

C/o. Mr. Sudarshan Gujar,
415, Vardhman Chambers,
17, Cawasji Patel Street, Fort,
Mumbai-400001.

.....Petitioner/Operational Creditor

Versus

M/s. S.R.K. Chemicals Ltd.
Neelkanth B B Z S 60,
Zanda Chowk,
Gandhidham, Kutch,
Gujarat, India-370201.

.....Respondent/ Corporate Debtor

Appearance:

Mr. Jaimin R. Dave, Advocate for the Petitioner.
None for the Respondent(s).

Order delivered on 27th November, 2019.



(Handwritten signature)

ORDER

[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]

1. The present I.B. Petition has been preferred by M/s. Pacific Gulf Shipping (Singapore) Pte. Ltd. being an Operational-Creditor. The present petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy Rules, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate-Debtor-Company namely, M/s. S.R.K. Chemicals Ltd win following relief/ directions:

- (i) To admit Application and communicate such decision to the Operational Creditor and Corporate Debtor, and to pass an order for initiating Corporate Insolvency Resolution Process against the Corporate Debtor.*
- (ii) To declare a moratorium for the purposes referred to in Section 14, under Section 13 of the Insolvency and Bankruptcy Code, 2016 read with other relevant sections and rules thereunder.*
- (iii) To cause a public announcement of the initiation of corporate insolvency process and call for the submission of claims under Section 13 and 15 of the Insolvency and Bankruptcy Code, 2016 read with other relevant sections and rules thereunder.*
- (iv) To appoint an Insolvency Resolution Professional, or any other person as deemed fit for this purpose by this Tribunal and order him to take charge of the Corporate Debtor's assets with all powers to conduct its affairs in the course of the Corporate*



Insolvency Resolution Process and distributing the Corporate Debtor's assets in accordance with Law.

- (v) ***To take charge of the assets, properties, stock in trade and books of accounts of the Corporate Debtor, if this Tribunal may consider fit as an IRP with all powers under Sections 17, 18 and 20 of the I.B. Code, 2016 read with other relevant sections and rules thereunder.***
- (vi) ***To pass an order for winding up and/or liquidating the Corporate Debtor.***
- (vii) ***To pass an order for costs of the Application, including Insolvency Resolution Process and liquidation costs.***
2. The Petitioner/Operational-Creditor states that it is an international company based in Singapore and known as M/s. Pacific Gulf Shipping Pte. Ltd. The Company appears to be involved in the business of shipping and its registered address is at: M/s. Pacific Gulf Shipping (Singapore) Pte. Ltd, 10-Anson Road, #16-06, International Plaza, Singapore-079903. The Company duly authorised **Mr.Rohit Parmar**, Mr. Santosh Koli and Mr. Sudarshan Gujar to be its Authorised Signatories and to act on its behalf vide its Board Resolution dated 30.01.2017. It is reported that the office of its authorised signatory, C/o. Mr. Sudarshan Gujar is situated at: 415, Vardhman Chambers, 17, Cawasji Patel Street, Fort, Mumbai-400001, India.



3. It is informed that the Respondent/Corporate Debtor Company, namely M/s. S.R.K. Chemicals Limited was incorporated on 09.12.2005 with the CIN: U24298GJ2005PLC047229 and is engaged in the business of manufacturing different products of wood, cork, straw and plaiting materials. The Corporate-Debtor-Company, as per record is said to have authorised share capital of Rs.3,60,00,000/- (Rupees Three Crore Sixty Lakh only) and the paid-up share capital of the company is Rs.1,99,00,000/- (Rupees One Crore Ninety Lakh only). The registered office of the Corporate Debtor Company is situated at: Neelkanth B B Z S 60, Zanda Chowk, Gandhidham, Gujarat, India- 370201 (Kutch).

4. It is the case of Petitioner/Operational Creditor that it received an order from the Corporate Debtor Company for a cargo of 62,000-64,000 tonnes of **salt in bulk** to be shipped and transported from **Kandla Port, India to Chittagong Port, Bangladesh** via a ship, "Pacific Pioneer" (hereinafter "the Vessel") as per the agreed terms and conditions incorporating GENCON 1994, which is a voyage charter party.

As per the information available on the website of BIMCO, it is stated that:

"GENCON is a standard voyage charter party. It is a general purpose agreement for the services of a ship in



exchange for freight and can be used in a variety of trades. It is accompanied by its own bill of lading, CONGENBILL 2016. The latest edition of this contract is GENCON 1994. Copyright in GENCON 1994 is held by BIMCO."

5. Since there arose some dispute in making payment of the demurrage amount to the Petitioner/Operational Creditor, therefore, the matter was referred to Arbitration as per agreed terms of contract, i.e. GENCON 1994.

6. As per the Clause 19 of the above stated agreement, any dispute that may arise between the party was to be referred to arbitration, in London, as per the relevant provisions of Arbitration Act 1996 (U.K.). It is submitted that the Clause 28 of the said stipulates for London Arbitration with English law to apply.

7. For the sake of convenience, the relevant Para 19(a) of the above referred agreement is being reproduced herein below:

"19. (a) This Charter Party shall be governed by and constructed in accordance with English law and any dispute arising out of this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Acts, 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force. Unless the parties agree upon a sole arbitrator, one arbitrator shall be appointed by each party and the arbitrators so appointed shall appoint a



third arbitrator, the decision of three-men tribunal thus constituted or any two of them, shall be final...”

8. It is further submitted that, in pursuance of such arbitration clause, the Learned Arbitrators have entered into the terms of reference for arbitration. **Mr. Brian Williamson and Ms. Sarra Kay of London**, who were appointed as Learned Arbitrators by both party. After their appointment, and entering into the Arbitration, both Learned Arbitrators did not feel necessary to appoint a third Arbitrator in the arbitration proceedings.
9. In the Arbitration proceedings before the Arbitrator, the Petitioner and the Respondents were represented by their respective Counsel/Solicitors. Both Parties submitted their respective documents for claim and counterclaim and written submissions before the Arbitrators. However, oral hearing was demanded by both the parties was not accepted as it was felt necessary by the Learned Arbitrators.
10. The Petitioner's case before the Learned Arbitrators was that it agreed to carry a cargo of **harmless salt from the Kandla Port, India to the Chittagong Port of Bangladesh** on an order receipt from the Respondent Company. The Petitioner/ Operational Creditor duly performed its part of



contract by shipping and transporting 62,000 – 64,000 Tonnes of 'Salt' in bulk from Kandla Port to Chittagong Port, Bangladesh.

11. It was contended that the ship, '**Pacific Pioneer**' was arrived at the port of Kandla on 14.09.2016 at 12.10Hrs. and anchored. A Notice of Readiness ("NOR") was tendered at 09.30Hrs. on 15.09.2016.
12. However, the Petitioner claimant made such grievance that the amount of demurrage for shipping the said cargo was not paid by the Consignor/Corporate-Debtor, being disputed by the Corporate Debtor. Hence, the Petitioner claimed initially **US \$ 141,656=27** plus interest and further revised by reducing the amount in claim in its reply submission of claims before the Learned Arbitrator, which amount to **US \$ 133,205/-**.
13. The present petition submits that the Learned Arbitrators having perused the material available on record have pleased to held and pass an award by declaring that the Petitioner/ Operational-Creditor, herein **M/s. Pacific Gulf Shipping (Singapore) Pte. Ltd. is entitled to be paid an amount of demurrage at the load port and thus passed an award in favour of it on 02.07.2018 by awarding GBP**



16,937=00 as recoverable cost of the owner from the Respondent/Corporate Debtor. The Learned Arbitrator further pleased to impose cost of the award which amounts to GBP 3350=00.

14. Thus, they awarded total Arbitral amount for **GBP 16,937=00 which is equivalent to US \$ 131,561=67 at the rate of US \$7,750=00 and if the said amount is converted in Indian Rupees, it comes to higher than Rs.1,00,000/- (Rupees One Lakh).** Hence, this Arbitral amount entitles the Petitioner/Operational Creditor to trigger the **Corporate Insolvency Resolution Process in respect of the Respondent/Corporate-Debtor** in accordance with the Insolvency and Bankruptcy Code, 2016.

15. As per the record of the present matter, there is no reply or representation received from the Corporate Debtor despite issuance of notice and paper publications effected. The present matter initially was listed for hearing on 25.09.2018, 06.11.2018, 14.12.2018, 05.02.2019, 22.03.2019, 27.05.2019, 27.06.2019, 20.08.2019, 17.09.2019, 03.10.2019 and on 23.10.2019. Finally the order was reserved on 26.11.2019.



16. The Petitioner/Operational-Creditor, M/s. Pacific Gulf Shipping (Singapore) Pte. Ltd, in compliance of this Bench's order dated 17.09.2019 duly furnished proof of paper publication of notice of hearing of the present I.B. Petition which got published in the Indian Express (English) Ahmedabad Edition and in Kutch Mitra (Gujarati), Bhuj Edition.

17. The Petitioner, in support of the present I.B. Petition has further filed an affidavit of Mr. Rohit Parmar, Authorised Signatory by verifying the facts of the present I.B. Petition by stating /deposing as under:

(i) That the Corporate Debtor is indebted to the Operational Creditor for an awarded/decreed sum of USD 159,366.04 and GBP 20,569.87, along with further interest calculated @ 5% p.a. compounded at three monthly intervals from the date of this Application till payment/realization in accordance with the Arbitral Award dated 26 March 2018 and Award of Assessed Costs dated 2 July 2018.

(ii) That the Award dated 26 March 2018 was passed by the Arbitral Tribunal comprising of Mr. Brian Williamson and Ms. Sarra Kay appointed under the LMAA. A copy of the Award dated 26 March 2018 is annexed hereto and marked as Annexure B. The arbitral tribunal allowed the contentions of the Operational Creditor and made the following awards:

a. Claim for demurrage USD 131,333.75

b. Interest @ 5% p.a. compounded at three monthly intervals on USD 131,333.75 from 1 January 2017 amounting to 1 August 2018 = USD 10,750.15

c. Costs of the award dated 26 March 2018 = GBP 12,975

[i.e.USD 17,282.14]



(iii) That the Arbitral Tribunal comprising of Mr. Brian Williamson and Ms. Sarra Kay passed the "Award of Assessed Costs" on 2 July 2018. A copy of the Award of Assessed Cost dated 2 July 2018 is annexed hereto and marked as Annexure C.

The arbitral tribunal assessed the costs of the arbitration and made the following awards:

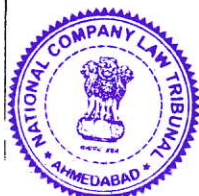
- a. Recoverable Costs GBP 16,937 [i.e. USD 22,559.36]*
- b. Interest @ 5% p.a, compounded at three monthly intervals on GBP 16,937 from 26 March 2018 to 1 August 2018 = GBP 282.87[i.e. USD 369.27]*
- c. Costs of the award dated 2 July 2018 = GBP 3,350 [i.e. USD 4402.06]*

(iv) That the Award came to be passed under a voyage charter party, evidenced by a Recap dated 9th September 2016 incorporating the GENCON 1994 form entered into between the parties, wherein the Operation Creditor chartered the motor vessel "Pacific Pioneer" to the Corporate Debtor to carry a cargo of 62000-64000 tonnes of Salt in bulk from Kandla to Chittagong Annexed hereto and marked as Annexure D is a copy of the charter party, evidenced by a Recap dated 9 September 2016 incorporating the GENCON 1994 form.

(v) That the awarded/decreed sums are an operational debt, since they are claims in respect of the provision of goods or services.

(vi) That the Operational Creditor delivered a demand notice dated 9 July, 2018, demanding payment of the amounts involved in the default to the Corporate Debtor at the Corporate Debtor's registered office at Neelkanth BBZ S60, Zanda chowk, Gandhidham, Gujarat, India 470201.

(vii) That the Corporate Debtor has not, within a period of 10 days of the receipt of the demand notice, brought to the notice of the Operational Creditor the existence of a dispute, and record of the pendency of the suit or arbitration proceedings filed before the receipt of the demand notice, in relation to such dispute, or the repayment of the unpaid operational debt, by sending an attested copy of the record of electronic transfer of the unpaid



amount from the bank account of the Corporate Debtor or by sending an Attested copy of record that the Operational Creditor has encashed a cheque issued by the Corporate Debtor.

(viii) That the Operational Creditor has not received payment from the Corporate Debtor or notice of the dispute under Section 8(2) of The Insolvency & Bankruptcy Code, 2016 after the expiry of ten days from the date of delivery of the notice dated 9 July 2018 demanding payment. Therefore, the Operational Creditor is entitled to make an Application before this Hon'ble Tribunal for initiating a corporate insolvency resolution proceeding.

18. Thus, it is evident that the Corporate-Debtor did not enter its appearing in the present matter nor disputed the award passed by the Learned Arbitrators as was referred to in Arbitration by both parties. There is no evidence available on record which shows that the Respondent/Corporate-Debtor has disputed the quantum of the amount of Arbitral Award, i.e. US \$ 131,333=75, which has now become due and payable as an operational debt nor the award is said to have been challenged in British Competent Court of Law or in Indian Court as per the provision of the Arbitration Act, 1996 (U.K.) or under the provision of the Arbitration & Conciliation Act, 1996. Hence, Arbitral Award has reached in its finality. Therefore, in our view, the unpaid amount towards demurrage/amount of Arbitral Award can be treated as Debs under Section 3(10) and 3(11) of the Insolvency and Bankruptcy Code, 2016.



19. Therefore, in our view, the unpaid amount towards the demurrage / amount of arbitral wdg. Falls within the definition of a debt under Section 3(11) of the I.B. Code. Further, Section 3(10) describe about debts which means a liability or obligation in respect of a claim which is due from any personnel and includes financial debt and operational debt. Further, the Section 3(10) defines services among all creditors which means any person, to whom a debt is owned and includes Financial Creditor, Operational Creditor, a secured creditor and unsecured creditor and a decree holder.

20. Since, in the present case, an award has been passed in favour of the Petitioner, his status is as good as of a decree holder. Hence, he can come within the scope of the Operational Creditor and the Arbitral amount which is unpaid, can be treated as a default of debt has occurred. For the sake of convenience, the relevant provisions of Section 3(10) and 3(11) are reproduced herein below:

“Section-3: In this code, unless the context otherwise requires,-

(1).....

xxxxxx

(10) “creditor” means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder;



(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

xxxxxx"

21. Further, the Section 5(21) define the Operational Debt which reads as under:

Section 5

xxxxxx

(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

22. By following the above stated legal provisions and perusal of the material available on record, it is evident that the Petitioner/Operational-Creditor has provided its services of cargo by transporting and shipping the goods of Corporate Debtor, i.e. bulk salt from Kandla Port (India) to Chittagong Port (Bangladesh). Since, the Corporate Debtor has failed to pay the due amount towards demurrage and transporting charges, which lead to an Arbitration Proceedigns and thereby an Arbitral Award has been passed in favour of the Petitioner and against the Corporate Debtor. Hence, we are of the view that the claimed amount of demurrage which has been awarded is still unpaid. Hence, it has become due and payable and a default of Arbitral amount can be

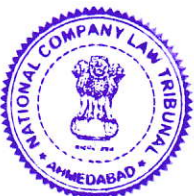


treated as good as an Operational Debt. Thus, the default of debts has been occurred and is well established. Hence, a Corporate Insolvency Resolution Process ("CIRP") can be triggered in respect of the Corporate Debtor Company. That apart, the present I.B. Petition is filed through its authorised signatory, Mr. Rohit Parmar of the Petitioner Company. Hence, its filing is found to be in order and well within the limit.

23. For the above stated reason, the present IB petition filed under Section 9 of the code is found complete to trigger the **Corporate-Insolvency-Resolution-Process ("CIRP")** in respect of Corporate-Debtor-Company. The present I.B. Petition deserve for admission under the I.B. Code.

24. Hence, the present IB petition is hereby admitted. It is ordered that the CIRP in respect of the Corporate-Debtor-Company namely, M/s. S.R.K. Chemicals Ltd. shall commence from the date of this order with following observation/direction.

25. This Adjudicating Authority, in exercise of power conferred to it under Section 13 and 14 of the I.B. Code, 2016 declares moratorium from the date of commencement of insolvency, by prohibiting all of the following, namely: -



- I.(a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 (54 of 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.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.*


26. Since, the Petitioner/Corporate-Debtor did not suggest any name of Insolvency Professional, this Adjudicating Authority hereby appoints **Mr. Sunit Jagdishchandra Shah**, having Insolvency Professional Registration No. **IBBI/IPA-001/IP-P00471/2017-18/10814**, Email ID: **sunit78@gmail.com**, mobile no. **9825562442**, as an



Interim-Resolution-Professional. The Interim-Resolution-Professional is further directed to make public announcement of moratorium in respect of Corporate-Debtor-Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code.

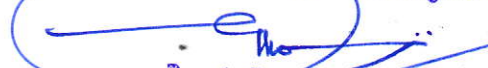
27. An authentic copy of this order to be communicated by the Petitioner as well as by this Registry to the Corporate-Debtor-Company, as well as to the Interim-Resolution-Professional and the Registrar of Companies at the earliest.

28. The present IB-Petition is disposed of accordingly.


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)

AT



Certified to be True Copy of the Original

Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad