

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-2144(ND)2019

IN THE MATTER OF:

M/s GAC Shipping (India) Private Limited
GAC House, Subramanian Road
Willingdon Island, Cochin
Kerala 682009

...Operational Creditor

VERSUS

M/s Classic Bottle Caps Pvt. Ltd.
E-14/B-1 Extension
Mohan Co-operative Industrial E State
New Delhi-110044

... Corporate Debtor

Section: 9 of IBC, 2016

Judgement Delivered on: 13.02.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Deepkaran Dalal and
Mr. Ajay Rajnish, Advocates

For the Respondent : None



(IB)-2144(ND)2019

M/s GAC Shipping (India) Pvt. Ltd. vs M/s. Classic Bottle Caps Pvt. Ltd.

JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present petition is filed under the Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s GAC Shipping (India) Pvt. Ltd. (for brevity 'Operational Creditor'), with a prayer to initiate the Corporate Insolvency Process against M/s Classic Bottle Caps Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s GAC Shipping (India) Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U63090KL1983PTC003733, having its registered office at GAC House, Subramanian Road, Willingdon Island, Cochin, Kerala 682009.

3. The Corporate Debtor namely, M/s Classic Bottle Caps Pvt. Ltd. is a Company incorporated on 13.04.2000 under the provisions of Companies Act, 1956 with CIN No. U25209DL2000PTC105213, having its registered Office at E-14/B-1 Extension, Mohan Co-operative Industrial E State, New Delhi-110044.

4. The Authorised Share Capital of the Respondent Company is Rs.2,50,00,000 and Paid-up Share Capital of the Company is Rs.2,13,49,880 as per the Master Data of the Company annexed.

5. It is the Petitioner's case that the Corporate Debtor had availed services regarding arranging and transportation of the products viz. bottle caps etc. It is added by the Petitioner that the Respondents also sought services for arranging Custom Clearance and facilitation of the export related documents. The services were provided against the invoices raised by the Petitioner. The details of the un-paid invoices raised by the Petitioner are as follows:

Bill No.	Invoice Date	Base Amount	Base Balance
T074430000000039	22.08.2017	271080.22	21080.22
T074430000000040	22.08.2017	168442.64	168442.64
T074430000000041	22.08.2017	271080.22	271080.22
T0744300000000237	13.09.2017	2600	2600
T0744300000000236	13.09.2017	59116.27	59116.27
T0744300000000157	09.10.2017	65861.97	65861.97
T0744300000000210	02.1.2017	272439.58	272439.58
T0744300000000209	02.11.2017	272439.58	272439.58
T0744300000000640	03.11.2017	3800	3800
T0744300000000639	03.11.2017	76523	76523
		Total	12,13,383.48
		Amount Received	3,00,000
		Balance	9,13,383.48

6. It is submitted by the Petitioner that the Respondent had made part payment of Rs.3,00,000 only towards the dues payable.



7. It is stated by the Petitioner that the total debt of the Respondent as on date is of Rs.9,13,383.48. It is further added by the Petitioner that it had sent a Demand Notice dated 17.01.2019 under Section 8 of IBC 2016 through email at the registered email-id as per the master data of the Corporate Debtor available on the MCA Website.

8. That the Petitioner in their Affidavit under Section 9(3)(b) of IBC, 2016 has made specific averment regarding receipt of a Notice of dispute issued by the Respondent. Further, the Petitioner has annexed a Certificate issued by the Axis Bank in compliance of the Section 9(3) (c) of IBC, 2016 dated 07.02.2020.

9. The Petitioner has also placed on record the Email dated 24.01.2019 sent by the Corporate Debtor whereby it has agreed to pay Rs.3,00,000 on 29.01.2019 and the balanced amount in four installments on monthly basis after 25th of every month. As per the email, the Corporate Debtor assured to clear all pending dues within four months. The offer of the Corporate Debtor was accepted by the Operational Creditor vide their returned email dated 08.02.2019 with their request to settle the outstanding dues in three monthly installments. The scanned copy of both the emails dated 24.01.2019 from the Corporate Debtor and reply email dated 08.02.2019 from the Operational Creditor are reproduced overleaf :



'ANNEXURE-B'

From: Jaya Shekar
Sent: Friday, February 8, 2019 6:49 PM
To: 'Bhandari' <bhandari@classiccaps.com>
Cc: 'Sanjeev Seth' <sanjeevseth@classiccaps.com>; shivseth@classiccaps.com; Balagopal Warriar <balagopal.warrier@gac.com>; Dicky Philip <dicky.philip@gac.com>; Vinod Dhiman <vinod.dhiman@gac.com>
Subject: RE: Plan Payment -Peoposal of Outstanding Payment -GAC Shipping

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Dear Sir,

Thank you for your email.

With reference to your email, we had taken up the matter with our management and our legal team their response to the same as follows

We considered your offer of settling the accounts in 3 monthly installments i.e. from the total current outstanding INR 913383.48 you need to pay equal 3 installments Of INR 304461/- on or before 25th of every month i.e. FEB, MAR & APR 2019, We accept your offer subject to strict compliance thereof at your end. We reiterate that our Demand Notice under IBC has been served on you. Our acceptance of your offer here does not mean that the Demand Notice has been withdrawn or we are waiving off our statutory rights to claim the amount due. We make it clear that in the event of a default/delay in any one of the installment, we shall move the NCLT without giving any further Notice.

Thanks & Best Regards,

Jaya Shekar | Branch Manager | GAC Shipping (India) Pvt. Ltd. | New Delhi | + 91 9899205424

From: Bhandari <bhandari@classiccaps.com>
Sent: Thursday, January 24, 2019 3:38 PM
To: Jaya Shekar <jaya.shekar@gac.com>
Cc: 'Sanjeev Seth' <sanjeevseth@classiccaps.com>; shivseth@classiccaps.com
Subject: Plan Payment -Peoposal of Outstanding Payment -GAC Shipping

Dear Mr. S. Jaya Shekar ,

Reference meeting held in our office today with undersigned and along with our M.D. Mr. Sanjeev Seth.

As per the subsequent discussion, Classic Bottle Caps will pay Rs. 3 lakh on 29th January 2019 and as per the proposal the balance payment will be pay in 4 installments on monthly basis after 25th of every month . We assure you that your all pending dues will be clear with 4 months. As you know that we are standing once again from the bottom and re-built our business relations with our esteemed customers.

We are very thankful to you for your kind co-operation with us during this period & also looking forward for your patronizing in future.

Best Regards ,

Rajender Bhandari
Classic Bottle Caps Pvt Ltd
Plot No -I-39 , DLF Industrial Area,
Phase- I , Faridabad -121 003 (HR)
bhandari@classiccaps.com
989159366

For GAC Shipping (I) Pvt. Ltd.

Authorised Signatory

10. During the proceedings on 19.11.2019, the Accounts Officer of the Corporate Debtor Mr. Yashwant Rao appeared and submitted that on account of financial crisis, they are unable to liquidate the debt due to the Operational Creditor. As none appeared on behalf of the Corporate Debtor during the subsequent proceedings, the Corporate Debtor was proceeded ex-parte vide Order dated 11.12.2019 passed by this Tribunal.

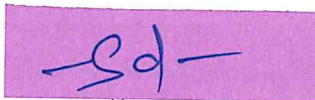
11. In the given facts and circumstances, the present Petition being complete and establishing the default in payment of the operational debt beyond doubt, the Petitioner is entitled to claim its dues. The amount of default being above Rs.1,00,000 for the unpaid invoices, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry :

- “(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.”

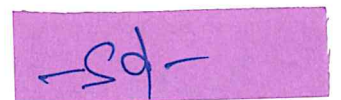
12. The Operational creditor has not proposed any IRP. Therefore, this Bench based on the list furnished by IBBI, appoints Mr. Rattan Chaudhry as an IRP having IBBI Registration No. IBBI/IPA-002/IP-N00325/2017-18/10930, (Email rattan_chaudhry@yahoo.co.in and Mobile No. 9311208340) subject to the condition that no disciplinary proceedings are pending against the IRP named and disclosures as required under IBBI Regulations, 2016 are made within a period of one week from this order. The IRP is directed to take the steps as mandated under this Code specifically under Section 17, 18, 20 and 21 of IBC, 2016.

13. The Petitioner Company is directed to deposit Rs.1,00,000 (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Petitioner.

14. In terms of the above, 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 this Order shall be communicated to the Petitioner, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)