

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT - II**

C.P. No. 3223/IBC/MB/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

**Gainwell Commosales Private Limited
(formerly Known as Tractors India
Private Limited)**

Address: Godrej Waterside, Tower-II, 7th
Floor, Unit No. 705, Block-DP, Sector-V,
Salt lake, Kolkata – 700091.

.....Operational Creditor

Vs

Pisces Exim India Private Limited
(CIN: U74900GA2009PTC006231) Having
Registered Office at : Row Bunglow No. 5
Valmiki Baug, Mungal Margao, Goa :-
403601.

.....Corporate Debtor

Order delivered on:- 21.12.2021

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. Vishesh Kalra, Advocate

For the Corporate Debtor : None Appeared

ORDER

Per :- Justice P.N. Deshmukh, Member Judicial

1. This Company Petition is filed by *Gainwell Commosales Private Limited (formerly known as Tractors India Private Limited)* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Pisces Exim India Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of Rs. 18,73,267.04/- (Rupees Eighteen Lacs Seventy Three Thousand Two Hundred Sixty Seven and Zero Four Paisa Only) together with interest of Rs. 7,14,514.30/- @ 18% per annum aggregating to Rs. 25,87,781.34/- (Rupees Twenty Five Lakhs Eighty Seven Thousand Seven Hundred Eighty One and Thirty Four Paisa only).
3. **The Submissions of the Operational Creditor are as follows:**
 - a. The Operational Creditor submits that on or about January, 2016 the Corporate Debtor approached the Operational Creditor with a request to provide services for repair of various machineries and also for supply of

various spare parts. The cost for providing such services and supply of such materials was mutually agreed between the Corporate Debtor and the Operational Creditor. The Operational Creditor submits that on receiving confirmation from the Corporate Debtor, the engineers of the Operational Creditor had successfully carried out the repairing work and the spare parts had also been supplied. The services rendered by the Operational Creditor to the Corporate Debtor are in the following manner: -

- i. Construction services rendered on 31st December, 2015 as per request made and the Invoice No. 2015-16/9016401838 dated 31st December, 2015 amounting to Rs. 54,960/- (Rupees Fifty-Four Thousand Nine Hundred Sixty Only) was issued.
- ii. Services for repairing of Transmission of Caterpillar Make Model 950H machine Serial No. D1N01621 rendered as requested by mail dated 21st January, 2016 and Invoice No. 2015-16/9023401148 dated 30th January, 2016 amounting to Rs. 16,23,766.71/- (Rupees Sixteen Lakh Twenty Three Thousand Seven Hundred Sixty Six and Seventy One Paise Only) was issued.
- iii. Services for repairing of Transmission of Caterpillar Make Model 950H machine Serial No. D1N01621 rendered as requested by mail dated 21st January, 2016 and Invoice No. 2015-16/9023401149 dated 30th January, 2016 amounting to Rs. 1,71,759/- (Rupees

One Lakh Seventy-One Thousand Seven Hundred Fifty only) was issued.

iv. Further, as requested invoice was raised for various services dated 10th February, 2016 being Invoice No. 9016106466 dated 10th February, 2016 amounting to Rs. 11,440.84/- (Rupees Eleven Thousand Four Hundred Forty and Eighty Four Paise only).

v. Further, as requested invoice raised for various services dated 10th February, 2016 being Invoice No. 9016106487 dated 10th February, 2016 amounting to Rs. 704.38/- (Rupees Seven Hundred Four and Thirty-Eight Paise only).

vi. Further, as requested invoice raised for various services on 16th February, 2016 being Invoice No. 9098100399 amounting to Rs. 6,287.34/- (Rupees Six Thousand Two Hundred Eighty-Seven and Thirty-Four Paise only) was issued.

vii. Further, as requested invoices raised for various services on 22nd February, 2016 being Invoice No. 9016106570 dated 22nd February, 2016 amounting to Rs. 32,927.20/- (Rupees Thirty-Two Thousand Nine Hundred Twenty-Seven and Twenty Paise Only) was issued.

- b. The Operational Creditor submits that the debt has arisen out of breach of contract under the provisions of the Contract Act, 1872 read with the provisions of Insolvency & Bankruptcy Code, 2016. The said debt has arisen out of supply of spare parts and providing services for repairs of transmission spare parts for Caterpillar Equipment's on the basis of Purchase Order and subsequent invoices thereto.
- c. Further the Operational Creditor submits that a mail dated 8th February, 2016 was sent by the Corporate Debtor to the Accounts Department of the Operational Creditor requesting to hand over the overhauled Transmission through the vehicle of the Corporate Debtor. The Operational Creditor by its mail dated 9th February, 2016 informed the Corporate Debtor that the overhauled equipment has been handed over to the authorized person of the Corporate Debtor.
- d. Further, the Operational Creditor had sent a Demand letter dated 30th May, 2017 to the Corporate Debtor addressed at its registered office at Goa and also to its office at Orissa and Mumbai. Thereafter, the Corporate Debtor vide email dated 18th May, 2016, the Corporate Debtor admitted that there were outstanding dues payable by the Corporate Debtor.
- e. The Operational Creditor sent Demand Notice under Section 8 of the Code in Form 3 dated 12.04.2018. The Operational Creditor submits that the notice could not be served at the registered office of the Corporate Debtor and the tracking details showed the status as "Addressee Moved" but the Ministry of Corporate Affairs website showed the address as the registered

address of the Corporate Debtor. Copies of the postal receipts of the Demand Notice sent at the registered office and the two other offices is produced on record.

- f. In the said circumstances, the copy of the said Demand Notice was sent to the Managing Director of the Corporate Debtor vide email dated 27th April, 2018.
- g. The Operational Creditor has annexed the courier receipt of the tracking report showing that the Notice was delivered to the Corporate Debtor. The Corporate Debtor did not file any Reply to the Demand Notice and as no dispute was raised by the Corporate Debtor under section 5(6) of the Code.
- h. The Operational Creditor has proposed the name of Mr Abhijeet Jain, Registration No. IBBI/IPA-002/IP-N00173/2017-18/10445, having address at Diamond Chambers, 4, Chowringhee Lane, Block - I, 4th Floor, Room No. 4M, Kolkata – 700016, as the Interim Resolution Professional of the Respondent. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

4. No Submissions from the Corporate Debtor:-

- a. The Corporate Debtor has not appeared before this Bench. The Affidavit of Service intimating the next date of hearing is placed on record. None attended. The correspondences between the Operational Creditor and the Corporate Debtor, vide email dated 18th May, 2016 reveal that the debt is an admitted debt.

- b. Since the Corporate Debtor has not appeared before this Bench, it is presumed that there is nothing much to say in defence.

FINDINGS

5. We have heard the submissions of the Counsel appearing for the Operational Creditor. It is seen from the records that this Tribunal had given sufficient chances to the Corporate Debtor to file its Reply. However, the Corporate Debtor failed to appear and did not file its Reply. This act itself shows that the amount is due and payable to the Operational Creditor.
6. Further it is seen from the records that the Operational Creditor had also carried newspaper publication in Nav Shakti (Marathi) and Free Press Journal (English) on 19.03.2019 and also on 27.09.2019 thereby setting out the next date of hearing in the Tribunal. Further in pursuant to the Order dated 02.06.2021 passed by this Tribunal, the Operational Creditor issued a private Notice to the Corporate Debtor Company and its Directors, thereby intimating the next date of hearing. To this, the Operational Creditor filed an Affidavit of Service dated 17.08.2021. This bench observes that the Operational Creditor has served and intimated the date of hearings to the Corporate Debtor on several occasions and finally the Corporate Debtor was set to be ex-parte vide Order dated 01.11.2021.
7. Further, it can be seen from the email correspondences between the Corporate Debtor and the Operational Creditor that the Operational Creditor has provided services to the Corporate Debtor and also the

Corporate Debtor had asked for some time to clear the outstanding dues.

8. The Operational Creditor has successfully demonstrated and proved the debt and default in this case and has also proved that there is absolutely no reason for the Corporate Debtor to hold on to the payment of the invoices. Hence this Bench is left with no option except to admit the above Company Petition, since the above Company Petition in hand satisfies all necessary legal ingredients for admission under Section 9 of the Code.
9. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

ORDER

- a. **The above Company Petition No. (IB) - 3223(MB)/2018 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Pisces Exim India Private Limited.
- b. This Bench hereby appoints **Mr. Abhijeet Jain, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00173/2017-18/10445** as the **Interim Resolution Professional**, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way

of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)**