IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT -V

C.P. (I.B) No. 542/MB/2023

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

ETC-ENERGY THERAPY CO. PRIVATE LIMITED
Having its registered office at 12- B, Ganga Vihar, Raheja Township, Malad (East) Mumbai.
MH-400 097.

...Operational Creditor/Applicant

Vs

ORBIIGO HEAVY LIFTERS PRIVATE LIMITED
(Formerly known as Ptraans Logistics (India) Private Limited)

Having its registered address at
401, 402, Navratna Premises Co-Op
Soc Ltd, 69 P Demello Road, Karnak
Bunder, Mumbai MH- 400 009

...Corporate Debtor/Respondent

Order Dated: 16.02.2024

Coram:
Reeta Kohli, Hon'ble Member (Judicial)

Sanjiv Dutt, Hon'ble Member(Technical)

Appearances: (Physical)

For the Operational Creditor: Adv. Prakhar Tandon

For the Corporate Debtor: None present

ORDER

Per: Reeta Kohli, Member (Judicial)

1. This Company Petition is filed **by ETC- ENERGY THERAPY CO. PRIVATE LIMITED** (hereinafter referred as "**the Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as **"CIRP"**) against **ORBIIGO HEAVY LIFTERS PRIVATE LIMITED (Formerly known as Ptraans Logistics (India) Private Limited)** (hereinafter called "**Corporate Debtor**") by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called "**Code**") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs.1,66,16,340/** along with interest @ 18% p.a. till date. The dates of the default are stated to be 18.10.2021, 26.11.2021, 22.01.2022, 20.02.2022, 27.03.2022, 19.04.2022. Demand Notice was served on 04.04.2023. The Corporate

Debtor had neither replied to the Demand notice nor paid the outstanding dues.

Brief Facts: -

1. The case of the operational creditor/petitioner is that petitioner company is engaged in the business of contracting of Civil Work as well as construction work. The respondent/corporate debtor contacted the petitioner to give a quotation for getting their office repaired and also for the maintenance work. The petitioner submitted the quotation amounting to Rs.1,37,51,962/- on 26.07.2021.

2. The Corporate Debtor issued Work Order no. WO/003/21-22 dated 27.07.2021 in favour of the petitioner/operational creditor to commence the repair work and also maintenance work at the transport house as well as office premises of the petitioner. The work commenced on 10.08.2021 and the same was completed within the stipulated time period agreed between the parties.

3. It is further submitted that it was agreed between the parties that petitioner shall raise monthly invoices for the services provided by the petitioner as running bills.

4. The respondent/corporate debtor assured the petitioner of the timely payment of entire amount. Based on the assurance of the corporate debtor, the petitioner completed the entire work by the 3rd week of January, 2022. The total invoices raised by the petitioner on the corporate debtor/respondent amounting to Rs.1,37,51,962/-.

5. The case of the petitioner further is that no dispute with respect to the quality of services rendered by the petitioner was ever raised by respondent/corporate debtor. The respondent has duly received all the invoices and have acknowledged these as well.

6. It is submitted that in terms of the invoices, the entire payment was to be made within 45 days after submissions of the tax invoices and on measurement of work being completed. Thus, the petitioner after issuance

of various invoices issued from 03.09.2021 to 05.03.2022 called upon the respondent for the due payment of the outstanding bills. In view of the non-payment on the part of the respondent, various reminders for payment of outstanding dues were sent which were duly received by the respondent/corporate debtor.

7. It is further submitted that ultimately the petitioner was left with no other option but to issue a demand notice in Form- 4 on 04.04.2023 calling upon the corporate debtor to pay the outstanding dues of Rs.1,66,16,340/- (Inclusive of interest till 31.03.2023) with further interest till the date of payment at the rate of 18%. The said demand notice was stamped and hand delivered to the Corporate Debtor.

8. In Part IV of the petition the petitioner has furnished the details of the invoices and also the default date of along with the due amount and the interest calculated upon the same. The case of the petitioner is that there has been no

response to the demand notice. Hence, the petitioner was left with no other option but to prefer the present petition.

Findings/Conclusion

We have heard the argument of the Learned Counsel for Operational Creditor and have gone through the records placed before the Hon'ble Tribunal.

9. The present petition has been filed by the Operational Creditor under Section 9 against the respondent for recovery of an amount of Rs.1,66,16,340/- (Inclusive of interest till 31.03.2023) with further interest till the date of payment at the rate of 18%. The dates of the default are stated to be 18.10.2021, 26.11.2021, 22.01.2022, 20.02.2022, 27.03.2022, 19.04.2022. The case of the Petitioner is for initiation of CIRP under Section 9 of IBC 2016, against CD for the above stated debt which till date has remained unpaid.

10. After having made the above said submissions, the learned counsel drew our attention to the

acknowledgement of the debt by the corporate debtor in the series of letters dated 03.12.2021, 25.02.2022, 26.04.2022, 14.07.2022, 29.02.22, in which the Corporate Debtor states as under-

Letter dated 3.12.2021-

"*We wish to inform you that your work performance is good we have certified work done against tax invoices 052/2021-22 & 082/2021-22 issued by you and accounted the same in our books of account. We hereby request you kindly wait for payments as we are in shortage of fund. We assure you that we shall clear the bills in coming days".*

Letter dated 25.02.2022-

"We shall release payment for all your 4 bills submitted till today, which total amount is Rs. 90,56,428/- in the coming month. Kindly do not hold the work."

Letter dated 26.04.2022-

"We are facing fund issue from last 3-4 months due to some business encumbrances but your total due amount of Rs.

1,37,51,962/- shall be paid as soon as possible at our first priority".

Letter dated 14.07.2022-

"Kindly allow us more time so that we can clear all your payment along with interest @ 18% p.a."

Letter dated 20.09.2022-

"We have received all your bills and accounted the same in our books of account. The same shall be considered on priority to pay in coming days. Kindly bear with us and support us at this situation"

The Ledger entry of the amount due is also placed on record. Thus, the acknowledgement of debt is a clear proof on the part of the corporate debtor. Hence the Petition deserves to be admitted.

11. Despite issuance of notice to the respondent, there is no representation on behalf of the respondent. In view of the absence of the respondent, we are left with no other option but to accept the submissions made by the learned counsel for the petitioner as true and correct. On the

perusal of documents placed on record i.e. the work order dated 27.07.2021 and also the invoices along with the acknowledgement of debt on the part of the respondent, we are left with no other option but to grant admission of the respondent/corporate debtor to CIRP.

12. We are of the considered opinion that the petitioner on the strength of the submissions made and the documents placed on record has been able to prove the amount of operational debt due which is payable to him and also default on the part of the respondent/corporate debtor and pursuance to the documents placed on record by the petitioner, there does not seems to be any existing dispute between the parties. In the absence of the respondent we are left with no other option but to accept the contention by the petitioner. Thus, in our opinion the all essential ingredients required for admission under Section 9 of the IBC, i.e., the existence of "**debt**" and "**default**" in this case are proved. We deem it appropriate to admit the corporate Debtor to CIRP.

ORDER

13. The above Company Petition No. 542/IBC/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against against ORBIIGO HEAVY LIFTERS PRIVATE LIMITED (Formerly known as Ptraans Logistics (India) Private Limited)

14. Mr. Vishnu Kant Kabra having registration No IBBI/IPA-001/IP-P-02178/2021-2022/13747, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

15. The Petitioner shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

16. 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 or 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.

17. 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.
18. 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.
19. 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.

20. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

21. 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.

22. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

23. Accordingly, CP (IB) No. 542 of 2023 is admitted.

SD/- **SD/-**

SANJIV DUTT
MEMBER (TECHNICAL)

REETA KOHLI
MEMBER (JUDICIAL)

/Aakansha/