

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.893/MB-IV/2022

Under Section 9 of the IBC, 2016

In the matter of

Chartered Finance Management Private
Limited.

[CIN: U99999MH1999PTC122702]

...Operational Creditor

v/s.

Roadways Solutions India Infra Ltd.

[CIN: U45201PN2017PLC169565]

...Corporate Debtor

Order Delivered on: 18.08.2023.

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor:

Mr. Nishit Dhruva a/w Mr. Meghna
Arvind, Mr. Yash Dhruva i/b MDP &
Partners, Ld. Counsel.

For the Corporate Debtor:

Mr. Ashish Kamat a/w Mr. Nirav
Shah, Ms. Prachi Garg, Mr. Zaid
Mansuri i/b DSK Legal, Ld. Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Chartered Finance Management Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Roadways Solutions India Infra Ltd., the Corporate Debtor.

1.1. The Company Petition is filed on 05/08/2022 claiming an amount of Rs. 7,99,60,000/- in default. The date of default specified in Part IV of the petition is 25.04.2022 (i.e. 7 days from the date of issuance of the Invoice dated 18.04.2022).

2. In or around 2020-2021, the Corporate Debtor needed financial assistance in order to complete certain projects, including project for the construction of Eight Lane access-controlled expressway from km 103.400 to Km 128.00 of Vadodara Mumbai Expressway of NHAI ("Package X Project"). As is standard practice in carrying out such projects, the Corporate Debtor formed a Special Purpose Vehicle for carrying out the Package X Project, being M/s. Vadodara Mumbai Expressway Pkg 10 Pvt. Ltd. ("said SPV"). The said SPV is the alter ego of the Corporate Debtor; and is owned and controlled by the Corporate Debtor. All the shares of the said SPV are owned by the Corporate Debtor, as evident from the list of shareholders of the SPV.

2.1. Accordingly, by a Mandate Letter dated 14.07.2021 ("Mandate Letter") addressed by the Corporate Debtor to the Operational Creditor, the Corporate Debtor engaged the service of the Operational Creditor to provide advisory services to raise certain credit facilities for its projects

including the Package X Project. Under the Mandate Letter, it was expressly agreed that a fee of 1.5% of the sanctioned amount would be payable by the Corporate Debtor to the Operational Creditor ("Fee"). It was further agreed by the parties in the Mandate Letter that 50% of the Fee would be paid upon sanction and 50% of the Fee would be paid upon disbursement to the SPV.

2.2. Subsequent to the execution of the Mandate Letter, the Operational Creditor performed various tasks in due performance of its obligations under the Mandate Letter including but not limited to preparing proposals and files for submissions to lenders, collating documents; coordinating/negotiating with lenders like Canara Bank. On 04.01.2022, due to the aforementioned efforts of the Operational Creditor, a term loan of Rs. 480 crores was sanctioned by Canara Bank in favour of the said SPV owned and controlled by the Corporate Debtor for the Package X Project. Hence, an amount of Rs.7.20 crores + GST became due and payable by the Corporate Debtor to the Operational Creditor towards the Fees of the Operational Creditor under the terms of the Mandate Letter, being 1.5% of the sanctioned amount i.e. Rs. 480 crores.

2.3. On 01.02.2022, the Operational Creditor raised a Partial Invoice on the Corporate Debtor for an amount of Rs.3.60 crores + GST towards 50% of Fees. Pursuant thereto, on 16.02.2022 the Corporate Debtor made partial payment of Rs.45 lacs.

2.4. Thereafter, on 18.04.2022, the Operational Creditor raised a Full Invoice on the Corporate Debtor for an amount of Rs.8,49,60,000/- (Rupees Eight Crore Forty-Nine Lacs Sixty Thousand only) (i.e. Rs.7.20 crores + GST), pursuant to the fee structure laid down in the Mandate Letter. The payment was required to be made within a period of 7 days from the date of the invoice as per the fee structure laid down in the Mandate Letter. The said

Invoice contained all the details regarding GSTIN, PAN, RTGS details etc. thus calling upon the Corporate Debtor to make payment of the Fees to the Operational Creditor. However, the Corporate Debtor failed to make payment of the amounts.

2.5. Since the Operational Creditor did not make payment of the Fees, the Operational Creditor sent various emails dated 26.04.2022, 02.05.2022, 24.05.2022 and 30.05.2022 to the Corporate Debtor calling upon to make payment of the balance amount of the fees. It is pertinent to note that, in the said Emails, the Operational Creditor has expressly stated that the Fees are towards the work done by the Operational Creditor under the said Mandate Letter towards the Package X Project. The said Emails further recorded that the amount of Rs.45 lacs were appropriated towards the total outstanding amount of Rs.8,49,60,000/- (Rupees Eight Crore Forty-Nine Lacs Sixty Thousand only) due and payable by the Corporate Debtor. Pertinently, there is no response and/or dispute raised to the said Emails disputing the amounts raised, services rendered by the Operational Creditor or raising any other issue.

2.6. A Demand Notice dated 12.07.2022 ("Demand Notice") was issued by the Operational Creditor to the Corporate Debtor, to call upon the Corporate Debtor to make payments of the amounts due. Till date, the Corporate Debtor has not responded to the said Emails or the Demand Notice or raised any dispute.

3. The Corporate Debtor vide its affidavit in reply dated 21.03.2023 states that the present petition filed by the Operational Creditor is liable to be dismissed *in limine* on then sole ground that the Demand Notice dated 12.07.2022 has not been served on the Corporate Debtor; the alleged claim of the Operational Creditor is ill-founded, frivolous and is not even mentioned in the Mandate

letter on which the petition has been filed; the mandate letter allegedly did not contemplate the provision of services in relation to the Package X Project; the proforma invoices does not hold any sanctity in the eyes of law there is no claim which qualifies it as a “Operational Debt” on the basis of the proforma invoice; no debit has been raised by the Operational Creditor under the Mandate Letter therefore, there is no liability on the part of the Corporate Debtor to pay any amounts to the Operational Creditor; the Operational Creditor only intends to extort monies under the garb of Proforma invoices raised for the Sanction Letter issued in altogether different project not forming a part of the Mandate letter; date of default is not mentioned in the said Demand Notice; the Operational Creditor had no role to play in procuring the Sanction Letter for the Package X Project for the Corporate Debtor; the loan sanctioned by Canara Bank was allegedly not in favour of the Corporate Debtor, but the said SPV. The Corporate Debtor has also filed an Additional Affidavit in reply dated 08.05.2023.

4. The Operational Creditor vide its affidavit in Rejoinder dated 08.05.2023 states that every objection raised is utterly irrelevant, frivolous and misconceived in the scope of section 9 of the IBC and nothing to be admitted by the Operational Creditor for want of Specific traverse.

Findings

5. This bench heard the counsels and perused the documents and pleadings available on record.

5.1. The bench finds that the Corporate debtor has engaged the Operational creditor to provide advisory services for raising credit facilities up to Rs.1750 Crores and was to pay 1.5% plus GST and any other statutory taxes. The fee payable to the Operational Creditor within 7 days of the raising of debit notes with regard to the services rendered and 50% was payable on

acceptance on sanction of credit facilities and remaining of 1st disbursement. The agreement dated 14.07.2021 was valid for 90 days and was deemed to be extended unless specifically cancelled.

5.2. It is the claim of the Operational Creditor that the term loan of Rs. 480 crores was sanctioned on 04.01.2022 by the Canara bank to M/s. Vadodara Mumbai Expressway Pkg 10 Private Limited (VNMP10PL), on of SPV formed by the Corporate Debtor, and said loan was sanctioned because of its services. Accordingly, the Corporate Debtor is liable to pay a sum of Rs. 7.20 Crores plus GST @ 18% thereon, and has paid only Rs.45,00,000/- out of this. Further, the Operational Creditor has sent a mail dated 18.04.2022 enclosing the “*Proforma Invoice*” for the fees and stated therein that “*we will send the original tax invoice post receipt of payment at our end*”. No email has been attached by the Operational Creditor evidencing the acknowledgement of the claim against the said proforma invoice.

5.3. The Corporate Debtor has raised various grounds which are dealt in the following paragraph(s).

5.3.1. The Corporate Debtor has submitted that the Demand Notice dated 12.07.2022 has not been served on the Corporate Debtor, as the same was served on “*plot no 20 Dhanjibuoy Society, near to SERA School behind bizzbay, Off NIBM Road, Pune 411048*”, while the address stated in the MCA records is *SN-29 HN-20 Kondhwa Kd. Nr. Kubex Soc. Nr. Shera School Pune MH 411048 IN*. This bench does not find any merit in this argument as both the addresses appears to be same and the plea of difference between two is superfluous.

5.3.2. As regards contention that the mandate letter allegedly did not contemplate the provision of services in relation to the Package X Project, This bench finds that the agreement for the advisory services was entered for raising finance up to Rs 1750 Crores and the Operational Creditor was responsible for preparation of Information Memorandum

and Financial Modelling. The said agreement is silent whether such services shall be for the purpose or benefit of group/associate companies or not. Even if the contention of the Operational Creditor is accepted that the agreement dated 14.07.2021 was a master agreement and contemplated raising of finance for different SPVs promoted by the Corporate Debtor, this bench feels that the obligation to pay the fee in terms of this agreement shall be on such associate/group company and not on the Corporate Debtor. It is not in dispute that the loan was sanctioned to VNMP10PL and it can only be made liable to pay the fees, if any to the Operational Creditor. Accordingly, this bench feels that the amount claimed by the Operational Creditor is not payable by the Corporate Debtor. This proposition holds good on another ground i.e. the failure of the Operational Creditor to raise debit note or final invoice as the said agreement specifically contemplates payment of fees within 7 days of raising of such debit note.

5.3.3. Further, the date of default is not mentioned in the said Demand Notice. This further fortifies our findings in the preceding para that the obligation to pay arises on raising of debit note and not on proforma invoice. Further, Part IV has stated date of default 25.04.2022 i.e. after 7 days after date of proforma invoice, this bench does not find the said determination to be in order because obligation to pay does not arise from the proforma invoice in terms of the Agreement.

5.3.4. The Corporate Debtor has placed on record and mandate agreement date 20.07.2021 entered with IDBI Capital Markets and Securities Limited (IDBI Caps) by VNMP10PL and submitted that the Operational Creditor had no role to play in procuring the Sanction Letter for the Package X Project for the Corporate Debtor. The said loan is stated to have been sanctioned because of services rendered by IDBI Caps, and has placed on record an invoice dated 25.03.2022 for

Rs.59,00,000/- raised by IDBI Caps on VNMP10PL, which was duly paid by VNMP10PL. This bench finds that IDBI Caps was engaged specifically for package 10 funding i.e. Financial Modelling & Information Memorandum and Assistance in arranging the Debt for the project. Accordingly, this bench is of the considered view that there exists dispute as to the claim of Operational Creditor about raising of Finance for package 10 project, while the IDBI Caps is also been paid for the similar services.

5.4. In view of the above findings this bench feels that present petition deserves to be dismissed on the ground of prior dispute in relation to existence of debt.

ORDER

6. The petition bearing CP (IB) No.893/ MB-IV/2022 filed by Chartered Finance Management Private Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Roadways Solutions India Infra Ltd., the Corporate Debtor is **dismissed**.
7. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)
18.08.2023.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)