IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.4537/MB-IV/2018

Under Section 9 of the IBC, 2016

In the matter of

European Projects & Aviation Limited
[CIN: U64200MH1996PLC103693]
…Operational Creditor

v/s.

Infro-Alliance Trading Private Limited
[CIN: U51900MH1999PTC121786]
…Corporate Debtor

Order Delivered on:31.08.2021

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner	:	Mr. Chandrakant Mhadeshwar, Advocate.
For the Respondent	:	None

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by **European Projects & Aviation Limited**, a Public Company limited by shares ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Infro-**

Alliance Trading Private Limited ("the Corporate Debtor"), [CIN: U51900MH1999PTC121786].

2. The Corporate Debtor is a company incorporated on 16.09.1999 under the Companies Act, 1956, as a Private Company Limited by Shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U51900MH1999PTC121786. Its registered office is at Flat No. 2605, 1st Floor, Building No. 57 Kailash C.H.S., Gandhinagar, Bandra East Mumbai Maharashtra-400051. Therefore, this Bench has jurisdiction to deal with the present petition.

3. The present petition was filed on 04.12.2018 by Mr. Ganesh Naik vide its Board Resolution dated 04.04.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Rs.11,52,27,101/- (Rupees eleven crore fifty-two lakh twenty-seven thousand one hundred one only) as the total outstanding amount.

4. The case of the Operational Creditor is as under:

   a) The Operational Creditor had raised Purchase Order on GPAL/03/0014/09-10 on the Corporate Debtor on 02.03.2010 amounting to Rs.26.29 crore and the Operational Creditor had made advance payments against the said purchase order amounting to Rs.23.37 crores as on 31.03.2012. The said Purchase Order dated 02.03.2010 is annexed as Exhibit 'A' of the Petition. The Operational Creditor had raised another Purchase Order No. GPAL/05/0009/11-12 on the Corporate Debtor on 17.01.2012 amounting to Rs.10.00 crore and the Operational Creditor had made advance payments against said Purchase Order amounting to Rs.8.40 crore. The said Purchase Order dated 02.03.2010 is annexed as Exhibit 'A-1' of the Petition.

b) In April 2012, due to the bad economic conditions especially in the telecom sector, this purchase order was cancelled by the Operational Creditor. The Operational Creditor then wrote various letters to the Corporate Debtor asking for refund of the advances given in the earlier years amounting to Rs.23,36,91,039/- (Rupees twenty-three crore thirty-six lakh ninety-one thousand thirty-nine only). After various letters, in July 2013, the Corporate Debtor refunded Rs.25,00,000/- (Rupees twenty-five lakh only) on 16.07.2013 and Rs.1,00,00,000/- (Ropes one crore only) on 22.07.2013. In view thereof the outstanding of the Operational Creditor was reduced to Rs.22,11,91,039/- (Rupees twenty-two crore eleven lakh ninety-one thirty-nine only).

c) Some equipments/material delivered by the Corporate Debtor in the previous year had some defects. The Operational Creditor had discussions at various occassions with the Corporate Debtor for rectification of the same. However, these equipments could not be rectified or repaired. Hence, in November, 2013, after various discussions, the Corporate Debtor accepted to take back theses defective equipments and both the parties entered into an agreement for inventory return of Rs.8.40 crore. Accordingly, equipments earlier delivered by the Corporate Debtor amounting to Rs.8.40 crore were returned by the Operational Creditor to the Corporate Debtor on 20.12.2013 vide a debit note numbered EPAL/DN/STK/018/13-14 and his account was debited by the said amount. In view thereof, the total outstanding amount of the Corporate Debtor was increased to Rs.30,52,12,936/- (Rupees thirty crore fifty-two lakh twelve thousand nine hundred thirty-six only) after above returns of goods.

d) The Corporate Debtor was unable to pay the said amount to the Operational Creditor. Thereafter several correspondence and meeting were held between the Operational Creditor and Corporate Debtor for recovery of outstanding dues. Moreover, the Corporate Debtor assigned its assets to the Operational Creditor to the extent of the worth of Rs.8,99,85,835/- (Rupees eight crore ninety-nine lakh eighty-five thousand eight hundred thirty-five only) which was accepted by the Operational Creditor. The Corporate Debtor executed an assignment agreement for settlement of claims. As per the terms thereof the Corporate Debtor agreed to assign its assets to the Operational Creditor. The Corporate Debtor promised to pay the balance dues of the Operational Creditor within a short period of time. In view of the said assignment agreement the amount of liability was reduced to Rs.21,52,27,101/- (Rupees twenty-one crore fifty-two lakh twenty-seven thousand one hundred one only). As agreed by the Corporate Debtor it was to pay balance dues of the Operational Creditor within a short period of time. However, the Corporate Debtor failed to pay the agreed amount to the Operational Creditor. Thereafter, several correspondence and meetings were held between the Operational Creditor and Corporate Debtor for recovery of outstanding dues of Rs.21,52,27,101/- (Rupees twenty-one crore fifty-two lakh twenty-seven thousand one hundred one only), pursuant to which the Operational Creditor addressed various letters for recovery of these dues.

e) The Operational Creditor had filed a Company Petition No. 2289/2018 under section 9 of the Code and the NCLT vide its order dated 29.08.2018 admitted the said Petition and appointed IRP. A copy of the said order is annexed as Exhibit ‘B of the Petition. In the meeting of CoC it was been proposed that the Corporate Debtor is willing to repay approximately 50% of principal amount as a full and final settlement of the claim. All the Creditors had agreed to the said proposal and entered into consent terms and agreed to withdraw the said Petition under section

12A of the Code. As per consent terms dated 17.10.2018, the Corporate Debtor was required to pay 13 crore on or before 10.11.2018. however, the Corporate Debtor paid only Rs.1,00,00,000/- (Rupees one crore only) on 10.08.2018 and defaulted in respect of balance payments.

f) The Operational Creditor issued a Demand Notice dated 16.11.2018 to the Corporate Debtor and the same has been received by the Corporate Debtor by hand delivery on 17.11.2018 and by Registered Post on 24.11.2018. The Corporate Debtor has not replied to the Demand Notice. A copy of the said Demand Notice is annexed as Exhibit 'C' of the Petition.

g) The table setting out the computation of amount which is annexed as Exhibit 'D' of the Petition is as under:

Date	**Particulars**	**Amount (Rs)**	
01.04.2012	**Opening balance carried forward** No financial transaction in FY 2012-13		**23,36,91,039** Nil
01.04.2013	**Balance as at 01.04.2013**		**23,36,91,039**
16.07.2013	Receipt in HDFC Bank from Infro-Alliance	(25,50,000)	
22.07.2013	Receipt in ING Vysya Bank from Infro-Alliance	(1,00,00,000)	
20.12.2013	Inventory returned to Infro-Alliance as per Agreement	8,40,21,897	7,15,21,897
01.04.2014	**Balance as at 01.04.2014** No financial transaction in		**30,52,12,936**

	FY 2014-15 and 2015-16		Nil
01.04.2016	**Balance as at 01.04.2016** Assignment agreement received from Infro-Alliance		**30,52,12,936** (8,99,85,835)
01.04.2017	**Balance as at 01.04.2017** No financial transactions from 01.04.2017 till date		**21,52,27,101** NIL
05.06.2018	**Balance as at 05.06.2018**		**21,52,27,101**
10.08.2018 05.11.2018	 Receipt after consent terms filed		(1,00,00,000) (9,00,00,000)
15.11.2018	**Balance as at 15.11.2018**		**11,52,27,101**

5. The Operational Creditor also submitted the Bank Statement of Kotak Mahindra Bank for period of 01.04.2018 to 20.11.2018 which is placed at pp 41-44 as Exhibit 'E' of the Petition.

6. Consent Terms dated 17.10.2018 placed on record at pp.24&25 of the Petition. The total debt due and payable to the Operational Creditor is Rs.11,52,27,101/- (Rupees eleven crore fifty-two lakh twenty-seven thousand one hundred one only), as mentioned at p.11 of the Petition.

7. However, the Corporate Debtor did not adhere to Consent Terms dated 17.10.2018 and accordingly the Operational Creditor has filed fresh Petition for the same.

Findings:

8. We have heard the arguments of Learned Counsel for Operational Creditor and perused the records.

9. It is observed that the Corporate Debtor was given various opportunities to appear in the matter. The Corporate Debtor was intimated the date of hearing on the following occasions:

   a) On 09.09.2019 by Hand Delivery;

   b) On 31.10.2019 by Registered Post;

   c) On 16.11.2019 by Registered Post;

   d) On 07.01.2020 by Hand Delivery;

   e) On 23.01.2020 by Hand Delivery;

10. The matter was listed on 19.06.2019, 23.09.2019, 15.02.2021 & 12.04.2021. However, despite giving various opportunities to the Corporate Debtor, the Corporate Debtor chose not to appear in the matter and the matter was finally heard on 08.07.2021 on which date the matter was proceeded ex-parte.

11. It is observed that the CIRP in Company Petition No. 2289/2018 was initiated against the Corporate Debtor vide order dated 31.08.2018. Consent Terms dated 17.10.2018 were filed after having 100% CoC approval for withdrawal. On 29.10.2018 the Petition was withdrawn pursuant to the said Consent Terms after initiation of CIRP against the Corporate Debtor.

12. That there is no reason to disbelieve the Corporate Debtor is liable towards the payment of dues to the Operational Creditor. The Corporate Debtor had also breached the Consent Terms as agreed between Operational Creditor and Corporate Debtor.

13. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum

amount of rupees one lakh stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

14. The Operational Creditor has proposed Mr. Ritesh Prakash Adatiya as Interim Resolution Professional (IRP) in the matter.

15. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP(IB) 4537/MB-IV/2018** filed by **European Projects & Aviation Limited**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Infro-Alliance Trading Private Limited** [CIN: U51900MH1999PTC121786], the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium,-

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) Mr. Ritesh Prakash Adatiya, registration No. IBBI/IPA-001/IP-P01334/2018-19/12013, as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-	Sd/-
Rajesh Sharma	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)

31.08.2021