

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301

CP(IB) 317 of 2019

Order under Section 9 IBC

IN THE MATTER OF:

Bharat Road Carrier Pvt Ltd
V/s
Rasna Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 01/09/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT – I**

CP (IB) 317/NCLT/AHM/2019

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the matter of:

M/s. Bharat Road Carrier Private Limited

CIN: U60230CT2008PTC020523

Oppo.- P.H.E Office, North Charadhar,
Nagar, Raigargh-496001

.... **Applicant/Operational Creditor**

VERSUS

M/s. Rasna Private Limited

CIN: 15499GJ2002PTC040538

905, Atlanta Tower, Nr. Sears Tower,
Gulabi Tekra, Ahmedabad-380015.

.... **Respondent/Corporate Debtor**

Order pronounced on: 01.09.2023

Coram:

SHAMMI KHAN, MEMBER(JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For Applicant : Mr. Sanyam Jain, Advocate

For the Respondent : Ms. Aishwarya Reddy, Advocate

ORDER
(Per : Bench)

1. This is an application filed on 24.04.2019 by one M/s. Bharat Road Carrier Private Limited (Operational Creditor) against M/s. Rasna Private Limited (Corporate Debtor) with prayer to commence the Corporate Insolvency Resolution Process (CIRP), to appoint Interim Resolution Professional (IRP), and declare the moratorium etc.
2. The Operational Creditor is a company having CIN: U60230CT2008PTC020523. The registered office of the Operational Creditor is at opposite P.H.E Office, North Charadhar Nagar, Raigarh - 496001.
3. The Corporate Debtor is a company having CIN:15499GJ2002PTC040538. The Corporate Debtor was incorporated on 13.03.2002. The registered office of the Corporate Debtor is situated at 905 Atlanta Tower, Nr. Sears Tower, Gulabi Tekra, Ahmedabad, Gujarat-380015.
4. This application has been affirmed by one Mr. Sourabh Agrawal duly authorized vide Board Resolution dated 29.03.2019. The affidavit and Board Resolution are appended from page no.330 to 332 of the application.
5. A perusal of Part-IV reveals that the Operational Creditor is claiming operational debt of Rs. 71,27,442/- (Rupees Seventy-One Lacs Twenty-Seven Thousand Four Hundred and Forty-Two only) plus interest on service tax and interest on unpaid amount as on 31.03.2019. There are various dates of defaults. Since each invoice has a separate due date and the last such invoice is dated 18.07.2018, the due date for such payment will be 18.08.2018.

6. A perusal of Part-V reveals that the Operational Creditor is not holding any security. The Operational Creditor has relied on the following documents:
1. *Copy of the Demand Notice under FORM 3 dated 20.08.2018.*
 2. *Acknowledgement of delivery of Demand notice dated 20.08.2018*
 3. *Emails for orders/approvals/quoatation*
 4. *Invoices*
 5. *Emails*
 6. *Statement of accounts of due bills.*
7. It is the case of the Applicant that the Applicant has transported various goods to the Corporate Debtor for which the Applicant has raised various invoices during the period from April 2017 to August 2018. The details of the various invoices for which payment has been received are provided on page no.8 of the application. The details of unpaid invoices is provided on page no. 24 to 28 of the application.
8. It is stated that the Demand Notice was issued on 20.08.2018. The Corporate Debtor in the written submission has acknowledged the receipt of said Demand Notice. It is the case of the Applicant that despite repeated reminders and sending the Demand Notice, the Corporate has failed to pay the amount demanded.
9. Reply was filed by the Respondent through an affidavit which was affirmed on 12.10.2019 by one Mr. Ramesh Sonar acting as Authorized Signatory. The Corporate Debtor has admitted that they have availed transportation services from the Operational Creditor. It is stated that there were various disputes

against the transportation services provided by the Operational Creditor which were before the issuance of notice under Section 8 of the IBC, 2016.

- 10.** It is stated that sometime in November 2018, the Corporate Debtor instituted a civil suit for damages amounting to Rs.1.25 Crore before the Hon'ble Commercial Court at Ahmedabad. The same was referred to mediation. During the mediation process, the Operational Creditor did not appear before the mediator and, hence, mediation failed. Notice was issued by the Hon'ble Commercial Court upon the Operational Creditor on 30.04.2019. Till the date of filing the reply, the Operational Creditor has not appeared before the Hon'ble Commercial Court. Thus, the main contention of the Corporate Debtor is in two folds:- (a) suppression of facts, (b) pre-existing dispute between the parties.
- 11.** It is also seen from the record that one IA bearing no. IA/482(AHM)2021 was filed by the Corporate Debtor seeking to place on record certain additional documents in the matter. The said IA/482(AHM)2021 was disposed off by this Tribunal vide order dated 20.07.2021. The additional documents were not allowed to be taken on record. During the hearing, learned counsel for the Respondent submitted that said order has not been impugned before Hon'ble NCLAT and has thus assumed finality.
- 12.** Written submissions as submitted earlier by both parties have been considered in the present matter.
- 13.** We have heard both the sides. It is not in dispute that the services of the Operational Creditor were availed by the Corporate Debtor. Through the

letter of their Advocate, Mr. Pathik Acharya attached at page no.9 along with the reply of the Corporate Debtor, it is admitted by the Corporate Debtor that they received notice dated 20.08.2018 from the Operational Creditor. Hence, it is seen that notice under Section 8 of IBC, 2016 was duly served on the Corporate Debtor.

14. It is also seen that the civil proceedings which were initiated are post the issue of the Demand Notice by the Applicant herein. None of the parties before us placed on record the outcome of the Comm CS/60/2019 stating what is the outcome of the Civil Suit.

15. The Applicant has attached email correspondence between the parties which is dated 10.08.2018 at page no.310 of the application. One Mr. Deepak from the side of the Corporate Debtor has written as under:

*“Dear Sourabhji
W have u a chq for 5.50 lc on 7th aug 2018, U have refused to accept !
The chq is still lying at our end and to be collected.
W have all intentions to pay the right dues and will take some time
Regards
Deepak”*

16. A perusal of said e-mail appears to be an admission of debt on behalf of the Corporate Debtor.

17. The Corporate Debtor has also attached a copy of the email communication between the two parties at page no.8 of the reply. A scanned copy of the same is appended below:

Communication Copy

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Gajendra

From: sourabh [sourabh.agrawal@bharatroad.com] on behalf of Gajendra
[accounts@bharatroad.com]
Sent: 14 August 2018 11:20
To: 'Gajendra'
Subject: RE: Advance Intimation

FYI

From: sourabh [mailto:sourabh.agrawal@bharatroad.com]
Sent: Saturday, August 11, 2018 3:33 PM
To: 'ramesh sonar'
Cc: 'Deepak Minotra'; 'pak rasna'
Subject: Advance Intimation

Dear Mr. Ramesh,

If there is any dispute/ deficient bills put all the details of those bills and reason for deficient/ dispute on mail, we will check and revert so that your meeting with my person will be useful.
Kindly ensure that we get the details of the bills you are claiming to be in dispute/ deficient today.... Else we know that you are trying to buy time again.

Further, I don't understand reason for holding payments for other bills????

Regards,
Sourabh

From: ramesh sonar [mailto:ramesh.sonar@rasnainternational.com]
Sent: Saturday, August 11, 2018 3:01 PM
To: sourabh
Cc: Deepak Minotra; pak rasna
Subject: Re: Advance Intimation

Dear Sir

With reference to your mails & calls we would like to inform you that there are disputed/deficient bills and need resolution.
You are requested to meet me at our HO or send some one and resolve the same.

Please note these disputed/deficient bills once resolved will clear the payment thereof.

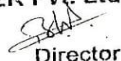
Thanks & Regard's
Ramesh Sonar

On Fri, Aug 10, 2018 at 6:50 PM, sourabh <sourabh.agrawal@bharatroad.com> wrote:
Dear Deepak Ji,

I hope you know that our outstanding is more than 75 lacs and you are offering 5.5 lacs after 4-5 months????

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BHARAT ROAD CARRIER Pvt. Ltd.


Director

18. It is stated that the Corporate Debtor in his email dated 11.08.2018 informed the Operational Creditor of certain disputed/deficient bills. This email was replied by the Operational Creditor on 11.08.2018. The Operational Creditor asked for the details of those bills and the reason for the disputed/deficient bills on email. On being asked, the Corporate Debtor's Advocate was unable to point out any reply to the email dated 11.08.2018.

19. Moreover, despite email dated 11.08.2018, the Corporate Debtor failed to provide the reasons for the dispute etc. to the Operational Creditor. In our view, the arguments so as to the dispute appear to be moonshine.
20. As such the Applicant has proved that there is a default and the amount in default is more than Rs.1Lac. It is also seen that this application was filed on 24.04.2019 when the pecuniary limit was Rs.1Lac. The date of default as mentioned is much before the advent of the Covid-19 pandemic. Hence, the Corporate Debtor cannot seek shelter under Section 10A of IBC, 2016. Therefore, present application deserves to be admitted against the Respondent/Corporate Debtor in terms of Section 9(5)(i) of the IBC, 2016.
21. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor, which ordinarily shall get completed within 180 days, reckoning from the date this order is pronounced.
22. It is seen that the Operational Creditor has not named the IRP in the matter. This Tribunal based on the latest list furnished by the IBBI applicable for the period between 01.07.2023 to 31.12.2023 hereby appoints **Mr. Ravindra Kumar Goyal, having Registration No. IBBI/IPA-001/IP-P-02019/2020-2021/13098 (Email ID. ravindra1960_goyal@yahoo.co.in)** as the Interim Resolution Professional.
23. In view of the above, we admit this application with the following terms and conditions:-

- (i) The Application bearing **CP(IB) No. 317 of 2019** filed by **M/s. Bharat Road Carrier Pvt. Ltd.** (the Applicant/ Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s. Rasna Pvt. Ltd.** (the Corporate Debtor) is hereby admitted and the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:-
- 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.*
- (ii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may

be.

- (iii) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-Sections (2) and (2A) of Section 14 of IBC, 2016.
- (iv) The Operational Creditor has not proposed the name of IRP. Hence, this Tribunal hereby appoints **Mr. Ravindra Kumar Goyal, having Registration No. IBBI/IPA-001/IP-P-02019/2020-2021/13098 (Email ID:- ravindra1960_goyal@yahoo.co.in)**.
- (v) The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under a legal obligation under Section 19 of the IBC, 2016 for extending assistance and cooperation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate with the IRP the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (vi) This Adjudicating Authority directs the IRP to make a public announcement of initiation of CIRP and call for submission of claims under Section 15 as required by Section 13(1)(b) of the IBC,

2016.

- (vii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (viii) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (ix) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.
- (x) The Operational Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per the Rules.
- (xi) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the IRP and the

concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in the MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

- (xii) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

24. Accordingly, **CP (IB) No. 317 of 2019** is allowed. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Rajeev Kr. Sen/PS