

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

C.P. (IB) 1049/MB/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016.

In the matter of

S.A. Consultants & Forwarders Pvt. Ltd.

Having its address at – L-2, Kanchenjunga Bldg. No. 18, Connaught Place, Barakhamba Road, New Delhi-110001

..... Petitioner/ Operational Creditor

Versus

Prime Cargo Movers & Logistics Pvt. Ltd.

Having its address-F.No. 201, Saikrupa Tower, Near Mehta Hospital, Nagpur, Maharashtra-440013

..... Respondent/ Corporate Debtor

Order Delivered on :- 03/05/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : Adv. Pervinder Chatrapati
a/w Avinash Bhati

For the Corporate Debtor : Adv. Hamza Lakhani

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **S.A. Consultants & Forwarders Pvt. Ltd.** (hereinafter called Operational Creditor) praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **Prime Cargo Movers & Logistics Pvt. Ltd.** (hereinafter called Corporate Debtor) by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called "the Code") for resolution of an unresolved Operational Debt of Rs. 31,59,604/- (Rupees Thirty-One Lakhs Fifty Nine Thousand Six Hundred and Four only)

The submissions of the Operational Creditor are as follows:

2. The Operational Creditor had rendered logistic services to the clients of the Corporate Debtor during the period 17.05.2019 to 30.05.2019 on the instructions of Corporate Debtor.

3. The Operational Creditor had raised 32 invoices for the services rendered on the Corporate Debtor amounting to Rs. 31,59,604/- (Rupees Thirty-One Lakh Fifty Nine Thousand Six Hundred Four only).
4. It is submitted that on repeated follow up with the Corporate Debtor by the Operational Creditor, the Corporate Debtor assured payment of the invoices and explained the delay on account of uncontrollable circumstances.
5. It is submitted that the Operational Creditor vide demand notice dated 26.11.2019 asked the Corporate Debtor to repay the outstanding amount. It is further submitted that on 06.12.2019, the Corporate Debtor falsely denied liability allegedly on the ground that the Corporate Debtor was acting only as Commission agents and not principal i.e. Shipper and, therefore, the Petition is not maintainable against him.
6. The Operational Creditor has filed the present Petition to initiate Corporate Insolvency Resolution Process against the Corporate Debtor for recovery of its outstanding dues. Hence the present Petition.

Reply filed on behalf of the Corporate Debtor

7. In reply, the Corporate Debtor has denied all allegations and/ or contentions and/or submissions made by the Petitioner in the Petition which are inconsistent with and/or contrary to what has been stated herein. Further, nothing shall be deemed to have been admitted for the reasons of non-traverse.
8. It is submitted that the Corporate Debtor is in the business of freight forwarding, transportation, logistics and distribution. He further submits that

M/s Rivaa Fashion, Aurum Fabrics and Clothing, Heartbury Garments and N.K. Exports (hereinafter referred to as “Principal”) had approached the Corporate Debtor to act as an agent to ship their goods to different consignees across the world.

9. It is submitted that the Corporate Debtor approached the Operational Creditor stating that it was acting as an agent of the principal with the requirements for shipping and logistics of the principal. He further submits that the Corporate Debtor was only receiving commission from the principal.
10. It is further submitted that the Operational Creditor has rendered logistics services to the clients of the Corporate Debtor on the instructions of the Corporate Debtor and this clearly shows that the Corporate Debtor had not received any benefit and was purely acting as an agent on behalf of the principal.
11. It is further submitted that the Corporate Debtor disclosed the names of the principals so that the invoices could be marked to them. He further submits that once the invoice was raised in the name of the Corporate Debtor, the principal would be intimated about the works carried out by the Operational Creditor. Thereafter, the Corporate Debtor would raise an invoice on the same day in the name of the principal for release of payments.
12. It is submitted that since the Corporate Debtor was merely an agent, once the invoices of the Corporate Debtor were paid by the principal, the Corporate Debtor would in turn make the payments to the Operational Creditor's account.

13. It is further submitted that there was no direct liability on the Corporate Debtor even if the payments were delayed as the Corporate Debtor was only a bona fide agent. He further submits that it is settled law that an agent cannot be held liable for the acts of his principal.
14. It is further submitted that the Operational Creditor cannot enforce his right against the Corporate Debtor, rather the correct action would be to initiate appropriate legal proceedings against the principal as it was the liability of the principal to make the payment and not the Corporate Debtor.
15. In the end, the Corporate Debtor has prayed for the dismissal of the Petition.

Analysis and Findings:

16. We have heard the Counsel for the parties and gone through the record.
17. During the course of arguments, Counsel for the Corporate Debtor has vehemently contended that no case in respect of default of non-payment of an operational debt is made out against the Corporate Debtor in this case. According to the Counsel for the Corporate Debtor, the Corporate Debtor has only been acting as an agent of the customers to whom the services were provide by the Operational Creditor. He has further argued that even though the invoices raised have been issued in the name of the Corporate Debtor, the name of the person/entity to whom the logistic services were provided is also mentioned in the said invoices. Since the Corporate Debtor was acting only as an agent and facilitating the transactions between the Operational Creditor and the said entities to whom the services were provided, the Corporate Debtor cannot be fastened with any liability on the basis of the invoices as no direct benefit has been derived by the Corporate Debtor. In support of his

arguments, Counsel for the Corporate Debtor has referred to **Section 230** of the Contract Act which provides that in the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. In support of his contention, Counsel for the Corporate Debtor has relied upon **an order dated 19.01.2022** passed by NCLT, Mumbai Bench, Court No. III in C.P No. **1952/IBC/MB/2019** whereby it has been held that the Operational Creditor should have taken recourse to legal remedies against the client to whom the services were actually provided and not against the agent and the Petition as against the agent was dismissed. Counsel for the Corporate Debtor has further relied upon the Judgement of the ***Hon'ble Bombay High Court in the matter of The Indian Seamless Metal Tubes Limited vs. Hina Shipping & Forwarding (M) Private Limited*** whereby also it was held that in view of Section 230 of the Contract Act, the suit would not be maintainable against the defendant who was merely an agent of the disclosed principal.

18. We have considered the above contention raised by the Counsel for the Operational Creditor but have found the same as **not tenable**. **Even if the Corporate Debtor was acting as an agent of the disclosed principal, the same would not be of any consequence so far as the Operational Creditor is concerned**. **The matter would have been different, had the Corporate Debtor been acting as agent of the Operational Creditor**. In that event, the case law relied upon the Counsel for the Corporate Debtor would have been relevant.
19. Counsel for the Operational Creditor has rightly pointed out that as against the invoices raised on the Corporate Debtor, the Corporate Debtor itself has raised further invoices on the entities concerned to whom the services were provided. For instance, against the invoice dated 23.05.2019 raised by the Operational Creditor upon the Corporate Debtor, the latter has further issued

the invoice on the same party i.e. Aurum Fabrics and Clothing after adding his own charges. The AWP No. 071-34131462 dated 23.05.2019 matches in both the invoices. Similar is the case with the invoice AWB No. 071-34131451 dated 24.05.2016 issued by the Operational Creditor on the Corporate Debtor who further reissued another invoice dated 24.05.2019 upon M/s Aurum Fabrics and Clothing after adding his charges. The issuance of the invoices to the principal entities are not disputed by the Corporate Debtor and rather the said invoices issued by the Corporate Debtor have been annexed with the reply itself filed by the Corporate Debtor. Therefore, it becomes evident that the Corporate Debtor has been availing services from the Operational Creditor directly for his clients and have been separately charging his parties by way of invoices after adding his own expenses, charges etc. Under the circumstances, the Corporate Debtor cannot eschew his liability saying he was acting only an agent of his clients. As regards the plea raised by the Corporate Debtor that amount of invoices should be recovered by the Operational Creditor from the principal entities only, to whom the services were provided, it is worth pointing out that there was no privity of contract between the Operational Creditor and said parties and the Operational Creditor cannot be made to pursue its remedies against such third parties. Therefore, the Operational Creditor cannot be asked to proceed against the said principal entities for the recovery of the outstanding dues with whom it has no privity of contract.

20. So far as the case law relied upon by the Counsel for the Corporate Debtor is concerned, the same is distinguishable and, therefore, the same cannot be applied to the facts and circumstances of the present case. In THG Publishing Private Limited vs. Deadline Advertising Private Limited (Supra), the Respondent/Corporate Debtor was appointed as an agent on a commission

basis by the Operational Creditor to increase its business whereas it is not so in the instant case. Similarly, the cited case i.e. The Indian Seamless Metal Tubes Limited vs. Hina shipping & Forwarding (M) Pvt. Ltd. stands on different footing. In this case, the agent of the principal i.e. owner of the vessel signed the contract on behalf of the principal and it was held that in the event of loss of any goods, the agent cannot be sued in view of Section 230 of the Contract Act. Besides that, in the cited case, agent was acting for his principal while providing services to other parties including the plaintiff whereas in the instant case, the Corporate Debtor is the recipient of the services provided by the Operational Creditor. Besides, the Corporate Debtor was never appointed nor acted as an agent of the Operational Creditor.

21. No other points have been raised by the Counsel for the Corporate Debtor. Even otherwise there is no dispute with regard to the issuance of the invoices based on the operational debt which are also well within the period of limitation.
22. As a result of above discussion, we hold that the Operational Creditor has been able to establish the existence of operational debt and its default having been committed by the Corporate Debtor and further that the Petition is filed within the period of limitation. Therefore, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 deserved to be admitted and it is ordered accordingly in following terms:-

ORDER

- a. **The above Company Petition No. (IB) 1049/(MB)/2020 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is

ordered against **Prime Cargo Movers & Logistics Pvt. Ltd.**

- b. This Bench hereby appoints **Mr. Ashish Vyas** **Registration No: IBBI/IPA-001/IP-P-01520/2018-2019/12267** as the Interim Resolution Professional having his address at **B-1A Viceroy Court CHS ,Thakur Village ,Kandivali (East) ,Mumbai Suburban, Maharashtra ,400101; Email id:- ashishvyas2006@gmail.com, Mobile No:- 9930035377** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 3,00,000/- (Rupees Three Lakhs Only) 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, Mumbai for updating the Master Data of the Corporate Debtor.

23. **Accordingly, this Petition is admitted.**

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

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)