

In the National Company Law Tribunal  
Mumbai Bench.

CP No. 278/I&BC/NCLT/MB/MAH/2017

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

Damani Shipping Private Limited : Petitioner / Operational Creditor

V/s

Ispat Energy Limited : Respondent / Corporate Debtor

Heard on : 09.04.2018  
Order delivered on: 25.04.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

Present:

For the Petitioner(s): : 1. Mr. Amit Shroff, Advocate.

Per M.K. Shrawat, Member (Judicial).

**ORDER**

1. This is a Petition transferred from the Hon'ble High Court at Bombay Judicature. Initially a Petition was filed bearing Company Petition No. (L) 580 of 2016 (High Court) under Ordinary Original Civil Jurisdiction on 19.07.2016, (Lodging No. OS.CPL/580/2016) before the Hon'ble High Court for winding up by invoking the jurisdiction U/s. 433 and 434(1)(a) of the Companies Act, 1956 as under:-

2. The brief history of the case is as follows:-

2.1. The Petitioner/Operational Creditor is a Company incorporated under the provisions of Companies Act, 1956 with its Registered Office at 206, Varma Chamber, 11, Homji Street, Fort, Mumbai-400 001 and is engaged in the business of acting as Clearing and Forwarding Agents / Customs House Agents / Shipping Agents.

2.2. The Corporate Debtor Company M/s. Ispat Energy Limited is incorporated on 23.09.1997 and some of the activities of the Company are: to carry on business as importers, exporters and dealers in liquefied natural gas / liquefied petroleum gas and any petroleum products or by-products.

2.3. The Corporate Debtor Company had entered into a Service Agreement on 30<sup>th</sup> March 2004 with the Petitioner Company and thereafter registered with the Corporate Debtor as a Vendor and was allotted Vendor Account No. 301785.

3. The Corporate Debtor placed various Purchase Orders with the Petitioner Company between the years 2004 to 2011 and the Petitioner Company provided its services to the Corporate Debtor. Thereafter, the Petitioner/Operational Creditor raised various Invoices as under :-

Sr. No.	Invoice Number	Date	Amount (Rs.)
1.	2055/99/20020034	March 31, 2004	6,030/-
2.	020710/2059/2003	March 31, 2005	50,000/-
3.	009631/2059/2003	October 14, 2005	10,750/-
4.	012111/2059/2003	November 23, 2005	320/-
5.	013371/2059/2003	December 10, 2005	66,59,887/-
6.	015118/2059/2003	January 07, 2006	517/-
7.	010421	October 07, 2006	250/-
8.	013014	November 23, 2006	1,36,81,847/-
9.	2400DEB/DSPL/92	April 01, 2007	4,29,549/-
10.	013282	September 29, 2007	44,944/-
11.	24014DEB/DN-220	January 16, 2008	4,944/-
12.	133371/014/20710 & 9631	August 06, 2011	3,33,078/-
<b>TOTAL</b>			<b>2,12,22,116/-</b>

4. As against the said total invoiced amount of ₹2,12,22,116/-, the Corporate Debtor had paid an amount of ₹1,91,70,631/- up to 12.04.2012 and balance amount of **₹20,51,485/- is still outstanding**. According to the Petitioner, the Corporate Debtor, through its Representative, had **acknowledged** that the said outstanding amount was **due and payable to the Petitioner** as is clear on the Ledger Reports shared with the Company for the financial years 2012-2013, 2013-2014, 2014-2015, 2015-2016.

5. As the outstanding amount was not paid by the Corporate Debtor, on 11<sup>th</sup> September, 2015, the Petitioner (Operational Creditor) served a Statutory Notice at the Registered address of the Company for winding up of the Company under Sections 433 and 434 of the Companies Act, 1956 dated 09<sup>th</sup> September 2015. According to the Petitioner, the Corporate Debtor neither replied nor contested the said Notice of Demand/Claim.

6. Sufficient evidences are on record to establish that Notices have been issued to the Respondent Debtor to repay the outstanding demand and also to intimate the Dates of Hearing before NCLT. Affidavit of service is on record with tracking reports. The Petitioner has also issued Notices of Demand on Form No.3. In spite of the several

opportunities, the Respondent Debtor never appeared or defended against the outstanding Debt. It appears that the Debtor has nothing to say in this regard.

7. The said Petition was transferred to NCLT and thereupon the Petitioner (Operational Creditor) has submitted Form No.5 under Rule 6 on 06.06.2017, therein under PART-IV, the total amount of Debt claimed of **₹41,49,058/-** (inclusive of outstanding amount of **₹20,51,485/-** and Interest thereon amounting to **₹20,97,573/-**).

8. The occurrence of default is established from the facts and circumstances narrated in the above paragraphs. Considering the totality of the facts and circumstances, this Petition under consideration deserves to be "Admitted".

9. The Petitioner has proposed the name of the IRP Mr. Jayesh Shah, Registration No. IBBI/IPA-01/IP-00134/2016-2017/244, Address: Juris Corp, 902, Tower 2, India Bulls Finance Centre, Senapati Bapat Marg, Elphinstone Road (West), Mumbai – 400 013. The so appointed IRP has furnished the requisite Certificate on Form No.2 that no Disciplinary Proceeding is pending against him. Upon Admission of the Application and Declaration of "Moratorium" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

### **FINDINGS**

10. Having considered the totality of the circumstances and the Petition for initiation of Corporate Insolvency Resolution Process under the I&B Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed *supra*, it is hereby pronounced that the "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential

goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

11. Accordingly, this **CP 278/I & BC/NCLT/MAH/2017** stood Admitted.

12. The Corporate Insolvency Resolution Process is commenced from the date of this order.

Sd/-

**M.K. SHRAWAT**  
Member (Judicial)

Date : 25.04.2018.  
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