
(2021) 01 NCLT CK 0008

In the National Company Law Appellate Tribunal

Case No : Company Petition No. IB-242/ND Of 2019

Union Roadways Limited

APPELLANT

Vs

Icon Cables Limited

RESPONDENT

Date of Decision : 12-01-2021

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Person) Regulations, 2016 — Regulation 6
Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 6
Insolvency And Bankruptcy Code, 2016 — Section 8, 9, 9(5), 14(1), 14(2), 14(3), 14(4)

Citation : (2021) 01 NCLT CK 0008

Hon'ble Judges : Dr. Deepti Mukesh, J; Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Sarfaraz Karim, Harshit Jain

Judgement

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Union Roadways Limited (for brevity

'Applicant') with a prayer to initiate the Corporate Insolvency process against Icon Cables Limited (for brevity 'Corporate Debtor').

2. The Applicant is a public limited company registered under the provisions of Companies Act, 1956, inter-alia, involved in the business of freight

transport. The applicant is having its registered office at P 9 New CIT Road, Kolkata, West Bengal-700073.

3. The Corporate Debtor is a public limited company registered under the provisions of Companies Act, 1956, inter-alia, involved in the business of

wires and cables. The applicant is having its registered office at 909, Chiranjiv Tower, 43 Nehru Place, New Delhi-110019. The authorized share

capital of the company is Rs 2,10,00,000/- and the paid-up share capital is Rs 1,27,70,360/- and the company is having CIN

U31300DL1999PLC100431.

4. The Applicant has stated that the corporate debtor had approached the applicant to avail the services for dispatching of consignments/goods from

Neemrana to the corporate debtor. Accordingly, the applicant rendered its services to the corporate debtor and had raised invoices from time to time.

5. The Applicant has submitted that on 24.10.2016, the corporate debtor made a part payment of Rs 15,100/- and further in partial discharge of its

liability, issued two cheques of Rs 2,09,818/- and Rs 3,19,235/- each. Thereafter corporate debtor informed the applicant not to deposit the said

cheques as the account of the corporate debtor had insufficient balance and therefore the same were not deposited by the applicant as per instructions

from the corporate debtor.

6. It is further submitted that the applicant on 16.02.2017, sent an email as a reminder to the corporate debtor requesting to clear the outstanding

amount due to the applicant. On 22.02.2017, the corporate debtor called the applicant for the meeting with regard to payment of outstanding amount

and in the said meeting, the corporate debtor acknowledged its debt and assured the applicant that the outstanding amount shall be paid within 10 days.

7. It is submitted that upon assurances made by the corporate debtor, the applicant waited for more than 10 days for the payment but corporate debtor

failed to make the outstanding payment to the applicant. The applicant again sent an email dated 20.03.2017 referring about the meeting and asking the

corporate debtor to clear its dues towards the outstanding payment.

8. Thereafter the corporate debtor on 23.03.2017 and on 23.08.2017 respondent through its email and informed applicant as below:

That due to non-payment from various customers, their cash flow had been badly effected and they were doing utmost to overcome the

situation.

There is very much financial burden in our company in which many of our payments have been stuck from large companies which has

resulted in cash flow problems and in fact our whole operations has been badly

affected. We are in the middle of discussions with financial institutions in which we are very much confident to generate finance to bring stability in our cash flow and to do further business amicably in the next coming months

9. The Applicant has submitted that after several follow ups for the payments, the corporate debtor in partial discharge of its liability issued another

cheque dated 24.06.2017 of Rs 2,00,000/- vide cheque no 358916 upon the applicant, but when same was presented for encashment, it was returned

unpaid with remarks ""funds insufficient"".

10. The Applicant has submitted that despite of several requests, the corporate debtor kept on giving false assurances and hopes to the applicant about

clearing its liability towards the outstanding dues.

11. The Applicant issued a demand notice dated 28.11.2018 in Form 3 under the provisions of section 8 of I&B Code, 2016 (Under Rule 5 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the total outstanding amount

of Rs. 12,57,786/- along with interest @18% p.a. The said notice was served through speed post and has been delivered to the corporate debtor at its

registered address as reflected in master data of MCA website. The corporate debtor neither replied to the said notice nor made the payment against

the outstanding dues claimed by applicant.

12. The Applicant filed present Application on 19.12.2018 under section 9 of IBC, 2016 and served the copy of this application which is duly delivered

to the Corporate Debtor as per the affidavit of service filed by the applicant.

13. The corporate debtor has replied to the application and has asserted that due to the deficiency in services provided by the applicant to the

corporate debtor, the corporate debtor had suffered losses. Further, the corporate debtor has also asserted that the corporate debtor was already

undergoing financial crises, as the customers of the corporate debtor had withheld their huge payments and then suffered a blow from the applicant

due to their deficient services.

14. Having heard the learned counsel for the applicant and having perused the paper books submitted by the corporate debtor, it has been concluded

from the contentions of the corporate debtor that the corporate debtor has tried

to create and raise a pre-existing dispute by asserting the deficiency services being rendered by the applicant. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to the application. On the contrary there is an indirect/passive admission as to inability to pay the outstanding balance due to financial crises. This leaves no doubt that the default has occurred with respect to the payment of the operational debt of the applicant.

15. The application is complete as per the requirements of section 9 of the code. Further the date of default occurred from 10.12.2018 and hence the debt is not time barred and the application is filed within the period of limitation.

16. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

17. The present application is complete and perusing the documents on records it goes beyond doubt that the Applicant is entitled to claim its dues, which is indirectly admitted by the Corporate Debtor, establishing the default in payment of the operational debt. In the light of above facts and records the present application is admitted.

18. The Applicant has named the Insolvency Resolution Professional, to be appointed by the order of Tribunal, as Mr. Anurag Nirbhaya, with

registration number IBBUIPA-001/IP-P00870/2017-18/11468 (email â?"a nurag@canirbhaya.com) as the Interim Resolution Professional subject to

the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the

Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in

relation to specifically the corporate debtor and the applicant herein and make disclosures as required under IBBI (insolvency Resolution Process for

Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

19. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Anurag Nirbhaya to meet

out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the

Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution

Professional, and shall be paid back to the Operational Creditor.

20. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of

Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the

moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

21. In terms of the above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to

the Applicant as well as to the Corporate Debtor above named, by the Registry. Applicant is also directed to provide a copy of the complete paper

book with copy of this order to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance

report to the Registrar, NCLT.