



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/1169/MB/2022

*[Under Section 9 of the Insolvency and Bankruptcy Code,
2016 r/w Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016]*

HARI PRAKASH KAUSHIK

N-107, Today Villa
Mayfield Gardens, Sector - 51
Gurugram, Haryana – 122018.

...Applicant/Operational Creditor

V/s

TRANZLEASE HOLDINGS (INDIA) PRIVATE LIMITED

[CIN No.: U65910MH2006PTC162528]
Office no. 2 & 3, Ground Floor
New Yashwant CHS Govind Bachaji Road
Charai, Thane (West), Maharashtra – 400601.

...Respondent/Corporate Debtor

Pronounced: 04.12.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Ramesh Kumar Dubey, Adv. Harshit Bhomia i/b Adv. Dinesh
Kumar Dubey

For Respondent: Adv. Hrutik Chavan a/w Adv. Sushant Valimbe & Adv.
Abhishek Mukherjee



ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

- 1.1 This CP (IB) No.1169/MB/2022 (Application) was filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, on 20.10.2022 by Mr. Hari Prakash Kaushik, the Operational Creditor (OC) for initiating Corporate Insolvency Resolution Process (CIRP) against TranzLease Holdings (India) Private Limited, the Corporate Debtor (CD), previously known as Easy Fleet Solutions Private Limited, as it had allegedly defaulted in repayment of operational debt of Rs.1,36,28,033/- (One Crore Thirty-Six Lakhs Twenty-Eight Thousand Thirty-Three Rupees).
- 1.2 This Application was pending before Court-II of this Tribunal and was later transferred to this Court on 28.08.2023.

2. CONTENTIONS OF OC

- 2.1 The OC was appointed as Vice President of the CD on 05.09.2006 and subsequently was promoted as the President and Chief Operating Officer (COO) on 14.11.2012. He, then, became entitled to receive revised remuneration of Rs.36,76,000/- p.a. w.e.f. 15.11.2012, and a Fixed Performance Bonus (FPB) of Rs. 10,00,000/- p.a. along with the other prerequisites as per the appointment letter dated 14.11.2012.



- 2.2 However, the CD, on a continuous basis, defaulted in paying the FPB starting 14.12.2013, despite multiple requests by the OC. Further, upon the CD's request, the OC even extended a loan amounting to Rs.25,00,000/- for a period of 4 years at an interest rate of 11.32% of which Rs.11,73,206/- is yet to be repaid by the CD.
- 2.3 The OC, due to the enormous pressure, stress and long working hours, suffered and underwent an angioplasty in 2019. In his email dated 10.05.2022, the OC claimed his financial dues of Rs.1,46,59,879/- (including unpaid FPB, salary, gratuity and loan provided) from the Board of Directors of the CD. The CD *vide* email dated 11.05.2022, acknowledged the said dues but expressed their inability to pay it off. The OC on 30.05.2022 resigned from the position in the CD with a request to settle his dues.
- 2.4 The OC issued a Demand Notice in Form-3 on 10.06.2022 by emails dated 16.06.2022 and 24.06.2022 to the CD asking them to repay the operational debt within ten days. The date of default is 25.06.2022, when the CD sent an email to the OC revalidating his claim; however, failed to make payment. In the circumstances, the OC prays that CIRP may be ordered against the CD.

3. CONTENTIONS OF CD


- 3.1 The CD had maintained a track record of zero default for a long time and during the onset of the COVID-19 pandemic, its capital infusion failed. All its borrowings are in NPA status.



- 3.2 The default is not wilful as known by the OC as well. The ongoing financial crisis of the CD is majorly a result of business failure during the pandemic, which later resulted in its inability to raise fresh capital and lack of support from shareholders and co-promoters as they moved out of the management, affecting its reputation.
- 3.3 Further, being aware of the financial stress faced by the CD, the OC himself agreed to defer the payments due to him indefinitely till the CD regains its business or receives fund infusion. This Application was filed by the OC even after being aware of the crises faced by the CD, and hence, the OC is attempting to exploit the situation to get personal gains. Hence, the Application is liable to be dismissed with exemplary cost.

4. ANALYSIS AND FINDINGS


- 4.1 We have perused all the documents available on record and heard both the Ld. Counsel for OC and the CD.
- 4.2 There is no dispute as to the employer-employee relationship between the CD and the OC. Under Part-IV of the Application, the OC has claimed a total amount of Rs.1,36,28,033/- comprising of unpaid salary of Rs.26,05,696/-; FPB of Rs.94,58,333/-; and gratuity of Rs.15,64,003/- for the period from 14.12.2013 until 31.05.2022. On perusal of the records, we find that the OC is entitled to the amounts as claimed by him from the CD. By the initial appointment of the OC as Vice President *vide* letter dated 01.09.2006, performance based incentive was made applicable to him as per the CD's policy. Later, the OC was appointed



to the position of President & COO, *vide* appointment letter dated 14.11.2012 and he worked with the CD for more than ten years. On 10.05.2022, the OC addressed an email to the Board of Directors of the CD, demanding Rs.93,75,000/- under the head of 'Unpaid Salary-Fixed Bonus Component' and Rs.12,69,675/- towards gratuity, and unpaid salary of Rs.26,10,755/-. However, the CD did not settle his accounts. This led to his resignation from the position of President & COO on 30.05.2022. The OC had cited 'prolonged liquidity crises of the CD' as the reason for his resignation. However, the above amounts remained unpaid by the CD. The CD did not dispute its liability to pay him but cited compelling financial reasons for not paying him in their communications dated 11.05.2022 and 25.06.2022. In short, the legitimacy of the operational debt remains unchallenged as the CD categorically admitted that all claims made by the OC were hundred per cent. valid.

- 4.3 Further, the OC even extended a loan to the CD amounting to Rs.25,00,000/- at an interest rate of 11.32%, which further evidences the trust placed in the CD during a challenging period of COVID-19 pandemic. As per the calculation sheet submitted by the OC, a total amount of Rs.1,36,28,033/-, which does not include the outstanding loan of Rs.11,73,206/- given to the CD by the OC is due and payable. The OC issued Demand Notice to the CD on 10.06.2022.

While the CD cites financial difficulties arising from the COVID-19 pandemic, such circumstances do not absolve them of their contractual obligations. No informal agreement to defer legal action would negate



the OC's rights under the IBC, especially given the CD's persistent default.

- 4.4 The OC has demonstrated the existence of operational debt as against the CD. The Application fulfils all criteria and is complete in all respects. The operational debt is more than one crore rupees even after deducting the balance of loan advanced by the OC with interest to the CD, as the same does not amount to operational debt. In light of the above, we hold that the OC has a rightful claim against the CD and the CD has defaulted in operational debt.

ORDER

In view of the aforesaid findings, this Application being C.P. (IB) 1169/MB/2022 filed under Section 9 of the IBC by Mr. Hari Prakash Kaushik, the OC for initiating CIRP in respect of TranzLease Holdings (India) Private Limited, the CD, is **admitted**.

We further declare a moratorium under Section 14 of IBC with consequential directions as mentioned below:

- I. We prohibit:
- a) the institution of suits or continuation of pending suits or proceedings against the CD including the 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of 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 Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- V. That this Bench hereby appoints **Mr. Atul Tondan, a registered Insolvency Professional** having **Registration Number IBBI/IPE-0040/IPA-2/2022-2023/50021** and **e-mail address ipe@npvca.in** having valid Authorisation for Assignment up to 14.01.2025 as the IRP to carry out the functions under the IBC.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.



- VII. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the CD.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the FC is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the CD.



- XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XII. The Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Alka Siwach//



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COURT VI

Item No. 3.

C.P. (IB)/1169(MB)2022

CORAM:

SHRI SANJIV DUTT
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **18.12.2024**

NAME OF THE PARTIES: **Hari Parkash Kaushik**

Vs

Tranzlease Holdings (India) Private limited

For OC : Adv. Neetu S. Prajapati B/H Adv. Dinesh Kumar Dubey

For CD : None Present

Section 9 of IBC

ORDER

1. Counsel for OC has tendered copy of the order pointing out certain errors crept in the order of pronouncement dated 04.12.2024. She requests that the errors may be ordered to be rectified.
2. Having heard the Counsel for OC, we find it appropriate to order rectification of mistakes as under:
 - a. In page 7, paragraph V, in line 1, for “**Mr. Atul Tondan**” the following shall be substituted:-

“NPV Insolvency Professionals Pvt. Ltd.”
 - b. In page 8, paragraph IX, in line 2 and 5 and in page 9, para XII, line 2, for “**FC**” the following shall be substituted:-

“OC”



3. In the result, it is hereby ordered that the Order in C.P. (IB) No. 1169/MB/2022 dated 04.12.2024 shall be read with the rectification as stated above.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)
//RA//

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)