

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **21.06.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/61(CHE)/2023
NAME OF THE PETITIONER(S) : E Pearson & Co. Ltd.
NAME OF THE RESPONDENTS : Sheba Marine Engineering Pvt Ltd
UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

ORDER

Present: None for the Petitioner.

None for the Respondent.

Vide order pronounced in the Open Court, the petition is allowed and
Shri. Prakul Thadi is appointed as IRP.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, CHENNAI**

CP(IB)/61/2023

(filed under Section 9 r/w rule 6 of the Insolvency and Bankruptcy Code, 2016)

In the matter of **M/s. SHEBA MARINE ENGINEERING PVT. LTD.**

E. Pearson & Co. Ltd.,

Registered Office at:

Unit 4, Woodstock Industrial Estate,

Athy, Co. Kildare, Ireland

... Operational Creditor

Vs

Sheba Marine Engineering Private Limited,

Registered Office at:

No. 46, Thenbazar Post, Tindivanam,

Villupuram, Trichy – Chennai Main Road,

Tamil Nadu-604 001

... Corporate Debtor

Order Pronounced on 21st June, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Operational Creditor : Ms. Kritika, Counsel

For Corporate Debtor : Mr. Vedhavel, Counsel

ORDER

(Hearing conducted through hybrid mode)

This Petition under Section 9 of Insolvency & Bankruptcy Code, 2016 (IBC), has been filed by E. Pearson & Co. Ltd, Petitioner / Operational Creditor (herein) for initiating Corporate Insolvency Resolution Process (CIRP) against Sheba Marine Engineering Private Limited, the Respondent / Corporate Debtor herein.

2. Part-I of the Petition sets out the details of the Operational Creditor i.e., E. Pearson & Co. Ltd having its registered office address at Unit 4, Woodstock Industrial Estate, Athy, Co. Kildare, Ireland.
3. Part-II of the Petition sets out the details of the Corporate Debtor having CIN: U74900TN2014PTC097690, date of incorporation as 14.10.2014 and its registered office at No. 46, Thenbazar Post, Tindivanam, Villupuram, Trichy – Chennai Main Road, Tamil Nadu – 604 001. It was engaged inter alia in the business of manufacturing, supplying and servicing aluminium boats, FRP boats etc.
4. As per the averments made in the Petition, the Operational Creditor had placed an order for procurement of three rescue boats with the Corporate Debtor, which were to be supplied to DNCC, Bangladesh (End User). The Corporate Debtor raised an invoice bearing No. 01/2020-21 dated 11.06.2020 for a sum of USD 335,000 upon the Operational Creditor. On 16.06.2020, first partial payment i.e., 30% of the purchase order was transferred by the Operational Creditor to the Corporate Debtor in order to start the work. The Corporate Debtor raised another invoice bearing No.16/2020-21 dated 19.02.2021 for USD 100,500 though the same was not due as per 2nd phase of payment terms but the Operational Creditor in order

to expedite the work, made the 2nd advance payment of USD 100,500 to the Corporate Debtor via bank transfer on 03.03.2021.

5. It is alleged that the Corporate Debtor failed to undertake its obligation under the Purchase Order as per the timeline for production and delivery laid down in the meeting dated 08.06.2020 and further failed to deliver the rescue boats and its auxiliaries to the Operational Creditor, as a result, Operational Creditor suffered immensely and the project was delayed. It is alleged that the Corporate Debtor admitted the default and agreed to pay USD 337,004 being the amount due and payable by the Corporate Debtor by 06.12.2022. It is alleged that the Corporate Debtor failed to reimburse the payment made by the Operational Creditor in respect of the purchase order. It rather illegally and fraudulently vide its Board Resolution dated 03.01.2023 revised the estimated schedule for reimbursement of the payment in the manner that instalments would be paid on 20.01.2023, 20.02.2023 and 06.03.2023 respectively.
6. It is alleged that till date the Corporate Debtor has not reimbursed the amount. It is stated that there is not a single occasion whereby the Corporate Debtor has disputed the payment by any form of communication. It is stated that the operational debt fell due and payable on 06.12.2022 and the default is continuing. It is stated that the Operational Creditor sent a demand notice

dated 20.01.2023 in Form-3 to the Corporate Debtor but till date it did not receive any reply nor any notice of dispute from the Corporate Debtor. This made the Operational Creditor initiate the proceeding under Section of 9 of IBC, 2016 against the Corporate Debtor.

7. The amount claimed in the present Petition is USD 337,004. The date of default is alleged on 06.12.2022. With the petition, the Operational Creditor has attached the documents Annexure – P4 to P11 as detailed in para-8, page 21-22 of the Petition.
8. On getting notice of the Petition, the Respondent filed the **reply** wherein it denied the averments made in the petition but admitted that the Corporate Debtor had received two tranches of payment amounting to USD 227,000 from the Operational Creditor / Petitioner. It is stated that there was no condition in the purchase order that the Respondent would be liable to pay interest. It is stated that the Respondent is liable to pay only USD 227,000 i.e., Rs.1,86,23,420.50 as on 18.07.2023. It is stated that due to Covid-19 lockdown, the Respondent faced difficulty in procuring certain parts which the Respondent had communicated to the Petitioner. In August 2021 it informed the Petitioner that Respondent had contacted multiple sources seeking a loan to complete the project and also requested the Petitioner for temporary loan to purchase auxiliary equipments for the rescue boats stating

that disbursement can be made directly to the suppliers but due to supply chain issues, the Respondent could not procure the essential parts and expert labour. It is stated that it was agreed that the Petitioner would transport the auxiliary equipments to the Respondent and local agent of the Petitioner would oversee the installation but the Petitioner failed in its promises. It is stated that the Respondent is ready and willing to transfer the completed boats within a period of 6 months upon a written communication by the Petitioner. It is ready and willing to let the Petitioner have a lien over the vessels and 50% of all work orders, which the Respondent has been entering till full and final repayment of amount of USD 227,000.

9. **Rejoinder** is filed by the Petitioner wherein it stated that the Corporate Debtor has admitted vide its Board Resolution dated 03.01.2023 that total liability owned to the Operational Creditor is to the tune of USD 337,004 and the same has not been disputed by the Corporate Debtor. Even the Corporate Debtor neither replied to the notice nor disputed the amount. It is stated that expressing a mere liability to pay only USD 227,000 is nothing but an afterthought by the Corporate Debtor. It is stated that as per the Resolution dated 03.01.2023, the Corporate Debtor was required to make payment in three tranches but till date not a single payment has been made by the Corporate Debtor to the Operational Creditor. It is stated that because

of non fulfilment of obligation, the Operational Creditor suffered immensely and the project was delayed.

10. We have heard Ld. Counsels for the parties and perused the records.

11. In the case of **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited (Civil Appeal No.9405 of 2017)**, the Hon'ble Supreme Court held as under:

“25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act).

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected.

Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

12. It is not in dispute that the Operational Creditor / Petitioner had issued a Purchase Order bearing No.81265 on 10.06.2020 for procurement of three

rescue boats on the Corporate Debtor for a total USD 335,000. On 11.06.2020, the Corporate Debtor raised a sales invoice dated 11.06.2020 for USD 335,000. As per the payment terms, first partial payment of 30% was transferred by the Operational Creditor to the Corporate Debtor on 16.06.2020. Upon raising the second invoice by the Corporate Debtor, dated 19.02.2021, the Petitioner in order to expedite the project made the payment of second tranche via transfer on 03.03.2021 for USD 100,500 to the Corporate Debtor. It is also not in dispute that the Corporate Debtor failed to undertake its obligations under the purchase order within the timeline which fact the Corporate Debtor also admitted in the meeting. Admittedly a meeting was held and in the meeting it was concluded that an amount USD 337,004 being due and payable by the Corporate Debtor shall be reimbursed to the Operational Creditor by 06.12.2022, which was revised in the Meeting dated 03.01.2023 but records show that the Corporate Debtor had only received only two tranches of payments.

13. The Respondent in its Reply has also admitted that it had received USD 227,000 as advance payment towards manufacturing and supplying the rescue boats in terms of the purchase order which it failed to supply within the timeline. There is an acknowledgement of operational debt for a sum of USD 227,000 i.e., Rs.1,86,23,420.50. The Petitioner in the present case has

taken the date of default as 06.12.2022, by which date, the Corporate Debtor had agreed to reimburse the amount to the Operational Creditor. As per the terms and conditions of the purchase order dated 10.06.2020, the Respondent had undertaken to supply three rescue boats for USD 335,000. It had admittedly received advance of USD 227,000. It failed to deliver the boats within the time. Though in the present case, the Respondent vide Resolution admitted to repay USD 337,004, but the admitted operational debt in the present case is only USD 227,000 i.e., Rs.1,86,23,420.50 which is above the threshold limit of Rs.1.0 crore for initiating the proceedings under Section 9 of the IBC, 2016.

14. It was held in the case of **Consolidated Construction Consortium Limited Vs Hitro Energy Solutions Private Limited [(2022) 7 SCC 164]**, that the expression in respect of, in Section 5(21) has to be interpreted in a broad and purposive manner in order to include all those who provide or receive operational service from the Operational Creditor, which ultimately lead to an operational debt. The relevant paragraphs are extracted as under:

“52. Similarly, in the present case, the phrase “in respect of” in Section 5(21) has to be interpreted in a broad and purposive manner in order to include all those who provide or receive operational services from the corporate debtor, which ultimately lead to an operational debt. In the present case, the appellant clearly sought an operational service from the Proprietary Concern when it contracted with them for the supply of light fittings. Further, when the contract was

terminated but the Proprietary Concern nonetheless encashed the cheque for advance payment, it gave rise to an operational debt in favor of the appellant, which now remains unpaid. Hence, the appellant is an operational creditor under Section 5(20) of the IBC.

53. In doing so, we are cognizant of the observations of this Court in judgments such as Swiss Ribbons, that IBC proceedings should not become recovery proceedings. However, in the present case, the dispute is not in relation to the quality of the services provided by the proprietary concern but is entirely about the repayment of the advance amount paid to them, upon the cancellation of the underlying project.”

15. In the case of **Chipsan Aviation Private Limited Vs Punj Llyod Aviation Limited (Company Appeal (AT) (Insolvency) No. 261 of 2022)**, the law laid down in the case supra was followed. It was held that in the facts of the present case, the advance of Rs.60 lakhs was clearly an operational debt and the Adjudicating Authority committed error in rejecting Section 9 application on the above ground. Similar views were expressed in the case of **TVS Motors Company Limited & Ors Vs Kalisma Steel Private Limited & Ors (CP(IB) 2826/MB/2018)** referring the above case.

16. In the present case, except the above contention, there is no document indicating any pre-existing dispute between the parties. There is a clear and express admission of operational debt by the Corporate Debtor which is above the threshold limit of Rs. 1.00 crore. There is an admission / acknowledgement of debt by the Respondent which was reiterated in the

Meeting held on 03.01.2023. This petition has been filed on 12.03.2023.

The Petition has taken the date of default as 06.12.2022, by which date the Respondent had undertaken to reimburse the debt.

17. For the aforesaid reasons, we are of the view that it is a fit case where the CIRP be initiated against the Corporate Debtor. We allow the Petition and order for initiation of CIRP against the Corporate Debtor viz., Sheba Marine Engineering Private Limited.

18. The Operational Creditor has proposed the name of **Mr. Prakul Thadi**, **Reg.No. IBBI/TPA-002/IP-N01149/2021-2022/13806**, (**E-mail ID: prakul@pandk.in**) as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 at page No.177 of the Petition and also upon verification from the IBBI website, it is seen that the said person holds valid Authorization for Assignment till 07.09.2024. **Mr. Prakul Thadi** is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force,

shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

20. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

21. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

22. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/- (Rupees Two Lakhs only)** to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational

Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

24. Accordingly **CP(IB)/61/2023** stands **admitted**.

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(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

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(SANJIV JAIN)
MEMBER (JUDICIAL)