

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302
C.P.(IB)/116(AHM)2023

Order under Section 9 IBC

IN THE MATTER OF:

Greka Green Solutions (India) Ltd
V/s
Essar Oil and Gas Exploration & Production Ltd

.....Applicant

.....Respondent

Order delivered on: 06/09/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

CP(IB) No. 116 of 2023

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

IN THE MATTER OF:

Greka Green Solutions (India) Ltd.

....Operational Creditor/Petitioner

Verssu

Essar Oil and Gas Exploration &
Production Ltd.

... Corporate Debtor/Respondent

MEMO OF PARTIES

Greka Green Solutions (India) Ltd.

Formerly known as Greka Drilling (India) Ltd.

Having its Registered Office at:

W-89A, Flat No. 101,
Greater Kailash Part II,
New Delhi 110048.
India

....Operational Creditor/Petitioner


Essar Oil and Gas Exploration & Production Ltd.

Registered Office at:

F 20, Balaji Shopping Wide Angle Highway,
Nagalpur, Mahesana,
Gujarat-384002

Also at:

Village/ PO Gopalur,
Near Rajendra Nath Polytechnic College,





Gopalpur,
Sarenga Road,
PS-Kanksha,
Durgaur-713212,
West Bengal,
India

....Operational Creditor/Petitioner

Order pronounced on 06.09.2024

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**


**MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)**

Present:

For the Applicant : Mr. Vishal Raval, Adv. a.w. Mr. Shalabh
Gupta, Adv.
For the Respondent : Mr. Raheel Patel, Adv. a.w. Mr. Yash
Dadhich, Adv.

JUDGEMENT

1. Under consideration, is an application filed by the Operational Creditor viz. M/s. Greka Green Solutions (India) Ltd. under Section 9 of Insolvency and Bankruptcy Code 2016, (hereinafter referred to as "IBC, 2016") against the Corporate Debtor viz. M/S. Essar Oil and Gas Exploration &




Production Ltd. seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

2. In Part II of the application it is stated that the corporate debtor was incorporated on 10.05.2016 with the Nominal Share Capital of Rs.5,00,000/- (Rupees Five Lakh only) and the paid-up capital of Rs.5,00,000/- (Rupees Five Lakh only). In Part IV of the application, the default amount is stated to be 24,38,26,881.60/- (Rupees Twenty Four Crores Thirty Eight Lacs Twenty Six thousand Eight Hundred Eighty One and Sixty Paise Only) (US\$ for 29,56,911/- calculated as per INR 82.46 as on 10.10.2022).
3. The application filed lists various invoices (57) from 26 May 2016 to 20 March 2023. The invoices are stated to be raised with respect to Contract No. EOL/RG(East)-CBM-2001/1/LR/GREKA/2015 dated 31.12.2015. Further, the applicant has submitted a letter of assignment agreement dated 19.06.2017 and a settlement agreement dated 24.06.2019 read with 03.07.2020. It is stated that the respondent CD had accepted the due amount of payment but till date the payment has not been done.



4. It is stated by the applicant that the debt became due as the invoices were not paid raised in lieu of the drilling services provided by the applicant [previously known as Greka Drilling (India) Ltd] as per the mentioned contract. The applicant had carried out in accordance with various job orders and raised various bills and the last bill was due on 26.12.2017 which became due with other invoices. It is stated that a settlement agreement dated 24.06.2019 and 03.06.2020, was entered and the CD respondent also acknowledged the same, but did not pay the amounts due including both the principal and interest due. Further, the applicant stated that the repayments made after the settlement agreements have been duly adjusted towards the amount of interest and the remaining interest has been calculated as Rs.14.29 lakhs, thereby the respondent is due to pay an amount of Rs.24,38,26,881.60 ps. The applicant has enclosed a calculation statement of the due along with a bank statement and ledger sheet.
5. The applicant issued a demand notice on 05.03.2018 which was acknowledged with reply by Respondent (CD) on




29.03.2018. The applicant has also stated that no dispute has been raised by the respondent to date.

6. The respondent CD and applicant (original company as a contractor) had signed a contract EOL/RG(EAST)-CBM-2001/1/Turnkey/Greka/2013 on 02.12.2013 to provide stated turn key services by the contract to enable the CD to undertake a contract with Government of India specified in the contract between both the parties. As regards payment conditions specified in Article 13, it is stated that invoices will be raised on a monthly basis in terms of the contract, with certifications on completion of the contract (which will be proof of satisfactory completion of wells by the applicant (contractor) and will be paid within 30 days of the raising the invoice by the CD. There are further clauses on the assignment of rights, bank guarantee requirements and termination by the CD/contractor, subject to certain events. The stated agreement is executed by the project director of the respondent in West Bengal and the applicant. There is a further contract for hiring of onshore drilling RIG services between the respondent and the applicant for Block RG (East)-CBM 2001/1 on 21.12.2015 with similar clauses.



The respondent CD [Essar Oil Limited (EOL) Exploration & Production Division] vide letter dated 19.06.2017 stated that the stated contract expired on 31.03.2017 and it has transferred all its rights to Essar Oil & Gas Exploration and Production Ltd which has assumed the transferred rights and obligations and consequently EOL shall be deemed to be discharged of such rights and obligations. The applicant has annexed all the respective invoices raised on EOL on various dates from 2014- 2017.

7. The applicant has enclosed an email dated 02.12.2017 that the CFO of the respondent Essar vide email dated 02.12.2016 (EOGEPL as inferred from the email) that an amount of USD 1,222,767.88 (equivalent to Rs 8,00,62,164.32 at eq exchange rate) was due as per its records to be payable to the applicant. Further, there are various emails between both parties. The applicant wrote a letter dated 26.12.2017 to the Chairman of Essar Group of Companies that their legitimate payments had not paid since Feb 2017 and also wrote a letter to the CEO of EOIGEP Limited on 19.12.2017. Similar letters were also sent on 05.07.2017 to CFO of Essar Oil the group holding




company. Further a demand notice was issued on 05.03.2018 in terms of Sec 8 of IBC 2016 calling payment of a sum of Rs.12,78,73,257 by Essar Oil and Gas Exploration and Production Limited vide its agreement dated 31.12.2015 which included the principal amount of Rs.8,00,62,164 (acknowledged by the CFO of the respondent on 2.12.2017) along with interest of Rs.4,78,11,093 on various invoices due and payable between 26.05.2016 to 20.03.2017. The respondent confirmed the issue of the notice by the applicant on 29.03.2018, mentioning a meeting on 05.03.2018 and acknowledging the amount claimed by the applicant seeking time for CFO to return from his tour to settle the liability.

8. A settlement agreement was executed between both parties on 24.06.2019 in terms of which an amount of USD 1,671,907 of the debt due and payable by the CD respondent was mutually agreed to be rescheduled to be paid by 9 instalments starting from 24.07.2019 and final instalment (9th) on 20.03.2020. It is further stated that on payment of the first instalment of 20%, the insolvency proceedings initiated dated 10.01.2019 filed before NCLT



Ahmedabad will be disposed off in terms of settlement and the MoU be placed on record. In case of 3 defaults in making the payment of instalments, the insolvency application will be revived before the NCLT. A modified settlement agreement under reference was executed on 03.07.2020 stating that the said agreement could not be complied with and the applicant had issued a demand notice under IBC on 27.02.2020 and a fresh settlement amount was arrived at USD 1,110,489 to be paid by the respondent to the applicant. On such payment by the CD, the applicant would withdraw the notice issued on 27.02.2020. A fresh repayment schedule was drawn as per Appendix 1 (the first instalment of USD 20,00,000 to be paid on the date of signing the agreement) ending in 21 instalments each ending in March 2022.


9. The applicant re-issued a notice in Form 3 on 17.10.2022 stating that an amount of Rs.24,38,26,881 (equivalent to USD 2,956,911) which includes the principal and interest (calculated at fresh USD-INR equivalent rate as on 10.10.2022 (Rs82.46).

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10. The respondent filed his reply dated 24.06.2024, denied the debt due and payable under Sec 9 of the IBC as it was not an operational debt and hence not maintainable. However, the respondent confirmed that they executed a settlement agreement dated 03.07.2020 whereby an amount of USD 1,110,489 was due and payable of which the respondent has already made a payment of USD 9,84,646 (eq of Rs 7.40 crores) on various dates from 17.07.2020 to 01.06.2022, which has been suppressed in the claim and an amount of USD 1,25,833 was only due and payable. The respondent could not make the entire payment as per the agreement and sought time, but the respondent did not agree and started demanding amounts outside the stated agreement, hence he had stopped further payments to settle the dispute. Further, the applicant had raised the demand based on the original agreement raising a demand of USD 2,956,911 (including principal and interest) taking the alleged default as on 26 June 2017. The settlement agreement did not provide for any claim of interest on the principal amount due and payable and an unimaginable claim of USD 1,735,143 has been made towards interest as




it ignores the settlement agreement which was unilaterally terminated by the applicant and hence the application is barred by limitation. Further, it is stated that there is a dispute on the final instalment amount to be paid in terms of the settlement agreement, however, the applicant had proceeded with this application which is arbitrary and with *malafide* intention. Further, the debt that arises out of the settlement agreement is not an operational debt and the goods were supplied to Essar Oil Limited and the present respondent is only an assignee based on the contract letter of assignment dated 19.06.2017, therefore the amount due is not an operational debt. Reckoning the date of default as 26.06.2017, this application is beyond the limitation period as it was filed in 2023. Further, Form 8 was not filed in its proper form.

11. The applicant also submitted its written submissions on 30.07.2024 along with a compilation of various judgments in support of his case before this Tribunal. The respondent also submitted his written submissions on 02.02.2024.
12. Heard the submissions of both the applicant and the respondent. The Debt due and payable under an Invoice for




a work contract in USD terms seems to have been kept alive on non-payment of debt till the final settlement agreement was arrived by the parties after an application was initially filed before this Tribunal for default and withdrawn based on an earlier settlement. The debt undoubtedly arose out of an operational debt and there is no excuse under any law as the assignee has obtained the debt transferred (contract) in his name immediately after the invoices became due and payable and the respondent had acknowledged the debt.

13. It is not a matter of any further examination of the quantum of debt, its equivalent rate to USD in Rupee terms and the debt becomes due and payable as per the settlement agreement arrived after the application was initially withdrawn with terms to repay the existing debt in 2020. The debt due as acknowledged is beyond the threshold limit prescribed for filing this application. There is no dispute on the contract executed, and the applicant has been waiting for a long time to realise his amount, compromised, rescheduled his debt and hence deserves to proceed against the respondent CD through Section 9. Further, both the parties agreed to withdraw the proceedings under



Insolvency Act on the bills due and payable earlier by arriving at a settlement agreement, which has been negated, not paid in full and hence there is an amount of debt outstanding since 01.06.2022. All the other matters relating to the amount due as per claim to be examined during the insolvency proceedings under Sec 9 of IBC 2016 by the Resolution Professional to be appointed.

14. In this regard, a settlement agreement is within the purview of the applicant to arrive at to give time to the CD respondent to repay the debt. A default or breach of the agreement is tantamount to violating the agreement which got extended of its limitation due to its acknowledgement giving a pause in the phase of litigation to file an insolvency by the applicant. Especially when the debt, is large and the creditors decide to give time by way of restructuring agreement is part of the process to recover the amount due. The applicant has sacrificed time value of money as his exposure has not been paid for a long time. The matter was dealt in length by the Hon'ble NCLAT in Esther Malini Victor Vs. Oriental Bank of Commerce & Ors. [Company Appeal (AT) (Ins) No.822 of 2019] wherein the Hon'ble NCLAT




confirmed the order of the NCLT which admitted the application under Sec 7 of IBC 2016. Similarly in the matter of Ludhiana Scrips Pvt. Ltd. Vs. K.C.Land & Finance Ltd, (2019 SCC Online NCLAT 355), Hon'ble NCLAT referred to the settlement agreements between the parties and concluded that the transaction between the parties involved payment of interest and requirement of time, value of money satisfied in the case. Further, Hon'ble NCLAT overruled the decision of NCLT in the matter of Ahulwalia Contracts India Ltd V Logix Infratech Limited, [(2022) ibclaw.in 693 NCLAT] where a settlement agreement was entered between the CD and the Operational Creditor. Another judgment of Hon'ble NCLAT is in the matter of Arenja Enterprises P Ltd V Edward Keventer (Successors) Pvt Ltd [Company Appeal (AT) (Insolvency) No. 528 of 2020] wherein reliance was placed on the subsequent settlement agreement or a consent decree for the initiation of CIRP by the financial creditor, if money was advanced for the time value of money and there was a default committed by the CD. In this case, the breach of settlement agreement, is the trigger for moving this insolvency and deserves to be allowed.



15. In our view the application is complete in terms of Section 9 of the Code. As the Applicant/Operational Creditor has proved that there is debt and despite service of notice under Section 8, the same was not paid by the Respondent/Corporate Debtor. We have also seen that the amount defaulted is Rs. 1.00 Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.
16. Hence we pass the following order:

ORDER

- I. The CP(IB) 116 of 2023 is allowed.
- I. The Respondent/Corporate Debtor Essar Oil and Gas Exploration & Production Ltd. is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- II. The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the




completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.

- III. However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- IV. We hereby appoint Mohit Bipinchandra Adatiya, Registered Insolvency Professional having registration number as IBBI/IPA-001/IP-P-01966/2019-2020/13004 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- V. The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency



Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.

- VI. The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- VII. The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police



Authorities to render all assistance as may be required by the IRP in this regard.

- VIII. The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- IX. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- X. We direct the Operational Creditor to pay IRP a sum of Rs.2,00,000/- (Rupees Two Lakh Only) in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.
- XI. The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and



Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

- XII. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

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DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)