

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**RCP(IB)/02/MB/2024
Connected to
CP (IB) No.373/MB-IV/2021**

Under Section 9 of the IBC, 2016

In the matter of

M/s Radhakrishna Agro

...Operational Creditor

v/s.

Altop Ishichi Solutions and Projects
Private Limited

...Corporate Debtor

Order Delivered on: 06.06.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Mr. Vishal Shriyan a/w Riddhi Wagh
& Mr. Akshay Terkar Ld. Counsel
present.

For the Corporate Debtor:

Mr. Somya i/b T.N. Tripathi Ld.
Counsel present through Video
Conferencing.

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s Radhakrishna Agro ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

RCP(IB)/02/MB/2024
Connected to
CP (IB) No.373/MB-IV/2021

(CIRP) in the matter of Altop Ishichi Solutions and Projects Private Limited, the Corporate Debtor.

2. The Corporate Debtor is a private company limited by shares incorporated on 22.06.2012 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is A-53, TTC Industrial Area, MIDC, Mahape Navi Mumbai, Thane- 400709. Therefore, this Bench has jurisdiction to deal with this petition.
3. The Company Petition is filed on 19/03/2021 claiming an amount of INR 2,30,57,100/- (Indian Rupees Two Crore Thirty Lakh Fifty-Seven Thousand and One Hundred Only) is due and payable by the Corporate Debtor as on 01.03.2021. The date of default as specified in Part IV of the petition is 11.02.2019 and that the Petition is filed within the limitation period.

Submissions advanced by the Operational Creditor are as follows:

4. The Operational Creditor submits that the OC (Operational Creditor) is engaged in the business of providing consultancy service interalia in the field of power projects and real estate. The CD (Corporate Debtor) is into the business of undertaking development of power projects in India. The OC was to aid in identifying a wind power project for acquisition and provide consultancy services for facilitating the transaction to the Respondent.
5. The Operational Creditor submits that there were certain emails exchanged between the OC and the CD with respect to terms and conditions and also additional terms were added by the CD for identifying the power projects. Accordingly, the OC identified an operational wind power business, undertaking 16 numbers of 2 MW wind turbines i.e. 32 (16*2) MW Wind Project belonging to Tata Power Renewable Energy Limited (**'TPREL'**) as a

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**RCP(IB)/02/MB/2024
Connected to
CP (IB) No.373/MB-IV/2021**

- suitable project. The CD showed willingness to purchase the assets **TPREL** of 32 MW wind Projects and based on discussion terms of the OC, consultancy services were issued to CD vide letter dated 21.11.2017. The same was also sent vide email dated 06.12.2017, duly signed and sealed by the CD as an acceptance of terms with addition of points. The additional terms were also agreed and confirmed to the CD vide email of OC dated 07.12.2017.
6. The Operational Creditor submits that with respect to the proposal with **TPREL** for purchase of 32 MW wind assets, the draft Non-Disclosure Agreement (NDA) was shared with the CD on 07.12.2017 and the same was agreed and executed by the CD and **TPREL**'S representative on 04.01.2018. Subsequent to the signing of the NDA, the CD requested to arrange certain documents for reviewing and due diligence. Accordingly, after reviewing all the information the CD has submitted its offer vide letter dated 11.10.2018 of Rs. 153,00,00,000/- as a purchase consideration amount for purchasing 32 MW wind project of **TPREL** and was accepted by **TPREL** in the mid of November,2018. The CD has requested to execute a term sheet and agreement in the name of "Altop Ishichi Renewable Project Private Limited" to **TPREL** vide email dated 28.11.2018. It was submitted that **TPREL** had circulated draft term sheet and has also considered the request of the CD where the OC has provided its assistance in reviewing the draft term sheet with its comments vide email dated 03.12.2018.
7. The Operational Creditor submits that the CD made a request to keep 02.02.2019 as a transfer day of 32 MW Wind assets instead of earlier agreed date as 01.01.2019. Accordingly, it was agreed by **TPREL** and executed the term sheet on 10.12.2018, keeping 02.02.2019 as a day for transfer of wind assets to CD. With the execution of the term sheet between **TPREL** and the CD the first payment of fees i.e. 0.15% of purchase consideration amount for 32 MW fell due towards the CD.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**RCP(IB)/02/MB/2024
Connected to
CP (IB) No.373/MB-IV/2021**

8. The Operational Creditor submits that with the execution of Business Transfer Agreement, the CD and the OC's scope under letter dated 21.11.2017 was completed and thus, the following terms towards the release of payment as per the term sheet, as agreed became due thereon:
- a. The total fee payable shall be 1.30% of the transaction amount, which is on the agreed purchase consideration amount of Rs. 153,00,00,000/-.
 - b. Out of which 0.15% fee is to be paid at the time of executing terms sheet with buyer (TREPL).
 - c. Balance fee of 1.15% be paid upon signing of Purchase agreement i.e. Business Transfer Agreement.

Invoice No.	Date	Amount (Rs.)
RA/2019/Wind/111	11.02.2019	18,36,000/-
RA/2019/Wind/111	04.04.2019	4,59,000/-
RA/2019/Wind/020	12.06.2019	2,07,62,100/-
RA/2019/Wind/028	10.12.2019	4,09,967/-

All the four Invoices, are due and payable by the CD and the CD has not made any payment towards these Invoices. It was submitted that several reminders were sent to the CD for making payments towards outstanding Invoices. On multiple occasions, the CD has made promises and given assurances for making payments but till date no payment has been received in respect of the above four Invoices. Therefore, the OC is constrained to issue demand notice under section 8 vide notice dated 23.01.2020 and further despite admitting the full claim amount on numerous occasions, the CD has failed to release any payments in respect of the admitted debt till date.

Submissions advanced by the Corporate Debtor are as follows:

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

RCP(IB)/02/MB/2024
Connected to
CP (IB) No.373/MB-IV/2021

9. The Corporate Debtor submits through its written arguments that vide order dated 03.01.2023 the present company petition was dismissed on account of amicable settlement between the parties. Thereafter, the Respondent paid Rs. 56,40,000/- in furtherance of settlement. It was submitted that the petitioner filed for Restoration of the Company petition which was restored by this tribunal vide order dated 06.02.2024. The Corporate Debtor submits two issues interalia on the grounds that:
- a. RCP(IB)/02/(MB)2024 is not founded on “operational debt” within the meaning of sub-section 21 of section 5 of the Insolvency and Bankruptcy Code,20146; and
 - b. That the Restored Company Petition without notice to the Respondent is contrary to law.

Findings

10. The bench heard the arguments of Learned Counsel for Operational Creditor & Learned Counsel for Corporate Debtor and perused the record.
11. This Bench take note of the order dated 06.02.2024 wherein the Petitioner has filed this application to restore and revive the C.P.(IB)/373(MB)2021, which was dismissed as withdrawn by this bench vide order dated 03.01.2023 on the ground of settlement. Restoration was allowed by this bench and the Corporate Debtor was directed to file their reply. Post Restoration when the matter was listed for hearing on 12.02.2024, the Corporate Debtor appeared and sought time to file reply. Thereafter, when the matter was posted for hearing on 27.03.2024, the Corporate Debtor appeared but no reply was filed. Therefore, this Bench forfeited the right to submit reply. Hence, the matter was heard on merits based on material available on records.
12. During the course of hearing the counsel for the Corporate Debtor submitted that (i) RCP(IB)/02(MB)2024 is not founded on “operational debt” within the meaning of sub-section 21 of section 5 of the Insolvency and Bankruptcy

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

RCP(IB)/02/MB/2024
Connected to
CP (IB) No.373/MB-IV/2021

Code,2016; and (ii) that the restored petition without notice to the Respondent is contrary to law. This Bench observes that when the restored C.P was posted for hearing on 12.02.2024, the counsel for Corporate Debtor was present and sought time to file reply. Hence, the contentions of the counsel that he did not have noticed of the restored petition is devoid of merits.

13. This Bench notes that amount of Rs. 2,30,57,100/- was due on account of services supplied to the Corporate Debtor. That the Corporate Debtor in its own settlement agreement entered on 13.12.2023 agreed to pay the Petitioner an amount of Rs. 1,77,00,000/-. However, the Corporate Debtor started defaulting on the payment right from the beginning and vide emails dated 16.06.2023 & 20.11.2023 made several requests for extension of time on account of shortage of funds. On request, the Petitioner repeatedly extended the time for clearing the dues. Regardless, the Corporate Debtor has made payment of only Rs. 56,40,000/- even after repeated follow-ups and emails.
14. In view of the admission by the Corporate Debtor of the liability in its own Settlement Agreement, the bench observes that Operational Debt amounting to more than Rs. 1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought out by the Corporate Debtor, it is a fit case for admission under section 9 of Insolvency and Bankruptcy Code,2016.
15. It is, accordingly, hereby ordered as follows: -

The petition bearing **RCP(IB)/02/MB/2024 Connected to CP (IB) 373/MB/2021** filed by M/s Radhakrishna Agro, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Altop Ishichi Solutions and Projects Private Limited, the Corporate Debtor, is Admitted. We are hereby directing the Suspended Board of Director to Co-

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**RCP(IB)/02/MB/2024
Connected to
CP (IB) No.373/MB-IV/2021**

operate with the RP/IRP for smooth functioning of CIRP proceeding with providing necessary documents/information as required by the RP/IRP.

(a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(b) Notwithstanding the above, during the period of moratorium: -

- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**RCP(IB)/02/MB/2024
Connected to
CP (IB) No.373/MB-IV/2021**

order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) Mr. Prakash Naringrekar, having Registration No: IBBI/IPA-002/IP-N00270/2017-2018/10783, having address 503-A, Blue Diamond CHS Ltd., Chincholi Bunder, Link Road Junction, Malad West, Mumbai-400064, email- prakash03041956@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (f) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (g) The Operational Creditor shall deposit a sum of Rs. 3,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (h) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

RCP(IB)/02/MB/2024
Connected to
CP (IB) No.373/MB-IV/2021

immediately, and in any case, not later than two days from the date of this Order.

- (i) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)