

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) 3434/MB/2019

Under Section 8 & 9 of the IBC, 2016

In the matter of

Halliburton Offshore Services Inc

16th,17th Floor, Commerz-II, Oberoi
Garden City International Business
Park, Western Express Highway,
Goregaon East Mumbai, Maharashtra-
400063

... Petitioner

v/s.

Mercator Petroleum Ltd.

3rd Floor, Mittal Tower, B-wing,
Nariman Point, Mumbai, Maharashtra-
400021

... Corporate Debtor

Order Pronounced on: 31.08.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. D. Bhattacharyya, Adv. S. Patel i/b Little & Co.
For the Corporate Debtor: Adv. Manaswi Agrawal, Adv. Yash Badkur i/b
Meraki Chambers

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This Company Petition is filed by Halliburton Offshore Services Inc (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Mercator Petroleum Ltd. (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of Rs. 2,87,25,414/- inclusive of interest at the rate of 18% per annum on the delay in payment by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petitioner is a foreign company, incorporated under the laws of Cayman Islands and engaged in the business of providing services in the upstream oil industry and Corporate Debtor is a company engaged in upstream oil industry through block ownership and project execution services.

3. The Petition reveals that the Petitioner was awarded two contracts bearing No. CB9/WO/110/2015 dated 05.11.2015 and No. CB9/WO/2015 dated 09.11.2015 by the Corporate Debtor for carrying out cementing services and logging while drilling services at its oil block at Cambay Basin, Gujarat. The Petitioner since then has been rendering uninterrupted services to the Corporate Debtor and raising various invoices against the same which had to be cleared by the Corporate Debtor within 60 days of its receipt. But, barring few ad-hoc payments, all the invoices raised since June 29, 2017 have remained unpaid till date.
4. The Counsel for the Petitioner submits that as being a foreign party providing services to the Corporate Debtor, the invoices raised by the Petitioner were subject to withholding taxes to be deducted by the Corporate Debtor. However, the books of accounts and Form 26 AS show that the Corporate Debtor has been delinquent in depositing withholding taxes against the payment made to the Petitioner. Also, no certificate evidencing payment of such taxes has been furnished by the Corporate Debtor to the Petitioner.
5. It is also to be noted that the payments were being made in USD to the Petitioner, however since the services were being rendered in India, the service tax/ GST component was being paid/ reimbursed in INR by the Corporate Debtor. But, most of such tax components of the invoices still remain unpaid by the Corporate Debtor.
6. Further, it is submitted by the Counsel for the Petitioner that the Corporate Debtor acknowledged its debt towards the Petitioner vide its email dated 01.08.2018 which is extracted below:

"Dear Mr. Lee,

As communicated earlier regarding payment of \$100,000 against total pending payment of \$398,000 on July 15, 2018 is delayed. Despite company's best efforts to ensure this payment in the month of July, this payment is delayed due to banking issues. The company is working with the bank to resolve this at the earliest.

The payment of \$100,000 should be made within the next two weeks, i.e., by 15th August. We regret this delay and appreciate your patience.

Best Regards

Adip Mittal"
7. Despite several requests made by the Petitioner, the Corporate Debtor failed to clear its dues (except some ad-hoc payments of

USD 17,488.23 made on 1st Oct, 2018). Thus, on account of non-payment of outstanding dues, the Petitioner issued Demand Notice dated 26.11.2018 in Form 3 under Section 8 of the I&B Code, 2016 to the Corporate Debtor to make payment of the debt amount of USD 4,00,095.22 or INR 2,82,62,726.30 within 10 days of receipt of this notice.

8. The Counsel for the Petitioner then submits that the Corporate Debtor replied to the above said demand notice on 07.12.2018 by disputing its payment obligation and proposed to resolve the dispute amicably. At a meeting held on 14.12.2018, the Corporate Debtor indicated that it had made a payment of USD 33,000 and subsequently shared the remittance advice of ICICI Bank of USD 33,270 with the Petitioner. In this meeting, it was proposed that the Corporate Debtor would clear the outstanding payments in two equal tranches payable by 31.03.2019 and 30.06.2019 and minutes of this meeting were circulated on 17.12.2018. The minutes of the said meeting are extracted below:

Aditya Desai

From: Raj Chandak <r.chandak@oilfieldtechnik.com>
Sent: Monday, December 17, 2018 8:06 AM
To: Tushar Ganjoo; Bhagwandas Sahajwani; Devesh Bhaisoru; Tejinder Oberoi; Aditya Desai; Amita Chitnis / Mercator; Adip Mittal
Subject: Minutes of the Meeting: Halliburton-MPL 14th December 2018
Attachments: halliburton bk aknw.pdf

Dear All,

Please find below MoM for the meeting held at MPL's office on 14th December 2018.

Date: 14th December 2018

Venue: Mercator Petroleum Limited, Mittal Tower- B wing, Nariman Point, Mumbai

Halliburton Representatives:

1. Mrs. Tejinder Oberoi
2. Mr. Bhagwan Das
3. Mr. Devesh Bhaisoru
4. Mr. Tushar Ganjoo

MPL's Representatives:

1. Mrs. Amita Chitnis
2. Mr. Adip Mittal
3. Mr. Aditya Desai
4. Mr. Rajendra Kothari
5. Mr. Raj Chandak

Points Discussed:

1. Meeting started at 1:00 PM. Halliburton requested payment of outstanding amount of \$417,583.45 (as per the notice) on or before 31/12/2018.
 MPL's Response - MPL informed Halliburton that a payment of ~\$ 17,000 was made and another ~\$33,000 is also under process and should reflect in Halliburton's system by Monday.
2. Halliburton (DB)- Requested proof of receipt of acknowledgement from the bank for the payment under process.
 MPL- Will share the acknowledgment copy of letter by bank for processing the above payment. (Attached in this email)
3. MPL (AD)- MPL suggested a payment plan in two tranches in two equal payments in next two financial quarters i.e. by 31st March 2019 and 30th June 2019.

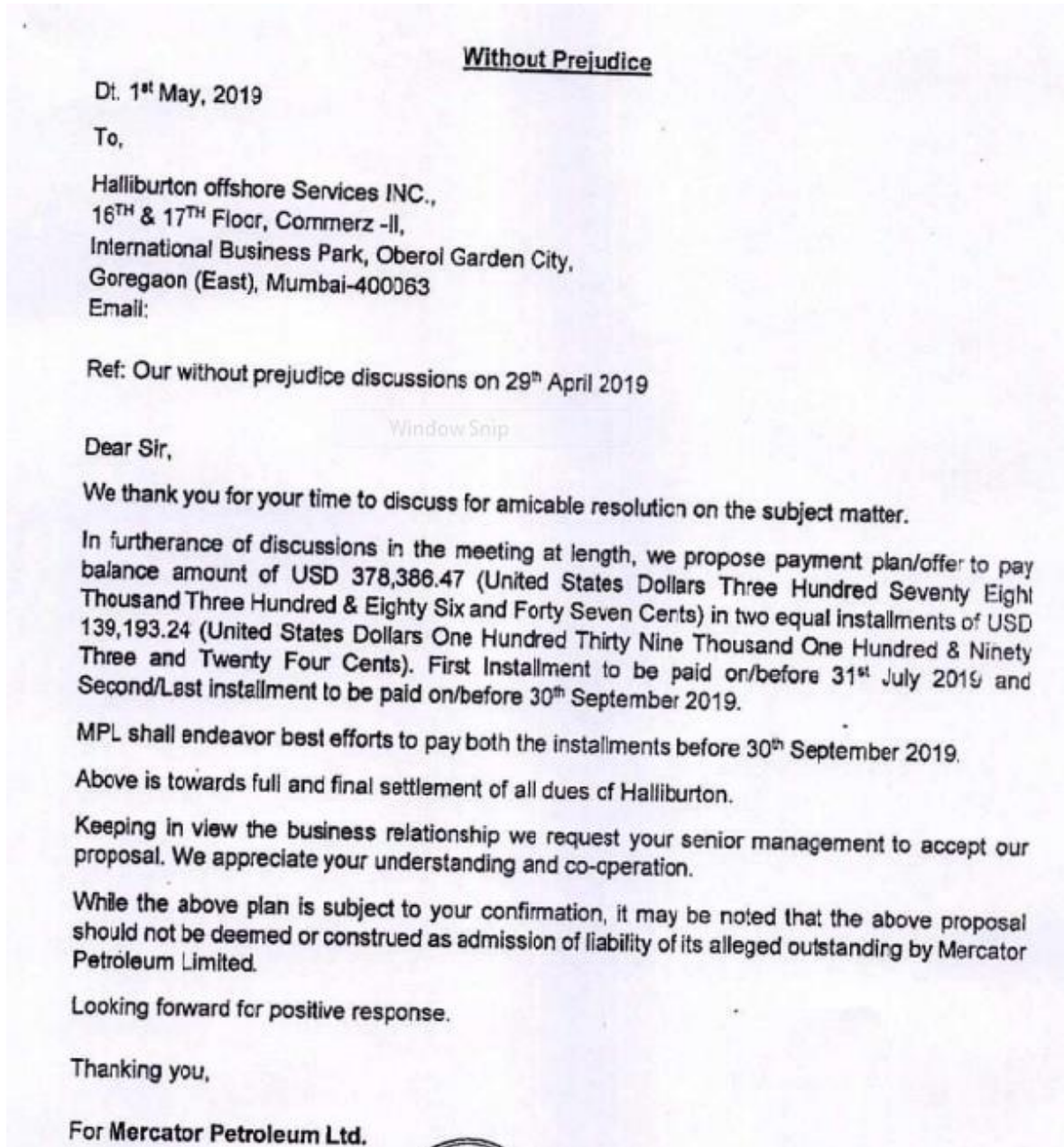
Halliburton (TO)- Informed MPL's team that they would need senior management's permission to agree or reject above mentioned plan.

4.
Halliburton (TO)- requested interest on the pending amount from 14th December 2018, until the complete amount is paid.
MPL (RK)- Suggested that MPL will clear the complete invoiced amount without deducting disputed amount.

5.
Meeting was concluded at 2:25 PM, with a plan of action that MPL will send a payment plan and Halliburton will respond to that payment plan after discussing with their senior management.

Regards,
Raj Chandak

9. Despite the above stated meeting and the points discussed and decided in it, the Corporate Debtor sent a detailed reply to the above said demand notice of the Petitioner on 05.01.2019 denying its obligation to pay the outstanding invoices.
10. Further, it is submitted by the Counsel for the Petitioner that there were again many discussions between the Petitioner and the Corporate Debtor regarding the payment of the outstanding dues. In furtherance to this discussion, the Corporate Debtor sent a letter on 01.05.2019 to the Petitioner, acknowledging the debt amount, which is extracted below:



11. In reference to the above stated letter, the Petitioner on 17.05.2019 requested the Corporate Debtor to clear all the outstanding dues by July 2019 due to Corporate Debtor's non adherence to earlier payment plans. However, no payments were ever made by the Corporate Debtor. Even the taxes withheld by the Corporate Debtor from the invoices have not been deposited by the Corporate Debtor thereby depriving the Petitioner from obtaining tax credit from the Income Tax Department. Hence, the present Petition.
12. The Corporate Debtor through its reply to the Petition raised the following contentions:
 - a. The Counsel for the Corporate Debtor submits that the Corporate Debtor is engaged in the business of exploration, development and production of crude petroleum and petroleum products. The Corporate Debtor, vide a Production Sharing Contract dated 22.12.2008, was appointed as an operator and acquired rights to carry out petroleum operations in the Cambay Basin in western

- India. In order to execute the projects, they appointed the Petitioner for providing logging while drilling and cementing services.
- b. As per the Contract, the Corporate Debtor had a right to withhold payments under the invoices raised by the Petitioner in the following two circumstances:- (i) inaccurate, incomplete, deficient, insufficient or non-compliant work carried out by the Petitioner, and (ii) any defects and/ or deficiency arising in the work carried out by the Petitioner due to use of bad material and/ or workmanship.
 - c. It is submitted by the Counsel for the Corporate Debtor that the invoices raised by the Petitioner were paid by the Corporate Debtor as far as the Petitioner's work under such invoices was in accordance with the Agreements. However, the Petitioner rendered certain services which were deficient and caused delay in the project and losses to the Corporate Debtor, against which the Corporate Debtor raised its objections and reservation for such services at the relevant time. The Corporate Debtor's email dated 22.09.2017 to the Petitioner complained of persisting cementing problem at Well Jyothi#6 and due to which they had to discard twice valuable spacers of more than 90bbl after pumping in the well. Further correspondence was exchanged by email dated 26.09.2017, 06.10.2017 etc.
 - d. It is further submitted by the Counsel for the Corporate Debtor that the present Petition is not complete and maintainable *per se* as the Petition is filed by a person not authorized by the Petitioner and also, the Petitioner has failed to file affidavit stating that the alleged unpaid operational debt is not received by the Petitioner. Therefore, the present Petition is liable to be dismissed *in limine*.
13. This Bench, after going through the contentions made by both the parties, documents produced on record and the written submissions filed by both of them, is of the view that the Corporate Debtor has committed default and the Petition deserves admission.
 14. The factual matrix demonstrates that evidently the Corporate Debtor executed two agreements and engaged the services of the Petitioner and the Petitioner has raised several invoices and that outstanding amounts were due and payable by the Corporate Debtor.
 15. It is to be noted from the averments of the Corporate Debtor that the Corporate Debtor, on the one hand, filed a detailed reply to the demand notice of the Petitioner on 05.01.2019 denying the liability to pay the debt amount, while on the other hand, the Corporate

Debtor also clearly acknowledged the liability to pay the debt amount through its letters to the Petitioner dated 01.08.2018 and 01.05.2019. Even in the meeting dated 14.12.2018, the settlement proposal was made which is also an affirmative of the fact that the liability is acknowledged and admitted.

16. The objection of the Corporate Debtor regarding the maintainability of the Petition is untenable, as the statutory notice was issued by the lawyer which is permissible in law. Further, the Petitioner has furnished additional power of attorney authorizing the Petitioner to file any petition in India.
17. The contentions of the Corporate Debtor that all the minutes of meetings and talks of settlement were executed without prejudice to the rights of the Corporate Debtor and cannot be construed as admission of liability, in view of the Judgement of *Peacock Plywood(P) Limited v. Oriental Insurance Co., reported in (2006)12 SCC 673*, cannot be applicable to the facts of the present case as there have been several rounds of settlement between both the parties. The Corporate Debtor's initial admission of liability was on 01.08.2018 and undertaking to pay USD 398000 and payment of USD 100,000 by 15.08.2018. The Corporate Debtor further, upon receipt of demand notice sought for a meeting on 14.12.2018, wherein the Corporate Debtor assured payment of USD 33000 which is under process and subsequent minutes of meeting on 17.12.2018 suggested a payment plan by 31.03.2019 and 30.06.2019. On 01.05.2019, the Corporate Debtor once again proposed a payment plan of USD 378,386.47 in two equal installments on 31.07.2019 and 30.09.2019 in full and final settlement of claim. It can be said that there was clinching evidence on multiple occasions that the Corporate Debtor attempted to settle the matter amicably and offered to pay the claim of the Petitioner, in spite of pre-existing disputes raised on 22.09.2017 which is before the settlement talks. The Corporate Debtor further remits USD 33,270 to the Petitioner on 13.12.2018 after receipt of demand notice, this demonstrates the fact that they are liable to pay monies under the invoices and have instructed their banker to make part payment. Therefore, this bench concludes that there is debt and default of payment of operational claim as claimed by the Petitioner.
18. A beneficial reference can be made to the decision of this Tribunal in the case of *Bank of India vs. Scorodite Stainless (India) Pvt. Ltd.*

(CP No. 3290/MB/MAH/2018) wherein it was held in paragraph no. 13 that

" It is worth to note that on the one hand, the Corporate Debtor is questioning the legality and correctness of the amount claimed by the Financial Creditor, while on the other hand, the Corporate Debtor also talks of settlement (OTS offer) with the Corporate Debtor to the tune of Rs. 22 crores. It is believed that Corporate Debtor cannot blow hot and cold at the same time. An endeavour to enter into settlement terms answers the question of whether the default has been committed or not. Once it is established that debt has been granted to the Corporate Debtor and default has been done to repay the debt, we are bound to admit the petition."

19. Once it is established that there is a debt and default on the part of the Corporate Debtor and the dispute raised does not fall within the purview of Section 5(6) of the Code, the Petition deserves admission.
20. This Bench having been satisfied with the Petition filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code, admits this Petition declaring Moratorium with the directions as mentioned below:

(a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(d) that the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.

(e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby appoints Ms. Pinkush Jaiswal, having Registration No. IBBI/IPA-002/IP-N00452/2017-2018/11409 and having email address fcspinkush@gmail.com as an Interim Resolution Professional to carry out the functions as mentioned under the Code.

21. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)