

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 4119/IBC/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

Admiral Logistics Zambia Ltd.

Plot No. 2139, North Mead, Grant
East Road, Lusaka, Zambia

Address in India

Admiral Hitech Logistics (India) Pvt.
Ltd. 414, 4th floor, Minerva Complex,
S. D. Road, Secunderabad,
Hyderabad, Telangana

.....**Operational Creditor**

Vs

Glint Cosmetics Pvt. Ltd.

(CIN: U24246MH2004PTC143913)
Registered office at: C-216/217/218,
TTC Industrial Area, MIDC, Turbhe,
Navi Mumbai- 400705

.....Corporate Debtor

Order delivered on: 24.09.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Manoj Mishra, Advocate

For the Respondent: Mr. Sanjay Kumar Ruia, Advocate

Per: Shri Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company petition is filed by *Admiral Rogistics Zambia Ltd.* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Glint Cosmetics Pvt. Ltd.* (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Operational Debt US\$ 63,077.60/- (Rs.45,22,493.61/-).

SUBMISSIONS OF THE OPERATIONAL CREDITOR

2. The Operational Creditor is engaged in the business of freight management system to measure and achieve high performance standards to offer its clients tailored solutions to achieve better time and monetary management. The Operational Creditor is a group company of Admiral Hitec Logistics (India) Pvt. Ltd.
3. The Operational Creditor operates from Zambia, whereas its sister concerned Admiral Hitec Logistics (India) Pvt. Ltd. operates from Secunderabad, Hyderabad with tis branch office at Mumbai.
4. The Corporate Debtor is engaged in the manufacturing of cosmetics and baby care products. The Corporate Debtor further submit that it had dispatched some goods to Dar Es Salaam through the Operational Creditor. However, the purchaser refused to accept the goods. Goods were not allowed to be kept there at the port for long, as it was also costing demurrage charges on daily basis.
5. The Operational Creditor further submits that due to the cost of demurrage charges, Operational Creditor insisted the

Corporate Debtor to get its goods back to India for its final disposal otherwise it was charging demurrage charges on the Operational Creditor.

6. On 05.11.2018, after a lot of negotiations on email and telephone, Corporate Debtor gave an order on Operational Creditor to get the delivery of its goods of four containers. Further, the Corporate Debtor negotiated to reduce the charges for shipment as US\$ 55,000 in INR 3943351. This reduction was done with negotiation of the price from US\$ 82,535/- in INR 59,17,536.66.
7. The Operational Creditor further submits that the contents of email dated 05.11.2018 is very clear for giving order to bring the material back. The email dated 05.11.2018 reads as follows:

“...Sir, kindly arrange to move all 4 containers back to Mumbai or other locations which shall be confirmed later at your earliest and we commit to pay you agreed amount of US\$ 55,000 in INR 39,43,351/- as soon as possible. You might have to wait for some days for the amount but please rest assured that the amount shall be paid in some time...”
8. On the basis of this assurance of Mr. Puneet Chopra, who is the director of Corporate Debtor, the Operational Creditor started all the steps in bringing the four containers from DAR ES SALAAM to JNPT, Mumbai. In this process, the Operational Creditor has given the update of all the developments in the matter. Exchange of various emails in the matter were exchanged and are on the record.
9. The Operational Creditor mentions that it took all the steps to perform its part of the contract on the basis of approval given by the Corporate Debtor. On 03.01.2019, the Corporate

Debtor paid a part of the contract i.e. i.e. US\$ 10,000 (Rs. 7,16,973) to the Operational Creditor.

10. On the basis of these repeated assurances and part payment of the contract amount, the operational creditor was full into the job for its timely delivery. Ms. Anjali from the Corporate Debtor after receiving the bills of lading started arising a new point that free period of 21 days were not mentioned.
11. The Operational Creditor mentioned that the Corporate Debtor had even written a letter to the Maersk Line stating that:

“We confirm that we have chosen to abandon the goods all right to and in the goods. Neither we nor any other party, to the best of our knowledge have any claim against Maersk Line, her vessel, or crew, Maersk’s line’s underwriter, sub-contractor or any other party whatsoever in respect of goods.
12. As written in letter, the Corporate Debtor represented that the good belongs to them with no conditions. The Operational Creditor’s sister concern at Zambia paid huge amount as demurrage charges at Dar Es Salaam and at JNPT, Mumbai. Further, the Charges paid by the operational Creditor at Dar Es Salaam for delay days as per Maersk Line were US\$ 4,236.20 (Rs. 3,03,724.10) against Invoice Number 5111697675. Another Charges paid at Dar Es Salaam for delay days as per Maersk Line were US\$ 13,841.40 (Rs. 9,92,391.01)
13. Since Corporate Debtor after return of the goods from Dr Es Salaam to Mumbai did not take the delivery of goods in accordance with their instruction, therefore demurrage charges were being imposed from Maersk Line at JNPT were INR were INR Rs. 26,85,690/-. This statement was payable from the Sister concern of the Operational Creditor in India.

14. The Operational Creditor submits that due to the charges of Maersk Line, the Corporate Debtor had to raise an invoice on Glint Cosmetics Pvt. Ltd. Because of which Invoices were raised. Details of Invoice are Invoice No HYDSELS181900663 dated 31.03.2019 for Rs. 20,14,260 and Invoice No. HYDSELS181900662 dated 31.03.2019 for Rs. 6,71,420/- totalling to Rs. 26,85,680/-.
15. The reply received by the Corporate Debtor does not delve on the payment or any issues which involves the requirement of payment to the Operational Creditor even after giving a specific instruction to ship the material back from Zambia to India and defaulting on payment of invoices of Operational Creditor as well as invoices of the sister concern of Operational Creditor at Zambia. The Operational further mentioned that it is also stated that this application is not barred by the limitation.

SUBMISSIONS OF THE CORPORATE DEBTOR

16. The Corporate Debtor submits in this reply that in the manufacturing of cosmetics and baby care products and is engaged in the export of the same and the petitioner along with its sister concern at Zambia is engaged in business of freight management system.
17. Further, there was an export of four containers I Zambia to a customer that involved the petitioner as they are involved in shipping business. In the process of exporting products; four containers amounting USD 1,23,213/- amounting to Rs. 80,00,894/- (Rupees Eight Lakhs Eight Hundred Ninety Four Only) were exported to the Respondent to the Respondent's customer (Zamking Investment Limited) in Zambia.
18. The Corporate Debtor further submits that it was advised to the Respondent by the same customer to carry out the export

though the petitioner. Chat dated 28.03.2019 Customer shared contact details of the petitioner stated: "*Contact of Venkat Admiral*".

19. The respondent completed the said export through the petitioner however due to some previous dispute between the petitioner and the respondent's customer; the four containers were withheld by the petitioner. And this fact was hidden by the petitioner in the said petition stating that "Corporate Debtor had dispatched some goods to Dar es Salaam through the Operational Creditor. However, the purchaser refused to accept the goods". (On page P6 of the petition) That was totally a false statement made by the petitioner in the said petition. Whereas, it was initially the petitioner in the said petition. Whereas, it was initially the petitioner in the said petition. Whereas, it was initially the petitioner who held back the goods due to their prior rivalry with the Customer and retained the containers with them. Chat dated 05.06.2018, 5:41 p.m., "*Chavan Admiral: nothing will be given until we get 25k+22k (payment of Dubai supplier) + any halting and liner detention which is applicable from tomorrow.*" Chat dated 06.06.2018, 11:30 p.m., "*Sir please pay our logistics as well 22k of Dubai supplier keep your goods in custody and make free from this transaction.*" Therefore, the amount that was demanded by the petitioner was not related to the consignments sent by the respondent. Just to recover their prior dues from the customer they confiscated goods sent by the respondent. This act by the petitioner indicates the disputes that were there initially with regard to these transactions.
20. Further, due to the nature of the products, that has a shelf life of three years, being withheld by the petitioner, the

Respondent incurred losses in this course of action. The respondent even tried to negotiate with the petitioner and resolve the problems between the Customers as well as the petitioner.

21. The Corporate Debtor further submits that the Operational Creditor firstly put the Respondent in a false pretext that the Respondent's Customer was a fraud and would not pay the money on time as the customer was ready to pay the Respondent 1 container at a time and keep rest of the containers at Respondent's custody. To which the petitioner refused as they were without any negotiations demanded the amount that was of some prior transactions. Whereas, in the petition the petitioner stated that the containers were never accepted by the Respondent's customer. The petitioner was the one who were not ready to release the Container as he was forcing the Customer to give payment in advance for all the four containers inclusive of old outstanding dues which was related to some other transaction, chat dated 24.05.2018, 12:33 p.m., stated as "*please clarify the payment of Mr. Tufail 21k of Dubai shipment*". Also chat dated 05.06.2018 stated as "*nothing will be given until we get 25k+22K (payment of Dubai supplier) + any halting and liner detention which is applicable from tomorrow.*" Only due to this bad intention of the petitioner to recover his old dues with the Respondent's transaction, the Respondent has lost a valuable customer who was ready to pay all the dues to them.
22. Further it is submitted that, the petitioner misguided the Respondent that they will be providing new customers and payment on time, insisting us not to release the above four containers to the Respondent's customer. Chat dated

04.06.2018 stated as *“Venkat had on Friday night informed me that lotion containers have been finalised. He got the price negotiated and finalized at usd 9 per ctn. But I told him to finalise all containers if the rate has be brought down so much. He said today he will do it.”* The Respondent in good faith agreed to these terms however, the Petitioner failed to fulfil the same and insisted the Respondent to pay all the dues which were originally liable by the Respondent’s Customer. Chat dated 13.06.2018, 7:25 p.m., 13.06.2018, 10:13 a.m.

23. As a last resort, the Respondent decided to bring the containers back to town and informed the Petitioner that they will appoint their own CHA (Custom House Agent) to bring back the containers to India in chat dated 29.08.2018 stated as *“I had suggested to give you my CHA. But you refused”*. But yet again the Respondent was misguided by the Petitioner stating that no other agent can bring back the containers as the Petitioner has a branch in Zambia and only they will be able to bring back the containers to India at the earliest. Chat dated 29.08.2018 stated as *“how can he handle sitting in india with no experience of Africa”*.
24. For the above transaction of getting the containers back to India, it was agreed by both the parties that an amount of USD 55,000/- (Fifty Five Thousand US Dollars Only) as asked by the Petitioner. Also, it was assured by the petitioner that those containers will be shipped to India within 30-35 days. Chat dated 08.06.2018, 7:30 p.m.: *“Puneet: when do you think it will reach India”*. Chat dated 08.06.2018, 7:31 p.m.: *“Chavan Admiral: Sir I will get back tomorrow approx. should be 30-35 days.”*

Sr. No.	Date	Ref No.	USD	INR
1.	20.06.2018	OTT- 0669OTT18047306	15000/-	10,22,550/-
2.	03.01.2019	OTT- 0669OTT19000735	10,000/ -	7,08,160/-

25. However, the Petitioner has taken almost 6 months to get back the containers to India. The containers were almost a scrap to the respondent when they arrived in India. Due to this delay, the Respondent lost a customer who was ready to buy all the above 4 containers. The containers arrived in India but the Petitioner failed to provide the Bill of lading (BL) within 14 days in the email dated 30.01.2019 stated : *“Dear Anjali, We got the free time from shipping for 14 days.”*

26. The Corprote Debtor states that the container reached on 26.12.2018, in the email dated 24.12.2018 stated : *“Dear Anjali, Please be noted that the sub shipment of 4X40’HC reaching to Mumbai on 26.12.2018.”*

The 14 days free time for payment allowed by MAERSK line was expiring on 08.01.2019, the BL confirmation was received by the Respondent on 14.01.2019 stated as: *“Dear Sir, Ref to below mail confirmation. We have sent Original Shipping line BL to your office address & find the BLUE Dart POD NO: 14882049125.”* And the original BL was received by the Respondent on 15.01.2019. Once BL was received, gathering an additional document in order to get the containers released was a tedious task thus, if the BL was received on time, detention charges of Rs. 26,85,680/- would not have accumulated as the Respondent would have

cleared it within the free time period and these charges would not have been raised by the shipping line.

27. The petitioner also failed to pay the freight charges to MAERSK line amounting to Rs. 2,70,424/- (Rupees Two Lakhs Seventy Thousand Four Hundred and Only) and then the Respondent had to pay the same amount to MAERSK line on 28.01.2019 bill dated 21.12.2018. This was inclusive of the amount that was earlier agreed by both the parties. And in the said petition the petitioner has nowhere mentioned or deducted this amount from the total claim that indicates that they are just filing the petition to abstract money from the respondent.
28. The Corporate Debtor further mentions that the Operational Creditor also denied paying the demurrage charges to MAERSK which was charged to the Respondent due to late handed over BL to Respondent. In this line of action, MAERSK line has charged the Respondent Rs. 26,85,680/- (Rupees Twenty-Six Lakhs Eighty Five Thousand Six Hundred and Eighty Only) as demurrage charges. Due to the delay of documents and clearance of container, the Respondent lost their customer and were left with no option other than auctioning all the above 4 containers to pay the demurrage charges to MAERSK due to mistake of the Petitioner and the Respondent also gave confirmation to MAERSK to recover all the demurrages by auctioning all the above 4 containers that amounted to US Dollars 1,23,213/- equivalent to Rs. 80,08,894/- (Rupees Eighty Lakhs Eight Thousand Eight Hundred and Ninety-Four only) thus also leading to loss of the Respondent and imprinted false reputation in front of MAERSK.
29. The abovementioned statement of abandonment was sent by the Respondent to MAERSK line on the date 19.03.2019

stated as: “*We shall not be able to make any more payments to your as told to you in our earlier emails. We have abandoned the 4 containers. As such whatever we have paid to you is out of our pocket. The shipping line has not cooperated and nor have you been able to help. The documents itself were handed over to us after the free detention period and post that we had a struggle with the no of documents needed. Hence pl do not expect any payment from us. Our financial position has become a total mess and we have suffered a huge loss this year.*” This mail was prior to the issue of demand notice by the Petitioner dated 25.07.2019. This clearly indicates that there was prior dispute with regard to the payment of the amount that is claimed by the Petitioner before the issuance of demand notice dated 25.07.2019.

30. That there were two demand notices that were sent by the Petitioner, one was of USD 45,000/- and another was of USD 63,077.60/-. In both the demand notices and in the said petition no invoice was annexed related to the claimed amount as well as the invoices that are annexed in the Petition were the charges that are to be paid by the Operational Creditor as all charges were included in the total amount on which both the parties agreed.

FINDINGS

1. This Company petition is filed on 30.08.2019 by *Admiral Rogistics Zambia Ltd.* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Glint Cosmetics Pvt. Ltd.* (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 for a total amount of US\$ 63,077.60/- which translate in to about Rs. 45,22,493.61/-).

2. The Operational Creditor mentions that the Corporate Debtor has requested to Operational Creditor to ship the material contained in four containers back to India from Lusaka, Zambia. The petitioner further mentions that the Corporate Debtor gave a quotation of US\$ 89,697 through an email dated 28.08.2018 to bring the material back to India. As a result of further negotiations between the parties this amount was reduced to US\$ 55,000/-. In this regard, the Bench notes that the email dated 05.11.2018 written by the Corporate Debtor to Operational Creditor reproduced as under:

“...Kindly arrange to move all 4 containers back to Mumbai or any other location which shall be confirmed later at your earliest and we commit to pay you agreed amount of US\$ 55000 as soon as possible. You might have to wait for some days for the amount but please rest assured that the amount shall be paid in some time...”

3. The Bench further notes that out of the said amount US\$55,000, the Corporate Debtor made a payment of US\$ 10,000 on 03.01.2019 which is equal to about Rs. 7,08,160/- in confirmation to the remaining debt, the Bench notes that on 11.01.2019 the Managing Director of the Corporate Debtor Mr, Punit Chopra wrote another email to the Operational Creditor which has been enclosed with the petition, which reads as under:

“...Dear Sir,

We commit to make balance payment of US\$ 45000 before marchend...”

4. The Corporate Debtor had defaulted in its payment of the following amount to the Operational Creditor:

Sr. No.	Particulars	Amount
1.	Balance of Freight Charges (US\$ 55,000-US\$10,000)	US\$ 45,000.00
2.	Demurrage Charges at Dar Es Salaam	US\$13,841.40
3.	Demurrage Charges at Dar Es Salaam	US\$4,236.20
	Total	US\$63,077.60

5. The Bench notes that the only plea which has been made by the Corporate Debtor in defence is that the Operational Creditor's claim of US\$ 63,077 is inflated and that the Corporate Debtor has agreed to pay only US\$ 55,000<10,000). Be that it may, the Bench notes that even the amount of US\$ 45,000/- which translate at the rate of Rs. 70 per US\$ comes to about Rs. 3,150,000/- . which is way above the threshold limit of Rs. 1,00,000/- as existed before 24.03.2020.
6. Therefore, for the reason stated above, there are no valid grounds warranting the rejection of the above Company Petition as the debt and default are clearly established and the debt is also within limitation. Thus, the present Company Petition satisfies all the necessary requirements for admission.
7. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -4119(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Glint Cosmetics Pvt. Ltd.
- b. Since the Operational Creditor has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Ashish Vyas** (ashishvyas2006@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-01520/2018-2019/12267 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; 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.

- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**