

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

**TCP (I&B) 879/NCLT/MB/MAH/2017**

Under Section 9 of the I&B Code, 2016

In the matter of

**MIQ Logistics Private Limited**

... Petitioner

v/s

**Omkar Speciality Chemicals Limited**

...Respondent

**Order dated 24.01.2019**

**Coram:** Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

**For the Applicant:** Vishal Kanade, Advocate, Monil Panjabi,  
Advocate and ShadabPearzade, Advocate  
i/b, Munir Merchant

**For the Respondent:** Sahil Mahajan, Advocate and MeetaKadhi,  
Advocate i/b Fortitude Law, Associates

*Per V.P Singh, Member (Judicial)*

**ORDER**

1. This is a transferred petition, numbered here as TCP 879/2017, from the Hon'ble High Court of Judicature at Bombay. The Petition was originally registered as Company Petition 799/2016 on 05.12.2016 at the High Court.
2. Omkar Speciality Chemicals Limited, Respondent herein, requested the MIQ Logistics Private Limited, Petitioner herein, to facilitate transport of cargo containing 1,000 Kg. of Potassium Iodate that was to be shipped from Nhava Sheva Port to Manila Port at the Philippines. Accordingly, the Petitioner provided its

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services as required and intimated the Respondent. The Bill of Lading dated 21.04.2014 is annexed with the Petition.

3. The said consignment was for some reason decided to be brought back to India, and the cost for the same was informed too and confirmed by the Respondent Company. The Petitioner requested the Respondent to pay the money for the services that it provided for shipping the goods from and back to India. For the said services provided by the Petitioner, as per the particulars of claim annexed to the Petition, the Respondent owes ₹35,66,904/- including interest at 2% per month.
4. The Petitioner had earlier issued a notice dated 25.05.2016 under section 433 and 434 of the Companies Act, 1956 requesting payment of the outstanding dues. The Respondent did not repay the amount within the stipulated time of 21 days from the date of the said notice. Hence the Petitioner preferred a petition under section 433(e) and 434(1)(a) of Companies Act, 1956 at the Hon'ble High Court of Judicature at Bombay for winding up of the Respondent Company on the grounds of inability to pay its debts.
5. Ld. Counsel for the Operational Creditor and Counsel for the Corporate Debtor is present.
6. CP 799/2016 has been received on transfer from the Hon'ble High Court of Bombay, which was earlier filed before Hon'ble High Court under Section 433(e) and 434(1)(a) of the Companies Act, 1956 against the Corporate Debtor. Given the Government Notification dated 30.6.2017, Petition was transferred to this Court under Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 and the petition was treated as an application under Section 9 of the IBC, 2016. The Petition got registered as TCP No.879/2017 in our office on 15.2.2017. Petitioner has filed details of application in Form 5.

7. Ld. Counsel appearing on behalf of the Corporate Debtor has filed the reply wherein it is stated that CP 799/2016 is not maintainable as the Petitioner failed to submit the relevant documents as per the requirements of Section 9(3)(a) of the IBC, 2016. It is further stated that as per the statutory provisions, the Operational Creditor shall along with the application, furnish a copy of the invoice demanding the payment or demand notice delivered by the Operational Creditor to the Corporate Debtor under Section 8 of IBC, 2016. The Petitioner has failed to submit the copy of the invoice and had applied by the Bill of Lading.
8. The Ld. Counsel appearing on behalf of the Corporate Debtor has relied on the law laid down by the Hon'ble NCLAT in Company Appeal (AT)(Insolvency) Nos. 285 and 286 of 2017 in the matter of *Mr M. Nandagopa Ivs Virtuous Urja Limited*. The facts of the case shows in the similar situation the Hon'ble NCLAT has held that the Petition filed under Sections 433(e) & (f), 434 (i) (a) and 439(i)(b) of the Companies Act, 1956 ,which was transferred by the Hon'ble High Court of Madras to Adjudicating Authority (NCLT), Chennai Bench pursuant to Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 is not maintainable for want of **demand notice** U/S 8 of the Code.
9. In the above case, Hon'ble NCLAT has observed that "*the petitioner has not followed the provisions of Rule 5, as no demand notice under sub-section (1) of Section 8 of the IBC was issued, nor relevant information in terms of Part IV of Form 5 was provided by the Financial Creditor.*"
- 10.** Hon'ble NCLAT has held that the Appellate Tribunal order in the matter of "*M/s. Sabari Inn Pvt Ltd vs Rameesh Associates Pvt Ltd*" has dealt with the similar issue, wherein it is held that;

***"In exercise of powers conferred under sub-section (1) and (2) of Section 434 of the Companies Act, 2013 read with sub-section (1) of Section 239 of the IBC, the Central Government framed the Companies (Transfer of Pending Proceedings) Rules, 2016 and Rule 5 relates to transfer of pending proceedings of winding up.---***

***The above rule provided that;***

***"the Petitioner shall submit all information, other than information forming part of the records transferred in accordance with the Rule 7, required for admission of the Petition under Section 7, 8 or 9 of the IBC, as the case may be, including details of the proposed Insolvency professional to the Tribunal within sixty days from the date of this notification, failing which the petition shall abate."***

11. As per Section 9 of I&B Code 2016, before the filing of the petition, **a demand notice under sub-section (1) of Section 8 is required to be issued on the Corporate Debtor**. It is only within 10 days of receipt of such notice under Section 8(1) and (2) of IBC; the Corporate Debtor may either pay the amount or may dispute the claim under sub-section (2) of Section 8 of IBC.
12. Clause (a) and (b) of sub-rule (1) of Rule 5 of the Adjudicating Authority Rules provides the format in which the demand notice/invoice demanding payment in respect of unpaid Operational Debt is to be issued by the Operational Creditor.
13. Here, the Petition under Section 9 has been filed without issuing demand notice under Section 8(1) of the Code. Given the law laid down by Hon'ble NCLAT in the case of *Mr M. Nandagopal vs Virtuous Urja Limited* supra and the case of *"M/s. Sabari Inn Pvt Ltd vs. Rameesh Associates Pvt Ltd"* supra, it is clear that

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issuance of demand notice is a precondition for filing Petition under Section 9 of the Code, even in the transferred case, where Petition has been received on transfer in accordance with Rule 5 of the *Companies (Transfer of Pending Proceedings) Rules, 2016*.

14. Given the above, we are of the considered opinion that the Petition U/S 9 is not maintainable for want of demand notice U/S 8 of the I & B Code 2016.
15. Therefore, the petition is rejected at the very threshold with liberty to file fresh petition.

Sd/-

**RAVIKUMAR DURAISAMY**  
Member (Technical)

**24<sup>th</sup> January 2019**

Sd/-

**V.P. SINGH**  
Member (Judicial)