

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT - II)

Item No. 201
(IB)-1100(ND)2020

IN THE MATTER OF:

M/s. Amrit Seair Express Pvt. Ltd.

...

Applicant/Petitioner

Versus

M/s. Hamd Foods Pvt. Ltd.

...

Respondent

Under Section: 9 of IBC, 2016

Order delivered on 31.05.2022

CORAM:

SHRI ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)

SHRI L.N. GUPTA,
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Ms. Nalini Advocate

For the Respondent :

ORDER

By filing this Petition, the Applicant has prayed to initiate the CIRP against the Corporate Debtor for the defaulted amount of Rs.1,29,19,885/- plus interest at the rate of 24%.

2. For better appreciation of the facts, we would like to refer to part-IV of the Application, the scanned copy of which is reproduced below:

PART IV

PARTICULARS OF OPERATIONAL DEBT

1.	Total Amount of Debt.	Rs.1,29,19,885/- (Rupees One Crore Twenty-Nine Lakhs Nineteen Thousand Eight Hundred and Eighty-Five Rupees) plus 24% interest.
	Details of Transactions on Account of which debt fell due, and the date from which such debt fell due.	That the Operational Creditor is in the business of carriage of express courier, mails/cargo-domestic and international since, 1996 and has acted as Clearing Agent for the Corporate Debtor. That the Corporate Debtor is a meat exporter and therefore was availing the services of the Operational Creditor as its Clearing Agent since 2017 for facilitating such export

For AMRIT SEAIR EXPRESS PVT. LTD.



		That the Operational Creditor was duly raising the invoices for the services given to the Corporate Debtor. Copy of invoices are already attached with the Demand Notice dated 05.02.2020 annexed with the present Petition and are not annexed again. That the Operational Creditor has sent various reminders to the Corporate Debtor for the unpaid Operational debt which were duly received by the Corporate Debtor. Till date no reply has been given by the Corporate Debtor. However, on receipt of such reminders, the Corporate Debtor has made a payment of meager amount of Rs. 1,34,000.00 (One Lakh Thirty-Four Thousands) on 31.01.2020. Copy of the reminders are already attached with the Demand Notice dated 05.02.2020 annexed with the present Petition and are not annexed again.
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		That the ledger account of the Corporate Debtor maintained in the books of accounts of Operational Creditor also confirms the outstanding amount of Rs.1,29,19,885/- (Rupees One Crore Twenty-Nine Lakhs Nineteen Thousand Eight Hundred and Eighty-Five Rupees). Copy of the revised Ledger Account of the Corporate Debtor is annexed herewith and marked as <u>ANNEXURE - 4.</u> That the Operational Creditor had sent a demand notice dated 05.02.2020 as per Form 3 of the NCLT Rules, to the Corporate Debtor, which was duly received by the Corporate Debtor on 07.02.2020, calling upon the Corporate Debtor to make payment to the Operational Creditor of the said Operational Debt of Rs. 1,30,76,885/- (Rupees One Crore Thirty Lakhs Seventy-Six Thousand Eight Hundred and Eighty-Five Rupees) along with interest @ 24%. Copy of the Demand Notice dated 05.02.2020 along with
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For AMRIT SEAIR EXPRESS PVT. LTD.





		speed post receipt dated 06.02.2020 and tracking report thereon is annexed herewith and marked as <u>ANNEXURE - 5 (COLLY)</u>. That the Corporate Debtor transferred an on account payment of Rs. 1,57,000/- through NEFT into the account of Operational Creditor on 06.02.2020 acknowledging the debt owed by it to Operational Creditor. Copy of Bank Statement indicating receipt of Rs. 1,57,000/- into the account of Operational Creditor is annexed herewith and marked as <u>ANNEXURE - 6.</u> That the Operational Creditor has sent a letter to the Bank to provide the Bank Certificate which is required to be filed with the Application Under Section 9 of the Insolvency and Bankruptcy Code, 2016 in terms of compliance under section 9 (3) (c) of Insolvency and Bankruptcy Code, 2016. Copy of
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		the Letter written to the Bank along with the Speed Post Receipt is annexed herewith and marked as <u>ANNEXURE - 7 (COLLY).</u>
2.	Amount claimed to be in default and the date on which the default occurred (Attach the workings for computation of default in tabular form)	Rs. Rs.1,29,19,885/- (Rupees One Crore Twenty-Nine Lakhs Nineteen Thousand Eight Hundred and Eighty-Five Rupees) along with interest @ 24%. Since the last invoice raised and presented by the Operational Creditor was on 13.01.2020, therefore, the date of default is 13.01.2020 i.e. on the date of presentation of invoice. The last payment received from the Corporate Debtor was on 07.02.2020.

Heard the Ld. Counsel appearing for the Applicant, who submits that despite several adjournments given to the Corporate Debtor, the Corporate Debtor has failed to appear, therefore, vide order dated 16.03.2022, the right of the Corporate Debtor to file the reply was closed. A demand notice was duly delivered to the Respondent and in support of its contention, Ld. Counsel has placed reliance on the tracking report placed at page 37 of the application, the scanned copy of which is reproduced overleaf :





2/20/2020

Track Consignment



Sign In

Register



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You are here Home>> Track Consignment

Quick help

Track Consignment

* Indicates a required field.

* Consignment Number

ED278138166IN

Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
New Delhi GPO	06/02/2020 15:39:49	110006	188.80	Inland Speed Post	Delhi GPO	07/02/2020 15:09:18

Event Details For : ED278138166IN

Current Status : Item Delivery Confirmed

Date	Time	Office	Event
07/02/2020	15:09:18	Delhi GPO	Item Delivery Confirmed
07/02/2020	09:24:50	Delhi GPO	Out for Delivery
07/02/2020	07:28:43	Delhi GPO	Item Received
06/02/2020	17:53:49	New Delhi GPO	Item Dispatched
06/02/2020	17:04:41	New Delhi GPO	Item Bagged
06/02/2020	15:39:49	New Delhi GPO	Item Booked

3. Ld. Counsel further submits that the Respondent on 31.01.2020 has paid an amount of Rs.1,34,000/- and the last payment was made on 06.02.2020 as per the Statement of Account placed at page 1370, the scanned copy of which is reproduced overleaf :

STATEMENT OF ACCOUNT

INDIAN BANK
S D ENCLAVE BRANCH
A B 20, Safdarjung -
Development Enclave
New Delhi
110029

Branch Code: 298 Phone No: 26175763

AMRIT SEAIR EXPRESS PVT. LTD.

224, BASEMENT, SANT NAGAR Account No. : 871340819
EAST OF KAILASH Product : OD IND SME SECURE -MIC
NEW DELHI-110065 110065 Currency : INR

ANNEXURE-6

1370

Statement From 01/12/2019 to 04/03/2020 Date : 04/03/2020 Time : 11:54:29

E-mail :

Nominee name :

Cleared Balance : 91,72,425.79Dr Uncleared Amount : 0.00 Page No. : 25
Limit : 95,00,000.00 Drawing Power : 95,00,000.00 Int. Rate : 9.90 % p.a.

Post Dt	Val Dt	Details	Chq. No.	Debit	Credit	Balance
		BROUGHT FORWARD		85,48,527.11Dr		
MUMBAI P		ORT IBUSER-SHRIDA UD SAA80549511				
		RM 97161000121				
31/01/20	31/01/20	R INTEREST		34,228.00		85,82,755.11Dr
MUMBAI F		ORT				
01/02/20	01/02/20	Y VOUCHER TFR		3,00,000.00		82,82,755.11Dr
MUMBAI F		ORT AMRIT SEAIR EXPR RTGS - HDFCR5202002016720324				
		RM 98905000120				
01/02/20	01/02/20	Y VOUCHER TFR		13,75,860.00		69,06,895.11Dr
MUMBAI F		ORT AMRIT SEAIR EXPR RTGS - HDFCR5202002016720227				
		RM 98905000120				
01/02/20	01/02/20	Y VOUCHER TFR		6,00,000.00		63,06,895.11Dr
MUMBAI F		ORT AMRIT SEAIR EXPR RTGS - ICICR5302002010073069				
		RM 98905000120				
03/02/20	03/02/20	EMT THRU CHQ 792581		98,005.00		64,04,900.11Dr
KAPASHED		A DCTMIPL RECEIVA IDIBH20034489736				
03/02/20	03/02/20	EMT THRU CHQ 792604		98,005.00		65,02,905.11Dr
KAPASHED		A ELHI CARGO SERV IDIBH20034489907				
05/02/20	05/02/20	Y CLEARING CHQ 146874			6,642.00	64,94,263.11Dr
SERVICE		BRANCH (59				
		013 CTS-CHQ:146874				
05/02/20	05/02/20	EMT THRU CHQ 792606		4,30,028.00		69,24,291.11Dr
NEHRU PL		ACE MRIT SEAIR EXPR IDIBR52020020519983488				
05/02/20	05/02/20	Y VOUCHER TFR		1,19,957.00		68,04,334.11Dr
MUMBAI F		ORT TAURUS FORWARDER 000082549771				
		RM 97161000121				
06/02/20	06/02/20	Y CLEARING CHQ 102894			1,511.00	68,02,823.11Dr
SERVICE		BRANCH (40				
		375 CTS-CLG:102894-CLG:102894/HDFC				
06/02/20	06/02/20	Y CLEARING CHQ 020205			11,936.00	67,90,887.11Dr
SERVICE		BRANCH (UNJAB AND SIND BANK				
		375 CTS-CLG:020205-CLG:020205/PSB				
06/02/20	06/02/20	Y VOUCHER TFR		1,57,000.00		66,33,887.11Dr
MUMBAI F		ORT HAMD FOODS PRIVA AXISPO0099468324				
		RM 97164000128				
07/02/20	07/02/20	Y CLEARING CHQ 041747			50,513.00	65,83,374.11Dr
SERVICE		BRANCH (UNJAB NATIONAL BANK				
		CARRIED FORWARD :		65,83,374.11Dr		

Statement Summary Dr. Count 189 Cr. Count 146 7,87,18,474.00 5,81,54,657.71

In Case Your Account Is Operated By A Letter Of Authority/Power Of Attorney Holder, Please Check The Transaction With Extra Care.

4. He further submits that an affidavit under Section 9(3)(b) of IBC, 2016 has already been filed, which is placed at page 1407 & 1408 of the Application and no dispute has been raised by Corporate Debtor, the scanned copy of which is reproduced below:

ANNEXURE-7

1408

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COMPANY PETITION NO. (IB) ____ OF 2020

IN THE MATTER OF:

M/S AMRIT SEAIR EXPRESS PRIVATE LIMITED

.....OPERATIONAL CREDITOR

V/S

M/S HAMD FOODS PRIVATE LIMITED

.....CORPORATE DEBTOR

AFFIDAVIT IN PURSUANCE TO SECTION 9 (3) (b) TO THE EFFECT THAT NO NOTICE IS GIVEN BY THE CORPORATE DEBTOR RELATING TO A DISPUTE OF THE UNPAID OPERATIONAL DEBT

I, Shri. Ravinder Sharma, son of Shri. G.S. Sharma, aged about 47 years, resident of A-2/53, Ashirwad Apartments, Paschim Vihar, New Delhi - 110063, do hereby solemnly affirm and state as under: -

- 1) That I am deposing on the basis of my own knowledge and the documents & records available with the Applicant, maintained during the ordinary course of business, all of which I believe to be true and correct.
- 2) That I confirm and reiterate the stands stated in the Insolvency Application, the above captioned application, and pray that the same be treated as a part and parcel of the present Affidavit.
- 3) That I state that the Corporate Debtor is admittedly indebted to the Operational Creditor for the sum of Rs.1,29,19,885/- (Rupees One Crore



Twenty-Nine Lakhs Nineteen Thousand Eight Hundred and Eighty-Five Rupees) along with 24% interest and in respect of the Operational Creditor's claims for the aforesaid due amount, I state that I have relied on the documents as specified in the said Insolvency Application.

- 4) That the Operational Creditor had sent a demand notice under FORM 3 of sub-rule 1(1) of Rule 5 of the Insolvency and Bankruptcy Code, 2016 and no reply to the said demand notice was ever received by the Operational Creditor.
- 5) That the Operational Creditor reaffirms that there is no dispute of unpaid operational debt pending between the parties in any Court of Law or Authorities as on date.



DEPONENT

VERIFICATION

I, the above named deponent, do hereby verify that the contents of my foregoing affidavit are true to the best of my knowledge and belief and nothing material has been concealed therefrom.

Verified at Delhi on this ____ day of March, 2020.



DEPONENT



5. On perusal of the averments made in the application and the documents on record, we notice that no reply to the demand notice has been sent by the Corporate Debtor. Even the Corporate Debtor has not appeared and filed its reply. Therefore, we have no option but to accept the averments made in the part-IV of the application regarding the defaulted amount, which is still due and payable by the Corporate Debtor.

6. Under such circumstances, in terms of Section 9(5) of the IBC, 2016. It is seen that the application is complete, no operational debt was paid and even no dispute has been raised. The Applicant has not proposed the name of the IRP.

7. In given facts and circumstances, the Operational Creditor has established the default on the part of Corporate Debtor in payment of the operational debt. The Petition filed under Section 9 fulfils all the requirements of law. Therefore, **the Petition is ADMITTED** in terms of Section 9(5)(i) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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 Act, 2002;



- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.”

8. Since there is no IRP proposed by the Operational Creditor. Therefore, this Bench appoints Mr. Kewal Krishan Saini having IBBI Registration No. IBBI/IPA-002/IP-N00629/2018-1911854 (Email : sainikewalk@rediffmail.com) from the list of panel of IPs recommended by IBBI to this Adjudicating Authority.

9. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

10. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.


(L. N. GUPTA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)