

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-2832/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Adani Logistics Ltd.

Registered office at:

Adani House.

Near Mithakhali Six Roads,

Navrangpura,

Ahmedabad.

...Applicant

Versus

Bhaskar Marine Services Pvt. Ltd.

Registered office at:

B-12/B. Durga Vihar,

Pole No. Khanpur New,

Delhi – 110062.

...Respondent



Coram:

DR. P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Karanjawala & Co., Advocates
Counsel for Respondent: Rajiv Shankar Dvivedi, Sushant Kumar Sarkar,
Rishabh Jain, Advocates



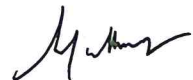
ORDER

Per Dr. V. K. Subburaj (Member Technical)

Date 20.4.2019

1. This is an application filed by the Applicant Adani Logistics Ltd. seeking to initiate corporate insolvency resolution process ("CIRP") of the Respondent Bhaskar Marine Services Pvt. Ltd., under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in clearing the debt of Rs. 24,91,860/- owed to the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Respondent approached the Applicant for transportation of their consignments to various places in India as per the directions of the Respondent and thereafter an agreement dated 11.05.2018 was executed between the Respondent and the Applicant. The Applicant was to provide Rail Logistics Services and handling of Rail Terminal and the term of the Agreement was for one year and it was agreed between both the parties that the effective date of the Agreement would be 01.04.2018. The term of the Agreement was for one year. The Agreement further



provided that the General Terms and Conditions for logistic services shall be deemed to be part of the Agreement.

- ii. As required under the Agreement the Applicant had duly provided logistics ad had transported the consignment in accordance with the directions of the Respondent and had raised various invoices for the services so rendered. In respect of these services, it was agreed between both the parties that the Respondent shall pay the amounts against the invoices raised by the Applicant.
- iii. The gravamen of this application is that despite rendering services in terms of the Agreement, the Respondent has failed to make payments to the invoices raised by the Applicant from time to time. The invoices which remain unpaid are from the period commencing from 31.03.2018 to 29.08.2019. the Applicant continued to render services to the Respondent based on the assurance given by the Respondent that the invoices will be cleared.
- iv. Clause 6.3 of the Agreement provided that the Respondent will make payment of the invoice amount within 30 days from the date of receipt of invoice. The said clause is reproduced hereinbelow:



“The Customer shall pay the Invoice amount and/or any payment due within 30 days (without any demur or protest) as per Annexure-I from date of receipt of Invoice or payment demand.”

- v. Clause 6.4 of the Agreement provides that non-payment within the stipulated period will attract penalty at 18% p.a. calculated at pro rata basis.
- vi. The Applicant vide letter dated 11.12.2018 addressed to the Respondent called upon the Respondent to clear the pending dues amounting to Rs.24,91,860/-. Further, the ledger account and the details of the pending invoices were also enclosed with the said letter.
- vii. The Respondent vide letter dated 11.12.2018 addressed to the Applicant admitted the outstanding amount amounting to rs.24,91,860/- and stated that there was a cash crunch in the company and gave assurance that payment will be made within one month or by the end of February. It is humbly submitted that the Respondent has acknowledged the amount due by admitting the debt.
- viii. Since no payments were being made by the Respondent, the Applicant was constrained to issue demand notice dated 22.08.2019 under Section 8 of the Code read with applicable



rules. The said demand notice was received by the Respondent on 03.09.2019. On receipt of the demand notice, the Respondent neither issued any notice of dispute nor made any payment to the Applicant.

2. On 18.11.2019 the Respondent appeared before the Tribunal and admitted the debt and submitted that it did not wish to file any reply to the application.
3. In light of the documents filed by the Applicant and the admission of the Respondent, the present application is admitted and the CIRP of the Respondent is initiated.
4. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:
 - “(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.

- (2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

5. From the list of interim resolution professionals (“IRP”) made available by IBBI vide File No. 25/02/2019-NCLT, Mr. Sudershan



Gupta (email id: sudershan2756@gmail.com: phone number: 9810864740) is being confirmed by this Bench as the IRP in the present matter. He shall take such further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

6. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

S-d

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

S-d

(DR. P.S.N. PRASAD)
MEMBER (JUDICIAL)

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Note: In terms of Rule 151 of NCLT Rules, 2016 and in view of Hon'ble Member (Judicial) sitting at the Jaipur Bench at NCLT, Rajasthan this order is being pronounced on behalf of Bench – VI by Hon'ble Member (Technical) Dr. V. K. Subburaj.