IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 2315/IBC/NCLT/MAH/2018
Under Section 9 of the I&B Code, 2016
In the matter of
Hermes Travel & Cargo Private Limited
....Operational Creditor
v/s.

Goodrich Logistics Private Limited
.... Corporate Debtor

Order Dated 18.01.2019

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Adv. Jehan Mehta i/b Adv. Rushabh Sheth

For the Respondent: Adv. Sachin Shankar

Per V.P. Singh, Member (Judicial)

ORDER

1. It is a Company Petition filed u/s 9 of Insolvency & Bankruptcy Code, 2016 (**IBC**) by Hermes Travel & Cargo Private Limited, Operational Creditor or Petitioner, against Goodrich Logistics Private Limited, Corporate Debtor, to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor on the grounds that as on 31.03.2018 the Corporate Debtor has defaulted in making payment of ₹10,73,561/- as principal and ₹3,36,335.97/- as interest thereon. The said amount is due for payment for services of freight forwarding,

carrier, handling/cartage, air waybill fee and import/export document processing.

2. It is the case of the Operational Creditor that it has provided services of freight forwarding, carrier, handling/cartage, air waybill fee and import/export document processing to the Corproate Debtor and raised 4 invoices that were duly received by the Corporate Debtor. Details of the said 4 invoices is given as below:

S. No.	Date of invoice	Invoice Amount (₹)
i.	15.12.2016	4,58,689
ii.	15.12.2016	6,76,394
iii.	15.12.2016	99,424
iv.	18.02.2017	2,874
TDS deducted		(1,63,820)
Total outstanding principal		10,73,561

3. The invoices contained explicit term that if the payment is delayed for more than 21 days then it will be charged a penal interest at 21% p.a. It is stated that the Corporate Debtor has admitted its claim in its e-mail dated 14.05.2018, 18.05.2018 and 19.05.2018 and 22.05.2018.

4. The petitioner has annexed its bank statements for the period 25.04.2018 to 06.06.2018 and a bank certificate dated 05.06.2018 to show that the impugned outstanding amount is not received during that period.

5. The Petitioner vide its letter dated 27.03.2018 has intimated the Corporate Debtor about the outstanding amount and demanded the payment thereof.

6. The Petitioner sent a demand notice dated 25.04.2018, in Form-3 and Form-4 along with invoices and calculations, stating the total outstanding amount under the 4 invoices as ₹12,37,381/- and demanded the payment of the same along with interest amount calculated at 21% p.a. It is stated on affidavit that the notice was duly received by the Corporate Debtor and a postal receipt is also annexed to the petition evidencing the delivery.

7. The Corporate Debtor in its e-mail dated 14.05.2018 admitted that it has an outstanding amount of ₹10,70,691/- payable to the Petitioner and assured the payment of the same. The Corporate Debtor, again on 18.05.2018 and 19.05.2018 confirmed its liability to pay to the Petitioner. On 22.05.2018, the Corporate Debtor sent an e-mail attaching a copy of a cheque for ₹10,73,561/- for final settlement of its outstanding.

8. However, the said cheque was not delivered to the Petitioner neither the payment.

9. The Corporate Debtor filed its Affidavit in Reply on 06.11.2018 alleging that the Petitioner has fabricated its ledger account and has raised a dispute upon the principal amount. To show this dispute, the Corporate Debtor relies upon the e-mail conversations. The Corporate Debtor in its reply has stated that they have issued various e-mails to the Petitioner stating that as per their records the outstanding amount is only ₹10,70,691/-. The Corporate Debtor has raised dispute upon the interest as well.

10. It is pertinent to note that the Petitioner vide its e-mail dated 22.05.2018 has explicitly stated that as extracted below:

"We confirm that you can proceed with making the lump sum payment of ***INR 10,73,561 latest by tomorrow (23 May 2018)****"*

11. We have heard the arguments of both the sides and perused the records and documents.

12. When a Section 9 Petition is filed before this Tribunal, we have to admit the application if the application is complete in all respects; there is no payment of unpaid operational debt; the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4) of section 9, if any.

13. The Petition is supported by affidavit of Mr. Mahesh N. Thakker, Chairman of the Corporate Debtor who is duly authorized to file the present petition.

14. The Petitioner has annexed with the Petition the impugned invoices, its bank statements for the period 25.04.2018 to 06.06.2018 and a bank certificate dated 05.06.2018 to show that the impugned outstanding amount is not received during that period.

15. The Petitioner has sent the Demand Notice dated 25.04.2018 and the same was duly delivered to the Corporate Debtor along with the annexures. The Corporate Debtor has replied to the Demand Notice through its e-mail stating that as per its records the outstanding amount was only ₹10,70,691/-. The Petitioner vide its e-mail dated 22.05.2018 has confirmed and requested the Corporate Debtor to remit ₹10,73,561/-. This amount is admitted by the Corporate Debtor firstly, by sending a copy of

the cheque for this amount via e-mail and, finally, in its Affidavit in Reply.

16. It may be noted that a copy of the cheque for an amount of ₹10,73,561/- was sent via e-mail but the original cheque or the payment was not handed over to the Operational Creditor. Thus the said amount is admittedly due and payable and in default.

17. It is pertinent to note the observation made by the Hon'ble NCLAT in *The Dhar Textile Mills Ltd. vs. Asset Reconstruction Company (India) Ltd.*, Company Appeal (AT) (Insolvency) No. 11 of 2019

> *"…it is clear that the* ***Adjudicating Authority is not required to decide mis-match of 'debt' occurred in one place or the other place and the mis-match of 'debt' cannot be a ground to reject the claim if the amount is due more than Rupees One Lakh and there is a 'default'****. Under Section 7(5), the Adjudicating Authority is to be satisfied that a 'default' has been occurred.* ***If the 'debt' is more than Rupees One lakh, then the Adjudicating Authority is required to admit the application****, except where there is defect, which can be removed within seven days from the date of receipt of the notice from the Adjudicating Authority. The 'corporate debtor' may only take plea that the 'default' has not occurred in the sense that 'debt' which has also includes 'disputed claim' is not due, a 'debt' may not be due, if it is not payable in law or in fact."*

18. Thus it is clear from the aforementioned judgment that at this stage we only have to ascertain if there is any debt for an amount more than ₹1,00,000/- due and payable and in default.

19. From the perusal of the correspondence that has transpired between both the sides, it is clear that both the sides admit that the Corporate Debtor is liable to pay an amount of nearly ₹10,73,000/- to the Petitioner and the same has not been paid yet. There is no challenge to this petition upon any ground other than the claim amount.

20. Out of the total claim amount including the principal and the interest, the principal amount cannot be said to be in dispute in light of the above noted facts as both the sides have agreed to ₹10,73,561/- as payable by the Corporate Debtor to the Petitioner.

21. So far as the interest amount is concerned, it would not, in any manner hamper the admission of this petition. This Tribunal, at this point, do not have to adjudicate upon the quantum of debt. All that the Tribunal, at this stage has to see is if there is debt of more than ₹1,00,000/- which is due and payable, as prescribed under section 4 of IBC.

22. The Corporate Debtor has in its e-mail dated 22.05.2018 stated that it is ready to pay ₹10,73,561/- if the Petitioner confirms that after this payment no amount against interest or any other thing would remain due from the side of Corporate Debtor. This cannot amount to a pre-existing dispute as it has been raised after the Demand Notice was served under section 8 of IBC.

23. Given that an amount of ₹10,73,561/- is already admitted by both the sides, there is no dispute in the present petition under section 5 (6) of IBC.

24. Therefore, there is a clear default on the part of the Corporate Debtor in payment of outstanding amount to the petitioner, and there was no existing dispute regarding the same. The petition is complete in all respects.

25. The Operational Creditor had recommended name of Interim Resolution Professional (**IRP**) with his consent and there are no disciplinary proceedings pending against the proposed IRP.

26. On perusal of the pleadings and documents submitted and the argument of the counsel appearing for the operational creditor, we are of the considered opinion that the petition is complete in all respects and is fit for Admission under the Insolvency and Bankruptcy Code, 2016.

ORDER

The petition filed under Section 9 of Insolvency and Bankruptcy Code, 2016 is admitted. We further declare moratorium U/S 14 of the I & B Code with consequential directions as mentioned below:

I. That this Bench at this moment prohibits:

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 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 corporate debtor.

II. It is further made clear that:

a. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

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

c. That the order of moratorium shall have effect from 18.01.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

d. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

e. That this Bench hereby appoints Mr. Cushru Shroff having registration number IBBI/IPA-001/IP-P00342/2017-18/10643 as Interim Resolution Professional to carry the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

27. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or whatsapp.

Sd/-	Sd/-
RAVIKUMAR DURAISAMY	**V.P. SINGH**
Member (Technical)	Member (Judicial)

18th January, 2019