

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH**

**C.P. (IB) 3630/MB/2019 and M.A. 62
of 2020 in C.P. (IB) 3630/MB/2019**

Under Section 8 & 9 of the IBC, 2016

In the matter of

Shri Guru Containers

... Petitioner

v/s.

Tarang Exports Private Limited

... Corporate Debtor

Corrigendum delivered on: 24.02.2020

Per: Chandra Bhan Singh, Member (Technical)

**Corrigendum in respect of C.P. (IB) 3630/MB/2019 and
consequent Revised Order**

Paragraph No. 4 and 5 in Order dated 17.02.2020 in C.P. (IB) 3630/MB/2019 wrongly figures in the order. In view of this, a revised Order is issued today after deleting para no. 4 and 5 in the Order dated 17.02.2020.

SD/-
Chandra Bhan Singh
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)



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On 03.03.2020

Assistant Registrar
National Company Law Tribunal Mumbai Bench

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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**C.P. (IB) 3630/MB/2019 and M.A. 62 of
2020 in C.P. (IB) 3630/MB/2019**

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In the matter of

Shri Guru Containers

... Petitioner

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... Corporate Debtor

Revised Order Delivered on: 24.02.2020

Coram: Hon'ble Shri Chandra Bhan Singh, Member (Technical)
Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

For the Petitioner: Adv. Saurabh Pandya, Adv. Sharad Bansal, Adv. Naushad Engineer

For the Corporate Debtor: Adv. K. L. Poddar, Adv. Igwala, Adv. Poonam Ketkar, Adv. Mrinalika Devarapalli, Adv. Sagar Ghogre

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is a Company Petition filed by **Shri Guru Containers** (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against **Tarang Exports Private Limited** (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹51,88,154/- inclusive of interest at the rate of 18% per annum on the delay in payment by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Petition is filed on 15.10.2019 for initiating Corporate Insolvency Resolution Process (**CIRP**).

The Petition is filed by Mr. Som Prakash Jhunjunwala, Sole Proprietor of the Shri Guru Containers, authorized vide letter dated 10.10.2019 which is annexed to the Petition.

Contentions made by the Petitioner:

The Petitioner contended that he entered into business with the Corporate Debtor in 2018 for the supply of plastic granules/ dana.



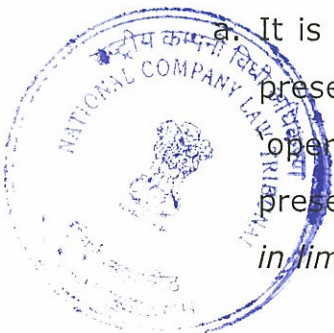
The Petitioner supplied goods worth ₹1,17,78,212/- to the Corporate Debtor and raised 6 tax invoices from 06.03.2018 to 16.03.2018 payable on the date of respective invoice. The Corporate Debtor accepted the goods supplied by the Petitioner pursuant to the tax invoices. However, the Corporate Debtor paid a sum of ₹76,75,253/- only and hence, a principal sum of ₹41,02,959/- along with interest of ₹10,85,195/- at the rate of 18% per annum is due under the six tax invoices. A statement showing the details of all the invoices raised, monies received, dates of payment, pending amounts, delay in payment and interest on delay in payment is annexed as Annexure II.C to the Petition.

4. Despite several requests made by the Petitioner, the Corporate Debtor failed to clear its dues. Thus, on account of non-payment of outstanding dues, the Petitioner issued Demand Notice dated 04.04.2019 in Form 3 under Section 8 of the I&B Code, 2016 to the Corporate Debtor demanding principal of ₹31,35,745/- including interest calculated at the rate of 18% per annum on the delay in payment.
5. The Petitioner has annexed the ledger statement of the Petitioner reflecting the amounts due from the Corporate Debtor, MSME certificate issued in favor of the Petitioner and certificate issued under Section 9(3)(c) of the Code by the Punjab National Bank reflecting a sum of ₹76,75,253/- received from the Corporate Debtor.

Contentions made by the Corporate Debtor:

6. The Counsel for the Corporate Debtor replied to the said demand notice on 30.09.2019 and denied all allegations averred in the demand notice. He asked for the inspection of the purchase orders along with delivery challans which were not annexed with the said notice and to prove the contractual rate of interest as agreed by the Corporate Debtor. He also stated that there is the price difference dispute raised by the Corporate Debtor for which the Corporate Debtor raised the debit note on the Petitioner showing a difference of ₹41,22,374.
7. The Corporate Debtor in its Reply to the Petition raised the following contentions:

a. It is contended that the Petitioner has no *locus standi* to file the present Petition under Section 9 of the Code as there is no 'operational debt' due from the Corporate debtor. Therefore, the present Petition is not maintainable and deserves to be dismissed *in limine*.

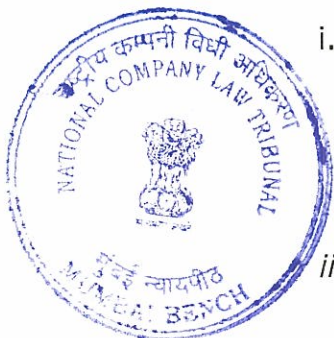


- b. It is contended that the statutory demand notice issued under Section 8 of the Code as well as the said Petition are incomplete, defective and vague in material respects and are not in compliance with the requirements prescribed under provisions and applicable rules of the Code.
- c. It is further contended that a sum of ₹41,02,959/- is alleged to be due and payable on account of the principal amount whereas a sum of ₹10,85,195/- is alleged to be due and payable on account of interest charged at the rate of 18% per annum up to 20.06.2019. However, neither the demand notice nor the alleged invoices in any way specify or state any contractual rate of interest whatsoever or interest rate of 18% per annum as contractually agreed by and between the parties.
- d. It is also contended that the alleged 6 invoices are incomplete, defective and vague in material respects and that the Corporate Debtor denies and disputes the contents and reliability of the invoices. It is submitted that the different claims arising out of different sales/ purchases in respect of different goods alleged to have been supplied under different invoices, having different amounts, dates of default and cause of action, cannot be clubbed together as a singular defaulted debt.
- e. It is further contended that the claim of the Petitioner, that it had allegedly supplied goods to the Corporate Debtor at the rate of ₹96.50/- per Kg. in March 2018 for which the Corporate Debtor had made partial payments, is without any proof as the Petitioner failed to set out the contractual basis on which the said amount is alleged to be due.
8. The Petitioner through its Rejoinder dated 03.01.2020 denied the contents of the Reply filed by the Corporate Debtor and contended that the facts of the case that the Corporate Debtor has sought to place on record are sham, concocted and bogus. It is further contended that the operational debt being claimed by the Petitioner is in respect of goods admittedly delivered to the Corporate Debtor and not goods that were to be delivered. Also, the Petitioner paid Goods and Services Tax (GST) on the goods supplied to the Corporate Debtor. Similarly, the payments made by the Corporate Debtor to the Petitioner were towards part payment of goods supplied by the Petitioner to the Corporate Debtor and not towards advance for goods to be supplied in future.



Findings:

9. This Bench, after going through the averments made in the Petition and the arguments made during hearing, comes to the following findings:
- a. That the Counsel for the Petitioner argued the case and has pointed out that he has a valid claim through several unpaid tax invoices and as per his ledger account statement. There is a clear liability of payment of the said tax invoices and Corporate Debtor has committed default in payment of the same. Hence, this Petition deserves admission.
 - b. That the Corporate Debtor did not raise any dispute before the issue of the demand notice under Section 8 of the Code by the Petitioner upon the Corporate Debtor. It was raised only after issuing demand notice which proves to be a clear afterthought and thus, there is no pre-existing dispute as per Section 5(6) of the Code.
 - c. That the 18% rate of interest, which is been charged by the Petitioner on the outstanding amount of debt, is as per Section 16 of the MSME Act, 2006, which is extracted below:
"Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank."
 - d. That the Corporate Debtor relied on the following judgements during hearing but these are completely distinguishable from the facts of this case and hence, those judgements will not be helpful to the Corporate Debtor:
 - i. *International Road Dynamics South Asia Pvt. Ltd. vs. Reliance Infrastructure Ltd. And International Road Dynamics South Asia Pvt. Ltd. vs. D. A. Toll Road Pvt. Ltd. (2017 SCC OnLine NCLAT 218)*
 - ii. *Surendra Trading Company vs. Juggilal Kamlpal Jute Mills Company Ltd. (2018 SCC OnLine NCLAT 251)*
 - iii. *Gopal Krishnaji Ketkar vs. Mohamed Haji Latif & Others ((1968) 3 SCR 862: AIR 1968 SC 1413)*



iv. *K. Kesava vs. Ajay Gopaldas Samat (HUF) & Ors. (Company Appel (AT) No. 36 of 2018)*

v. *Drulum India Pvt. Ltd. vs. Sharma Kalypso Pvt. Ltd. (2018 SCC OnLine NCLAT 916)*

- e. That the rest of the contentions of the Corporate Debtor are baseless and do not hold any ground.
10. This Bench having been satisfied with the Petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this Petition declaring Moratorium with the directions as mentioned below:
- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; 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;
- (b) 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;
- (c) 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;
- (d) that the order of moratorium shall have effect from 24.02.2020 till the completion of the CIRP 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;
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code;
- (f) that this Bench hereby appoints Mr. Jitendra Palande, having Registration No. IBBI/IPA-003/IP-N00028/2017-18/10188 as Interim Resolution Professional to carry the functions as mentioned under the Code.

11. Accordingly, this Petition is admitted.



12. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.
13. M.A. 62 Of 2020 in C.P. 3630 of 2019 has been filed by the Corporate debtor seeking inspection of record of the Petitioner. M.A. 62 of 2020 is disallowed in view of the fact that the debt has been admitted by the Corporate Debtor and the debt and default is established.

SD/-
Chandra Bhan Singh
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)



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Assistant Registrar
National Company Law Tribunal Mumbai Bench

