

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH (URGENT HEARING THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 19.08.2020 AT 10.30 AM

1

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 627/9/HDB/2019
NAME OF THE COMPANY	La Nourriture India Specialties Ltd
NAME OF THE PETITIONER(S)	Om Logistics Ltd
NAME OF THE RESPONDENT(S)	La Nourriture India Specialties Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

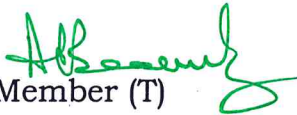
Counsel for Respondent(s):


Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Matter is listed today for orders.

CP (IB) No. 627/9/HDB/2019 is dismissed vide separate orders.


Member (T)


Member (J)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**CP (IB) No. 627/9/HDB/2019
U/s. 9 of Insolvency & Bankruptcy Code, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016**

Between:

M/s. Om Logistics Limited
130, Transport Centre, Ring road
Punjabi Bagh
New Delhi - 110035

... Petitioner / Operational Creditor

VERSUS

M/s. La Nourriture India Specialities Limited
Plot No.49, Shed NO.2, Phase-III
IDA, Cherlapally
Hyderabad, Rangareddy
Telangana – 500 051

... Respondent/ Corporate Debtor

Date of order: 19.08.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Sri Veera Brahma Rao Arekapudi, Member (Technical)

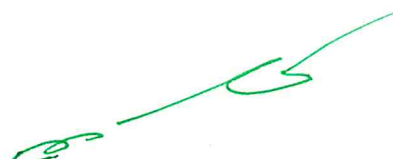
Parties / Counsels present:

For the Petitioner : Ms. Neelam Naranja, Ms. Kajal Jaiswal
Advocates

For the Respondent: Mr. Ashok Talla & Mr. Nitish Bandari
Advocates

Per: Hon'ble Sri Veera Brahma Rao Arekapudi, Member (Technical)

Heard on: 13.03.2020, 18.03.2020, 21.07.2020, 03.08.2020, 12.08.2020



ORDER

1. The instant Petition is filed by M/s. Om Logistics Limited / Operational Creditor alleging that M/s. La Nourriture India Specialities Limited /Corporate Debtor had defaulted an amount of Rs.2,18,437/- (Rupees Two Lakhs Eighteen Thousand Four Hundred and Thirty Seven only) which includes principal amount of Rs.1,27,074/- and interest @ 24% till 28.08.2019 is Rs.91,363/- . The details are as follows:

Invoice No.	Bill Date	Due Date	Bill Amount (in Rs.)	Receivable (in Rs.)
16011613001246	25-Jul-16	14-Aug-16	45,500	45,500
16011613001362	01-Aug-16	21-Aug-16	45,500	45,500
16011613002088	09-Sep-16	29-Sep.-16	36,074	36,074
Total				1,27,074
Interest @ 24% till 28.08.2019 (Calculation Sheet attached) A-VII				91,963
Total amount due with interest				2,18,437

Hence, this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

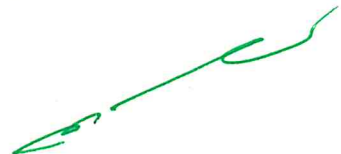
2. The averments of the petition filed by the Petitioner/Operational Creditor in brief are described hereunder:
- i. M/s. Om Logistics Limited/Operational Creditor is engaged in the business of providing Logistics Solutions to all multi-nations and reputed Indian Companies, including transportation by Road (Surface & Express), Air, Railway and Warehousing across





the country. M/s. Om Logistics Limited / Operational Creditor and M/s. La Nourriture India Specialities Limited / Corporate Debtor had entered into a Contract dated 03.03.2016, which is annexed as **Annexure-IV** to the application for providing transportation services for movement of valuables and raised three invoices by the Operational Creditor for a total amount of Rs.1,27,074/-.

- ii. It is averred in terms of the Contract dated 03.03.2016, within 20 days from the date of issue of the invoices, payment to be made by the Corporate Debtor to the Operational Creditor and the Corporate Debtor failed to make the payments within the grace period and the interest accrued on the invoices amount is Rs.91,363/-.
 - iii. It is averred the Operational Creditor made several requests to clear the outstanding payments but no payments were received from the Corporate Debtor and the Operational Creditor was constrained to issue demand Notice on 05.07.2018 to the Corporate Debtor under Insolvency and Bankruptcy Code, 2016, which was received by the Corporate Debtor on 09.07.2018.
 - iv. It is averred even after the issue of the demand notice, neither received any payment nor any convincing response from the Corporate Debtor and any notice of dispute towards the outstanding payment. Hence the petition.
3. The averments made in the counter filed by the Corporate Debtor are described as follows:
- i. The Company petition is prima facie not maintainable on the following grounds:



- a. The Operational Creditor has not filed the record of default alongwith the Company Petition.
 - b. The Operational Creditor has suppressed the facts that there are pre-existing disputes with regard to the alleged services provided between the Operational Creditor and the Corporate Debtor.
 - c. The Operational Creditor did not file any proof of booking freight servicesand the details of the consignments.
 - d. The Operational Creditor has intentionally suppressed the fact that the La Nourriture is completely different entity from the Corporate Debtor i.e. La Nourriture India Specialities Limited. The Operational Creditor herein intentionally and deliberately by suppressing the facts, with malafide intention dragged the Corporate Debtor to the dispute and thereby caused irreparable loss and damage in pacifying the present litigation. As such, the present application deserves to be dismissed in toto by imposing heavy costs apart from taking other measures to prevent further abuse of process of law.
4. It is also averred that the Operational Creditor issued a demand notice dated 05.07.2018 but there are pre-existing disputes between the parties with respect to the alleged services. Therefore, the Corporate Debtor is not liable to pay any amount to the Operational Creditor as there is no operational debt for the Petitioner to proceed under the provisions of Insolvency and Bankruptcy Code, 2016 and as such the company petition is liable to be dismissed in limini.
5. It is averred that the Corporate Debtor and the Operational Creditor has entered into an Agreement for freight services on





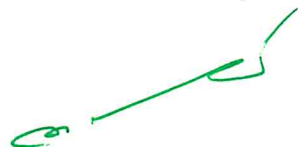
03.03.2016 and according to that the Corporate Debtor never placed any orders for transportation of any goods till date and the alleged invoice No.16011613000785, dated 29.06.2016, for Rs.45,500/- are not from the Corporate Debtor. Therefore, the Corporate Debtor Company is not liable to pay any single pie to the Operational Creditor. Therefore, the present application deserves to be dismissed in limini.

6. It is averred as there is no signature of the consigner or consignee as the consignment has been received / delivered. No lorry receipts produced in support of the alleged invoices of the Operational Creditor and without filing any proof simply harping on false invoices the Operational Creditor approached this Hon'ble Tribunal with unclean hands and with malafide intention harping on false and created documents. It is also averred the Operational Creditor is trying to misguide the Hon'ble Tribunal under the guise of computer generated invoices without producing list of goods consigned or lorry receipt and mischievously harping on the false documents filed the present application for initiating Corporate Insolvency Resolution Process, which is nothing but abuse of process of law and also a fraud and mischief played by the Applicant before this Tribunal.
7. It is averred except the alleged three invoices there is no other document or correspondence from the Operational Creditor till issuing Notice under Rule 5 of Insolvency & Bankruptcy Rules, 2016 and even after the said notice there is no correspondence till date.
8. It is averred the present petition has been filed merely as an arm twisting tactics by the Operational Creditor to extract money from the Corporate Debtor illegally and unethically, by playing fraud not only against the Corporate Debtor, but also before the Tribunal as the Invoices are concern they are false and fabricated and created




for the purpose of playing mischief taking undue advantage of the provisions of law.

9. It is averred there are pre-existing disputes between the Operational Creditor and the Corporate Debtor as to the existence of any debt more particularly under the cover of the alleged invoices, the Corporate Debtor has chosen to initiate the Corporate Insolvency Resolution Process which is contrary to Section 9(5)(ii)(d) of the Insolvency & Bankruptcy Code, 2016. As such, the provisions of I&B Code, 2016 cannot be invoked and the present petition is liable to be dismissed in limine.
10. Heard the Counsel for Petitioner / Operational Creditor and the Respondent / Corporate Debtor. The Learned Counsel for Petitioner submits that Operational Creditor has entered into a contract on 03.03.2016 for transportation of goods of the Corporate Debtor.
11. Learned Counsel further submitted that Operational Creditor accordingly raised three invoices dated 25.07.2016, 01.08.2016 and 09.09.2016 totaling to Rs.1,27,074/-. Copies of these invoices are available at pages 25 to 27 of the petition. It is submitted by her that the Corporate Debtor inspite of various reminders did not pay any amount against the said invoices and therefore Operational Creditor issued statutory Demand Notice on 05.07.2018 demanding from the Corporate Debtor an amount of Rs.1,27,024/-. It is submitted by her that the Corporate Debtor did not bother to send any reply to the said notice. Therefore, there being no other recourse than to file a petition under the Insolvency & Bankruptcy Code, 2016, Operational Creditor filed the present petition. It is submitted by her that in terms of the said invoices an interest @ 24% on the due amount is also recoverable from the Corporate Debtor. Accordingly, the claim for the purpose of the present proceedings under Insolvency &



Bankruptcy Code has been worked out at Rs.2,18,437/-, the details of which have been given at page 29 of the petition. In view of the said submissions, the Counsel pleads for admission of the present petition against the Corporate Debtor.

12. The Counsel for the Corporate Debtor on the other hand submitted that the present petition is squarely based on the said alleged three invoices and no other document or correspondence from the petitioner company has been filed to confirm the said transactions.
13. It is further submitted by him that the alleged invoices are not supported by any lorry receipts to confirm transportation of any materials by the Operational Creditor. It is submitted by him that the Petitioner with malafide intention created false documents and filed the present petition. It is further submitted by him that all the three invoices appear to be generated on 25.07.2016, 01.08.2016 and 09.09.2016 and are barred by limitation. To support his aforesaid contention, the learned Counsel for Corporate Debtor has relied upon Hon'ble Supreme Court decision in the case of B.K.Educational Services Pvt. Ltd. vs. Parag Gupta & Associates. In view of this, the Counsel for Corporate Debtor submits that the present petition deserves to be dismissed.
14. We have seen the petition, counter filed by the Corporate Debtor and all averments advanced by both the counsels. It is seen from the copies of three invoices available as Annexure I (page 25 to 27) of the petition that the said invoices are issued on 25.07.2016, 01.08.2016 and 09.09.2016 respectively. Further, in terms of contract dated 03.03.2016, a grace period of 20 days is allowed to the Corporate Debtor for making the payment. Accordingly, the due dates for the said invoices as per petitioner's own calculation become 14.08.2016, 21.08.2016 and 29.09.2016 as given at page 29 of the petition. As stated earlier, the Counsel for the Corporate Debtor has relied upon Hon'ble Supreme Court Judgement in the



case of B.K. Educational Services Pvt. Ltd. with regard to applicability of the provisions of Limitation Act to applications filed under Sections 7 and 9 of the Insolvency & Bankruptcy Code. In the said case, the Hon'ble Supreme Court has held that *"the right to sue, therefore, accrues when a default occurs. If the default has occurred over three years period to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, section 5 of the Limitation Act may be applied to condone the delay in filing such application"*.

15. In the present case, it would be seen that the petition has been filed under Insolvency & Bankruptcy Code on 23.09.2019 which is within 3 years from the due date with regard to only one invoice i.e. Invoice No.16011613002088, dated 09.09.2016, after considering the grace period of 20 days as agreed between the parties in terms of clause 2.4 of the Agreement dated 03.03.2016 as the right to sue under this invoice accrues on 29.09.2016. For the other two invoices for which the due date is 14.08.2016 and 21.08.2016 are clearly barred by limitation as the present petition has been filed on 23.09.2019. The invoice dated 09.09.2016 is only for an amount of Rs.36,074/- and even if the interest @ 24% is added, the total amount comes to Rs.61,288/-. This is well below the threshold limit of minimum amount of default of Rs.1,00,000/- for any petition under section 7 or 9 to be considered/admitted by this Tribunal in terms of Section 4 of the Insolvency and Bankruptcy Code, 2016. Accordingly, the petition deserves to be dismissed on the said grounds. The petition is accordingly dismissed. No order as to costs.

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

RATAKONDA MURALI
MEMBER (JUDICIAL)

Syamala