

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

**(IB)-2087(ND)2019**

**IN THE MATTER OF:**

**M/s. Sahaj Bharti Travels  
Registered Office at 1257,  
Street No. 10, Madan Puri,  
Gurgaon, Haryana-122001**

**...Applicant/ Operational Creditor**

**VERSUS**

**M/s. HCL Technologies Limited  
Registered Office  
At 806, Siddharth, 96 Nehru Place,  
New Delhi-110019**

**...Respondent/ Corporate Debtor**

**Section: 9 of IBC, 2016**

**Order Delivered on : 17.01.2022**

**CORAM:**

**SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)**

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

**PRESENT:**

<b>For the Applicants</b>	<b>: Adv. Pragya Sharma, Adv. Mohit Arora</b>
<b>For the Respondent</b>	<b>: Adv. Sameer Jain, Adv. Jayashree Parihar, Adv. Aastha Saxena and Mr. Mritunjay Kumar A.R for Respondent HCL</b>

## **ORDER**

**PER SHRI L. N. GUPTA, MEMBER (T)**

M/s. Sahaj Bharti Travels (for brevity '**Applicant/Operational Creditor**') has filed the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. HCL Technologies Limited (for brevity '**Respondent/Corporate Debtor**').

2. That the Corporate Debtor namely, M/s. HCL Technologies Limited is a Company incorporated on 12.11.1991 with CINL74140DL 1991PLC046369 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 806, Siddharth, 96, Nehru Place, New Delhi 110019. Hence, the jurisdiction lies with this Bench.

3. That the Authorized Share Capital of the Corporate Debtor is Rs.6,03,40,00,000 and Paid-up Share Capital is Rs.5,42,73,30,192 as per the Master Data of the Corporate Debtor on the MCA website.

4. It is submitted that the Applicant is engaged in the business of providing transport services on contract basis. That it entered into a registered Agreement for Transport Services (for brevity referred to as "**ATS**") dated 19.11.2015 with the Corporate Debtor for provision of transport services for a period of 3 years from 20.04.2015 to

30.04.2018 and which was renewable on mutual consent. It is submitted by the Operational Creditor that the agreement was mutually extended up to 31.12.2018 and as there was no further extension, the agreement expired on 31.12.2018. It is added by him that the last payment was received in June 2017. In Part IV of the Application, the Operational Creditor has claimed the total unpaid Operational debt of Rs.3,54,10,565/-.

5. That the particulars basing on which the Applicant has claimed its Operational Debt are given under Part IV of the Application, the scanned copy of which is reproduced below :

**PART-IV**

<b>PARTICULARS OF OPERATIONAL DEBT</b>		
1.	Total amount of debt, details of transaction on account of which debt fell due, and the date from which such debt fell due.	<p><b>Total Amount of Debt:</b>  Rs. 3,54,10,565/- (Rupees Three Crore Fifty Four Lacs Ten Thousands Five Hundred Sixty Five Only) including interest including interest @ 18% per annum from 31.12.2018 for providing lease services to the Corporate Debtors.</p> <p>a) The Operational Creditor and Corporate Debtor entered into a registered service agreement dated 19.11.2015 for provision of transport services for the period of 3 years commencing from 20.04.2015 till 30.04.2018. The copy of the agreement is annexed herewith as Annexure-A-1</p> <p>b) That the Operational Creditor provided its transport service to the Operation Debtor initially for a period of 3 years on the agreed</p>

		<p>terms envisaged under the agreement dated 19.11.2015 which was effective from 20.04.2015 till 30.04.2018. The payment terms were decided between the operational creditor and the Corporate Debtor as per the schedule-A attached to the agreement.</p> <p>c) The operational creditor in terms of the aforesaid agreement deployed varying number of 7+1 and 4+1 vehicles for to and fro transport of employees from pre-determined points to various sites of Corporate debtors as per the requirement of the Corporate Debtor.</p> <p>d) That one of the Important terms and conditions of the agreement envisaged in the schedule A of the agreement is reproduced below:</p> <p><b>"AGREEMENT FOR TRANSPORT SERVICES Schedule A</b>  <b><u>Other terms and conditions</u></b>  a. For 7 +1 seaters the above rate will be applicable with minimum running guarantees of 7000 km per cab per month on cumulative basis for dedicated registered fleet with HCL. This shall be effective from 1<sup>st</sup> September, 2015."</p>
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		<p>From the bare perusal of the above mentioned clause it is apparent that the operational Creditor was entitled to minimum guarantee kilometers 7000, whether the corporate debtor takes the use of the 7+1 seater vehicles to 7000 kms or not.</p> <p>e) That the operational creditor in view of the agreement, continued to provide the services to the corporate debtor. The agreement was further mutually extended up to 31.12.2018 by way of email of Mr. Vikas Trivedi dated 08.06.2018. There has been no further extension and the term of the agreement has expired as on 31.12.2018. The email is annexed herewith as <b>Annexure-A-2</b></p> <p>f) That another clause of the agreement which requires attention is reproduced below:</p> <p><i>"Clause 39: Except or otherwise provided for herein, no term or condition in this agreement may be modified, amended or waived, except by a written agreement signed by both the parties."</i></p> <p>In view of the above, the Corporate Debtor unilaterally cannot amend</p>
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		<p>the terms of the aforesaid contract without any written agreement to be signed by both the parties.</p> <p>g) That since the beginning of the agreement, the operational creditor has been raising invoices for the running dues of the operational creditor which have been also getting cleared, however, the corporate debtor was liable to make the payments of the minimum guarantee amounts which despite repeated requests of the operational creditor, the corporate debtor has not paid.</p> <p>h) That during the continuation of the agreement, it has been repeatedly informed to the corporate debtor, that a certain number of vehicles have been employed at the services of the corporate debtor which have also been acknowledged by the corporate debtor by making the payments of the invoices raised according to the running of the vehicles. Although the payments have not been released as per the minimum guarantee clause of the agreement which has been envisaged herein above.</p> <p>i) That from the date of</p>
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		<p>commencement of the services under the agreement dated 19.11.2015, the operational creditor provided services worth <u>Rs. 10,04,61,200/- (Ten Crores Four Lacs Sixty One Thousand Two Hundred Only)</u> in accordance with the agreement, out of which a total sum of <u>Rs. 6,50,50,635/- (Six Crores Fifty Lacs Fifty Thousand Six Hundred Thirty Five Only)</u> has been received by the operational creditor as per the invoices raised by the operational creditor. However remaining sum of Rs. 3,54,10,565/- (Rupees Three Crore Fifty Four Lacs Ten Thousands Five Hundred Sixty Five Only) was not paid which was the sum due in terms of Minimum Guarantee Clause existing between the parties up to the date of expiration of the agreement on 31.12.2018.</p> <p>j) That there was no express condition in the agreement that the operational creditor is liable to raise invoices for the minimum guarantee clause. That it is clear that no invoice has been raised for this amount, yet there is a clear admission of dues payable</p>
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		<p>towards the minimum guarantee amount. The total minimum guarantee amount of a sum of Rs. 3,54,10,565/- (Rupees Three Crore Fifty Four Lacs Ten Thousands Five Hundred Sixty Five Only) is due and payable against the minimum guarantee amount in furtherance of the agreement existing between the parties.</p> <p>k) That the minimum guarantee clause is enforceable against the corporate debtor in view of the fact that the contract is a written contract and the sum due has accrued owing to the business operations of the parties in furtherance of the agreement being serviced by the operational creditor up to 31.12.2018 in view of the extensions agreed to between the parties.</p> <p>l) That as per calculation made in terms of Clause A of Schedule A of the agreement dated 19.11.2015 a total amount of Rs. 3,54,10,565/- (Rupees Three Crore Fifty Four Lacs Ten Thousands Five Hundred Sixty Five Only) stands due from the corporate debtor in the books of the operational creditor upto the date of 31.12.2018.</p>
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		<p>m) The date from which the debt fell due is 31.12.2018.</p> <p>n) Hence the Operational Creditor sent a demand notice dated 8.05.2019 to the Corporate Debtor which was duly delivered at the registered office on 10.05.2019.</p> <p>o) That the Corporate Debtor is liable to pay interest @18% per annum on the total outstanding amount as they have miserably failed to comply with the terms and conditions of the registered lease deed entered into between the parties.</p> <p>p) That it is apparent from the conduct and financial status of the Corporate Debtor is unable to clear its outstanding debt and liable to go into corporate insolvency and Bankruptcy Code, 2016</p>
2.	Amount claimed to be in default and the date on which the default occurred (Attach the workings for computation of amount and dates of default in tabular form)	<p><b>Amount claimed to be in default:</b></p> <p>That the books of accounts maintained by the operational Creditors exhibits a balance of Rs. 3,54,10,565/- (Rupees Three Crore Fifty Four Lacs Ten Thousands Five Hundred Sixty Five Only) excluding interest @ 18% per annum from</p>

		<p>31.12.2018</p> <p><b>Date on which the default occurred:</b></p> <p>31.12.2018</p>
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6. That the Corporate Debtor has averred that from the date of commencement of the services under the ATS dated 19.11.2015, it has provided services worth Rs.10,04,61,200/- (Ten Crores Four Lakhs Sixty-One Thousand Two Hundred Only), against which he received a sum of Rs. 6,50,50,635/- (Six Crores Fifty Lakhs Fifty Thousand Six Hundred Thirty-Five Only). However, the remaining sum of Rs. 3,54,10,565/- (Three Crore Fifty-Four Lakhs Ten Thousand Five Hundred Sixty Five Only) was not paid by the Corporate Debtor. That from perusal of Part IV of the Application, it is observed that the Applicant has claimed its operational debt solely arising out of the Minimum Guarantee Clause in the ATS existing between the parties up to its expiration on 31.12.2018.

7. That it is submitted by the Operational Creditor that since the Corporate Debtor did not make the due payment of his operational debt, it had issued a Demand Notice dated 08.05.2019 in Form no. 3 under Section 8 of IBC, 2016 at the registered office of the Corporate Debtor via Speed Post. The Operational Creditor has also annexed the notice of dispute dated 25.06.2019 received from the Corporate Debtor through Advocate Mr. Ravindra Kumar Sharma. The Applicant has filed the Affidavit under Section 9(3)(b) of IBC, 2016 and stated that *the Operational Creditor has received a reply to its Demand Notice dated 8.05.2019 on 10.06.2019, however, the Corporate Debtor has failed to raise any dispute with respect to the demand raised by the Operational*

*Creditor* and also there is no dispute of unpaid operational debt pending between the parties in any court of law.

8. That on issuance of notice by this Adjudicating Authority, the Corporate Debtor has appeared and filed its reply as well as the Written Submissions.

9. It is submitted by the Corporate Debtor that the Petition is barred by limitation. It is added by the Corporate Debtor that the table attached at page no. 74 of the Application contains claims, which are time barred. The list relied by the Corporate Debtor containing the claims, which are time barred is reproduced below :

Month	No. of Cabs	MG KM	KM	Rate	Amount	Invoice Amount	Balance
Sep-15	20	7000	140000	13.52	18,92,800	13,48,187.36	5,44,612.64
Oct-15	20	7000	140000	13.52	18,92,800	14,85,063.84	4,07,736.14
Nov-15	24	7000	168000	13.06	21,94,080	14,87,103.02	7,06,976.98
Dec-15	30	7000	210000	13.06	27,42,600	16,60,644.30	10,81,955.70
Jan-16	35	7000	245000	13.06	31,99,700	18,45,586.96	13,54,113.04
Feb-16	35	7000	245000	13.06	31,99,700	19,73,039	12,26,660.50
Mar-16	35	7000	245000	14.86	36,40,700	23,46,394	12,94,660.50
Apr-16	36	7000	252000	14.86	37,44,720	25,87,616.38	11,57,103.62
May-16	35	7000	245000	14.86	36,40,700	30,28,557.16	6,12,142.84
Jun-16	35	7000	254000	14.56	35,67,200	26,13,709.28	9,53,490.72
Jul-16	35	7000	254000	14.69	35,99,050	22,71,250.28	13,27,799.72



10. It is contended by the Corporate Debtor that there is a pre-existing dispute between the parties and in support of its contention, the Corporate Debtor has referred to the e-mail communication exchanged between the parties placed at Annexure 2 from page no. 48 onwards of the Application.

11. It is further contended by the Corporate Debtor that there is no debt due and payable in terms of the service contract as the Corporate Debtor did not raise invoices for the unpaid Operational debt. In this context, the Corporate Debtor has placed emphasis and drawn attention to the Clause 28 of the ATS.

12. It is stated by the Corporate Debtor that the Operational Creditor itself has admitted in its Application that it has not issued any invoices for the Operational Debt claim arising out of the Minimum Guarantee Clause of the ATS.

13. It is further stated by the Corporate Debtor that any payment under the ATS is to be made by the Respondent Company only of the undisputed invoiced amounts. This is clearly provided in Clause 28 of the ATS filed at pages 26-27 of the E-Application. Schedule 'A' annexed with the Agreement, does not provide for any independent right of claim. However, it just provides for the mode of computation/calculation of the claim in furtherance of Clause 28 of the Agreement. The terms and conditions for the Minimum Guarantee to be applicable are contained in Schedule A of the Agreement at page

38 of the E-Application (Annexure A-1). The relevant clause of the ATS is reproduced below:

*“Terms and conditions for Minimum Guarantee and back-to-back (applicable for small vehicles):*

- 1. 90% availability of cabs*
- 2. Average 2.5 routes per cab*
- 3. Usage of only fully complaint cab (GPS and panic buttons on the device)*

*Maximum 5 hours route duration for back-to-back trip”.*

14. It is contended by the Corporate Debtor that the Applicant has failed to meet the aforesaid four conditions for demanding the Minimum Guarantee payment, which requires the Applicant to follow certain pre-conditions before claiming the payment under the Minimum Guarantee Clause.

15. It is further contended by the Corporate Debtor that the Applicant vide its email dated 03<sup>rd</sup> December 2018, sent in response to the Respondent’s challenge/dispute to the alleged claim of the Applicant, accepted that the Minimum Guarantee was withdrawn and was effective till 31 July, 2016 and not 1<sup>st</sup> July, 2016. Further, in the said email, the Applicant admits the existence of a dispute in relation to the payment liability/Operational Debt as presently claimed.

16. It is stated by the Corporate Debtor that the ATS dated 19.11.2015 was further modified by way of three subsequent Addendums executed on 17.07.2017, 22.01.2018 and 04.09.2018 to the Service Agreement dated 19.11.2015. It is added that in above stated addendums, the Schedule A was amended. It is submitted by

the Corporate Debtor, that the Applicant has concealed these material facts in its Application.

17. The Operational Creditor has filed its Rejoinder and Written Submissions and stated that there is no pre-existing dispute between the parties. It is stated that the payment of the Minimum Guarantee was divided into 2 parts i.e., part A, which deals for the services till July 2016 and Part B, which deals with the services for the period from August 2016 till the end.

18. That as regards to the non-issuance of invoices, it is stated by the Operational Creditor that it was only liable to raise the invoices to exhibit the actual kilometers, which the car actually ran. However, as per the ATS, the Minimum Guarantee was already decided, therefore, the Operational Creditor was under no liability to raise separate invoice(s) towards the Minimum Guarantee, which was already agreed upon between the parties by the Agreement.

19. With regard to the issue of Limitation, it is stated by the Operational Creditor that in the instant case, the cause of action is a continuous one and, on several occasions, the corporate debtor has admitted the liability towards minimum guarantee and has never denied the existence of the said liability. And the Corporate Debtor vide its email dated 29.11.2018 has even tried to settle the liability by offering Rs.20,58,818/- as one-time full and final settlement which clearly depicts that the CD has acknowledged the existence of debt.

amount to the Operational Creditor. Therefore, the limitation is continuing and still subsisting. It has added that the Service Agreement (ATS) between the parties was duly extended mutually, therefore, it is considered to be a running account between the parties which amounts to a continuous cause of action.

20. That as regards to the not annexing the addendums to the Service Agreement in its application, it is stated by the Operational Creditor that since the said addendums nowhere reflected any change or amendment to the minimum guarantee clause, which was specified in the original agreement entered between the parties, therefore it has not annexed the same with its Application.

21. It is stated by the Operational Creditor that the Corporate Debtor vide email dated 28.05.2018 placed at page 52 of the e-Application, had itself admitted that a certain amount was due towards the Minimum guarantee, for which it had provided the Operational Creditor with a computation. That in response to the said mail and after the meeting with the Corporate Debtor on 14.08.2018, the Operational Creditor vide email dated 17.08.2018 had supplied the month-wise computation of the entire minimum guarantee (MG) dues till July 2016 to the Corporate Debtor. The scanned copy of the email annexed at page 52 of the e-Application is reproduced overleaf :

52

Sahaj Bharti Travels

From: Ajay Sharma (sharmaaj@hcl.com)  
Sent: Wednesday, September 05, 2018 2:50 PM  
To: Sahaj Bharti Travels; m.jha@sahajbhartitravels.com  
Cc: Rajit Kapoor  
Subject: RE: M O M 28-5-2018  
Attachments: MG Working\_SBT.xlsx

Dear Mr. Mukesh

Further to our meeting on MG calculation which we explained, please find attached the same for your reference.

We request your acceptance confirmation on the same so as to move to next step of payment release & settlement.

Rgds,  
Ajay Sharma

--Original Message-----  
From: Sahaj Bharti Travels <mukesh@sahajbhartitravels.com>  
Sent: 17 August 2018 18:40  
To: Ajay Sharma <sharmaaj@hcl.com>; Sanjeev Bhandari <sanjeev-b@hcl.com>  
Cc: Rajit Kapoor <rajit.kapoor@hcl.com>; m.jha@sahajbhartitravels.com  
Subject: RE: M O M 28-5-2018  
Importance: High

Dear Ajay

As discussed in meeting there is mismatch in data showed by you.

Our actual MG amount till July 2016 is attached in files. These amount are as per the contract terms.

Thanks & Regards  
MUKESH KUMAR  
SAHAJ BHARTI TRAVELS PVT LTD  
PH-0124-3224131,9999888898  
E-mail:-mukesh@sahajbhartitravels.com

22. That during the course of final hearing held on 02.11.2021, the Operational Creditor has drawn our attention towards the email dated 29.11.2018 to demonstrate that the Corporate Debtor had acknowledged its liability to the extent of Rs.20,58,818/-. The scanned copy of the same is reproduced overleaf :



**From:** Ajay Sharma [sharmaaj@hcl.com]  
**Sent:** Thursday, November 29, 2018 1:13 PM  
**To:** Sahaj Bharti Travels  
**Cc:** Rajit Kapoor; Sanjeev Bhandari  
**Subject:** Settlement of claimed outstanding amount on account of MG

Dear Mr. Mukesh

This is in reference to Transport Agreement dated 19/11/2015 ("Agreement") between HCL Technologies Ltd and Sahaj Bharti Travels.

It is matter of fact that clause of Minimum Guarantee had been withdrawn w.e.f 01/07/2016

In this regard, you have alleged that some dues of Rs. 1,11,91,096/- are outstanding including on account of MG provision under the Agreement. Please note that we have duly verified the records and per us no amount is outstanding or payable to you in terms of the Agreement including on account of MG provision.

However, considering our business relationship and with an objective of working together in future, we propose a good faith offer of Rs 20,58,818/- as one time full and final settlement of all issues between the parties.

This limited period without prejudice offer remains open to be accepted by you until 5pm on 6<sup>th</sup> December 2018 after which the offer will lapse and be no longer capable of acceptance. If you are agreeable to accept the offer, you are requested to confirm in writing before the aforesaid time and submit the invoice for the aforesaid amount immediately to enable us to make the payment accordingly.

Please note that nothing contained herein should be deemed to be an admission of any liability/claim whatsoever.

Regards,  
Ajay Sharma

23. After hearing submissions, going through the pleadings and written submissions placed on record by both the parties, it is observed from the Affidavit filed by the Operational Creditor under Section 9(3)(b) of IBC 2016 that the Applicant has averred that no notice of dispute has been given by the Respondent/Corporate Debtor. However, during the course of hearing, the Ld. Counsel for the Operational Creditor confirmed that the notice of dispute was received and the same is enclosed at page no. 325 of the Application. Therefore, we are of the view that since the notice of dispute has been annexed by the Applicant with the Application, no prejudice shall be caused to anyone.

24. We further observe that the issue with regard to the Limitation raised by the Corporate Debtor needs to be examined first.

25. It is observed from the records that the present e-Application was filed on 06.08.2019. That from perusal of the Application, it is seen that the Applicant has claimed its Operational Debt on the basis of the Service Agreement (ATS) dated 19.11.2015, which was valid for a period of 3 years from 20.04.2015 to 30.04.2018 as per clause 31 of the aforesaid agreement. The scanned copy of the Clause 31 of the Agreement is reproduced overleaf :

Xxxx                      xxxxxx                      xxxxxx                      xxxxxx                      xxxxxx

31. **Term:** This agreement shall be in effect from 20<sup>th</sup> April 2015 to 30<sup>th</sup> April 2018 and be renewed on mutual consent. This Agreement overrides all existing agreement for similar services, whether written or verbal, with effect from the date hereinabove mentioned. The rates freezed in the agreement would be valid for next 2 years and except for fuel price variation as per the computation stated in the agreement there would not be any change in the rates during the contract term. There will be no change in rates with hike in fuel rates, unless there is a drastic increase in the same (over 10 %), in the case of such an occurrence 2.5% hike would be admitted on base rate of slabs.

26. We have already noted that the present claim of the Operational Creditor is arising out of the Minimum Guarantee Clause of the Service Agreement (ATS). Since the claim of the Operational Creditor is solely arising on the basis of the Service Agreement dated 19.11.2015 (which was valid for a period of 3 years from 20.04.2015 to 30.04.2018), without commenting anything on the merits of the dispute so far, we observe that there was a continuous default by the

Corporate Debtor till the time the said Service Agreement was in force. Hence, in our considered view, the present e-Application having been filed on 06.08.2019 is well within limitation period of 3 years from the date of expiry of the original Service Agreement (ATS). Therefore, we are of the considered view that the present Application is well within the limitation period.

27. That another objection taken by the Corporate Debtor is that the Operational Creditor has not annexed any invoice for the debt arising out of the Minimum Guarantee Clause and the same is a violation of Clause 28 of the Agreement.

28. Per contra, it is stated by the Operational Creditor that it has raised invoices for all other services. However, for the debt arising out of the Minimum Guarantee Clause, no invoices were ever raised as there was no specific condition in the Agreement putting an express obligation on the Applicant to raise such invoice(s) for the debt arising out of the Minimum Guarantee Clause.

29. That in order to adjudicate whether there was a necessity of raising invoice(s) for the debt arising out of the Minimum Guarantee Clause, it is necessary to have a conjoint reading of Clause 28 and Schedule A of the Agreement. The scanned copy of the same are reproduced below :



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28. **Hire Charges:** The Hire Charges for the vehicles operated shall be paid as per the Schedule A annexed hereto which excludes service tax @ 5.60%. COMPANY shall not be liable for any charges other than that are expressly provided in Schedule A.

**Payment Terms:** The SERVICE PROVIDER agrees to submit the bills to the COMPANY on 5th of every month for the Services rendered for the previous month. The SERVICE PROVIDER has to mention their PAN and TIN numbers on each invoice. Payments will be released within 45 days from the date of receipt of undisputed invoice. The SERVICE PROVIDER agrees that it shall be solely responsible for and shall bear and pay all present and future taxes, duties, cess, levies, etc., applicable or payable with respect to the Services provided by it pursuant to this Agreement as also any additional taxes, duties, cess, levies, etc. as per existing law or an amendment to existing law or new legislation, or notification. The Parties agree that the Service provider's obligation to render services/provide deliverables as set out under this Agreement/PO shall be valid only till the expiry of Agreement/PO validity date ("Validity Date") and that Company shall not be liable to make any payments as may be claimed by the vendor for services/deliverables provided by the Service provider beyond this Validity Date. The Parties agree that in case services/deliverables are to be delivered beyond the Validity Date then the Service provider should raise a request with Company to get the revised PO / renewed agreement issued from Company in its favour 45 days prior to the Validity Date.

The Parties further agree that Service provider shall raise and submit the invoices for the services delivered/billed to Company within 60 days from the date of delivery of services, failing which Company will not be liable to consider the same for payment. The Service provider shall mention the purchase order/contract release order ('PO'/'CRO') number while raising the invoice and shall not deliver any services to Company without receipt of a valid PO/CRO from Company. The Service provider further agrees to indemnify Company against any loss that Company may suffer for not being able to claim cenvat credit benefit for reasons attributable to the Service provider including Service provider's failure to submit the invoices within aforesaid agreed timeline."

debited to SERVICE PROVIDER in his monthly billing. In addition, payment of liquidated damages as specified in Clause 32 per one-way trip to / from Company for missing of points shall also be levied on the SERVICE PROVIDER in his monthly billing. In case of any dispute, the decision of the Company shall be final and binding on the "SERVICE PROVIDER".

- (xii) In case any Vehicle breaks-down midway, Company designated personnel / employees shall be entitled to take AC taxi / equivalent modes of transport after seeking a reimbursement ID from the Transport Helpdesk and claim the amount as per the laid down procedure. Subsequently, the amount reimbursed to the employee shall be debited to SERVICE PROVIDER in his monthly billing. In case of any dispute, the decision of the Company shall be final and binding on the SERVICE PROVIDER

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30. The contents of the Schedule 'A' as annexed to the original agreement (ATS) are given below :

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**Other Terms & Conditions:**

a. For 7+1 seaters the above rate will be applicable with minimum running guarantees of 7000 km / cab / month on cumulative basis for dedicated registered fleet with HCL. This shall be effective from 1<sup>st</sup> September, 2015.

b. 100% trips will be paid (subject to actual deployment of the vehicle on evidence from GPS). However, except in case of cancellations and applicable penalties as defined in the contract will be imposed.

c. In case of Multiple Token ID's raised on the same route ID which is covered within 4.5 routes per cab per day for 7+1 category vehicle, the reimbursement amount shall be shared 50 - 50 between the COMPANY and the SERVICE PROVIDER. The routes shall be provided based on the fleet size as recorded for 18<sup>th</sup> Dec '14 or as negotiated for newly inducted SERVICE PROVIDER. Single Token ID per route will be solely borne by the SERVICE PROVIDER

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| <p>d. The Token ID for the excess routes above an average of 4.5 and 3.5 routes per cab per day for 4+1 and 7+1 vehicle categories respectively shall be borne by COMPANY</p> <p>e. The route allocation norm will be defined by the COMPANY and the SERVICE PROVIDER has to abide to the routes allocated and the performance of the SERVICE PROVIDER shall be monitored monthly accordingly.</p> |
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| <p>f. The SERVICE PROVIDER shall refuse the route minimum 3 hrs in advance prior to the Pick/Drop time to allow the operations team to plan for back-up cab. In case the SERVICE PROVIDER does not intimate the operations team in advance based on the SLA mentioned above, cost of Token IDs on such routes shall be solely borne by the SERVICE PROVIDER</p> <p>g. The cost of engaging a backup vehicle shall be levied on the SERVICE PROVIDER who has refused the route. The kilometers of such routes shall be paid to the SERVICE PROVIDER. Details of the backup vehicles deployed on routes refused shall be shared by the operations team on a fortnightly basis with the SERVICE PROVIDER</p> <p>h. The SERVICE PROVIDER will have to furnish a one month notice in writing in case of any decrease in the number of cabs committed. The number of cabs committed by the SERVICE PROVIDER are:</p> |
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31. That from the perusal of Clause 28 of the Agreement, it is observed that the invoices were to be raised for the services rendered by the Applicant to the Corporate Debtor. However, in the case of Minimum Guarantee Clause, no service as such was provided by the Applicant to the Corporate Debtor, it was merely a minimum usage guarantee charge for 7,000 Km/cab/month on cumulative basis, which the Corporate Debtor was required to pay to the Operational Creditor. Further, the Schedule A annexed to the Agreement nowhere stipulates that the Applicant was obligated to raise such invoice(s) towards the Minimum Guarantee Clause.

32. That we observe that the contractual relationship between the parties herein is clearly established via Service Agreement (ATS) dated 19.11.2015 which was not terminated at any stage. Further, there is no communication relating to the contract period placed on record by the Corporate Debtor either advising or raising objection that the Operational Creditor was to issue invoice for the debt arising out of the Minimum Guarantee Clause. We also observe that at no point of time prior to issuance of the demand notice, the Corporate Debtor has taken a plea to not to make payment against the minimum guarantee clause on the ground of absence of invoice(s). Furthermore, there is no trace of any objection with regard to non-issuance of invoice in the email dated 05.09.2018 sent by the Corporate Debtor to the Operational Creditor with which the calculation sheet with regard to the Minimum Guarantee was sent by it to the Applicant. Hence, we

infer that neither there was any insistence by the Corporate Debtor nor practice of raising any invoice(s) against the Minimum Guarantee Clause.

33. That as regards to not annexing the 3 addendums to the Service Agreement dated 19.11.2015, the Operational Creditor has submitted that since its claim was not materially affected, therefore, it had not annexed the addendums. Per contra, it is stated by the Corporate Debtor that the claim of the Operational Creditor is arising out of the Schedule A of the service agreement, which was amended vide the addendums.

34. That the Corporate Debtor in its reply has placed on record 3 addendums to the Service Agreement dated 17.07.2017, 22.01.2018 and 04.09.2018. That in order to examine whether the Minimum Guarantee Clause was in existence in spite of execution of the addendums, it is necessary to examine these addendums.

35. That the scanned copy of the first addendum dated is 17.07.2017 is reproduced overleaf :



उत्तर प्रदेश UTTAR PRADESH

DL 238325

Addendum 1 to Agreement for Transport Services dated 19<sup>th</sup> day of November 2015

This addendum to agreement is entered into on this 17<sup>th</sup> day of July, 2017 (hereinafter the "Addendum")

BY AND BETWEEN

HCL Technologies Ltd., a Company incorporated under the Companies Act, 1956 having its registered office at 806-808, Siddharth, 96 Nehru Place, New Delhi - 110 019 through its authorised signatory Vineet Vij (hereinafter referred to as "Company" which expression shall, unless repugnant to the meaning or context, mean and include its successors and assigns) OF THE ONE PART

AND

Sahaj Bharti Travels a Sole Proprietorship firm having its principal office at 1257, Street No 10, Madan Puri, Gurgaon - 122001, India represented by its authorized signatory Mr. Mukesh Kumar bearing PAN Card No. ANTPK1550F (hereinafter referred to as "Service Provider")

which expression shall, unless repugnant to the meaning or context, mean and include its successors and permitted assigns) **OF THE OTHER PART**

Company and Service Provider shall hereinafter be referred to individually as "Party" and collectively as "Parties".

**WHEREAS**, the Parties had entered into a Transport Agreement dated 19<sup>th</sup> day of November 2015 effective from 20<sup>th</sup> April 2015 that shall expire on 30<sup>th</sup> April 2018 (hereinafter "Agreement") for providing services for Transport to Company.

**AND WHEREAS** the Parties after mutual discussion have decided to amend certain Annexures of the Agreement as follows:

**NOW THEREFORE THIS ADDENDUM WITNESSETH AS UNDER**

1. This Addendum shall form an integral part of the Agreement. The parties hereby agree and record that the validity date of the Addendum shall be the same as previously signed Agreement (20<sup>th</sup> day of April, 2015 up till 30<sup>th</sup> day of April, 2018).
2. The Parties have mutually agreed to amend "Schedule A" of the Agreement and to replace the same with the revised "Schedule A" attached herein with this Addendum.
3. The Parties have further agreed to amend the Agreement by inserting the below clause as under:
  - a. The Parties agree that the Service Provider's obligation to render services/provide deliverables/goods as set out under this Agreement/PO shall be valid only till the expiry of Agreement/PO validity date ("Validity Date") and that HCL shall not be liable to make any payments as may be claimed by the vendor for services/deliverables/goods provided by the Service Provider beyond this Validity Date. The Parties agree that in case services/deliverables/goods are to be delivered beyond the Validity Date then the Service Provider should raise a request with HCL to get the revised PO / renewed agreement issued from HCL in its favour 45 days prior to the Validity Date.
  - b. The Parties further agree that Service Provider shall raise and submit the invoice(s) for the Services/goods delivered to HCL within 60 days from the date of delivery or acceptance (as applicable) of Services/goods or within 60 days from the due date of submission as respectively mentioned in Agreement/PO, failing which HCL will not be liable to consider the same for payment. The Service Provider shall mention the purchase order/contract release order ("PO"/"CRO") number, date or the period Services were performed, brief description of the Services performed, invoiced amount and HCL's relevant legal entity address, in the invoice(s) and shall not deliver any services to HCL without receipt of a valid PO/CRO from HCL.



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### Schedule A

(Vehicle Description, No. of Vehicles to be deployed, Rates and Charges)

1. All other terms except the ones mentioned hereunder shall be as per the original 'Schedule A' of the Agreement.

Below rates are applicable for Diesel & CNG vehicle.

Cab Rates		
Vehicle Type	AC	Non AC
Indica/ Vista/ Liva/ Figo/ Polo/ Swift/ Indigo/ Desire/ Ertos/ Fiesta	9.45	9.03

Note: Fuel Escalation / De-Escalation will be applicable only in case there will be a Hike / Decrease of one rupees in fuel price.

#### Fuel Escalation / De-Escalation Formula.

##### PKM

$$\text{Escalation / De-Escalation} = \frac{\text{New Fuel Price} - \text{Old Fuel Price}}{\text{Mileage Of Vehicle}}$$

##### Trip

$$\text{Escalation / De-Escalation} = \frac{\text{New Fuel Price} - \text{Old Fuel Price}}{\text{Mileage Of Vehicle}} \times \text{Average trip KM}$$

##### Fixed / Package Model

$$\text{Escalation / De-Escalation} = \frac{\text{New Fuel Price} - \text{Old Fuel Price}}{\text{Mileage Of Vehicle}} \times (\text{Monthly Minimum Guarantee/Fixed KM})$$

- HR Tax will be payable on the actual basis.
- HR Tax amount is Rs. 100 per day / per vehicle.
- In case DL/UP vehicle performed the duty in a day only for the Haryana State from the Transport Manesar Hub / Client locations – Gurgaon then this tax is not liable to pay.
- HR vehicle performed the duty for Manesar/Gurgaon/Faridabad and any other part of Haryana State locations tax not liable to pay.



**Rate Chart: -**

Diesel Base Rate INR. 54.77/- as on 1st Apr'17			Vehicle Mileage	
Diesel Rate	Indica		Approved KPL for Each Categories	
	AC	Non AC	Type of Vehicle	KPL
46.00	8.82	8.44	Indica Non AC	15
47.00	8.90	8.51	Indica AC	14
48.00	8.97	8.58	Innova (AC)	10
49.00	9.04	8.64	Innova (Non AC)	11
50.00	9.11	8.71	Sumo / Qualis / Tavera(AC)	10
51.00	9.18	8.78	Sumo / Qualis / Tavera(Non AC)	11
52.00	9.25	8.84		
53.00	9.32	8.91		
54.00	9.40	8.98		
54.77	9.45	9.03		
55.00	9.47	9.04		
56.00	9.54	9.11		
57.00	9.61	9.18		
58.00	9.68	9.24		
59.00	9.75	9.31		
60.00	9.82	9.38		
61.00	9.90	9.44		
62.00	9.97	9.51		
63.00	10.04	9.58		
64.00	10.11	9.64		
65.00	10.18	9.71		
66.00	10.25	9.78		

36. That from the perusal of the addendum dated 17.07.2017, which was valid till 30.04.2018, it is observed that as per Clause 2 of the said addendum, the parties have mutually agreed to revise the Schedule A of the Agreement and replace the same with the revised "Schedule A" as attached with the addendum.

37. That when we visit the amended Schedule A annexed with the addendum, we find that the Para 1 of the Schedule reads as:

*"All other terms except the ones mentioned hereunder shall be as per the original "Schedule A" of the Agreement."*

38. Thus, from perusal of the amended Schedule A, we observe that except for the rates applicable for diesel and CNG vehicles as specified



in the said schedule, all other terms remained valid as per the schedule A of the original agreement (ATS). There is no mention of any change regarding the Minimum Guarantee Clause. Therefore, in our considered view, the Minimum Guarantee Clause as annexed with the original Agreement was in subsistence till 30.04.2018.

39. That the scanned copy of the Second addendum dated is 22.01.2018 is reproduced below:



उत्तर प्रदेश UTTAR PRADESH

DY 803048

Addendum 2 to Agreement for Transport Services dated 19<sup>th</sup> day of November 2015

This addendum to agreement is entered into on this, 22<sup>nd</sup> Day of January 2018 (hereinafter the "Addendum 2")

BY AND BETWEEN

HCL Technologies Ltd., a Company incorporated under the Companies Act, 1936 having its registered office at 806-808, Siddharth, 96 Nehru Place, New Delhi - 110 019 (hereinafter referred to as "Company / HCL" which expression shall, unless repugnant to the meaning or context, mean and include its successors and assigns) OF THE ONE PART

AND

Sahaj Bharti Travels a Sole Proprietorship firm having its principal office at 1257, Street No 70, Madan Puri, Gurgaon - 122001, India represented by its authorized signatory Mr. Mukesh Kumar bearing PAN Card No. ANTPK1550F (hereinafter referred to as "Service Provider" which expression shall, unless repugnant to the meaning or context, mean and include its successors and permitted assigns) OF THE OTHER PART

Company and Service Provider shall hereinafter be referred to individually as "Party" and collectively as "Parties".

WHEREAS, the Parties had entered into a Transport Service Agreement dated 19<sup>th</sup> day of November 2015 that expired on 30<sup>th</sup> April 2018 (hereinafter "Agreement"). Thereafter the parties amended the certain annexures of the agreement via addendum ("Addendum 1") dated 17<sup>th</sup> July, 2017 which expired on 31<sup>st</sup> December 2017 for providing services for Transport to Company.

AND WHEREAS the Parties after mutual discussion have decided to amend certain Annexures of the Agreement as follows:

NOW THEREFORE THIS ADDENDUM WITNESSETH AS UNDER

1. This Addendum 2 shall form an integral part of the Agreement. The parties hereby agree and record that the Agreement is extended / renewed further with effect from 1<sup>st</sup> May 2018 up till 30<sup>th</sup> June 2018.
2. The Parties have mutually agreed to amend "Schedule A" of the Agreement and to replace the same with the revised "Schedule A" attached herein with this Addendum.
3. The Parties have mutually agreed to amend "Schedule B" of the Agreement and to replace the same with the revised "Schedule B" attached herein with this Addendum.
4. The Parties have mutually agreed to continue with the "Schedule C" and "Schedule D" of the Agreement
5. The Parties have further agreed to amend the Agreement by inserting the below clause as under:
  - a. As per the clause 34 of the Agreement this clause is continued as: HCL shall have the right to terminate the Agreement without providing any reason or cause by giving 30 (Thirty) days prior notice to the other party. Such termination shall be without any liability except for valid charges incurred for the Services provided. The Contractor shall continue to provide the Services during the said notice period. HCL shall have the right to terminate the Agreement if the Contractor breaches any of its obligations under this Agreement and fails to remedy such breach with 15 (fifteen) days after written notice of such breach is provided to the Contractor by HCL.
  - b. The Parties agree that the Service Provider's obligation to render services/provide deliverables/goods as set out under this Agreement/PO shall be valid only till the expiry of Agreement/PO validity date ("Validity Date") and that HCL shall not be liable to make any payments as may be claimed by the vendor for services/deliverables/goods provided

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#### Schedule A

##### (Vehicle Description, Number of Vehicles to be deployed, Rates & Charges)

1. All Cabs will be GPS and Panic button fitted from Company prescribed Vendor which shall ensure employees safety and help to implement Km calculation through GPS and enable E-trip sheet generation.
  2. Under no circumstances shall the Vehicles being provided to Company hereunder be more than three years old or have run more than 2,00,000 KMS (for medium capacity vehicle)/ 1,50,000 KMS (for small vehicle) whichever is earlier. Any vehicle exceeding this criteria shall be replaced automatically by the SERVICE PROVIDER, failing which Company in its sole discretion, reserves the right to impose such liquidated damages as it may deem fit and proper.
  3. Cost of GPS/GPS enabled device for on-time tracking needs to be borne by the Service Provider. Service Provider need to directly liaison up with the selected partner for owning and maintaining the device. The SERVICE PROVIDER will enter into a tripartite agreement with the COMPANY and GPS provider for payment of device and services.
  4. Service provider cannot poach any vehicle or employee staff from any of the service provider site. Minimum gap of 3 calendar months will be acceptable for change of any vehicle and manpower from one service provider to another.
  5. At least 80% of the fleet size of Service provider shall be dedicated to HCL.
  6. Vehicle must be in good physical and running condition and will be allowed to operate for the COMPANY post clearance from the operation team in writing
  7. Ratio of total fleet between own cabs Vs attached cabs should be in 50:50 ratios. 50% of the fleet inducted into service for HCL by the vendor should be owned by the vendor. Any deviation from the ownership norms shall invite liquidated damages as it may deem fit and proper.
- 
- ❖ The vehicle shall be fitted with seats with a minimum of 6" of cushions.
  - ❖ All the seats should ensure comfort.
  - ❖ The vehicles shall be equipped with music system and air conditioner.
  - ❖ Minimum 20 cabs shall be provided by the service provider at any given point of time however, Minimum Fleet could vary if requirement goes down or operations team reduces the freezed minimum fleet criteria.
  - ❖ The Hire charges of the vehicles as per their make/model shall be as follows:

Below rates are applicable for Diesel & CNG vehicle.

Date	Diesel Rate	Indica		Tavera		Innova	
		AC	Non AC	AC	Non AC	AC	Non AC
January 16, 2017	59.80	9.76	9.32	13.58	12.88	15.08	14.49
April 1, 2017	54.77	9.45	9.03	13.15	12.60	14.64	14.10
April 16, 2017	56.91	9.60	9.17	13.36	12.79	14.86	14.29
May 16, 2017	54.99	9.47	9.04	13.17	12.62	14.67	14.12
June 1, 2017	56.03	9.54	9.11	13.27	12.71	14.77	14.21
June 16, 2017	54.49	9.43	9.01	13.12	12.57	14.62	14.07
June 26, 2017	56.57	9.58	9.15	13.33	12.76	14.82	14.26
June 27, 2017	53.53	9.38	8.95	13.02	12.48	14.52	13.98
July 10, 2017	54.59	9.44	9.02	13.13	12.58	14.83	14.08
August 1, 2017	55.63	9.51	9.09	13.23	12.67	14.73	14.17
August 7, 2017	56.85	9.58	9.15	13.33	12.77	14.83	14.27
September 8, 2017	57.78	9.67	9.23	13.45	12.87	14.95	14.37
September 13, 2017	58.8	9.74	9.30	13.55	12.96	15.05	14.46
October 4, 2017	56.85	9.60	9.17	13.35	12.79	14.86	14.25
November 3, 2017	57.93	9.68	9.24	13.46	12.88	14.96	14.38

Taxes will be extra as per actual.

- HR TAX will be payable on the actual basis.
- HR TAX amount is Rs. 100 per day / per vehicle.
- In case DL / UP Vehicle performed the duty in a day only for the Haryana state from the Transport Manesar Hub / Client locations - Gurgaon then this TAX is not liable to pay.
- HR Vehicle performed the duty for Manesar / Gurgaon / Faridabad and any other part of Haryana state locations TAX not liable to pay.

Fuel Escalation / De-Escalation will be applicable only in case there will be a Hike / Decrease of one rupees in fuel price.

Fuel Escalation / De-Escalation Formula:

PKM

$$\text{Escalation / De-Escalation} = \frac{\text{New Fuel Price - Old Fuel Price}}{\text{Mileage Of Vehicle}}$$

Fixed / Package Model

$$\text{Escalation / De-Escalation} = \frac{\text{New Fuel Price - Old Fuel Price}}{\text{Mileage Of Vehicle}} \times (\text{Monthly Minimum Guarantee/Fixed KM})$$

Trip

$$\text{Escalation / De-Escalation} = \frac{\text{New Fuel Price} - \text{Old Fuel Price}}{\text{Mileage Of Vehicle}} \times \text{Average trip KM}$$

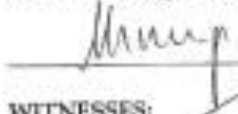
Approved RPL for Each Categories	
Type of veh	RPL
Indica Non AC	15
Indica AC	14
Innova (AC)	20
Innova (Non AC)	12
Sumo / Quoris / Tavera (AC)	10
Sumo / Quoris / Tavera (Non AC)	11

There will be no revision in rates against publicly announced fuel hikes, unless there is an increase / decrease Rs. 1 from the immediately preceding base rate captured in the agreement. In case Rs. 1 or higher / lower revision in publicly announced fuel rate, rate revision will be captured as above formula & revised rate will be applicable from next billing cycle.

- The Service Provider shall refuse the route minimum 3 hours in advance prior to the pick/drop time to allow the operations Team to plan for Back-up cab. In case the SERVICE PROVIDER does not intimate the operations team in advance based on the SLA mentioned in existing agreement, cost of Token IDs on such routes shall be solely borne by the SERVICE PROVIDER.
- The Cost of engaging the Backup Vehicle shall be levied on the SERVICE PROVIDER who has refused the route. The Kilometres of such routes shall be paid to the SERVICE Provider. Details of the backup vehicles deployed on routes refused shall be shared by the operations Team on a fortnightly basis with the SERVICE PROVIDER.

VINEET VIJ

For & on behalf of  
HCL Technologies Ltd. Authorized Signatory

  
WITNESSES:

1.  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Signature: \_\_\_\_\_

For & on behalf of  
Sahaj Bharti Travels  
SAHAJ BHARTI TRAVELS

  
Proprietor

2.  
Name: MUKESH KUMAR  
Address: \_\_\_\_\_  
Signature: \_\_\_\_\_

40. From the second addendum dated 22.01.2018 (supra), which was valid for the period from 01.05.2018 to 30.06.2018, it is observed that the parties mutually agreed to amend the Schedule A. That from perusal of the Amended Schedule A, it is observed that unlike the previous addendum, we do not find any clause as per which the provisions contained in the Schedule A of the original Agreement (ATS) shall remain in existence. Therefore, we find that the Minimum

Guarantee Clause stood omitted vide the amended Schedule A added with second addendum dated 22.01.2018, which took effect from 01.05.2018. Hence, we are of the view that the Operational Creditor cannot claim any amount under the Minimum Guarantee Clause beyond 30.04.2018.

41. That from perusal of the computation sheet provided by the Operational Creditor in its Application, it is observed that it has claimed Operational Debt from September 2015 to December 2018. The scanned copy of the Calculation sheet is reproduced below:

**CALCULATION OF MINIMUM GUARANTEE AMOUNT**

MONTH	DAY	NO. OF DAYS	RATE	AMOUNT	INTEREST	TOTAL	PAID	UNPAID
Sep-15	20	7000	140000	13.52	18,92,800.00	13,48,187.36		5,44,612.64
Oct-15	20	7000	140000	13.52	18,92,800.00	14,85,063.84		4,07,736.16
Nov-15	24	7000	168000	13.06	21,94,080.00	14,87,103.02		7,06,976.98
Dec-15	30	7000	210000	13.06	27,42,600.00	16,60,644.30		10,81,955.70
Jan-16	35	7000	245000	13.06	31,99,700.00	18,45,586.96		13,54,113.04
Feb-16	35	7000	245000	13.06	31,99,700.00	19,73,039.50		12,26,660.50
Mar-16	35	7000	245000	14.86	36,40,700.00	23,46,394.00		12,94,306.00
Apr-16	36	7000	252000	14.86	37,44,720.00	25,87,616.38		11,57,103.62
May-16	35	7000	245000	14.86	36,40,700.00	30,28,557.16		6,12,142.84
Jun-16	35	7000	245000	14.56	35,67,200.00	26,13,709.28		9,53,490.72
Jul-16	35	7000	245000	14.69	35,99,050.00	22,71,250.28		13,27,799.72
Aug-16	35	7000	245000	14	34,30,000.00	22,84,800.00		11,45,200.00
Sep-16	35	7000	245000	14	34,30,000.00	23,42,705.00		10,87,294.00
Oct-16	35	7000	245000	14	34,30,000.00	22,87,038.00		11,42,962.00
Nov-16	34	7000	238000	14	33,32,000.00	18,63,287.00		14,68,713.00
Dec-16	34	7000	238000	14	33,32,000.00	19,81,991.00		13,50,009.00
Jan-17	34	7000	238000	14	33,32,000.00	19,72,912.00		13,59,088.00
Feb-17	34	7000	238000	14	33,32,000.00	18,43,213.00		14,88,787.00
Mar-17	34	7000	238000	14	33,32,000.00	25,51,161.00		7,80,839.00
Apr-17	34	7000	238000	14	33,32,000.00	23,78,970.00		9,53,030.00
May-17	33	7000	231000	14	32,34,000.00	26,04,729.00		6,29,271.00
Jun-17	33	7000	231000	14	32,34,000.00	21,55,587.00		10,78,413.00
Jul-17	28	7000	196000	14	27,44,000.00	17,69,326.00		9,74,674.00
Aug-17	28	7000	196000	14	27,44,000.00	19,02,391.00		8,41,609.00
Sep-17	22	7000	154000	14	21,56,000.00	14,88,245.00		6,67,755.00
Oct-17	18	7000	126000	14	17,64,000.00	7,91,286.00		9,72,714.00
Nov-17	18	7000	126000	14	17,64,000.00	8,37,879.00		9,26,121.00
Dec-17	18	7000	126000	14	17,64,000.00	5,44,142.00		12,19,858.00
Jan-18	18	7000	126000	14	17,64,000.00	8,36,159.00		9,27,841.00
Feb-18	18	7000	126000	14.93	18,81,180.00	9,00,052.00		9,81,128.00
Mar-18	14	7000	98000	14.93	14,63,140.00	7,46,367.00		7,16,773.00
Apr-18	15	7000	105000	15.51	16,28,550.00	8,61,793.00		7,66,757.00
May-18	12	7000	84000	15.51	13,02,840.00	8,46,832.00		4,56,008.00
Jun-18	12	7000	84000	15.51	13,02,840.00	4,97,490.00		8,05,350.00
Jul-18	12	7000	84000	15.96	13,40,640.00	7,63,120.00		5,77,520.00
Aug-18	12	7000	84000	15.96	13,40,640.00	10,89,970.00		2,50,670.00
Sep-18	12	7000	84000	16.17	13,58,280.00	10,37,406.00		3,20,874.00
Oct-18	12	7000	84000	16.68	14,01,120.00	11,92,577.00		2,08,543.00
Nov-18	12	7000	84000	16.56	13,91,040.00	10,76,796.00		3,14,244.00
Dec-18	12	7000	84000	15.32	12,86,880.00	9,55,258.00		3,31,622.00
					<b>10,04,61,200.00</b>	<b>6,50,50,635.08</b>		<b>3,54,10,564.92</b>

42. Thus, in sequel to the aforesaid discussion, we find that the Operational Debt claimed by the Applicant, even if it is limited for the period up to 30.04.2018, being above Rs.1 (one) Lakh, the Application survives. Since, all this Adjudicating Authority is required to see is whether there is a debt due and default has occurred. However, while adjudicating the default, the Adjudicating Authority does not have to indulge in determining the extent or details of debt. The moment it is satisfied that the unpaid amount of default is above Rs 1 Lakh or Rs 1 Crore as the case may be, it is bound to admit the application. In the context, we are further strengthened by the law laid down by the Hon'ble Supreme Court in the matter of **"Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407"**, whereby it is held that :

*"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an installment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. **The Code gets triggered the moment default is of rupees one lakh or more (Section 4).** The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. **The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect***

*within 7 days of receipt of a notice from the adjudicating authority.”*

**(Emphasis supplied)**

43. That as regards to the objection relating to the pre-existing dispute, the Corporate Debtor has relied upon the email dated 03.12.2018 sent by the Applicant to the Corporate Debtor stating that the Minimum Guarantee was valid till 31.07.2016. The scanned copy of the same is reproduced below:

**Sahaj Bharti Travels**

**From:** Sahaj Bharti Travels [mukesh@sahajbhartitravels.com]  
**Sent:** Monday, December 03, 2018 3:01 PM  
**To:** 'Ajay Sharma'  
**Cc:** 'Rajit Kapoor'; 'Sanjeev Bhandari'; 'Sahaj Bharti Travels'  
**Subject:** RE: Settlement of claimed outstanding amount on account of MG  
**Attachments:** RE: M O M 28-5-2018; M O M 28-5-2018

Dear Sir(s).

In reference to your mail dated 8-7-2016 the minimum guarantee was applicable till 31st July 2016 and not 1st July 2016 as mentioned in this mail. Also, the payments made to us Please refer to the excel sheet provided by us on 17-8-2018.

The current outstanding prior to withdrawal of MG clause is Rs. 81,96,237.00 whereas the offer made by you is appx. 1/4th of the amount which is unacceptable to us.

Please refer our meeting on 28-5-18 and reference MOM shared on 29-5-2018, where we agreed to divide the entire situation in 2 parts.

Payment dispute to be divided into 2 parts say Part A for the period of service till July 2016 and Part B for the period from August 2016 till date to handle the current issues

2- SBT to showcase the losses incurred from August 2016 till date to HCL and form a consensus to resolve the issues at the earliest (12th of June 2018).

seems that you are currently addressing the 1st issue only. Please share your thoughts on 2nd issue as well. Also, We request you to make payment of Rs. 81,96,237.00 on immediate basis so that we can reduce our loss.

Considering our partnership we would be happy to help in case you need any additional data to support our demand. We also recommend for a complete reconciliation to plug the gaps in your data.

In case you disagree to pay the said amount we will be forced to take it up legally.

Thanks & Regards

 **MUKESH KUMAR**  
**SAHAJ BHARTI TRAVELS PVT LTD**  
**PH-0124-3224131,9999888898**  
**E-mail:-mukesh@sahajbhartitravels.com**



44. When we peruse the email dated 03.12.2018, it is observed that the Applicant has mentioned the following :

*“.....Payment dispute to be divided into 2 parts say Part A for the period of service till July 2016 and Part B for the period from August 2016 till date to handle the current issues.*

*2 - SBT to showcase the losses incurred from August 2016 till date to HCL and form a consensus to resolve the issue at the earliest (12<sup>th</sup> of June, 2018).*

*It seems that you are currently addressing the 1<sup>st</sup> issue only. Please share your thoughts on 2<sup>nd</sup> issue as well. Also, we request you to make payment of Rs. 81,96,237.00/- on immediate basis so that we can reduce our loss...”*

From the aforesaid email, it is inferred that the Applicant has rejected the offer of Rs. 20,58,818/- made by the Corporate Debtor vide email dated 29.11.2018 to settle the matter as a full and final settlement. Rather, vide email dated 03.12.2018, the Operational Creditor demanded the *payment of Rs 81,96,237.00/- on immediate basis* to reduce its loss.

45. That while discussing about the addendum dated 17.07.2017 which was valid from 20.04.2015 to 30.04.2018, we have already observed that the Minimum Guarantee Clause was subsisting till 30.04.2018. Had the Minimum Guarantee Clause been terminated, the same would have got reflected in the amended Schedule A vide addendum dated 17.07.2017.

46. Since the contractual relationship between the parties in the instant case is determined through their contract (which in this case has been determined by the original ATS along with the first

addendum) and not by emails, therefore, we are of the view that the dispute raised by the Corporate Debtor is moonshine and a patent feeble argument, which is inconsistent with the service agreement (ATS) read with the 1<sup>st</sup> Addendum.

47. In the given facts and circumstances, the Operational Creditor has established the default on the part of Corporate Debtor in payment of the operational debt of more than Rs.1,00,000/- (One Lakh). **Therefore, the Application is admitted in terms of Section 9(5) of the IBC, 2016. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the IBC, 2016.** 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.” (IB)-2087/(ND)/2029M/s. Sahaj Bharti Travels Vs M/s HCL Technologies Limited.

48. Since there is no IRP proposed by the Operational Creditor, this Bench appoints Mr. Raj Kumar Gupta (IBBI Registration No. IBBI/IPA-002/IP-N00064/2017-18/10142 and Email Id : [rkassociat@gmail.com](mailto:rkassociat@gmail.com)) as an IRP of the Corporate Debtor with immediate effect from the panel of the IPs recommended by IBBI to this Adjudicating Authority and order that:

***“Mr. Raj Kumar Gupta is directed to take charge of the CIRP of the Corporate Debtor with immediate effect.”***

***“The Court Officer will inform the IRP so appointed by all modes.”***

49. 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.

50. A copy of this Order shall be communicated immediately to the Operational Creditor, the Corporate Debtor and the IRP named above, by the Registry/Court Officer. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their record.

**Sd/-  
(L. N. GUPTA)  
MEMBER (T)**

**Sd/-  
(ABNI RANJAN KUMAR SINHA)  
MEMBER (J)**