



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 56/Chd/Hry/2019

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016**

In the matter of:

SMS Freight Logistics

Through Sabu Sebastian, Erstwhile Partner
Office at
A-26/27, Second Floor,
Jawahar Park, Devli Road,
Khanpur, Delhi- 110062

...Petitioner-Operational Creditor

Vs.

Foremost International Pvt. Ltd.

Registered Office:
Plot No.71, Udyog Vihar, Phase-I,
Gurgaon, Haryana- 122001
CIN: U18101HR2002PTC035485

...Respondent-Corporate Debtor

Judgement delivered on: 10.11.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Mr. Nahush Jain, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 23.03.2022



Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **SMS Freight Logistics** (for brevity 'Operational Creditor' / 'Petitioner'), represented through its erstwhile Partner, Mr. Sabu Sebastian with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **Foremost International Pvt. Ltd.** (for brevity 'Corporate Debtor' / 'Respondent').

and

2. The Corporate Debtor namely, Foremost International Pvt. Ltd., is a Company incorporated on 11.12.2002 under the provisions of Companies Act, 1956 with CIN No. U181HR2002PTC035485 with its registered office at Plot No. 71, Udyog Vihar, Phase-1, Gurgaon-122001 (Haryana). Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure 1.

3. The facts of the case, briefly, as stated in the petition are that corporate debtor approached operational creditor for taking logistic services for delivery goods from one place to another. In 2014-15 the operational creditor started giving services to the corporate debtor and raised several invoices but the corporate debtor delayed the payments. Corporate debtor never raised any complaints against the services or invoices. The operational creditor requested to make the payment of outstanding dues but the corporate debtor released only part payments. The emails dated 30.11.2015, 20.02.2016 were sent to the corporate debtor for outstanding payment but no



payment was received. On 24.12.2016 and 06.10.2017 the operational creditor again requested for payment.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 10,10,328/- (Rupees Ten Lakhs Ten Thousand Three Hundred Twenty Eight Only) i.e. total amount of Rs. 19,55,463/- (Rupees Nineteen Lakhs Fifty Five Thousand Thousand Four Hundred Sixty Three Only) which is inclusive of 24% interest p.a. from the date of default till date) and the default occurred on 20.02.2016 i.e. when last e-mail for repayment was sent by the operational creditor. Copy invoice raised by operational creditor (Annexure-2), emails (Annexure-3), working for computation of default (Annexure-6), ledger account (Annexure-7), Bank account statements (Annexure-10).

5. A demand notice in Form 3 dated 24.04.2018 is stated to be issued to the operational creditor by registered post on 22.10.2019 and the same has been delivered to the operational creditor (Annexure 4). Reply dated 14.08.2018 was sent by corporate debtor (Annexure 5), wherein, it was stated that there was no unpaid operational debt of Rs.10,10,327.07/- (Ten Lakhs Ten Thousand Three Hundred Twenty Seven and Zero Seven Paise Only) and same amount has already been paid.

6. Accordingly, order dated 13.02.2019, notice of this petition issued to the corporate debtor to show cause as to why this petition be not admitted. Mr. Munish Kumar Garg, Advocate accepted the notice and filed his memo of appearance on behalf of the respondent. Reply has been filed vide Diary No.205 dated 23.04.2019 wherein it is submitted that Mr. Sabu Sebastian is not authorized to file the present petition. Further, no amount is



due to petitioner by the respondent-corporate debtor. The respondent had never withheld any payment nor had defaulted in making payment towards the services rendered. Respondents made payment on a regular basis and within stipulated time. In 2017, respondent issued debit notes on account of pieces being missing from the consignment delivered. The petitioner had concocted the entire facts and emails exchanged between the parties was merely an internal communication from erstwhile Director Mr. Atul Moudgil to one of the employees in the Account Department of respondent to check the status of any outstanding in account of petitioner. Thereafter, Mr. Ashwani Kumar, joined as new counsel for the corporate debtor. However, on 23.05.2022, none appeared on behalf of the respondent corporate debtor and no Vakalatnama was filed despite vide order dated 03.01.2022. Therefore, the respondent-corporate debtor proceeded ex parte.

7. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

8. The first issue for consideration is whether the demand notice in Form 3 dated 24.04.2018 was properly served. The demand notice was received as per tracking report (Annexure 4). In view of the same, it is held that the demand notice has been duly served. However, reply dated 14.08.2018 to the demand notice was received.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of affidavit by the petitioner that no reply was received to the demand notice within 10 days from receipt of demand notice, however, corporate debtor sent reply dated 14.08.2018 to notice issued by operational creditor raising frivolous defence.



The corporate debtor never shared any debit notes, if any, with the operational creditor as claimed in reply. The corporate debtor never raised any plea with regard to shortage of any material. Therefore, there was no pre-existing dispute prior to issuance of demand notice to the corporate debtor and no payment has been received.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice dated 24.04.2018 in Form 3 attached as Annexure 4 was duly served on the corporate debtor through speed post. Reply dated 14.08.2018 was sent by corporate debtor (Annexure 5), wherein, it was stated that there was no unpaid operational debt of Rs.10,10,327.07/- (Ten Lakhs Ten Thousand Three Hundred Twenty Seven and Zero Seven Paise Only) and same amount has already been paid. However, there was no evidence forwarded by the corporate debtor regarding payment as claimed in the reply. Therefore, the period of limitation would begin from the date of default mentioned in Part IV, Form V i.e. 20.02.2016 i.e. when last e-mail for repayment was sent by the operational creditor. This application has been filed on 25.01.2019 vide Diary No. 400. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹19,55,463/- with interest. Corporate debtor approached the operational creditor for taking logistics services for delivery goods from one place to another place. Invoices



attached as Annexure 2. Ledger accounts maintained by the operational creditor and bank statement have been attached at Annexure A-7 & 10 respectively. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

12. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

13. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Foremost International Pvt. Ltd. and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

14. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

15. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

16. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process 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.



17. In Part-III of Form No. 5, no Interim Resolution Professional has been proposed by the petitioner. Keeping in view of this, we appoint Ms. Gunjan Arora, Insolvency Resolution Professional from the list provided by IBBI. The Law Research Associate of this Tribunal has checked the credentials of Ms. Gunjan Arora and there is nothing adverse against her. In view of the above, we appoint Ms. Gunjan Arora, Registration No. IBBI/IPA-003/N-00404/2021-2022-14056, E-mail: gunjanaroraip@gmail.com, Mobile No. 98182-82960 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Ms. Gunjan Arora shall be in accordance with the provisions of Section 16(5) of the Code; subject to her written consent within 7 days of the order;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim



Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency



Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to IRP after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the Resolution Process in a time-bound manner. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.

vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and



viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

18. The petitioner is directed to deposit an amount of ₹40,000/- (Rupees Forty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

19. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

20. This petition is accordingly admitted.

Sd/- 10.11.22
(Subrata Kumar Dash)
Member (Technical)

Sd/- 10.11.22
(Harnam Singh Thakur)
Member (Judicial)

November 10, 2022
YP/TB