

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH- II**

(IB)-1373(ND)2019

IN THE MATTER OF:

M/s Advance Cargo Movers (India) Pvt. Ltd.

202 Advance Complex

C-2 Building NH 8

Vapi - 396191 Gujarat

...Operational Creditor

VERSUS

SBS Transpole Logistics Pvt. Ltd.

A-173, 1st Floor, Road No.4,

Street No.10, Mahipalpur Extn,

New Delhi 110037

... Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on : 04.09.2019

Quorum:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

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



PRESENT:

For the Petitioner : Mr. Shivam Narang, Advocate
For the Respondent : Mr. Karan Valecha, Advocates

ORDER

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

The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Advance Cargo Movers (India) Pvt. Ltd. (for brevity 'Operational Creditor') through its authorized representative Mr. Deepak Saraf, who is duly authorized vide Authorization letter dated 01.02.2019, with a prayer to initiate the Corporate Insolvency process against SBS Transpole Logistics Pvt. Ltd (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s Advance Cargo Movers (India) Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U63010MH2001PTC134039, having its registered office at 702 Ameya Arcade Shivdarshanco Op Housoc Ltd Near MHB Colony Gorai Road Borivali Mumbai - 400091.

3. The Corporate Debtor namely, SBS Transpole Logistics Pvt. Ltd. is a company incorporated on 30.08.2004 under the provisions of Companies Act, 1956 with CIN No. U63013DL2004PTC128680, having its registered



office at A-173, 1st Floor, Road No.4, Street No.10 Mahipalpur Extn., New Delhi - 110037.

4. The Authorised Share Capital of the Respondent Company is Rs. 5,00,000 and Paid Up Share Capital of the Company is Rs 5,00,000 as per Master Data of the Company.

5. It is the Operational Creditor's case that they had provided support to the Corporate Debtor for the purpose of transporting material from Mumbai Port (JNPT) to Dahej.

6. It is submitted that an invoice was issued to the Corporate Debtor towards the transportation facilities rendered by the Petitioner company. It is further submitted that the invoice was personally handed over to appointed personnel of the Corporate Debtor. The details of the invoice are given below:

DATE	INVOICE NO.	INVOICE AMOUNT
24.09.2016	1089	Rs. 2,46,300

7. That the Petitioner had claimed as amount of Rs.4,22,820 (Four Lakh Twenty Two Thousand Eight Hundred and Twenty Rupees only) inclusive of interest @ 24% per annum from the due date as on 24.10.2016. The Petitioner has also annexed the Copy of Delivery Challan

dated 09.09.2016, Copy of Consignment note no.051551, 051552 and 051553 dated 09.09.2016 in support of his claims.

8. It is stated by the Petitioner that since the Respondent had failed to liquidate their dues, it had sent a Demand Notice under Section 8 of IBC 2016 vide speed post dated 28.02.2019 to the Registered Office of the Respondent and E-mail.

9. That the Petitioner had further submitted that *“the Counsel for the Operational Creditor received a Reply dated 17.03.2019 from the Counsel of Corporate Debtor neither giving the existence of any arbitration proceedings or pendency of any suit in relation to the present demand filed before the receipt of Demand notice dated 28.02.2019 rather the Corporate Debtor after admitting the claim straight away denied the valid and legal claim of the Operational Creditor and alleged that there is a “pre existing dispute” in reference to the demand made herein by the operational creditor.”*

10. On entering appearance, the Corporate Debtor filed his reply on 15.07.19 and raised certain objections. It has pointed out that the Petitioner has not filed his Affidavit in compliance of Section 9 (3)(b) of IBC, 2016.

11. It has been submitted by the Respondent that “no service order/work order was ever raised by the Respondent in favor of the



Applicant towards the services purportedly provided by the Applicant to the Respondent. Further, there is no contract/agreement ever executed between the Applicant and Respondent with respect to said alleged transportation services”.

12. That the Respondent further pleaded that the debt claimed by the Operational creditor does not qualify to be an operational debt as per Section 5(21) of IBC 2016.

13. That the Respondent has replied to the Demand notice issued by the Petitioner, under Section 8 of IBC 2016, wherein it has been denied that Invoice bearing No.1089 dated 24.09.2016, amounting to Rs. 2,46,300 and other related documents were personally handed over to the Officials/appointed personal and that the same were sent through post and e-mails.

14. That the Respondent had placed reliance on the Email dated 03.05.2017 to show the pre-existing dispute between the parties. The contents of the Email are reproduced below :

“Dear Sir,

We have received your outstanding claim towards services like transportation. We have verified the records made available to us from the branches and got to know that there was no approved purchase order/rate quotation on the said documents and complete set of documents including POD (Proof of Delivery) are not available for verification and process, in absence of such basic information/documents, any claim of amt could not be checked & processed.



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For any claim of amt we required complete set of document with approved rate quote/PO to process further verification.

Right at this junction we dispute & denying that our company is liable to pay the amt on getting the documents short from you, we shall make a reconciliation of your account with us.

Pls expedite so that we can resolve the dispute at an earliest”.

15. At the time of final arguments on 23.08.2019, the Ld. Counsel appearing for the Respondent clearly admitted the claim in the instant case and expressed their inability to liquidate the outstanding liability.

16. The amount of default being above Rs. 1,00,000 for the invoices, the Petition is admitted in terms of Section 9(5) of the IB Code and moratorium is declared in terms of Section 14 of the Code. 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;

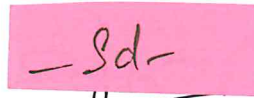
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

17. The Operational creditor has not proposed name of any IRP. However, in another petition no. (IB)956(ND)/2019, filed by SBS Logistics Singapore Pte Ltd. Vs SBS Transpole Logistic Pvt. Ltd. (the same Corporate Debtor), the petitioner has named Mr. Mohan Lal Jain, R/o: F-2/28, Sector-15, Rohini, New Delhi - 110089 (Email Id: ml_jain@sumedhamanagement.com) having IBBI Registration No. IBBI/IPA-002/IP-N00006/2016-17/10006 as IRP. This Bench is inclined to accept the suggestion and appoints Mr. Mohan Lal Jain as IRP subject to the production of Certificate of his Registration with IBBI to this Bench within three days and the condition that no disciplinary proceedings are pending against him and disclosures as required under IBBI Regulations, 2016 are made within a period of one week from this order. The IRP is directed to take the steps as mandated under this Code specifically under Section 17, 18, 20 and 21 of IBC, 2016.

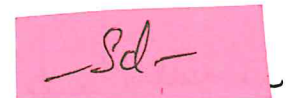
18. The Operational Creditor is directed to deposit Rs.1,00,000 (one Lakh) only to meet the immediate expenses of the IRP, for which he shall be liable to account for.



19. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of resolution professionals forwarded by IBBI be also furnished with copy of this order forthwith by the Registry.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)