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GOVERNMENT OF INDIA/ भारत सरकार
NATIONAL COMPANY LAW TRIBUNAL/ राष्ट्रीय कंपनी विधि अधिकरण
AHMEDABAD BENCH/अहमदाबाद बेंच

1st and 2nd Floor, Corporate Bhawan/ पहली और दूसरी मंजिल, कॉर्पोरेट भवन,
Beside Zydus Hospital, Off S.G. Highway / ज़ाइडस अस्पताल के पास, ऑफ एस जी हाईवे,
Thaltej, Ahmedabad-380 059./थलतेज, अहमदाबाद- ३८० ०५९.

Ref: NCLT/AHM/ CP (IB) No. 441 of 2018/ 634 /2020.

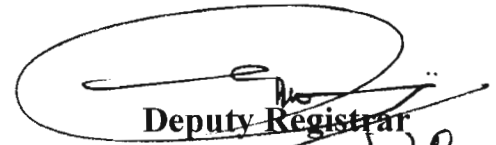
To,

1. TCI Express Limited	Flat No. 306 & 307, 31, 3 rd Floor, 201-203, Ashoka Bhoopal Chambers, S.P Road, Secunderabad, Telangana-500 003
1.1 TCI Express Limited	T.C.I House, Outside Astodia Gate, 1 st Floor, Near H.P Pump, Junalathi Bazar, Ahmedabad-380 022
2. Sonali Energiees Pvt. Ltd.	C-208, Belagum Chambers, Opp. Linear Bus Stand, Ring Road, Surat-395 003
3. Mr. Omkarchand Rikhabdas Maloo Interim Resolution Professional	403, 4th Floor, Shaival Plaza, Near Hope Neuro Care Hospital, Gujarat College Raod, Ellisbridge, Ahmedabad-380006
4. The Registrar of Companies	ROC Bhavan, Nr. Ankur Bus Stand, Opp. Rupal Park Society, Naranpura, Ahmedabad- 380 013

Sub: Certified True Copy of order dated 13.01.2020 passed in CP (IB) No. 441 of 2018.

With reference to the subject cited above, please find enclosed herewith copy of the order dated 13th day of January, 2020 passed by this Tribunal in CP (IB) No. 441 of 2018, being The Applicant, Corporate Debtor, Interim Resolution Professional and Registrar of Companies for information, records and action if any at your end.

Date:21.01.2020


Deputy Registrar
21/01/20

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

C.P. (I.B) No.441/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.01.2020**

Name of the Company: TCI Express Ltd.
V/s.
Sonali Energiees Pvt. Ltd.

Section: Section 9 of the Insolvency and Bankruptcy Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE


1.

2.

ORDER

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 13th day of January, 2020.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 441/9/NCLT/AHM/2018

In the matter of:

TCI EXPRESS LIMITED
Having its Registered Office at:
Flat No.306 & 307, 31,
3rd 201-203, 3rd Floor,
Ashoka Bhoopal Chambers,
S.P. Road, Secunderabad,
Telangana-500 003.

Having its Regional Office at:
T.C.I. House, outside Astodia Gate,
1st Floor, Near H.P. Pump,
Junalathi Bazar,
Ahmedabad-380 022, Gujarat.

..... Petitioner/ Operational Creditor

Versus

SONALI ENERGEES PRIVATE LIMITED
Having its Registered Office at:
C-208 Belagum Chambers,
Opposite Linear Bus Stand,
Ring Road, Surat,
Gujarat-395 003.

..... Respondent/ Corporate Debtor

Order delivered on 13.01.2020.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member(J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Mr. Mandeep Singh for Rituraj Meena for the
Petitioner/Operational Creditor
None for the Respondent

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor, TCI Express Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, Sonali Energiees Private Limited.
2. The Petitioner/Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) - L62200TG2008PLC061781. The registered office of the Petitioner is situated at Flat No.306 & 307, 31, 3rd 201-203, 3rd Floor, Ashoka Bhoopal Chambers, S.P. Road, Secunderabad, Telangana-500 003. The present Petition is filed through Shri Rituraj M. Meena.
3. The Respondent/Corporate Debtor, namely Sonali Energiees Private Limited was incorporated on 26.03.2009 with CIN: U40100GJ2009PTC056444. The authorised capital of the company is Rs.10,00,00,000/- and the paid-up capital is Rs.5,36,86,460.00/-. The registered office of the Corporate Debtor Company is situated at: C-208 Belagum Chambers, Opposite Linear Bus Stand, Ring Road, Surat, Gujarat-395 003.

4. It is submitted by the Petitioner that the Respondent/Corporate Debtor is indebted to the Petitioner for **Rs.5,36,104/-** (Rupees Five Lakhs Thirty Six Thousand One Hundred Four Only) **along with interest @ 24 % per annum** pending payment. That the Operational Creditor is **India's leading door to door express distribution specialist** including reverse logistics services for India and across the globe and logistic solutions provider and a pioneer in the sphere of cargo transportation in India. That Corporate Debtor approached the Operational Creditor for transportation of their consignments to various destinations. The Operational Creditor quoted the transportation charges for the delivery of the consignment from time to time and was duly accepted by the same.

In this regard various invoices/bills were raised by the Operational Creditor in proportion to the work carried on by the Operational Creditor and the same were duly accepted by the Corporate Debtor.

5. It is submitted that the said invoices/bills are still outstanding and the have remained unpaid till date. That as on date there is an outstanding amount of Rs.5,36,104/- (Rupees Five Lakhs Thirty Six Thousand One Hundred Four Only) which is **due and defaulted and payable by** the Corporate Debtor.

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Details of Invoices raised to the Corporate Debtor is produced herein below (Invoice raised are from Page no. 15 to 86 of the application):

BILL NO.	BILL SUB DT	DEBT FELL DUE	BILL AMT Rs.
130310021	09.05.2017	08.06.2017	58470.00
1240006443	23.10.2017	22.11.2017	90008.00
130310077	06.07.2017	05.08.2017	241089.00
130310089	06.07.2017	05.08.2017	24780.00
1131003680	18.09.2017	18.10.2017	3842.01
130310043	09.06.2017	09.07.2017	87515.00
1240052640	09.04.2018	10.05.2018	30400.00
		TOTAL Rs.	536104.00

6. It is submitted that the Form 3 demand notice was issued by the operational creditor on 12.04.2018 which was duly served to registered office of the Corporate Debtor. It is submitted that the respondent Corporate Debtor has chosen **not to give any reply/response** to the said demand notice.
7. Thereafter the operational creditor has approached this Tribunal by filing captioned section 9 applications.
8. It is submitted that on 17.09.2018, this Tribunal was pleased to issue notice to the respondent Corporate Debtor and directed the respondent to file its reply.

9. It is submitted that as the corporate debtor did not appear before the Adjudicating Authority, Operational Creditor/Petitioner was directed to serve the notice through paper publication. Accordingly, the Applicant has published the notice in the newspaper and thereafter filed affidavit in this regard before the Adjudicating Authority.
10. It is submitted that the respondent Corporate Debtor had chosen not to appear before this Adjudicating Authority and did not file any reply despite sufficient opportunity given. Therefore, this Adjudicating Authority, after hearing arguments of the applicant Operational Creditor, was pleased to reserve the captioned matter for order.
11. It is submitted that the Operational Creditor and the Corporate Debtor were entered into a Customer Service Agreement on 04.05.2018 wherein the Corporate Debtor had agreed to comply the conditions mentioned in the agreement. (Page no. 104 to 109)
12. It is pertinent to note that on 20.03.2018 (Page No. 110) wherein the Nitesh Hiralal Desai, one of the director of the company had sent an email to the operational creditor stating that
Due to GST effect and poor conditions of the solar industry overall, your payment was a delay and we are trying to clear it.

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It is submitted from the said email that the said amount is not deposited and the same is due to the Operational Creditor.

13. In light of the abovementioned facts and circumstance the Applicant's Prayer before this Adjudicating Authority is to Cause public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims in accordance with Clause (b) of Sub-section (1) of Section 13 read with Section 14 of the Insolvency and Bankruptcy Code, 2016 and be pleased to pass any further order in the interest of justice.
14. Now, the Petition is filed on 20.07.2018 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for **the unpaid Operational Debt due of Rs.5,36,104.00**
15. The case was taken up by this Adjudicating Authority on 17.09.2018; however, none appeared on behalf of the Corporate Debtor. The matter was adjourned to 26.10.2018 with directions to the Registry to serve the notice of date of hearing on the Respondent along with the copy of the order under acknowledgement. Since nobody was present on behalf of the Respondent on the next date of hearing on 06.08.2019, the petitioner was given liberty to publish the **notice in daily newspapers** in the area where the company is situated and subsequently, proof of service was also filed on record.

However, the Respondent company failed to appear to submit its submission.

16. The case was taken up by this Adjudicating Authority on 17.09.2018 on the request of the Petitioner's Counsel. The matter was heard on 17.09.2018, 26.10.2018, 20.12.2018, 12.02.2019, 01.04.2019, 11.06.2019, 06.08.2019 & 03.09.2019. Arguments of the counsels of the Operational Creditor were heard. On 12.09.2019 written submission was submitted.

17. The matter was finally heard on 03.09.2019. During the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may **be admitted** and an Interim Resolution Professional **appointed in** accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the Corporate Insolvency Resolution Process be initiated as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared.

18. Further, the Operational Creditor **has not suggested any** name of an Interim Resolution Professional ("IRP" for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

19. **It is observed that -**

19.1 The Application has been filed on 20.07.2018 for

operational debt due and defaulted of

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Rs.5,36,104/- (Rupees Five Lakhs Thirty Six Thousand One Hundred Four Only) as per the respective Invoices enclosed.

19.2 Date of invoice is 09.05.2017, 23.10.2017, 06.07.2017, 06.07.2017, 18.09.2017, 09.06.2017 & 09.04.2018.

19.3 Date of first default is **08/06/2017**.

19.4 Application is filed within the limitation period **as the date of default is 08/06/2017 and the date of filing this petition under Section 9 of IBC is 20/07/2018.**

19.5 No pre-existing dispute before the filing of this application is observed.

ORDER

20. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **19, 19.1, 19.2, 19.3, 19.4 & 19.5**, this Adjudicating Authority is **satisfied that,**

- a) Existence of debt is above Rs. One Lac;
- b) Debt is due;
- c) Default has occurred on **08/06/2017**;
- d) Petition has been filed within the limitation period as the date of default is **08/06/2017** and the petition has been filed on **20/07/2018**.
- e) Inspite of giving Demand Notice in Form No.3 as required by Section 8 of the IB Code read with

Rule 5 of the IB Rules and Publication of notice in the newspaper Respondent did not choose to give any reply.

- f) Copy of the Application filed before the Adjudicating Authority has been sent to the Corporate Debtor, Paper publication was done and the application filed by the **Petitioner under Section 9 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.

Therefore, the **present IB petition is admitted with the following directions:**

21. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this adjudicating authority shall declares moratorium for prohibiting all of the following, namely: -

- I.(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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*

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[Signature]

respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

II. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

III. The provisions of sub-section (1) shall not apply to (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

22. The Petitioner/Operational Creditor has not suggested the name of any Interim Resolution Professional in the present Petition. Though it is not mandatory on the part of the Applicant to propose an Interim Resolution Professional when the application is filed under Section 9 of the IBC, 2016, but in that case, the Adjudicating Authority shall appoint an Insolvency Professional from the panel prepared by the IBBI and meant for this Bench on admission of the application. But if it is observed that when an Operational Creditor does not suggest the name of any Interim Resolution Professional and the Interim Resolution Professional is appointed by the Adjudicating Authority

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from the panel of Insolvency and Bankruptcy Board of India available for NCLT, Ahmedabad, the dispute is arising for payment of Interim Resolution Professional fees, paper publication costs etc., in the first month of the Corporate Insolvency Resolution Process. This is more, when Financial Creditor or other Operational Creditor is not there, CoC is not formed and the Operational Creditor is not able to bear the CIRP expenses.

23. Hence, this Adjudicating Authority hereby appoints **Shri Omkarchand Rikhabdas Maloo, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P00435/2017-18/10758, Email ID - omkar@ormaloo.com, Address: 403, 4th Floor, Shaival Plaza, Near Hope Neuro Care Hospital, Gujarat College Road, Ellisbridge, Ahmedabad, Gujarat-380006 an Interim Resolution Professional.**

The IRP is advised to file declaration disclosure statement within two days with this Registry.

The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code. The


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Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnels connected with the Corporate Debtor, its promoters or any other persons associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

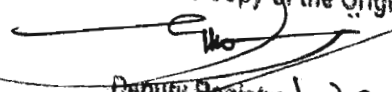
24. An authentic copy of this order to be communicated by this Registry to the Operational Creditor, Corporate Debtor, as well as to the Interim Resolution Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.

Hence, this CP(IB) No.441/9/NCLT/AHM/2018 is admitted on 13/01/2020 with the **above Observations and Directions.**


(Prasanta Kumar Mohanty),
Adjudicating Authority
Member (T)


(Harihar Prakash Chaturvedi),
Adjudicating Authority
Member (J)

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Certified to be True Copy of the Original

Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad