

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOLKATA BENCH**

**KOLKATA**

**C.P. (IB) No. 1706/KB/2018**

**In the matter of:**

**An application U/S. 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;**

**And**

**In the matter of:**

**Trans Asian Shipping Services [P] Limited, having CIN: U63090KL1992PTC006824, represented by its Assistant General Manager Sri Reji Mammen, having its Registered office at Trans Asia Corporate Park, Seaport Airport Road, Chittethukara, Kakkanad Cochin- 682037, Kerala;**

**... Operational Creditor**

**-Versus-**

**Logan Minerals Private Limited, having CIN: U12000WB2009PTC137835, having its registered office at Krishna Building, 224 A, A.J.C. Bose Road,**

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9<sup>th</sup>Floor, Suite No. 904 & 905, Kolkata- 700017, in the State of West Bengal, within the aforesaid jurisdiction;

... **Corporate Debtor**

**Coram: Shri Madan B. Gosavi, Hon'ble Member [Judicial]**

**Counsel appeared:**

1. Shri Souvik Kundu ] for the Operational Creditor

**Order pronounced on 25/07/2019**

**ORDER**

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "I & B Code"] by the Operational Creditor viz., **Trans Asian Shipping [P] Ltd.** for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] as against the Corporate Debtor viz., **Logan Minerals Private Limited** claiming that an amount of **Rs. 10,80,932/- [Rupees Ten Lakhs Eighty Thousand Nine Hundred and Thirty-Two only]** is the unpaid operational debt due from the Corporate Debtor including interest @12% p.a. till 15.10.2018. That despite demand, the Corporate Debtor did not pay the outstanding amount and hence defaulted in payment of the operational debt and therefore, the Operational Creditor has filed this application.

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2. The facts in brief, as stated by the Operational Creditor are the following:-

- a. The Corporate Debtor vide its letter dated 30.10.2017 approached the Operational Creditor to take on lease 10\*40 ft. containers and 30\*20 ft. containers. A Term Lease Agreement dated 01.11.2017 was executed between the Operational Creditor and the Corporate Debtor for lease of 20\*20 DV and 15\*40 HC containers from the Operational Creditor for a month and thereafter the lease was further extended after the Corporate Debtor vide its letter dated 05.02.2018 requested for extension of the duration under the Term Lease Agreement dated 01.11.2017. The said duration for the lease of the containers was extended for a period of four months under revised rental charges.
- b. Accordingly, the Operational Creditor raised invoices for rent since the month of November, 2017. The Corporate Debtor made payments till January 2018 and thereafter failed to make regular payments. Thereafter, the Corporate Debtor made payments of Rs. 1,00,000/- [Rupees One Lakh only] on 28.04.2018 and Rs. 2,00,000/- [Rupees Two Lakh only] on 30.04.2018. The Corporate Debtor has failed to make payments of 17 invoices from 06.03.2018 to 24.09.2018 which are produced along with the application and marked as **Annexure "F" colly.**
- c. The Corporate Debtor returned some of the containers to the Operational Creditor and hence the rental charges for the remaining containers continued as per the terms in the Lease Agreement.

- d. The Corporate Debtor did not make any payments for the tax invoices, thereafter, the Operational Creditor sent a demand notice dated 15.10.2019 in Form 3 under Rule 5 of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 to the Corporate Debtor to pay the unpaid operational debt in full. The notice returned to the Operational Creditor with the postal remarks "Refused". Thereafter, the Operational Creditor sent the demand notice via email on 30.10.2018. Copy of the notice along with the copy of envelope and copy of email have been collectively annexed to the application and marked as **Annexure "O"**.
3. The Corporate debtor has failed and neglected to make payment of Rs. 10,80,932/- [Rupees Ten Lakhs Eighty Thousand Nine Hundred and Thirty-Two only] including interest @12% p.a. till 15.10.2018, in spite of demand made. The Operational Creditor/Applicant has produced certain documents to prove the existence of operational debt with regard to prove the existence of operational debt with regard to the goods supplied and the amount of default. The following are the documents relevant for the consideration of the case in hand:-
- a. Copies of tax invoices from 06.03.2018 to 24.09.2018 are annexed to the application and marked as **Annexure "F" colly.**;
  - b. Copy of certificate from HDFC Bank dated 30.11.2018 confirming that there is no payment by the Corporate Debtor which is annexed to the application and marked as **Annexure "B"**;
  - c. An affidavit under Section 9 [3] (b) of the I & B Code has been filed which has been affirmed by Sri Reji Mammen on 30.11.2018

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and has been produced along with the application in **Pp. 137-140**;

- d. Copy of the Demand Notice in the prescribed under Section of the I & B Code has been annexed with the application and marked as **Annexure "O"**;
4. Notice was served on the Corporate Debtor/ Respondent who entered an appearance on 03.01.2019 and thereafter but the Corporate Debtor failed to appear and hence this application directed to proceed ex-parte against the Corporate Debtor.
5. Heard the Ld. Counsel for the Operational Creditor and perused the records. This is an application filed under Section 9 of the I & B Code for initiating CIRP against the Corporate Debtor alleging that the Corporate Debtor failed to make payments for the rent amount of the containers given on lease to the Corporate Debtor. The Corporate Debtor, despite demand has committed default in payment of Rs. 10,80,932/- [Rupees Ten Lakhs Eighty Thousand Nine Hundred and Thirty-Two only] including interest @12% p.a. till 15.10.2018, payable to the Operational Creditor. The Applicant claims that the amount is due on the basis of invoices dated 06.03.2018 till 24.09.2018.
6. The Operational Creditor issued a demand notice U/S 8 of the I & B Code, dated 15.10.2018 upon the Corporate Debtor calling for payment of the debt which was returned to the Operational Debtor with the Remark "Refused". Thereafter, the Operational Debtor sent the Demand Notice via email on 30.10.2018, despite receipt of which the Corporate Debtor has not paid the outstanding amount. According to the Ld. Counsel for the Operational Creditor, the requirement to be meted out to file an application under Section 9 of the I & B Code has

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been complied with. Since the Corporate Debtor did not pay the operational due to the Operational Creditor, the applicant filed the instant application. The Section 8 of the I & B Code r/w Rule 5 [2](b) of the IBBI [Application to Adjudicating Authority] Rules, 2016 states that the demand notice may be delivered to the Corporate Debtor by electronic mail service hence the Demand Notice sent via email by the Operational Debtor is held as valid service.

7. The Operational Creditor has also filed an affidavit under Section 9 [3](b) of the I & B Code that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt.
8. The Operational Creditor has not proposed the name of an Interim Resolution Professional [hereinafter referred to as the I.R.P.]. The Operational Creditor in the case in hand, succeeds in proving all the ingredients of Section 9 (5)(i) of the Code and therefore, the application is liable to be admitted.
9. In view of the above-said discussion, the application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is admitted upon the following orders:-
  - a. The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Logan Minerals Private Limited is hereby admitted.
  - b. I hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
  - c. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall

cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- d. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- i. 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;
  - ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - iii. 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 Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- e. The services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

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- f. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- h. Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- i. Necessary public announcement as per Section 15 of the I & B Code, 2016 may be made.
- j. **Sri Suman Kumar Agarwal**, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having **Registration No. IBBI/IPA-001/IP-P00913/2017-2018/11519**, **email i.d.: [casumansimran@gmail.com](mailto:casumansimran@gmail.com)** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- k. The Operational Creditor/Applicant to pay Rs. 50,000/- [Rupees Fifty Thousand only] to the I.R.P. as payment of his fees as

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advance, as per Regulation 33 [3] of the IBBI [Insolvency Resolution Process for Corporate Persons] Regulations, 2016, the same shall be adjusted towards total fees.

- l. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
  - m. Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through email.
10. List the matter on 16.09.2019 for the filing of the progress report.
11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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25/7/2019

**Madan B. Gosavi**

**Member (J)**

*Signed on this, the 25<sup>th</sup> day of July, 2019.*