



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 296/KB/2022

*An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016, for
brevity “I&B Code” read with other Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.*

IN THE MATTER OF:

INDEX LOGISTICS PRIVATE LIMITED

[CIN: U63090MH2005PTC152924]

... Operational Creditor/ Applicant

Verses

VAAYU LOGISTICS PRIVATE LIMITED

[CIN: U74900WB2013PTC190895]

... Corporate Debtor/ Respondent

Date of Hearing: October 09, 2023

Date of Pronouncement: October 18, 2023

CORAM:

HON’BLE SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

HON’BLE SHRI ARVIND DEVANATHAN, MEMBER (TECHNICAL)

Appearance:

For Index Logistics Private Limited (Operational Creditor):

1. Ms. Lisha Saha, Adv.

For Vaayu Logistics Private Limited (Corporate Debtor):

1. Mr. Rishav Banerjee, Adv.

2. Ms. Nikita Khaitan, Adv.

ORDER

Per Arvind Devanathan, Member (Technical):

1. This Court is congregated through hybrid mode.
2. This instant Application has been filed under **Section 9 of the Insolvency and Bankruptcy Code, 2016**, for brevity “**I&B Code**” read with **Rule 6** of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Index Logistics Private Limited, hereinafter referred to as the Applicant/ Operational Creditor/ OC against Vaayu Logistics Private Limited, hereinafter referred to as the Respondent/ Corporate Debtor/ CD seeking direction to initiate Corporate Insolvency Resolution Process, for brevity “**CIR Process**”/ “**CIRP**” in respect of Corporate Debtor herein.

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3. The Corporate Debtor is a private limited company incorporated on 25.02.2013, having an Authorized Share Capital of Rs. One Lakh and a Paid-up Capital of Rs. One Lakh, having registered office address at 2 No. Alipore Gate, Motilal Colony Tantkol, Ambagan, Kolkata – 81.
4. The **Total amount claimed to be in default** is of **Rs. 1,13,50,932/-**, in which the Principal Amount (from June 2022 to July 2022) is of Rs. 1,10,41,750/- along with the Interest @18% on principal due as on August 23, 2022, is of Rs. 2,62,018/- along with GST of Rs. 47,163/-. The **Date of Default** is claimed as **01.08.2022 (First Date of Default** – upon confirmation by the CD regarding the unpaid operational debt of Rs. 83,79,254.64/-) and **23.08.2022 (Second Date of Default** – when the CD failed to remit the due amount in receipt of the Demand Notice dated 23.08.2022).
5. **Brief Fact of the Case:**
- 5.1. It is claimed that in the present case, the Applicant through its Director, had approached the Respondent in the year 2019 and showed its willingness to do business with the Applicant for airfreight/ express logistics at Pan India Level. During the course of business, the Respondent has taken credits of crores from the Applicant which remains unpaid. Vide an email dated 01.08.2023, annexed at Pages 83-85 to this Application as **Annexure OC-4**, the Respondent has confirmed the due balance of unpaid operational debt is to the tune of Rs. 83,79,254.64/- against the service rendered to the Respondent by the Applicant. Further, it is claimed that several reminder emails dated 21.08.2022, 23.08.2022, 08.08.2022 and 11.08.2022 have been sent by the OC, but CD did not respond, except transferring a meagre amount of Rs. 5 Lakh out of total outstanding dues.
- 5.2. Further it is claimed that the Demand Notice dated 23.08.2022, annexed at Pages 89-104 to this Application, as Annexure OC-7, has been issued to the CD and the CD has also replied to the Demand Notice vide Letter dated 07.09.2022. Hence this Application.

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6. Ld. Counsel for the Applicant contends as:

- 6.1.** That, in the Financial Year 2019-2020, after acting on the Respondent's representations, the OC has continued the business with CD and after winning the OC's Trust, the CD falsely secured the Credit from the OC in availing the logistics services, consideration for which became outstanding due for payment.
- 6.2.** That, the Applicant vide an email dated 21.07.2022 and 23.07.2022 has intimated to the Respondent related to the unpaid operational debt and in reply, the Respondent has assured the Applicant to repay within a few days but the Respondent has failed to do so. The copies of the emails dated 21.07.2022 and 23.07.2022 are annexed as Annexure – OC-5 (Colly) at Pages 86-87 to this Application.
- 6.3.** That, vide an email dated 01.08.2022, the Respondent has confirmed that the operational debt of Rs. 83,79,254.64/- is due and payable at their end. A copy of the email dated 01.08.2022 is annexed to this Application at Pages 83-85 as Annexure – OC-4. However, the Respondent has failed to remit the same.
- 6.4.** That, vide an email dated 08.08.2022 and 11.08.2022, annexed at Page 88 as Annexure – OC-6, further communication is made by the OC to CD for payment of outstanding operational debt. It is submitted that as on August, the due amount of the CD as per the books of account maintained with OC is showing Rs. 1,10,41,750/- as principal outstanding. The OC has informed the same to CD through various emails and telephonic calls, however, the directors of the CD remained oblivious to the OC's request and did not bother to remit any amount till date, except a meagre amount of Rs. Five Lakh only.
- 6.5.** Ld. Counsel for the Applicant contends that seeing no remittance of payment of any amount, the Applicant has issued a Demand Notice under Section 8 of the I&B Code on 23.08.2022 and on 07.09.2022, the Respondent has sent the Reply of the said Demand Notice refuting the

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claim of OC with an attempt to dispute of admitted due amount of unpaid debt, so as to defeat the legal right of the Applicant and thus on frivolous, baseless and only ulterior motive to delay the process of law. However, the Respondent neither showed “*any existence of a dispute, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or any debit note in relation to such dispute*” nor received any payment against the amount claimed in the Demand Notice.

7. Ld. Counsel for the Respondent per contra submits:

7.1. That, the Respondent disputes the amount claimed by the Applicant as being inflated to reach the statutory threshold of one crore in as much that the Applicant has deliberately suppressed the amounts received by it prior to filing the Company Petition especially between the period of August 23, 2022 to October 18, 2022. It is submitted that the money received by the applicant just prior to filing of this company petition is as per the table below and thus the total principal outstanding amount is below the Rupees one crore threshold on the date of filing this application.

SN	Date	Amounts Debited from the A/c of the Respondent as payments to the Applicant
1.	02/09/2022	10,00,000/-
2.	05/09/2022	07,00,000/-
3.	21/09/2022	04,00,000/-
Total = 21,00,000/- (INR Twenty-One Lakh Only)		

7.2. That, to substantiate the contention of the Respondent, the Ld. Counsel has submitted the Bank Statement of the Respondent, **annexed to the Supplementary Affidavit dated September 04, 2023, being Annexure “B” at Page 10-22 (Relevant Pages 11 and 12).**

7.3. The Ld. Counsel for the Respondent claims that as per the Applicant, the Principal amount is of Rs. 1,10,41,750/- and the Respondent has already paid Rs. 21 Lakh, hence the amount payable to the Applicant is less than the threshold level as provided under Section 4 of the I&B Code, 2016.

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- 7.4. Further, it is submitted that amounts as claimed by the Applicant have been vehemently disputed even in the correspondences exchanged between the parties. E-mails from 23.07.2022 to 11.08.2022, annexed to the Company Petition, demonstrate one such dispute pertaining to alleged outstanding amounts. The respondent had sought for reconciliation of the Petitioners books of accounts with the ledger provided by the Respondent. The Applicant's ledger account is maintained with the Respondent from the period 1st April, 2022 to 6th, March, 2023 reflects the payments made to the Petitioner and the closing balance as on date 8th February, 2023 as Rs. 55,39,420/-. Therefore, the principal, if at all, to be received by the Petitioner after deducting the monies received by it is Rs. 55,39,420/-. **A copy of the Applicant's ledger account as maintained with the Respondents for the period 1st April, 2022 to 6th, March, 2023 is annexed as Annexure "B" to the Reply Affidavit at Pages 22-25.**
- 7.5. Further, it is claimed that the Respondent is a solvent company and insolvency proceedings against a "solvent company" defeat the purpose of this Code.
8. The Ld. Counsel for the Applicant through Rejoinder Affidavit submits that the reply filed by the Corporate Debtor is wrong and denied. The claim of the Respondent that the Respondent had suffered loss and damaged owing to deficiency in services by the Applicant is baseless and there is no pre-existing dispute regarding the services provided by the Applicant.

Analysis and Findings

9. We have heard the rival contentions of the parties and perused the documents placed before us.
10. It is evident from the Bank Account statement of the Respondent annexed at Page 11 and 12 of the Supplementary Affidavit dated September 04, 2023, filed by the Respondent that the Respondent has made a payment in total of **Rs. 21 Lakh** from 02/09/2023 to 21/09/2023 to the Applicant and this Application has been filed on 22.10.2022 and registered on 14.11.2022.

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11. The Applicant alleges that the **Total amount claimed to be in default** is of **Rs. 1,13,50,932/-**, and from the Bank Statement, it evident that an amount of **Rs. 21,00,000/-** has already paid to the Applicant by the Respondent before filing this Application under Section 9 of I&B Code. Hence, the default amount is less than the threshold limit as provided under Section 4 of the I&B Code and accordingly this application under Section 9 is **dismissed**.
12. We are of the view that, the applicant has filed this application to initiate the insolvency resolution process in respect of the Respondent by hiding the fact of payment of Rs.21 Lac before filing this application under Section 9 of IBC with fraudulent and malicious intent to initiate Insolvency proceedings. Hence, we are of the view that is a fit case to invoke Section 65 of the I&B Code and imposing a penalty of **Rs. One Lakh only** upon the Applicant. The Applicant is directed to furnish the penalty amount to the **Prime Minister's National Relief Fund (PMNRF) within 10 days** and delaying of payment of the penalty amount beyond 10 days shall be carrying a rate of **10%** per annum from the date of pronouncement to the date of payment.
13. However, the above direction is without prejudice to the Applicant's entitlement to recover their dues as per other laws as applicable
14. In view of the above, this Company Petition, being **C.P. (IB) 296/KB/2022** is **dismissed** with Cost of **Rs. One Lakh only**.
15. Registry is directed to issue notice to the Operational Creditor, Corporate Debtor, Registrar of Companies, IBBI and all the concerned parties.
16. Certified copy of this order may be issued by the Registry, if applied for, upon compliance of all requisite formalities.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 18th Day of October, 2023.

Bose, R. K. [LRA]