

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No. 774/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 05.04.2021**

Name of the Company: Tiger Logistics (India) Ltd
V/s
Famous Tradeline Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

(through video conferencing/physical)

None appeared on behalf of parties.

The order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 5th day of April, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. (IB) 774/9/NCLT/AHM/2019

In the matter of:

M/s. Tiger Logistics (India) Limited

D-174, Ground Floor
Okhla Industrial Area Phase – 1
NEW DELHI 110 020

:

Petitioner
Operational Creditor

Versus

Famous Tradeline Private Limited

1-448, Fourth Floor
Titanium CityCentre Mall
Near Sachin Tower
Anandnagar Road
Satellite
Ahmedabad 380 015

:

Respondent
[Corporate Debtor]

Order delivered on 5th April, 2021

Petitioner : Mr. Vishal Raval, Advocate
Respondent : None

ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Hardik Patel, being authorised signatory, on behalf of **M/s. Tiger Logistics (India) Limited** filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.
2. The applicant/operational creditor is a limited company incorporated under the Companies Act, 1956, having registered office at New Delhi and having identification No.

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L74899DL2000PLC105817 engaged in the business of providing logistics services and freight forwarding services comprising of international air freight, international ocean freight, domestic freight, project logistics, custom clearance etc.

3. The respondent/corporate debtor is a private limited company registered on 15.03.2012 under the provisions of Companies Act, 1956, having identification No. U51109GJ2012PTC069439 and having registered office at Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 1,00,000/- and paid up share capital is Rs. 1,00,000/-.
4. The applicant/operational creditor has stated that during the course of business it had provided logistical services, comprising of arrangement of international ocean freight services by road and railways and agency attendance services for export of the corporate debtor's goods from India to their final destination. That, the applicant raised and submitted respective invoices pertaining to the logistical and freight forwarding services provided and the corporate debtor used to make payment.
5. The applicant/operational creditor has stated that from August, 2016 onwards, the corporate debtor had availed international ocean freight services whereupon various containers containing the corporate debtor's goods from Mundra port to various ports located in Sohar, Sultanate of Oman were transported and raised various invoices (page 45-73) during the period from 19.08.2016 to 26.12.2016. Accordingly, the applicant had raised invoices on the respondent for the sum of Rs. 42,17,490/- during the financial year 2016-2017 against which the respondent had made payment of total Rs. 28,66,276/-. Thus, an amount

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of **Rs. 13,51,214/- (Rupees thirteen lacs fifty-one thousand two hundred fourteen only)** towards principal with interest @ 24% per annum calculated from the date of presentation of the invoices.

6. It is further stated that the applicant has been regularly corresponding and communicating with the corporate debtor regarding the payment of the outstanding debt, however, no amount of outstanding debt has been forthcoming, but, in September, 2017 the corporate debtor duly admitted and acknowledged the outstanding liabilities and executed a Memorandum of Understanding (page 93-95) dated 22.09.2017 with the operational creditor undertaking to pay the outstanding debt within 90 days in weekly instalments ranging from Rs. 1,00,000/- to Rs. 1,50,000/-. Though, thereafter, certain payments were made, but, again the corporate debtor defaulted in paying the weekly instalments thereby violating the terms and conditions of the MoU.
7. It is further stated by the applicant that having failed to receive the outstanding debt, the applicant was compelled to issue demand notice in form 3 under section 8 of the Code dated 04.01.2019 demanding operational debt of **Rs. 13,51,214/- (Rupees thirteen lacs fifty-one thousand two hundred fourteen only)** due and payable by the respondent along with interest @ 24% upon the outstanding operational debt from the date of presentation of invoices. That, the corporate debtor has neither replied the demand notice, nor it raised any dispute.
8. In support of its claim, the operational creditor has annexed to the application documents like; copy of invoices (page 45-73), Board Resolution dated 13.08.2018 authorising the official to initiate CIRP against the corporate debtor,

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computation sheet of principal and interest outstanding, copy of ledger, copy of MoU dated 22.09.2017, demand notice dated 04.01.2019, copy of bank statement etc.

Findings:

9. On perusal of the record it is found that, despite giving number of opportunities, the respondent neither appeared in person nor filed any reply. Since the notice issued to the respondent through Registry was returned undelivered, in compliance of order dated 17.08.2020, paper publication was made by the petitioner. Since the service is complete, the matter is heard in absence of the corporate debtor.
10. Heard the learned counsel appearing for the applicant and perused the documents annexed to the application.
11. On perusal of the records it is found that the petitioner has filed all the documents and the petition is complete in all respect. Service is complete. That, the petitioner received the last payment on 25.04.2018, therefore, the date of default is 25.04.2018.
12. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted.
13. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no pre-existing dispute regarding the operational debt from the side of the corporate debtor.

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14. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
15. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
16. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBC (JP) 2 SC*** that while examining an application under Section 9 of the Act, will have to determine the following: -
- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
 - (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
- and**
- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?
If any of the aforesaid conditions is lacking, the application would have to be rejected.
17. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. No dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish

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that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

18. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
19. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
20. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
 - (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;

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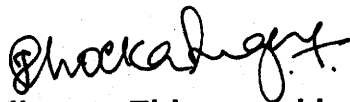
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation 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.
21. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
22. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the 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.
23. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoint Shri Manish Kumar Bhagat, 103-104 Panchdeep Complex, Mithakhali Six Road, Navrangpura, Ahmedabad 380 009 (mbhagat2003@gmail.com) (Mobile 9876061500) having registration No.IBBI/IPA-001/IP-P00856/2017-2018/11438 to act as an interim resolution professional under Section 13(1)(c) of the Code. The IRP shall be under duty to protect and preserve the value of the property of the corporate

Manish Kumar Bhagat

Manish Kumar

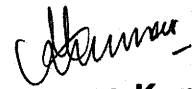
debtor company and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The operational creditor is directed to pay an advance of **Rs. 50,000/- (Rupees fifty thousand only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of corporate insolvency resolution process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with first progress report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per Rules.

24. This Petition is accordingly admitted. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
26. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking of name of the respondent company be initiated arising out of non-compliance of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of liquidation and sale of assets to realise the amount of all the stakeholders.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

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Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)