

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V



CP(IB) 1228 MB 2020

Under section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy Rules, 2016)

IN THE MATTER OF

LCL Logistix (India) Pvt. Ltd.

Der Deutsche Parkz, 3rd Floor,
Adjacent to Nahur Railway Station,
Subash Nagar Road, Bhandup (West)
Nahur, Mumbai- 400078.

... Operational Creditor

V/s.

**Eashkrupa Shipping & Logistics
India Private Limited**

Flat No. 302, Alder Wing, 3rd Floor,
Rosewood Heights, Plot No. 270,
Sector- 10, Kharghar, Navi Mumbai,
Raigarh, Maharashtra- 410210.

... Corporate Debtor

Order delivered on :- 20.10.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances:

For the Operational Creditor : Adv. Omprakash Parihar
For the Corporate Debtor : Adv. Ashish Verma

ORDER


Per: - Kuldip Kumar Kareer, Member (Judicial)




1. This Company petition is filed by LCL Logistix (India) Pvt. Ltd. (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Eashkrupa Shipping & Logistics India Private Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code, 2016 (hereinafter called "**Code**") on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 2,13,89,662.85/-.

The submissions by the Operational Creditor: -


2. The Applicant is engaged in the business of Sea freight, Air Freight, Container Freight, Warehousing service, IATA agents and other business related to maritime and logistics industry.
3. The Corporate Debtor through its Directors approached the Applicant for providing them with services for transporting goods and made freight bookings of consignments of various shippers through the Applicant.
4. The Applicant had provided service to the Corporate Debtor and had raised invoices for its services.
5. The said invoices were received by the Corporate Debtor and thereafter towards part payment of the invoices the Corporate Debtor had handed over cheques.

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6. The said cheques were periodically presented by the Applicant and were dishonoured as “Payment Stopped by Drawer”. Therefore, the Applicant was constrained to initiate proceedings against the Corporate Debtor before the Metropolitan Magistrate’s Court, Kurla Mumbai under section 138 of the Negotiable Instruments Act.
 7. Thus, the Corporate Debtor has failed to make payments with respect to the shipment invoices/outstanding amounts. The non-payment of the pending invoices has led to the filing of this Application. The Corporate Debtor has defaulted, failed and neglected to make the payment of the total undisputed outstanding amounts.
 8. After repeated requests and demands, the Applicant was constrained to issue Demand Notice in Form-3 and Form-4 under the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 on 31.08.2019 demanding payment of the outstanding amount of Rs. 1,72,65,837.38/-.
 9. The Applicant has received a letter in reply to the notice from the Corporate Debtor dated 09.09.2019 where it is admitted that the said cheques were given by the Managing Director of the Corporate Debtor to the Applicant but vague and unsubstantiated allegations have been made against the Applicant including that the cheques were handed over only for security purpose which is a statement made purely with a malafide intent to evade liability to make payment due for services that were received from the Applicant.

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10. An extract of the Customer sub-ledger for the period ranging from April, 2019 till August, 2019 has been annexed with the Petition.
 11. Since the Corporate Debtor defaulted in payments towards the pending invoices, as stated above, the Corporate Debtor is liable to pay the total amount of Rs. 2,13,89,662.85/- (Rupees Two Crores Thirteen Lakhs Eighty-Nine Thousand Six Hundred Sixty-Two and Eighty-Five Paise Only). Hence, the Petition.
 12. No reply was filed on behalf of the Corporate Debtor despite ample opportunity and vide order dated 18.05.2023 the right to file reply was forfeited.

Findings:-

13. We have heard the Counsel for the parties and have gone through the records.
14. This Petition has been filed on the averments that the Petitioner rendered services for transporting goods to the Corporate Debtor from time to time and raised invoices as per Annexure B which were issued between 12.06.2019 and 18.07.2019. The Corporate Debtor issued cheques towards the payment of the said invoices which were dishonoured. In this regard the Petitioner has also initiated proceedings u/s 138 of the Negotiable Instruments Act.
15. The Petitioner has further proved on record the demand notice dated 31.08.2019 calling upon the Respondent to make the payment of the outstanding dues. In reply dated 09.09.2019 to the demand notice the Corporate Debtor has




simply stated that the cheques given as security have been misused to launch criminal proceedings against the Corporate Debtor. It has also been claimed that the Petitioner illegally withheld some of the bills of lading pertaining to some consignments to harass and pressurize the Corporate Debtor. However, no substantive pre-existing dispute has been raised in reply to the demand notice.

16. The Respondent has not filed any reply to controvert the averments made in the Petition and thus the case set up by the Petitioner has gone unrebutted.
17. The invoices in question pertain to the period from 12.06.2019 to 08.07.2019 and the present Petition was filed on 27.04.2023. Considering the law laid down in suo-moto Writ Petition no. 03 of 2020 by the Hon'ble Supreme Court whereby it was held that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special law in respect of all judicial and quasi-judicial proceedings and further, that the balance period of limitation remaining as on 03.10.2021, if any, shall become available w.e.f. 01.03.2022. The present Petition can be deemed to have been filed within the period of limitation.
18. As a result of above brief discussion, we of the considered view that the Operational Creditor has been able to establish the existence of the operational debt and its default committed by the Corporate Debtor and further that the Petition has been filed within the period of limitation. There is no pre-existing dispute between the parties.

Therefore, we deem it fit to admit this Petitioner u/s 9 of the Code. It is ordered accordingly in the following terms:


ORDER

- a. **The above Company Petition No. (IB) - 1228(MB)/2020 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Eashkrupa Shipping & Logistics India Private Limited.**
- b. This Bench hereby appoints Ms. Dipti Amit Thite, Registration No: IBBI/IPA-002/IP-N01087/2021-22/13629 as the Interim Resolution Professional email :- dipti@csdiptithite.com, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring,
encumbering, alienating or disposing of by the
corporate debtor any of its assets or any
legal right or beneficial interest therein;
any action to foreclose, recover 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)