



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.262/MB-IV/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

Air India Limited

[CIN: U62200DL2007GOI161431]

...Operational Creditor/Applicant

V/s

LAS Cargo Private Limited

[CIN: U74999MH2017PTC300168]

...Corporate Debtor/Respondent

Order pronounced on : 09.06.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Abhay Itagi a/w Adv. Tejasvini
Bhat i/b MV KINI Law Firm,
Advocate

For the Respondent(s) : Mr. Shadab Jan a/w Mr. Himanshu
Pradhan & Mr. Prathamesh i/b
Crawford Bayley & Co.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 262/NCLT/MB/C-IV/2022 filed by Air India Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate

Insolvency Resolution Process (CIRP) in the matter of Las Cargo Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Kishore Ramachandra Prabhu, authorized by the Operational Creditor vide Board Resolution dated 30.12.2021, claiming amount in default amounting to Rs.2,31,82,092/- (Rupees Two Crore, Thirty-One Lakh, Eighty-Two Thousand and Ninety-Two only), which includes Principal of Rs.1,72,36,133/- (Rupees One Crore, Seventy-Two Lakh, Thirty-Six Thousand, One Hundred and Thirty- Three only) and interest of Rs. 59,45,959/- (Rupees Fifty-Nine Lakh Forty-Five Thousand, Nine Hundred and Fifty-Nine Only) as on 30.09.2021. A chart showing computation of total debt due from LAS Cargo covering is reproduced hereinunder:

**COMPUTATION OF OUTSTANDING AMOUNT PAYABLE BY LAS CARGO
AS ON 30TH SEPTEMBER 2021
FOR THE CALENDER YEAR 2018**

SLNO	INVOICE NUMBER	TOWARDS THE SERVICES PROVIDED FOR THE MONTH OF	DATE OF INVOICE	INVOICE AMOUNT (IN RUPEES)	DUE DATE FOR PAYMENT	PAYMENT RECEIVED ON	OUTSTANDING BALANCE	NO OF DAYS OF DEALY AS ON 30.09.2021	INTEREST AMOUNT CALCULATED ON OUTSTANDING BALANCE AT 18% P.A.I
1	HNP0012177	JANUARY, FEBRUARY, MARCH	19-04-18	24,14,090	04-05-18	*04.07.2018 *03.10.2018	NIL	-	-
2	HNP0012248	APRIL	27-07-18	12,56,803	11-08-18	*25.09.2018	NIL	-	-
3	HNP0012572	MAY	09-10-18	15,51,461	24-10-18	*15.11.2018	NIL	-	-
4	HNP0012573	JUNE	09-10-18	13,56,798	24-10-18	*12.02.2019	NIL	-	-
5	HNP0012574	JULY	09-10-18	9,53,949	24-10-18	*15.03.2019	NIL	-	-
6	HNO0012577	AUGUST	10-10-18	11,00,866	25-10-18	-	11,00,866	1071	4,91,261
7	HNP0012633	SEPTEMBER	03-11-18	9,03,183	18-11-18	-	9,03,183	1047	3,94,014
8	HNP0012688	OCTOBER	28-11-18	10,89,257	13-12-18	-	10,89,257	1022	4,63,842
9	27AHNP0008	NOVEMBER, DECEMBER	25-01-19	16,41,329	09-02-19	-	16,41,329	964	6,59,267

* Note: Six Ad-hoc payments towards first 5 invoices were received on various dates as stated above after deducting TDS amount.

3. The date of Default is stated as “*The debt fell due on the date of issuance of the respective invoice by the applicant and the default occurred after 30 days from the date of respective invoice due to non-payment of the 15 invoices amounting to Rs. 1,72,36,133/- by the Corporate Debtor*” in Part-IV of the Petition.
4. The case of the Operational Creditor is as under:
 - 4.1 M/s LAS Cargo Pvt Ltd, the Corporate Debtor, the sole Cargo Agent of M/s Go Airlines (India) Ltd entered into an agreement with M/s

Air India Limited, the Operational Creditor for availing X-Ray screening of cargo at Pune Airport from Air India from 01.01.2018 to 31.12.2019. Pursuant to said Agreement, the Operational Creditor provided X-ray screening services to the Corporate Debtor and accordingly raised invoices on monthly basis as per the Agreement. That such invoices were to be paid within 30 days of the date of receipt of such invoices. Operational Creditor during the period between 01.01.2018 to 31.12.2019 raised 20 invoices on Corporate Debtor for a total value aggregating to Rs. 2,47,69,234. Out of the aforementioned total payable amount, Rs 74,12,580 was received by the Operational Creditor by way of various payments / adjustment of credit vouchers and the same was adjusted accordingly.

Sr.No.	Payment received on	Gross Amount	TDS	Net Amount
1.	05.07.2018 03.10.2018	24,14,090	36,210	13,00,052 10,77,828
2.	03.10.2018	12,56,803	18,851	12,37,952
3.	19.11.2018	15,51,461	26,296	15,25,165
4.	12.02.2019	13,56,798	22,996	13,33,802
5.	15.03.2019	9,53,949	16,168	9,37,781
Total		75,33,101	1,20,521	74,12,580

- 4.2 That the said payments were appropriated towards first 5 invoices in the absence of specific direction from the Corporate Debtor. On account of Non-payment of debt even after several follow ups, the Petitioner was left with no other option, but to discontinue its services. Subsequently, the Petitioner vide its email dated 06.12.2019. discontinued its services with LAS Cargo. In response to the said email, the Corporate Debtor vide its email dated 06.12.2019 informed Petitioner that a cheque of Rs. 19,70,082/- was deposited with AIR India's Bank Account towards outstanding invoices raised for the months of August and September 2018. However, it was found that no

such cheque has been deposited. The Petitioner, vide its email dated 16.12.2019, informed to the Corporate Debtor about non-receipt of the said payment of Rs. 19,70,082/-. In response to the said email, the Corporate Debtor, vide its email dated 18.12.2019, informed that the said cheque was lost in transit and would revert back once they trace out the cheque. However, subsequent to the said mail there was no response.

- 4.3 Again on 17.01.2020, the Petitioner, vide its email, requested the Corporate Debtor for payment of outstanding dues and also informed that Air India team will be visiting LAS Cargo's office to discuss issues pertaining to non-payment outstanding dues on 21.01.2020. In the said meeting, though Mr. Bhogale, Chief Financial Officer of LAS Cargo confirmed about the outstanding dues payable by the Corporate Debtor to the Petitioner, he also expressed his difficulty in liquidating the payment of outstanding dues due to financial crunch faced by the Company. In the said meeting, he also assured that they will clear outstanding dues within the next 3 months. However, LAS Cargo again failed to keep up their promise made during the said meeting.
- 4.4 Subsequently, the Petitioner, vide its emails dated 20.12.2019, 01.01.2020, 17.01.2020, 22.01.2020, 28.01.2020, 06.02.2020, 18.02.2020, 09.09.2020, 19.10.2020 and 02.11.2020 requested the Corporate Debtor for payment of outstanding dues. However, no such payment was received.
- 4.5 The Petitioner is left with no other option, therefore, issued Demand Notice dated 20.12.2021 u/s 8 of the Code to the Corporate Debtor recalling/demanding the outstanding dues. Despite receipt of Demand Notice, the Corporate Debtor neither replied to the same nor repay the outstanding dues.

- 4.6 The Petitioner has filed affidavit u/s 9(3)(b) of the Code along with the Petition stating that there is no notice of dispute received from the Corporate Debtor.

Reply by the Corporate Debtor

5. The Corporate Debtor filed reply dated 10.09.2022 submitting that the Petition has been filed without due compliance with the mandatory process and timeline set out therein under the Code and is not maintainable in the eyes of law. The Corporate Debtor also submits that the Petitioner is guilty of *suppression very suggestion falsi* and it has suppressed vital documents and important facts in the petition, which would reveal that existence of pre-dispute between the parties. The Corporate Debtor submits that the Petition is liable to be dismissed on the following grounds:
- a. Pre-existing dispute;
 - b. Petition is premature-not maintainable; and
 - c. No authority to file petition or issue demand notice
- 5.1 The agreement executed between the parties provided the scope of services to be provided by the Petitioner as well as the nature/quality of services and agreement also provided a dispute resolution clause which provided for adjudication of disputes arising under the said agreement to be referred to arbitral tribunal comprising of a sole arbitrator.
- 5.2 Notwithstanding the binding nature of the Agreement, Petitioner failed to act in a diligent manner, and neglected in rendering the said Services. In view of the deficiency in services and several defaults in respect of Services, especially the high rate of absenteeism by the screening staff, the X-ray machines remained non-functional on numerous occasions. Most importantly, the above deficiency in service have also occurred during flight timings which has led to cargo offload on many occasions. As a result of deficiency in services and several defaults in respect of services,

the Corporate Debtor has received various customer complaints which has also led to loss of business, revenue and reputation/goodwill.

- 5.3 Further, on account of deficiency in services and several defaults in respect of Services, the Corporate Debtor suffered loss of revenue to the tune of Rs. 1,56,30,307/- (Rupees One Crore Fifty-Six Lakh Thirty Thousand Three Hundred and Seven Only) and to that end, the Respondent raised the Debit Notes from 05.09.2018 to 07.12.2019. Therefore, they have issued legal notice 22.01.2022 calling upon the Petitioner to make payment to the tune of Rs.1,56,30,307/- alongwith interest @18% within days failing which the arbitration in terms of clause 6.2 of the said agreement will invoked.
- 5.4 Therefore, in view of the disputes between the parties, the Corporate Debtor was constrained to instruct its advocates to issue Notice dated 21 March 2022 inter alia seeking referral of disputes between the parties to arbitration by sole arbitrator and thereby called upon the Respondent to consent for appointment of Advocate Mr. Atul Daga as sole arbitrator of disputes between the parties under the said Agreement dated 1 January 2018. Since the Petitioner did not confirm the nominee arbitrator proposed by the Corporate Debtor within the statutory period under the Arbitration & Conciliation Act, 1996, the Corporate Debtor was constrained to file Commercial Arbitration Petition (L) No. 18364 of 2022 (on 10th June 2022) before the Hon'ble Bombay High Court seeking appointment of a sole arbitrator and referral of disputes between the parties to arbitration.
- 5.5 The Demand Notice dated 20.01.2021 was initially delivered to the Former CFO of the Corporate Debtor vide email dated 20.12.2021. The service of Demand Notice upon the former CFO is bad in law. The Petitioner has delivered the Demand Notice upon the Regd. Office of the Corporate Debtor only on 22.12.2022 and as per the I&B Code, the section 9 application can only be filed after the expiry of 10 days from the date of delivery of notice.

- 5.6 The Authorization Letter dated 30.12.2021 does not confer/delegate powers to the signatory to file an application under section 9 of the Code.

Rejoinder by the Operational Creditor

6. The Petitioner/Corporate Debtor filed rejoinder dated 01.02.2023 denying each and every allegation levelled by the Corporate Debtor in its reply and submits that reply is totally frivolous and baseless.

- 6.1 The Operational Creditor is not liable for any deficiency that arises out of a shortage of manpower or offloading of cargo. The liability of the Operational Creditor as per the liability and Indemnity Clause of the said Agreement is only limited to the extent of providing Cargo screening services. The Liability and indemnity clause reproduced hereinbelow:

“10 LIABILITY & INDEMNITY

“10.1 Air India Limited is liable for only the cargo screening services provided to LAS Cargo, baring the above LAS Cargo shall not make any claim against Air India Limited, for or in respect of anything done or to be done under this Agreement and shall indemnify and keep indemnified Air India Limited from and against all claims, actions, demands, dues duties proceedings, penalties, losses, damage, costs, charges and expenses and other liabilities whatsoever (hereinafter called “Liability”) which may be suffered or incurred by LAS Cargo.”

- 6.2 The Debit Notes raised by the Corporate Debtor claims money on account of “Loss on Revenue arising from offloading cargo due to shortage of Manpower at the screening machine”. The debit notes raised by the Corporate Debtor do not reflect any alleged deficiency arising out of non-functionality of X-Ray screening services that were provided. Further, the allegation made by the Corporate Debtor of the X-Ray screening non-functional on numerous occasions is unsupported by any evidence and its therefore baseless.

Findings:

7. We have heard both the counsels and perused the materials available on record.

7.1 The Corporate Debtor has raised a defence of pre-existing dispute. This Bench finds that clause 9.1 of the Agreement provides that *“LAS Cargo cannot any time calculate or evaluate the services of Air India Limited. Air India Limited shall provide the services as per this Agreement on best effort basis. For any change or modification or amendment in the nature of services to be provided, LAS Cargo shall write to Air India Limited regarding the nature of change of services to which both the Parties shall mutually agree in writing.”* Further, the said agreement in the recital states that *“C. The Parties are desirous to explore a possible business relationship pursuant to which the Air India Limited shall provide the cargo X-ray screening services (herein after referred to as "Services") to the cargo of the Carrier as per the terms and conditions of this Agreement including the payment for the aforesaid to be done by LAS Cargo”*.

7.1.1 It is also noticed that (a) the said agreement nowhere stipulates provision of any manpower at the screening machine; (b) the Corporate Debtor has not produced any evidence suggesting service of these debit notes on the Operational Creditor prior to issuance of demand notice; (c) the Corporate Debtor has also not brought to knowledge of the Operational Creditor existence of these Debit Notes in its communication dated 06.12.2019 and 18.12.2019; (d) the Corporate Debtor had not responded to the email dated 22.01.2020, whereby the operational creditor had enclosed the outstanding statement for an amount of Rs.1.67 Crores as on 31.12.2019 and informing the Corporate Debtor that these dues are long outstanding;.

7.1.2 There have been series of emails from the Operational Creditor following up the payment, including email dated 02.11.2020, whereby outstanding list as on 28.10.2020 was again enclosed. This Bench is

unable to understand why the Corporate Debtor, despite its claim of debit notes having been issued for the period from 05.09.2018 till 07.09.2019 for a sum of Rs.1,56,30,307/-, chose to keep silence over the constant payment follow-ups of the Operational Creditor during the period from 06.12.2019 till 02.11.2020. This Bench is also not able to comprehend the fact, if the Corporate Debtor had a claim of Rs.1,56,30,307/- vide debit notes, why it communicated to the operational creditor the fact of deposit of a cheque of Rs.19,70,082/- against the outstanding of Rs.1.64 Crores claimed by the Operational Creditor in email dated 06.12.2019.

7.1.3 The Hon'ble Supreme Court in the case of ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. (2017 ibclaw.in 01 SC)*** held at para 40 that *“Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application”*.

7.1.4 In view of these facts, this bench finds that the defence of existence of pre-existence dispute is not maintainable, as being an assertion of fact unsupported by evidence.

7.2 As regards defence of Arbitration proceeding having been initiated before Hon'ble Bombay High Court, by the Corporate Debtor by seeking appointment of arbitrator, this Bench finds that the Corporate Debtor had proposed arbitrator on 21.03.2022, whereas the Operational Creditor had



issued a Demand Notice on 20.12.2021. This Bench considers it to be an afterthought.

7.3 As regards service of Demand Notice on the former CFO Mr. Parimal, vide email dated 20.12.2021, this Bench finds that the operational creditor

The screenshot shows the MCA21 website interface. The header includes the Government of India logo and the text 'CORPORATE AFFAIRS GOVERNMENT OF INDIA'. Below the header is a navigation menu with options like Home, About MCA, Acts & Rules, My Workspace, My Application, MCA Services, Data & Reports, E-Consultation, and Help. The main content area is titled 'Company/LLP Master Data' and displays a table of company details.

Company/LLP Master Data	
CIN	U74999MH2017PTC300168
Company Name	LAS CARGO PRIVATE LIMITED
ROC Code	RoC-Mumbai
Registration Number	300168
Company Category	Company limited by Shares
Company SubCategory	Non-govt company
Class of Company	Private
Authorised Capital(Rs)	15000000
Paid up Capital(Rs)	12766000
Number of Members(Applicable in case of company without Share Capital)	0
Date of Incorporation	27/09/2017
Registered Address	5, 1ST FLOOR, 235/2327, PIRAMAL MANSION, DADABHAI NAWROJI ROAD, HANDLOOM HOUSE, FORT, MUMBAI Mumbai City MH 400001 IN
Address other than R/o where all or any books of account and papers are maintained	-
Email Id	parimal@livewel.com
Whether Listed or not	Unlisted
ACTIVE compliance	ACTIVE compliant
Suspended at stock exchange	-
Date of last AGM	06/08/2019
Date of Balance Sheet	31/03/2019
Company Status(for e-filing)	Active

Below the table, there is a section for 'Charges' with a table structure:

Assets under charge	Charge Amount	Date of Creation	Date of Modification	Status
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had sent its last mail for follow-up the payment on 02.11.2020 to Mr. Parimal and Ms. Lathika. Both the persons have not responded and Ms. Lathika never informed the operational creditor that the CFO has resigned from the Job. Nonetheless, the email service of Demand Notice dated 20.12.2021 was also marked to Ms. Lathika, who had been communicating with the Operational Creditor has can be seen from her emails dated 06.12.2019 and 18.12.2019. Nonetheless, this Bench on inspection of company details at www.mca.gov.in finds that the email ID of the corporate debtor is stated as parimal@livewel.com, the relevant screen shot is reproduced as below:

7.3.1 Further, this Bench finds that a copy of said Demand Notice came to be delivered to the Operational Creditor on 22.12.2021 via courier which is duly acknowledged by the Corporate Debtor also.

7.3.2 This Bench finds that this Petition was e-filed on 31.12.2021. Section 8(2) of the Code mandates the Corporate Debtor to intimate within 10 days of the receipt of demand notice, the existence of any dispute. The said period of 10 days expires on 31.12.2021, in so far as delivery of demand notice via courier is concerned. However, copy of Petition having been served via email on 20.12.2021 at the email ID found in records of MCA belonging to the Corporate Debtor, which is a valid service in accordance with Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Accordingly, this Bench feels that there is no non-compliance of Section 8 as the Petition came to be filed on 31.12.2021 and period of days from the date of delivery expires on 29.12.2021.

8. The Petition is complete and has been filed under the proper form. The operational debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established. The Bench didn't find existence of prior dispute in view of discussion in the preceding para. Accordingly, this Bench is of the considered view that this Petition is deserves to be admitted u/s 9 of the Code.

ORDER

a) This Application being C.P. (IB) No. 262/NCLT/MB/C-IV/2022 filed by Air India Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against LAS Cargo Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:



- I. That this Bench as a result of this prohibits:
 - a) 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;
 - 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 respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Pramod Kumar Ramesh Ladda, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00694/2018-2019/12148], Phone No. 7972405776, email- csladdaji@gmail.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) The Operational Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)