

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 2222(ND)/2019

IN THE MATTER OF:

AJAY KUMAR SINGH

S/O SHRI DAROGA SINGH

MANAGING DIRECTOR, AMBA ENTERPRISES PVT.LTD.

215, ELDECO GREENS, GOMTI NAGAR, LUCKNOW

...OPERATIONAL CREDITOR

VERSUS

1. SH. ARUN KUMAR SHRIVASTAVA

MD CENTRAL WAREHOUSING CORPORATION

(PRESENTLY ACTING CHARGE OF CRWC)

CENTRAL WAREHOUSING CORPORATION,

4/1 SIRI INSTITUTIONAL AREA, HAUZ KHAS

NEW DELHI-110016

2. MR. PAWAN KANT

ADVISOR, CENTRAL RAILSIDE WAREHOUSE CO. LTD.

PRAGATI MAIDAN, METRO STATION BUILDING

GROUND FLOOR, NEW DELHI-110001

3. MR. SUDHIR NAIR

MANAGER LOM, CENTRAL RAILSIDE WAREHOUSE CO. LTD.

PRAGATI MAIDAN, METRO STATION BUILDING

GROUND FLOOR, NEW DELHI-11

4. MR. YATIN PATEL

DGMLM, CENTRAL RAILSIDE WAREHOUSE CO. LTD.

PRAGATI MAIDAN, METRO STATION BUILDING

GROUND FLOOR, NEW DELHI-110001

✓ Acs

5. MS. KAVITA KATHURIA

DGM FINANCE

CENTRAL RAILSIDE WAREHOUSE CO. LTD.

PRAGATI MAIDAN, METRO STATION BUILDING

GROUND FLOOR, NEW DELHI-110001

.....CORPORATE DEBTORS

SECTION: U/S 9 OF IBC, 2016

Order Delivered on: 04.03.2022

CORAM:

MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

MR. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

PRESENT:-

For the Applicant/Operational Creditor: Adv. Ashwini Kumar Singh

For the Respondent/Corporate Debtor: Adv. Ashish Tiwari

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The present petition has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor on grounds of its inability to liquidate its operational debt.

2. The facts mentioned in the application in brief are as follows: -
 - i. That the Operational Creditor, Amba Enterprises Pvt. Ltd., started work as service provider at Central Railside Warehouse Co. Ltd. Alamnagar Rail Terminal, Lucknow on 04.01.2019 for handling of Rail borne cargo as per contract dt. 19.12.2018.



- ii. That, since March 2019, the CRWC Terminal Manager, Vivek Yadav, and his team had started to engage in the illegal practice of moving sweeping materials out of the premises unacknowledged, the Operational Creditor had intimated the higher authorities about such occurrences repeatedly.
- iii. That the Operational Creditor had received a request for placement of ACC rake of 58 wagons on 04.05.2019 at 1:55 p.m. It was verbally told by railway staff that rake will be reaching designated railway line at Alamnagar Rail Terminal on 06.05.2019. However, on 05.05.2019, it was found that there was an additional separate request already presented by Mr. Mohammad Ilyas Asstt. Terminal Manager CRWC for the same rake, which was dated 06.05.2019 but was received by railway station office staff on 05.05.2019. The service provider's name on that request was M/s. O.P. Marine Services Pvt. Ltd. On bringing this to the notice of CRWC Terminal Manager's attention, it was told to applicant's site staff that Asstt Terminal Manager CRWC had received orders to assign the handling of the said rake to M/s. O.P. Marine Services Pvt. Ltd. by cancelling the rake placement request of the Operational Creditor and a new rake request was generated for M/s. O.P. Marine Services Pvt. Ltd.
- iv. That the said document of request for ACC rake is dated 06.05.2019. However, this document has been received by the railways on 05.05.2019 as it is evident on the receiving acknowledgement of the Railways.
- v. That at the end of the document, it is written that the request has been Copy Marked (CC) to C.G.S. Alamnagar Terminal. Lucknow and M/s. O.P. Marine Services Pvt. Ltd. And nowhere in the document, it was mentioned that it was copy marked to the Operational Creditor. The rake request enclosed with the Show Cause Notice is not the one which was received by the railways. This shows that the documents



have been forged by CRWC Staff and Terminal Manager to make a case against the Operational Creditor.

- vi. That the Operational Creditor had never refused to handle a rake that was intimated to them. However, after the aforementioned incident no rake has been assigned till date. Therefore, this does not breach the contract but the onus of responsibility shifts to the Corporate Debtor who are intentionally not assigning a rake to the Operational Creditor during this entire period.
- vii. That the Corporate Debtor owes an unpaid due for the months of March, 2019 and April, 2019 as well as Security Deposit, which have been deliberately held up due to the aforementioned incidents. Total Amount being withheld is more than Rs. 45 Lakhs.
- viii. That the details of total amount of debt due is as follows:
 - Rs. 14,02,637.59 since 1st Apr-2019 against bill for Mar-2019
 - Rs. 23,49,121.22 due since 1st May-2019 against Bill for Apr-2019
 - Rs. 750,000 /-submitted as security since 5th Mar-2019
 - Retention Money deducted from bills of Jan-19 & Feb-19
- ix. That the Demand Notice dt. 30.07.2019 was raised against the Corporate Debtor/

3. The Respondent/Corporate Debtor has filed a reply and submitted the following:

- i. That CRWC has not been the party to the present proceeding and all the four parties shown as the Corporate Debtors are individuals and not a corporate entity. Hence, the present application is not maintainable.



- ii. That CRWC submitted a reply dt. 07.08.2019 to the demand notice dt. 30.07.2019 u/s 8 of the Code informing the Applicant about the existence of dispute regarding invoices for the months of March and April, 2019.
- iii. That, as per the agreement, the Applicant was entirely responsible to provide complete solutions to the customer and for any claims by the Railways
- iv. That, in respect of the purported claim of Rs. 14,02,758/- against the invoice for the month of March, 2019, it is stated that several customers of the Railways/CRWC raised the claims regarding loading services.
- v. Accordingly, CRWC sought No Dues Certificate (NDC) from respective customers, before release of the payment, due to the Applicant. In the email dt. 11.03.2019, the Applicant accepted that it had to refund the loading charges to one of the customers. The Applicant also assured that once the invoices for January and February, 2019 were paid by CRWC, it would settle the disputes with the customers. However, the Applicant neither obtained the NDC nor paid the claims, accordingly, invoices for the month of March, 2019 were returned. The dispute was brought to the notice of the Applicant vide letter dt. 27.05.2019 and various emails were exchanged between 08.03.2019 to 24.05.2019.
- vi. That, in respect of the purported claim of Rs. 23,49,121/- against the invoice for the month of April, 2019, it is stated that the Applicant has not raised any such invoice and there are no documents in support thereof.
- vii. That, against the total purported claims of Rs. 37,51,889 (Rs.14,02,768/ + Rs. 23,49,121/-), the total claim raised by customers is Rs. 38,25,603/- as on 25.09.2019 and also the payments due to CRWC have been withheld, which was intimated to the Applicant vide letter dt. 25.09.2019.



- viii. That the outstanding dues of the Applicant, if any, shall be paid after adjustment of all the claims for the losses suffered by CRWC due to breach of contract.
- ix. That, in respect of the purported claim of Rs. 7,50,000/- towards the Security Deposit, as per the clause (h) and (i) of the tender conditions, the Applicant has liability period of one year from the date of termination of contract and only, thereafter the CRWC shall take the decision on refund of Security Deposit.

4. The Applicant/Operational Creditor has filed a rejoinder and submitted the following: -

- i. That the Operational Creditor has an outstanding amount due of Rs. 37,51,889/- against the Corporate Debtor.
- ii. That although the Corporate Debtor had given a reply dated 07.08.2019 to section 8 notice but they failed to make payment of the outstanding amount due to them. It is wrong to suggest that there was any dispute regarding invoices for the month of March-April, 2019.
- iii. That the Corporate Debtor/ CRWC has not given any receipt of payment to the customers, if any, and it is also not mentioned as to under whose permission the payments were made
- iv. That the payments for January and February 2019 were made without any rider of submitting any No Due Certificates (NDC) from the customers.

5. The Applicant/Operational Creditor has filed written submissions. The scanned copy is reproduced below:



WRITTEN ARGUMENTS ON BEHALF OF OPERATIONAL CREDITOR

1. That it is submitted that the operational creditor had received a request for placement of ACC rake of 58 wagons on 4th May, 2019 at 1:55 p.m. which was to be handled at Alamnagar rail terminal Line No.6. Since then, the applicant was continuously following up about the whereabouts of the rake from time to time as per regular operational practice. It was verbally told by railway staff that rake will be reaching designated railway line at Alamnagar Rail Terminal on 6th May-2019.
2. That on 05.05.2019 when site staff went to get the said request acknowledged by the Alamnagar Railway Station office personnel, it found that there was an additional separate request already presented to them by Mr. Mohammad Ilyas , Asstt. Terminal Manager CRWC for the same rake which was dated 06.05.2019 but was received by railway station office staff on 05.05.2019. The service Provider's name on that request was M/s. O.P. Marine Services Pvt. Ltd. on bringing this to the notice of CRWC Terminal Manager's attention, it was told to applicant's site staff that Asstt Terminal Manager CRWC had received orders to assign the handling of the said rake to M/s, O.P.Marine Services Pvt. Ltd. by cancelling the rake placement request of the



operational creditor (and a new rake request was generated for M/s. O.P Marine Service Pvt. Ltd.

3. That it is submitted that the said request for ACC rake was given to the railways on 06.05.2019 because date of generation of said request as mentioned on the document is 06th May, 2019 only. However, this document has been received by the railways on 5th May, 2019, as it is evident on the receiving acknowledgement of the Railways where receiving signature date is clearly mentioned as 5th May-2019 . Also, at the end of the document it is written that the request has been Copy Marked (CC) to C.G. S Alamnagar Terminal. Lucknow and M/s, O.P. Marine Services Pvt. Ltd. Nowhere in the document it was mentioned that it was copy marked (CC) to the operational creditor i.e. Amba Enterprises Pvt. Ltd. Operational Creditor could collect copy of this document from the concerned office of the Railway department. The rake request enclosed with the Show Cause Notice is not the same as the one which was received by the railways. This shows that the documents have been forged by CRWC Staff and Terminal Manager to make a case against the operational creditor i.e. Amba Enterprises Pvt. Ltd with malafide intention for victimization.
4. That it is submitted that Operational creditors i.e. Amba Enterprises Pvt. Ltd had never refused to handle a rake that was intimated to them. However, after the aforementioned incident no rake has been assigned to the operational creditor i.e. Amba Enterprises Pvt. Ltd till date. Therefore, this does not put us in breach of contract but the onus of responsibility shifts to the operational debtor i.e. CRWC who are intentionally not assigning a rake to operational creditor i.e. Amba Enterprises Pvt. Ltd during this entire period.

5. That it is submitted that above issues had been raised by operational creditor to the officials of operational debtors i.e. Managing Director CWC (Officiating charge CRWC) and Chief Vigilance Officer CWC (Officiating charge CRWC) New Delhi, several times via email with proofs but no actions were taken after repeated requests. All the above-mentioned incidents are strongly proving and intentional and willful breach of contract through use of forged documents on the part of operational debtors i.e. CRWC who owes an unpaid due for the months of March, 2019 and April, 2019 as well as our Security Deposit which have been deliberately held up due to the aforementioned incidents. Total Amount being withheld is more than Rs 45 Lakhs, which includes the security amount of Rs. 7,50,000/-.
6. That it is further submitted that the operational creditor has not filed the petition u/s 9 of the IBC to coerce the CRWC to reconsider its decision of termination and blacklisting of Operational Creditor, the same would be taken care of under the provisions of law. It is further submitted that the claim of the Operational Creditor are genuine and true.
7. That it is submitted that the operational creditor carried out every assignment given to them and it is wrong assumption of the Corporate Debtor that several customers of Railways/CRWC raised the claims in as much as the loading services were not provided by the operational creditor and the same were carried out by the customers themselves.
8. That it is submitted that the Corporate Debtor/ CRWC has not given any receipt of payment to the customers, if any, and it is also not mentioned as to under whose permission the payments were made. It is further denied and made clear that the Operational Creditor had ever accepted that it had to reimburse/refund the loading charges to any of the customers/their clearing agents.

9. That it is submitted that the Operational Creditor has genuine outstanding claim of Rs. 37,51,889/- (Rupees Thirty-Seven Lakhs Fifty-One Thousand Eight Hundred Eighty Nine) for March and April and the invoices of same were submitted to them, and the payments for January and February, 2019, were also genuine and the same was cleared by the Corporate Debtor. The withholding of payments for March-April, 2019, as it has been outlined in foregoing paras, pertains to some internal plan hatched by the officials of the Corporate Debtor to oust the Operational Creditor. The refund of security deposit of Rs. 7,50,000/- (Seven Lakh Fifty Thousand Rupees) is also being withheld by the corporate debtor against all the principle and canons of corporate law.
10. That it is submitted that the provisions of IBC are overriding over all other disputes of the company matters and the recourse of Arbitration would have consumed much more time and cost to the Operational Creditor. The Corporate Debtors are indulged in malpractice of underhand dealing much to the disliking of the Operational Creditor which had tried to stop this practice and that being the reason the Operational Creditor has been penalized and victimized.

It is therefore, most respectfully prayed that Operational Creditor had very rightfully and genuinely has claimed the payment for the invoices raised in April and May, 2019 for Rs.37,51,889/- (Rupees Thirty-Seven Lakhs Fifty-One Thousand Eight Hundred Eighty Nine) and a security amount of Rs.7,50,000/- (Seven Lakh Fifty Thousand Rupees), the total outstanding comes to Rs.45,01,889/- with interest @18% p.a., the Operational Creditor is entitled for this much of amount which is genuine and not disputed.



6. The Respondent/Corporate Debtor has filed written submissions.
The scanned copy is reproduced below:

1. The Respondent herein i.e. CRWC is a public sector undertaking and wholly owned by Central Warehousing Corporation, a statutory corporation, under the aegis Ministry of Consumer Affairs, Food and Public Distribution, Government of India;

SUBMISSIONS ON MAINTAINABILITY OF THE PETITION

2. The present petition U/s 9 of IBC is filed against the "*individuals*" and not against any "*Corporate Entity*", CRWC has not been made the party to the present IBC proceeding. All the four parties shown as the Corporate Debtors in the memo, are in-fact, individuals and not a Corporate Entity; Hence, the present petition is not maintainable and liable to be dismissed on this ground alone.
3. It is further submitted that the Petitioner has no locus to sue in his individual capacity as CRWC neither has any transaction nor any amount is due to him and purported claim pertained to M/s Amba Enterprises Pvt. Ltd (hereinafter referred as "*M/s Amba Enterprises*") and not the Petitioner.

PRE-EXISTENCE OF DISPUTE BETWEEN PARTIES

4. It is submitted that there is a genuine "pre-existing dispute" as regards the purported claims of M/s Amba Enterprises (which is not even party here), which was brought to the notice of the Petitioner time and again and even much prior to issuance of the demand notice dated 30.07.2019 u/s Sec. 8 of the Act [reference is made to various emails exchanged between parties from pages 14-31 of reply including the Respondent's email dated 11.03.2021 [*page 31 of reply*], Petitioner's email dated 11.03.2019 [*page 29 of reply*], Respondent's letter dated 27.05.2019 [*page 25 of reply*]]. Thus, as there was pre-existing dispute, same cannot be subject matter of Insolvency and Bankruptcy Code 2016.
5. It is submitted that pursuant to the NIT dated 26.09.2018 [*Annexure R-I- @page 32 to 85 of reply*] issued by CRWC, M/s Amba Enterprises was engaged as the Service Provider by CRWC for providing "Handling and Management Services" on behalf of

CRWC for the rail borne cargo at RWC, Alamnagar and cater the needs of various customers and users of the Railways/CRWC.

6. As per the agreement, M/s Amba Enterprises was entirely responsible to provide complete solution to the CRWC's customers for handling and storage including loading and unloading of cargo/stocks at RWC, Alamnagar. It was further provided that M/s Amba Enterprises shall be solely responsible for any claim for demurrage or any claims by the Railways and it shall keep CRWC indemnified against any loss/damages arising due to operations at RWC, Alamnagar. *[page 54 of reply- Annexure R-1]*
7. That M/s Amba Enterprises commenced the services at the RWC Alamnagar w.e.f. 01.01.2019. However, during its operations, several instances of malpractice were noticed and customers of CRWC raised issues regarding the services and also raise the claims inasmuch as the loading services were not provided by M/s Amba Enterprises but same were done by the customers themselves; nonetheless, M/s Amba Enterprises was raising invoices for the entire operations including the loading charges on CRWC;
8. As M/s Amba Enterprises was not entitled to raise invoices for loading charges and liable to refund the said amount to the customers. Accordingly, CRWC vide its email dated 11.03.2019 *[page 31 of reply]* expressed its concerns and requested the Petitioner to provide No Dues Certificate from the respective customers. In response, M/s Amba Enterprises vide its email dated 11.03.2019 *[page 29 of reply]* while acknowledging that it had wrongly recovered loading charges, agreed that same was to be paid to the clients *[M/s Shivnath and other customers]*. M/s Amba Enterprises also assured that same would be paid after release of the invoices for the month of January 2019 & February 2019. It is also pertinent to mention herein that the invoices for the month of Jan 2019 and February 2019 were paid by CRWC only on the assurance of M/s Amba Enterprises that it shall settle the disputes with various CRWC customers/users catered by it. *[ref. CRWC's letter dated 27.05.2019 @ page 25 of reply]*;
9. However, despite the assurance and subsequent payments by CRWC of the invoices for the month of Jan & Feb 2019 M/s Amba Enterprises neither obtained the No Dues Certificate from customers/user nor paid their claims.
10. Though, the Petitioner submitted the invoices only for the month of March 2019 *[no invoice for month of April 2019 was ever submitted by the Petitioner till date]*. Be that as it may, in view of the pre-existing disputes and pending dues of the CRWC customers and malpractices of M/s Amba Enterprises in raising frivolous invoices, the invoices for the month of March 2019 were returned with instructions to submit the revised invoices

after obtaining NDC from respective customers/users. [ref: CRWC's letter dated 27.05.2019 @ page 25 of reply];

11. It is submitted that despite repeated requests by CRWC, M/s Amba Enterprises has never raised any such invoice on CRWC for the month of April 2019, much less documents in support thereof. In fact, no such invoice was enclosed with the section 8 notice either or with the petition before this Hon'ble Tribunal. It is also pertinent to mention that there is no proof submitted by the Petitioner that the invoice for the month of April 2019 was ever submitted to CRWC. In fact, perusal of the supplementary affidavits dated 22.09.2019 and subsequently affidavit dated 25.02.2020 filed by the Petitioner would show that there was no original invoice in existence earlier and subsequent to this Hon'ble Tribunal order dated 17.02.2020, purported fake "*original invoices*" for the month of April 2019 were generated, which is also evident from the fact that same are not matching with their respective photocopies filed along-with the earlier affidavit dated 22.09.2019. Thus, as such there was no invoice for the month of April 2019 ever existed prior to filing of the present petition.
12. Be that as it may, in the meanwhile, M/s Amba Enterprises was issued the show-cause notice dated 18.06.2016 for breach of contract and termination as well as blacklisting under the relevant provisions of the agreement and the contract was subsequently terminated without prejudice to the rights of CRWC.
13. It is pertinent to mention here that even after termination of the contract, CRWC received several complaints and claims for loading charges as well as demurrage from various customers and in fact customers withheld the payments due to CRWC as well causing loss to it. The customers raised the total claim of about Rs. 38,25,603, towards the claims for loading charges as well demurrage and also withheld substantial payments due to CRWC. [reference page 95-96 of reply]
14. Be that as it may, it is pertinent to mention herein that against the total purported claims of Rs. 37,51,889 (Rs. 14,02,768/ + Rs. 23,49,121/-); the customers/users of the Railways and CRWC have already raised the demand on CRWC of about Rs. 38,25,603 and also withheld the payments due to CRWC. This was also intimated by CRWC to the Applicant vide its letter dated 25.09.2019. Copies of various communications/claims received from the customers [Annexure R-4 (Colly) & Annexure R-5 respectively].
15. As such, as a result of RWC operations carried out by M/s Amba Enterprises as service provider, CRWC is now saddled with huge admitted liability of Rs. 38,25,603 towards loading and demurrage charges against the total purported claims of Rs. 37,51,889 (Rs. 14,02,768/ + Rs. 23,49,121/-) raised by the Petitioner under the purported invoices

for the month of March and April 2019 [without prejudice to the fact that the Petitioner never submitted that invoice for the month of April 2019];

16. Thus, as such the CRWC have huge claims from various customers as well as claims for the demurrage charges from the Railway as a result of delay in handling of rakes. Hence, the outstanding dues of M/s Amba Enterprises, if any, shall be paid only after adjustment of all the claims for the losses/damages suffered by CRWC arising out of or as a consequence of breach committed by M/s Amba Enterprises, which is in terms of the tender conditions.
17. However, despite the fact that there was pre-existing dispute, the Applicant chose to issue the purported demand notice dated 30.07.2019 [*page 31-42 of the Petition*] u/s 8 of the Code as an offshoot to termination proceeding initiated by CRWC against M/s Amba Enterprises. It is pertinent to mention here that the purported notice was not supported by any invoices but only self-serving computations. Be that as it may, CRWC submitted detailed response on 07.08.2019 [*page 58-61 of the Petition*] disputing the purported claims made by Applicant. It is further submitted that though the Applicant has selectively filed the copy of the CRWC's response dated 07.08.2019, he concealed various documents enclosed with the reply, which would show, the pre-existence of dispute regarding the invoices right from March 2019 i.e. much prior to issuance of the section 8 notice. [*detail response with enclosures is at Annexure R-2 @ page 10-31 of reply*];
18. It is thus submitted that the present proceeding is frivolous and sham proceeding inasmuch as there is a pre-existing of disputes, even much prior to issuance of the demand notice dated 30.07.2019.
19. Be that as it may, as held by the Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. Vs Kirusa Softwares Pvt. Ltd 2018(1) SCC 353*, there is certainly a plausible contention which requires further investigation and that the dispute raised by CRWC is not the patently feeble legal argument. As held by the Hon'ble Court, there was no requirement of examining 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, this Hon'ble tribunal may reject the application filed under Sec. 9 of the Code.
20. As such, the present application is merely an afterthought and abused of the process of the court. In fact, perusal of the petition would show the section 8 notice as well as the present petition has been filed with malafide intent and was merely an offshoot to coerce CRWC to re-consider its decision of termination and blacklisting of M/s Amba Enterprises. These purported claims are an attempt to intimidate and influence the

officials of CRWC and refrain them from taking adverse decision against M/s Amba Enterprises. Thus, as is apparent, the Petitioner is misusing the provisions of the Code and fraudulently and with malicious intent has sought to initiate a recovery proceeding against a public sector undertaking that too in respect of disputed amount in the garb of present proceeding, which is clearly not permissible under the provisions of the Code and thus the Petitioner is liable for action u/s 65 of the Act.

EXISTENCE OF ARBITRATION AGREEMENT

21. Without prejudice to aforesaid, it is further submitted that the contract between CRWC and the Applicant has an arbitration clause and if the Applicant has any genuine claim, which is otherwise disputed by CRWC, the proper recourse for the Applicant is to resort to the dispute resolution mechanism provided under the NIT terms and conditions, rather than resorting to a sham and frivolous proceedings. For ease of reference clause XIX of the NIT terms and conditions (Arbitration clause), [page 90 of reply] reads thus:

"All disputes and differences arising out of or in any way touching or concerning this agreement whatsoever shall be referred to the sole arbitrator or any person appointed by the Managing Director, Central Railside Warehouse Company Ltd; New Delhi. There will be no objection to any such appointment that the person appointed is an employee of the company/CRWC that he had to deal with the matters to which the contract related and that in the course of his duties as such employee of the company/CRWC he had expressed views on all or any of the matter in dispute or difference. The award of such arbitrator shall be final and binding on the parties to this contract. It is term of this contract that in the event of such Arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act or resigning for any reason, the Managing Director, Central Railside Warehouse Company Ltd. New Delhi ; at the time of such transfer, vacation of office or inability to act or resigning for any reason, shall appoint another person to act as Arbitrator in accordance with the terms of this contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by the Managing Director, Central Railside Warehouse Company Ltd; New Delhi as aforesaid should act as Arbitrator and if for any reason that is not possible the matter is not to be referred to arbitration at all. The Arbitrator shall give reason for his award....."

22. It is respectfully submitted that the present petition is complete abuse of process of law and has been filed with oblique motive and intention to coerce and extort a Public Sector Undertaking. Therefore, for the reasons stated above, this Hon'ble court may graciously be please to reject the present application for the reasons stated above and impose an exemplary cost on the Applicant/Operational Creditor for indulging into vexatious and fraudulent proceedings of such extreme nature.

Prayed accordingly

7. We have heard the Learned Counsel for the applicant as well as for the respondents and perused the averments made in the application, reply, rejoinder and the written submissions filed by the respective parties.



8. On perusal of the averments made in the application, reply, rejoinder and written submissions, we observe that the applicant claimed that he had entered into agreement with Central Railside Warehouse Company Pvt. Ltd. Alam nagar Railway Terminal, Lucknow as per scope of CRWC contract no. CRWC-II/ Tender- SP (H&T) Alamnagar /2018-19/2413 dated 19.12.2018. It is further observed that the claim of the applicant is that the said Central Railside Warehouse Company Pvt. Ltd. has defaulted in making the payment and that is the reason the present application is filed for initiating the CIRP.

9. The argument advanced on behalf of the Corporate Debtor is that the applicant has filed the present application for the initiation of CIRP against the individual person and not against the Central Warehousing Corporation, who is a government undertaking. It is further contended that the application under Section 9 IBC against the individual is not maintainable. The other point raised by the respondents is that the present application is not maintainable as there is a pre-existing dispute between the parties, prior to the issuance of the notice under Section 8 of the IBC, 2016.

10. Therefore, before considering the prayer of the applicant, we would like to consider this aspect. Now it is the settled principle of law that before initiation of the CIRP, a notice under Section 8 (1) of IBC, 2016 is required to be delivered to the Corporate Debtor and only after the delivery of notice, an application under Section 9 of IBC, 2016 is maintainable.

11. At this juncture, we would like to refer to the demand notice issued by the applicant/Operational Creditor upon the respondents, the demand notice is from page 31 to 42 of the application and the scanned copy of the same is reproduced below: -





Amba Enterprises Pvt. Ltd.

CONTRACTORS

215, Eldeco Greens, Gomti Nagar, Lucknow - 226010, U P (India)

Phone: +91 522 4021726

CIN : U24110UP1993PTC015692

Email: ambaenterprisespvtld@gmail.com • Website: www.ambaenterprises.in

FORM 3

DEMAND NOTICE/INVOICE OF DEMANDING PAYMENT UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016

(Under rule 5 of the Insolvency and Bankruptcy Rules,)

30-07-2019

To,

1. Sh. Arun Kumar Shrivastava
MD Central Warehousing Corporation
(presently acting charge of CRWC)
Central Warehousing Corporation,
4/1 Siri Institutional Area, Hauz Khas
New Delhi-110016
2. Mr. Pawan Kant
Advisor, Central Railside Warehouse Co. Ltd.
Pragati Maidan, Metro Station Building
Ground Floor, New Delhi-110001
3. Mr. Sudhir Nair
Manager LOM, Central Railside Warehouse Co. Ltd.
Pragati Maidan, Metro Station Building

For Amba Enterprises Pvt. Ltd.

Managing Director



Amba Enterprises Pvt. Ltd.

CONTRACTORS

215, Eldeco Greens, Gomti Nagar, Lucknow - 226010. U P (India)

Phone: +81 522 4021728

CIN : U24110UP1893PTC015692

Email: ambaenterprisespvtld@gmail.com • Website: www.ambaenterprises.in

Ground Floor, New Delhi-110001

4. Mr. Yatin Patel
DGMLOM, Central Railside Warehouse Co. Ltd.
Pragati Maidan, Metro Station Building
Ground Floor, New Delhi-110001

5. Ms. Kavita Kathuria
DGM Finance
Central Railside Warehouse Co. Ltd.
Pragati Maidan, Metro Station Building
Ground Floor, New Delhi-110001

Madam/Sir,

1. This letter is a demand notice/invoice demanding payment of an unpaid operational debt due from the above named operational corporate creditors.
2. Please find the particular of the unpaid operational debt below.

FORM 3

PARTICULARS OF THE OPERATIONAL DEBT

For Amba Enterprises Pvt. Ltd.

Managing Director



Amba Enterprises Pvt. Ltd.

CONTRACTORS

215, Eldaco Greens, Gomti Nagar, Lucknow - 226010, U P (India)

Phone: +91 522 4021726

CIN : U24110UP1993PTC015692

Email: ambaenterprisespvtltd@gmail.com • Website: www.ambaenterprises.in

1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH THE DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE Rs.14,02,637.59 due since 1st Apr-2019 against bill for Mar-2019 Rs 23,49,121.22 due since 1st May-2019 against Bill for Apr-2019 Rs 750,000 /-submitted as security since 5th Mar-2019 Retention Money deducted from bills of Jan-19 & Feb-19 1) The operational creditor i.e. Amba Enterprises Pvt. Ltd. had started work as Service Provider at Central Railside Warehouse Co. Ltd. (CIN No.- U63023DL2007PLC165676) Alamnagar Rail Terminal, Lucknow on 04.01.2019 for engagement as service provider for handling of Rail borne cargo at Railside warehouse complex, at Alamnagar Rail Terminal, Lucknow as per scope of CRWC contract number CRWC-II/Tender-SP(H&T)- Alamnagar/2018-19/2413 dtd 19/12/2018. The work assigned to the operational creditor was being undertaken in routine and smooth manner till March, 2019 when the Terminal Manager, Vivek Yadav joined/resumed work at the Terminal, when the problems in operations started. 2) Since March 2019, The CRWC Terminal Manager, Alamnagar
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For Amba Enterprises Pvt. Ltd.

Managing Director



Amba Enterprises Pvt. Ltd.

CONTRACTORS

215, Eldeco Greens, Gomti Nagar, Lucknow - 226010. U P (India)

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Lucknow and his team started to constantly obstruct the honest work policy of the operational creditor because Terminal Manger and his henchmen wanted to continue with their previous running system of manipulating records for their own pecuniary gains & other personal favor. They wanted the Operational Creditor/ applicant to ignore the extra sweeping material generated during rake unloading operation which was usually sold by them illegally and without maintain any official record of that material.

The Operational Creditor/ applicant tried its level best to stop this illegal practice however, there were several instances when the sweeping material was moved out of the premises unacknowledged.

The Operational creditor/ applicant had intimated the higher authorities about such occurrences repeatedly.

- 3) It is further submitted that the operational creditor had received a request for placement of ACC rake of 58 wagons on 4th May, 2019 at 1:55 p.m. which was to be handled at Alamnagar rail terminal Line No.6. Since then, the applicant was continuously following up

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about the whereabouts of the rake from time to time as per regular operational practice. It was verbally told by railway staff that rake will be reaching designated railway line at Alamnagar Rail Terminal on 6th May-2019.

However, On 5th May 2019 when site staff went to get the said request acknowledged by the Alamnagar Railway Station office personnel, it found that there was an additional separate request already presented to them by Mr. Mohammad Ilyas, Asstt Terminal Manager CRWC for the same rake which was dated 06.05.2019 but was received by railway station office staff on 05.05.2019. The service Provider's name on that request was M/s. O.P. Marine Services Pvt. Ltd. on bringing this to the notice of CRWC Terminal Manager's attention, it was told to applicant's site staff that Asstt Terminal Manager CRWC had received orders to assign the handling of the said rake to M/s, O.P. Marine Services Pvt. Ltd. by cancelling the rake placement request of the operational creditor (and a new rake request was generated for M/s. O.P. Marine Service Pvt. Ltd.

- 4) It is further submitted that the said request for ACC rake was given to the railways on 6th May, 2019 because date of generation of said request as mentioned on the document is 6th May 2019 only.

For Amba Enterprises Pvt. Ltd.

Managing Director



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However, this document has been received by the railways on 5th May, 2019 as it is evident on the receiving acknowledgement of the Railways where receiving signature date is clearly mentioned as 5th May-2019

5) Also, at the end of the document it is written that the request has been Copy Marked (CC) to C.G. S Alamnagar Terminal, Lucknow and M/s, O.P. Marine Services Pvt. Ltd. Nowhere in the document it was mentioned that it was copy marked (CC) to the operational creditor i.e. Amba Enterprises Pvt. Ltd. Operational Creditor could collect copy of this document from the concerned office of the Railway department. The rake request enclosed with the Show Cause Notice is not the same as the one which was received by the railways. This shows that the documents have been forged by CRWC Staff and Terminal Manager to make a case against the operational creditor i.e. Amba Enterprises Pvt. Ltd with malafide intention for victimization

6) It is further submitted that Operational creditors i.e. Amba Enterprises Pvt. Ltd had never refused to handle a rake that was intimated to them. However, after the aforementioned incident no rake has been assigned to the operational creditor i.e. Amba Enterprises Pvt. Ltd till date.

For Amba Enterprises Pvt. Ltd.

Managing Director



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		Therefore, this does not put us in breach of contract but the onus of responsibility shifts to the operational debtor i.e. CRWC who are intentionally not assigning a rake to operational creditor i.e. Amba Enterprises Pvt. Ltd during this entire period. 7) It is further submitted that above issues had been raised by operational creditor to the officials of operational debtors i.e. Managing Director CWC (Officiating charge CRWC) and Chief Vigilance Officer CWC (Officiating charge CRWC) New Delhi several times via email with proofs but no actions were taken after repeated requests. 8) All the above-mentioned incidents are strongly proving and intentional and willful breach of contract through use of forged documents on the part of operational debtors i.e. CRWC who owes an unpaid due for the months of March, 2019 and April, 2019 as well as our Security Deposit which have been deliberately held up due to the aforementioned incidents. Total Amount being withheld is more than Rs 45 Lakhs
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURED (ATTACH	- Rs. 14,02,637.59 due since 1st Apr-2019 against bill for Mar-2019 - Rs 23,49,121.22 due since 1st May-2019 against Bill for Apr-2019

For Amba Enterprises Pvt. Ltd.

Managing Director



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	THE WORKINGS FOR COMPUTATION DEFAULT IN TABULAR FORM)	- Rs 750,000 /-submitted as security since 5th Mar-2019 - Retention Money deducted from bills of Jan-19 & Feb-19 - The workings for computation default attached as annexure 1
3.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR, ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)	Rs. 7,50,000/-
4.	DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS /*this is the part of the title retention clause that states that the title of goods remains vested in the seller, or in this case, the operational creditor, until the buyer, in this case, the corporate debtor, pays the complete purchase price*/	N/A
5.	RECORD OF DEFAULT WITH THE INFORMATION UTILITY (IF ANY) /*information utility refers to a centralized digital hub that stores, maintains and manages financial information.	1) Office of Terminal Manager. CRWC, Alamnagar Rail Terminal, Lucknow. 2) CRWC Office, Ground Floor, Metro Station Building, Pragati Maidan, New Delhi

For Amba Enterprises Pvt. Ltd.

Managing Director



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6.	PROVISIONS OF LAW, CONTRACT OR OTHER DOCUMENT UNDER WHICH THE DEBT HAS BECOME DUE.	- Companies Act, 2013 - Insolvency and Bankruptcy Code, 2016
7.	LIST OF THE DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF OPERATIONAL DEBT AND THE AMOUNT OF DEFAULT	1) Invoice No.3 dtd 1st Apr-2019 amounting to Rs 14,02,637.59. 2) Inv No 4 dtd 1st May-2019 amounting to Rs 23,49,121.22 3) Letter dated on 18/3/2019. 4) Email Letter dated on 06.05.2019 5) Email Letter #1, #2 & #3 dated 07.05.2019. 6) Email Letter dated on 27.05.2019. 7) Personal Meeting dtd 06.06.2019 with Mr. Pawan Kant, Mr. Yatin Patel & Mr. Sudhir Nair at CRWC Office, New Delhi 8) Letter dated on 25.06.2019. 9) Email letter dtd 27th Jun-2019

3. If you dispute the existence or amount of unpaid operational debt (in default), please provide the undersigned, within ten days of the receipt of this letter, of the pendency of the suit or arbitration proceedings in relation to such dispute filed before the receipt of this letter/notice.
4. If you believe that the debt has been repaid before the receipt of this letter, please demonstrate such repayment by sending to us, within ten days of receipt of this letter, the following:

For Amba Enterprises Pvt. Ltd.

Managing Director



Amba Enterprises Pvt. Ltd.

CONTRACTORS

215, Eldeco Greens, Gomti Nagar, Lucknow - 226010. U P (India)

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- a. An attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor or
- b. An attested copy of any record that [name of the operational creditor]; has received in payment
5. The undersigned, hereby, attaches a certificate from an information utility confirming that no record of a dispute in relation to the relevant operational debt has been filed by any person at any information utility (if applicable).

The undersigned request you to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate corporate insolvency resolution process in respect of Central Railside Warehouse Co. Ltd. Pragati Maidan, Metro Station Building Ground Floor, New Delhi-110001.

Yours Sincerely

Signature of the person authorized to act on behalf of the operational creditor:
Name in Block letters: AJAY KUMAR SINGH
Position with or in relation to the operational creditor: Managing Director, Amba Enterprises Pvt. Ltd.
Address of person signing: 215, Eldeco Greens, Gomti Nagar, Lucknow

For Amba Enterprises Pvt. Ltd.

Managing Director

AMBA ENTERPRISES PVT. LTD.							
Mar-19							
	Particular	Quantity	Rate	Gross Amount	Tax Rate	Amount	Amount
JUTE BAGS	UNLOADING	12147.65	43.5	528422.775	18%	95116.0995	623538.8745
	LOADING	10826.35	44	476359.4	18%	85744.692	562104.092
	DIRECT LOADING	715.25	71	50782.75	18%	9140.895	59923.645
PAPER BAGS	UNLOADING	1210.1	55	66555.5	18%	11979.99	78535.49
	LOADING	1210.1	55	66555.5	18%	11979.99	78535.49
	DIRECT LOADING	0	101	0	18%	0	0
TOTAL							1402637.592

For Amba Enterprises Pvt. Ltd.

Managing Director

Annex-1

(11)

(2)

AMBA ENTERPRISES PVT. LTD.							
Apr-19							
	Particular	Quantity	Rate	Gross Amount	Tax Rate	Amount	Amount
JUTE BAGS	UNLOADING	17327.6	43.5	753750.6	18%	135675.108	889425.708
	LOADING	20328.6	44	894458.4	18%	161002.512	1055460.912
	DIRECT LOADING	2071.7	71	147090.7	18%	26476.326	173567.026
PAPER BAGS	UNLOADING	1777.1	55	97740.5	18%	17593.29	115333.79
	LOADING	1777.1	55	97740.5	18%	17593.29	115333.79
	DIRECT LOADING	0	101	0	18%	0	0
TOTAL							2349121.226

For Amba Enterprises Pvt. Ltd.

Managing Director

(12)

12. On perusal of the demand notice referred to Supra, it is seen that the said demand notice was issued in the name of the respondents shown in the memo of parties and not against the Central Warehousing Corporation against, who according to the applicant, had entered into agreement and defaulted in making the payment, as referred to in part-IV of the application.

13. Therefore, at this juncture, we would like to refer to the definition of debt and default as referred in Section-3 sub-Section 7, 8, 11 and 12 of IBC, 2016 and the same are reproduced below: -

Section-3 sub-Sections, 7, 8 11 and 12 of IBC, 2016

(7) "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act 2013(18 of 2013), a limited liability partnership, as defined in clause (n) of sub section (1) section 2 of the Limited Liability Partnership Act, 2008(6 of 2009)) or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

(8) "corporate debtor" means a corporate person who owes a debt to any person.

(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1 [paid] by the debtor or the corporate debtor, as the case may be;

14. The conjoint reading to these provisions shows that debts mean a liability or obligation in respect of a claim, which is due from any person and which includes the Financial Debt as well as the Operational Debt and the default is the non-payment of the debt, which is due and payable and is not paid by the debtor or the corporate debtor as the case may be. And a corporate debtor means a corporate person, and corporate



person means a company defined u/s 2(20) of the Companies Act 2013, a limited liability partnership, as defined in clause (n) of sub section (1) section 2 of the Limited Liability Partnership Act, 2008(6 of 2009)) or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.

15. Admittedly, the respondents referred to in memo of parties are not the corporate debtor in terms of Section 3(8) of the IBC 2016 and they don't owe any debt and they are not personally liable to pay any amount to the Operational Creditor on behalf of Central Railside Warehouse Company Pvt. Ltd.. All the respondents who are referred to in the demand notice as the corporate debtor are an employees of the Central Railside Warehouse Company Pvt. Ltd. and they cannot be personally liable to pay any debt owes by the company, therefore, we are of the considered view that the demand notice issued by the Operational Creditor against the individual are, in fact, not a demand notice against the Central Warehousing Corporation in terms of Section 8 (1) of the IBC, 2016, which clearly mentioned this fact that it shall be delivered to the corporate debtor, as referred to in Section 3(8) of the IBC.

16. Since the demand notice is not delivered to the corporate debtor, which is the condition precedent to file the application under Section 9 of the IBC, 2016, therefore, on this score along, the present application is not maintainable.

17. Apart from the aforesaid facts, we would also like to mention these facts, since they are not the debtor and they are not liable to pay any amount to the Operational Creditor, therefore, they have been wrongly added as a party as the corporate debtors in the proceeding and on this score also the application is liable to be dismissed.

18. Apart from that, at this juncture, we would also like to refer to the reply filed by the respondents from page 14 to 16, it is a Show Cause Notice issued by the Central Railside Warehouse Company Pvt. Ltd. on 18th June, 2019 to the Operational Creditor and the same is reproduced below: -



Exhibit A

14



सैन्ट्रल रेलसाइड वेअरहाउस कम्पनी लिमिटेड

(भारत सरकार का उद्यम)
आईएसओ 9001:2008 प्रमाणित कंपनी
CENTRAL RAILSIDE WAREHOUSE COMPANY LIMITED

(A Govt. of India Enterprise)
An ISO 9001:2008 Certified Company
सीआईएन : यू63023डीएल2607पीएलसी165476
CIN U63023DL2607PLC165476



मिनी रेल
Mini Railna PSU



Date: 18.06.2019
Speed Post

No. CRWC-II/Buss-Alamnagar/2019-20/612

Show Cause Notice

WHEREAS M/s Amba Enterprises Pvt. Ltd was awarded Handling Contract vide letter of award dated 19.12.2018 for handling of rail-borne cargo at Railside Warehouse Complex, Alamnagar, Lucknow (hereinafter referred as RWC, Alamnagar) w.e.f. 04.01.2019.

AND WHEREAS as per tender clause VIII "The Service Provider shall be liable for all causes, damages, demurrages, wharfages, forfeiture of wagon registration fees, charges and expenses suffered or incurred by the CRWC due to the Service Provider's negligence and un-workman like performance of any service under this contract or breach of any terms thereof on their failure to carry out the work with a view to avoiding incurrence of demurrage etc., and for all damages or losses occasioned to the CRWC or in a particular to any property or plants belonging to the CRWC due to any act whether negligence or otherwise of the Service Provider themselves or their employees."

AND WHEREAS as per tender clause XVIII the Service provider shall be responsible to engage competent and adequate supervisory staffs and labours for ensuring efficient handling of the stock and furnishing correct up to date position/information to the satisfaction of the Terminal Manager and completion of the loading/unloading operations within permissible free time. He shall also be liable for any loss, which the CRWC suffers on account of bags not being properly handled. The Service provider shall also be responsible for unloading/handling of the wagons/rakes within the free period allowed by the Railways. The service provider shall be liable to make good any compensation, demurrage/wharfage or other charge or expenses that may be incurred by CRWC on account of delay in loading/unloading of trucks and unloading of the wagons/rakes etc.

[Signature]

पंजीकृत एवं कॉर्पोरेट कार्यालय : भूखल, प्रगति मैदान मेट्रो स्टेशन बिल्डिंग, नई दिल्ली-110001, दूरभाष : 011-23379418, फैक्स : 011-23379434
Regd. & Corp. Office : Ground Floor, Pragati Maidan Metro Station Building, New Delhi-110001, Ph: 011-23379418, Fax: 011-23379434
Website: www.rwc.co

सैन्ट्रल रेलसाइड वेअरहाउस कम्पनी लिमिटेड

(भारत सरकार का उद्यम)
आईएसओ 9001:2008 प्रमाणित कम्पनी

CENTRAL RAILSIDE WAREHOUSE COMPANY LIMITED

(A Govt. of India Enterprise)

An ISO 9001:2008 Certified Company

सीआरएन : गृह-023डीएल2007पीएलसी1656/6

CIN:U63023DL2007PLC1656/6



मिनी रत्न
Mini Ratna PSU



AND WHEREAS, the Terminal Manager RWC Alamnagar, vide requisition dated 04.05.2019 (copy enclosed), requested the Station Superintendent, Alamnagar Railway Station for placement of rakes at line no. 6 (RWC line) for unloading thereof at RWC Alamnagar with a copy to M/s Amba Enterprises Pvt. Ltd. Accordingly, the rake (comprising of 58 wagons) was placed at line no. 6 on 06.05.19 and being a Service Provider for CRWC, it was the responsibility of M/s Amba Enterprises Pvt. Ltd. to handle the rakes on behalf of CRWC.

AND WHEREAS M/s Amba Enterprises completely abandoned the rake for continuous period of more than 16 hrs. which was duly informed to M/s Amba Enterprises by the Terminal Manager vide his letter dated 07.05.2019 as well as the mails dated 07.05.2019 (copy enclosed) and dated 08.05.2019 (copy enclosed). Despite repeated requests of CRWC, M/s Amba Enterprises did not handle the said rakes. As such M/s Amba Enterprises breached its obligation and failed to handle the rakes which resulted in heavy demurrage charges, thereby putting CRWC in an embarrassing situation and financial loss.

AND WHEREAS M/s Amba Enterprises has the contractual obligations to deploy sufficient labour for loading and unloading of the rake and ensure handling of the wagons/rakes within the free time permissible by the Railways. However, it has not only failed to fulfill its contractual obligations but did not clear/unload the rake inspite of repeated instructions of CRWC in brazen defiance of the provisions of the tender conditions. Hence, M/s Amba Enterprises has failed to perform its obligations and breached the terms & conditions of the contract could not unload the rake within the free time as required under the agreement. Despite inordinate delay M/s Amba Enterprises did not provide labours and staffs for unloading. Therefore, CRWC was compelled to engage outside labour to handle the rake at the risk and cost of M/s Amba Enterprises, in order to mitigate its losses.

[Signature]

पंजीकृत एवं कॉर्पोरेट कार्यालय : गूडल, प्रगति मैदान मेट्रो स्टेशन बिल्डिंग, नई दिल्ली-110001, दूरभाष : 011-23379418, फैक्स : 011-23379434
Regd. & Corp. Office : Ground Floor, Pragati Maidan Metro Station Building, New Delhi-110001, Ph: 011-23379418, Fax: 011-23379434
Website : www.crwc.in

सैन्ट्रल रेलसाइड वेअरहाउस कम्पनी लिमिटेड

(भारत सरकार का उद्यम)
अर्द्धराज्य 9001:2008 प्रमाणित कंपनी
CENTRAL RAILSIDE WAREHOUSE COMPANY LIMITED
(A Govt. of India Enterprise)
An ISO 9001:2008 Certified Company
सीआईएसएन : 96302330एलएलसी185076
CIN:U63023DL2007PLC165675



मिनी रत्न
Mini Ratna PSU



Thus, as per terms and conditions mentioned in detailed above, M/s Amba Enterprises Pvt. Ltd is liable to make good the extra cost of labour engaged by CRWC for unloading ACC cement rake apart from demurrage charges occurred thereon due to non-handling of the said rake by M/s Amba Enterprises Pvt. Ltd. within the permissible time.

And therefore, in terms of clause M (ii) (C) of the tender conditions under the provision of termination M/s Amba Enterprises Pvt. Ltd is hereby served a notice as to why their contract should not be terminated forthwith and get the work done at their risk & cost for remaining period of contract and why action should not be taken against M/s Amba Enterprises Pvt. Ltd in accordance with the provisions of Clause XV of term and conditions for blacklisting/Debar without prejudice to other rights and remedies of CRWC.

In the event M/s Amba Enterprises Pvt. Ltd fails to respond to this show cause notice within the period 7 days, it shall be presumed that M/s Amba Enterprises Pvt Ltd has no explanation to offer and CRWC shall proceed to take action as per the terms and conditions of agreement. This is without prejudice to the rights of the CRWC to take suitable action including legal remedies for recovery of the losses/damages suffered as result of aforesaid breach.

Encl : As Above.

Yatin K. Patel
18/6/2019
(Yatin K. Patel)
DGM (L/O/M)

To,
M/s Amba Enterprises Pvt. Ltd
215, ELDECO GREENS, GOMTI NAGAR,
LUCKNOW, U.P. Pin- 226010.

Copy to: Terminal Manager, RWC, Alamnagar.

पंजीकृत एवं कॉर्पोरेट कार्यालय : भूतल, प्रगति मैदान मेट्रो स्टेशन बिल्डिंग, नई दिल्ली-110001, दूरभाष : 011-23379418, फ़ैक्स : 011-23379434
Regd. & Corp. Office : Ground Floor, Pragati Maidan Metro Station Building, New Delhi-110001, Ph.: 011-23379418, Fax: 011-23379434
Website : www.crwc.in

19. A bare perusal of the documents referred to Supra shows that some disputes have been raised regarding the service provided by the

applicant / Operational Creditor and, that is the reason, a show cause notice was issued to the Operational Creditor on 18th June, 2019 and it is an admitted fact that after the issuance of this show cause notice, the said demand notice was sent to the individual persons and not the corporate debtor on 30th July, 2019. Therefore, it is also seen that there is a pre-existing dispute between the parties, prior to the issuance of the demand notice

20. In sequel to the above, we are of the considered view, the present application is not maintainable, **hence, the same is hereby dismissed.**


(AVINASH K. SRIVASTAVA)

Member (T)


(ABNI RANJAN KUMAR SINHA)

Member (J)