



**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**

**COURT III**

15. C.P.(IB)-96(MB)/2022

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)  
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **05.01.2023**

NAME OF THE PARTIES: DHL ECOMMERCE (INDIA) PRIVATE LIMITED

V/s.

FUTURE SUPPLY CHAIN SOLUTIONS LIMITED.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

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**ORDER**

Mr. Akshay Pawar i/b Mr. Kunal Bhanage, counsel for the Petitioner and Ms. Krishna Baruah, counsel for the Respondent are present through virtual hearing.

Counsel appearing for the Corporate Debtor fairly accepted that even though part of the claim falls within 10 A period, the rest of the claim which is above One Crore pertains to pre-covid period. In view of the above admission of the existence of the “debt” and “default” and meeting the requirement of threshold limit, nothing needs to be adjudicated in the above Company Petition. Accordingly, the above Company Petition **is admitted. Detail order would follow:**

**Sd/-**  
MADHU SINHA  
Member (Technical)  
//SGP//

**Sd/-**  
H. V. SUBBA RAO  
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 96/IBC/MB/2022**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**DHL ECOMMERCE (INDIA) PRIVATE LIMITED**

Having registered office at: 702, 7<sup>th</sup> Floor, Tower B, 247 Park, L.B.S. Road, Vikhroli (West), Mumbai, Mumbai City, Maharashtra-400083.

*.....Operational Creditor*

**Vs**

**FUTURE SUPPLY CHAIN SOLUTIONS LIMITED**

Registered office at: Knowledge House, Shyam Nagar, Jogeshwari, Vikhroli Link Road, Jogeshwari (East), Mumbai, Maharashtra-400060

*.....Corporate Debtor*

Order on: **05.01.2023**

**Coram:**

Hon<sup>ble</sup> H.V. Subba Rao, Member (Judicial)

Hon<sup>ble</sup> Madhu Sinha, Member (Technical)

**For the Applicant:** Mr. Akshay Pawar i/b Mr. Kunal Bhanage,  
Advocate.

**For the Respondent:** Ms. Krishna Baruah, Advocate.



1. The above Company Petition is filed by DHL ECOMMERCE (INDIA) PRIVATE LIMITED hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against FUTURE SUPPLY CHAIN SOLUTIONS LIMITED called as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 7,26,25,299.00/- (Rupees Seven Crore Twenty-Six Lac Twenty-Five Thousand Two Hundred and Ninety-Nine Only)

**BRIEF FACTS OF THE CASE**

2. The Operational Creditor submits that the Operational Creditor is a company incorporated under the Companies Act, 2013, it was incorporated on 10.03.2021 by conversion of DHL Ecommerce (India) LLP. On conversion into a private limited company, DHL Ecommerce (India) LLP stood dissolved. On conversion into a private limited company, the Operational Creditor acquired all the rights and obligations of the dissolved LLP. The Operational Creditor has, inter alia, been engaged in the business/services of providing transport vehicles on hire and transporting goods of its customers from place to place within India. The Corporate Debtor is engaged in the business of supply chain, warehousing and transportation of goods to its customers.
3. The Operational Creditor further submits that the Operational Creditor in its erstwhile constitution and the Corporate Debtor entered into two agreements, i.e. one dated 01.08.2018 and the other dated 01.02.2019 whereby the Operational Creditor agreed to provide the services mentioned in the agreements including the services of providing transport vehicles on hire and transporting goods of the Corporate Debtor from place to place within India. Under the Harmonized System of Nomenclature/Services Accounting Code (HSN/SAC) used to classify goods and services under GST regime, the services provided by the Operational Creditor



to the Corporate Debtor under the agreements fell under the code-9965-Goods Transport Services.

4. The Operational Creditor further submitted that, in terms of aforesaid agreements dated 01.08.2018 and 01.02.2019, the Operational Creditor raised invoices in terms of the said agreements from time to time. After adjusting for the payments received from the Corporate Debtor from time to time, several invoices have remained due and payable by the Corporate Debtor to the Operational Creditor towards the services provided wholly or partly.
5. The Operational Creditor further submitted that, the invoices raised by the Operational Creditor on the Corporate Debtor contained the stipulation that “**Payment due as per agreed terms**” or “**Payment Term: within 30 days due net**”. Interest, being recompense for the amount wrongly enjoyed by the Corporate Debtor to which the Operational Creditor was wrongly deprived of, became payable by the Corporate Debtor on the expiry of the said 30 day. The credit period allowed to the Corporate Debtor was 30 days under the agreement between the parties. The Operational Creditor has, accordingly, charged interest after the expiry of 30 days from the invoice date on all unpaid invoices (on the outstanding amount). Transactions between the parties being commercial transactions, interest @ 18% per annum has been debited in the account of the Corporate Debtor by the Operational Creditor. The Operational Creditor is entitled to get interest till the date of receipt of all payments to which it is entitled from the Corporate Debtor.
6. The Operational Creditor further submitted that, vide email dated 23.01.2020 the Corporate Debtor stated that it was trying to release a sum of Rs. 75 Lacs to 1 Crore (as part payment) to the Operational creditor. By way of another email sent on 23.01.2020 the Corporate Debtor stated that “Payments will be released by 28<sup>th</sup> Jan.” The Operational Creditor issued and served a demand notice dated 27.01.2021 on the Corporate Debtor. Despite the service of the



demand notice, the Corporate Debtor has failed to pay the debt due to the Operational Creditor.

7. The Operational Creditor further submitted that, on 31.07.2021 the demand notice under Section 8 of the Insolvency & Bankruptcy Code, 2016 was issued to the Corporate Debtor to pay the outstanding amount of Rs. 7,26,25,299.00/- (Rupees Seven Crore Twenty-Six Lac Twenty-Five Thousand Two Hundred and Ninety-Nine Only) (exclusive of interest with effect from 01.07.2021). The Operational Creditor has not received any response to the said notice.
8. The Corporate Debtor filed affidavit in reply of Mr. Bhavesh K. Shah, the Authorised Signatory of the Respondent raising several pleas in opposing the above Company Petition on the following grounds:
  - A. The Petition is hit by Section 10-A of the Code and is solely on this count, not maintainable.
  - B. The claim of Rs. 1,37,20,127/- towards interest merits dismissal in limine on account of the fact that there is no contract/agreement between the parties on the payment of interest.
  - C. The Petitioner has grossly suppressed material facts pertaining to the payments made by the Respondent in January-2020.
9. The matter was listed on 05.01.2023 for hearing. The learned counsel appearing for the Operational Creditor submitted that even though the Corporate Debtor has raised several defences they have mainly laid emphasis on the plea with regard to falling of the debt within the Covid period as defined under Section 10A. The learned counsel appearing for the Corporate Debtor fairly conceded that even though part of the claim falls within 10A period, the rest of the claim which is above One Crore pertains to post Covid period. In view of the above statement made by the counsel appearing for the Corporate Debtor there is nothing much to be adjudicated in the above petition, since other objections are trivial in nature.



10. Accordingly, the above Company Petition is admitted by passing the following order:

**ORDER**

- a. The above Company Petition No. (IB) 96 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against FUTURE SUPPLY CHAIN SOLUTIONS LIMITED.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Rajan Rawat (rajanrawat61@rediffmail.com)**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00743/2018-2019/12262 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- 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 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; 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

//Shubham//

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**