

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

C.P. (I.B) No.152/NCLT/AHM/2019

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

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 08.10.2020**

Name of the Company: TCI Express Ltd
V/s
Praspack Industries Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code


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

ORDER

Advocate, Mr. Mandeep Singh appeared on behalf of the Petitioner.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 08th day of October, 2020

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

C.P. No. (IB) 152/9/NCLT/AHM/2019

In the matter of:

TCI Express Limited
306 & 307, 1-8-271 to 273,
3rd Floor, Ashoka Bhoopal Chambers
S.P. Road
Secunderabad
Hyderabad 500 003
Telangana

And having Regional Office at
TCI House
Outside Astodia Gate
1st Floor, Nr. H.P. Petrol Pump
Juna Lathi Bazar
AHMEDABAD 380 022

Petitioner
Operational Creditor

Versus

M/s. Praspack Industries Private Limited
Praspack, Plot No. 32
Nr. Pharma Lab
Santej -Vadsar Road
Santej
Taluka Kalol
GANDHINAGAR 382 721
Gujarat State

Respondent
[Corporate Debtor]

Order delivered on 08th October, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

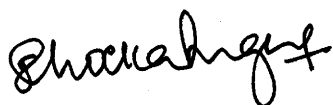
Appearance:

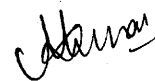
Petitioner : Mr. Mandeep Singh Saluja, Advocate

ORDER

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


1. Mr. Noratmal Sarva, Regional Manager, being the authorised signatory, on behalf of M/s. TCI Express Limited,





filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The applicant/operational creditor is a limited company having identification No. L62200TG2008PLC061781 having its registered office at Hyderabad and Regional Office at Ahmedabad is engaged in the business of logistics.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 26th June, 2010 and having identification No. U25202GJ2010PTC061326 and having registered office at Gandhinagar, Gujarat State. Authorised share capital of the respondent company is Rs. 5,00,00,000/- and paid up share capital is Rs. 5,00,00,000/-. The respondent is engaged in manufacturing of fabrics and other kind of fibrous materials.
4. The applicant/operational creditor has stated that, the corporate debtor approached the operational creditor for transportation of their consignments to various destinations and the operational creditor quoted the transportation charges for the delivery of the consignment from time to time. That, various invoices/bills were raised by the operational creditor in proportion to the work carried out by the operational creditor and the same were duly accepted by the corporate debtor. That, towards the logistic services provided by the applicant during the period from 10.08.2018 to 09.06.2018, total amount of **Rs. 5,69,185/- (Rupees five lacs sixty-nine thousand one hundred eighty-five only)** along with interest @ 24% per annum is due and payable by the respondent. That, as per the terms and



conditions of the agreement entered into between the applicant and respondent (page 131-133) all the invoices as per the computation chart, have fallen due and payable, however, are still outstanding and have remained unpaid till the date, therefore this petition.

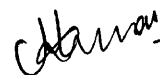
5. The applicant/operational creditor has further stated that, having failed to receive the outstanding amount, the applicant was compelled to issue demand notice dated 10.09.20018 calling upon the respondent to pay total outstanding of Rs. 5,69,185/-. That, no reply is received from the respondent.
6. The applicant in support of its claim has furnished copy of documents like affidavit in support of the application, copy of ledger, Board Resolution dated 01.11.2017 passed in favour of the authorised signatory, copy of invoices and proof of delivery, track report of delivery of consignment containing demand notice, copy of demand notice etc.
7. On issuance of notice, respondent filed affidavit in reply inter alia raising various objections that, there is no time bound condition of the payment, there is no condition of interest for delayed payment in the offer letter, the petitioner company has not solved the issue of the damaged suffered by one of the clients of the respondent company. That, on account of the above reasons, the respondent company has not cleared the outstanding payments. The respondent has also alleged that the petitioner has not filed affidavit complying Section 9 (3)(b) with the petition.

Shachin

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Findings:

8. On perusal of the records it is found that the instant application filed on 11th February, 2019 came to be notified for hearing for the first time on 28.02.2019. During the course of hearing, on 01.07.2019, the Adjudicating Authority having observed that the petitioner has not complied with Section 9 (3) of the I & B Code, granted seven days' time to the petitioner to rectify the same and the petitioner has subsequently filed affidavit to that effect.
9. On perusal of the records it is found that, despite giving notice, during the last 2-3 hearing, none appeared on behalf of the respondent. Therefore, on 25.09.2020, the matter was heard ex-parte.
10. On perusal of the records it is found that the operational creditor has annexed to the application (page 3-119) copies of invoices raised upon the corporate debtor during the period from 16.07.2018 to 31.05.2018 towards the logistic services provide to the respondent company. The operational creditor has also placed on record bill-wise details/computation of the operational debt.
11. On perusal of the record it is found that the demand notice issued by the applicant under section 8 of the I & B Code on 10.09.2018 has been served upon the corporate debtor, but, no dispute has been raised.
12. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt or any pre-existing



dispute regarding the operational debt from the side of the corporate debtor.

13. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
14. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
15. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ(JP) 2 SC*** that while examining an application under Section 9 of the Act, will have to determine the following: -
 - (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
 - (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
and
 - (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

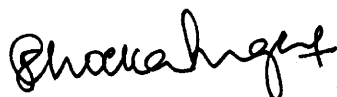
16. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the

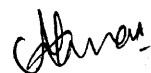




Applicant and it fulfilled the requirement of I & B Code. That, service is complete and no dispute has ever been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

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





- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.


20. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

21. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.



22. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Nimai Gautam Shah, 605-606-607, Silver Oaks, Nr. Mahalaxmi Char Rasta, Paldi, Ahmedabad 380 007 (enjabd@gmail.com) having registration No. IBBI/IPA-001/IP-P00154/2017-18/10323 to act as an Interim Resolution Professional under Section 13(1)(c) of the Code.
23. This Petition is accordingly admitted.
24. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
25. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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