IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB- 632/ND/2020

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

Hellmann Worldwide Logistics India Private Limited

..........Operational Creditor

Versus

Sea Air Consolidators India Private Limited

.........Corporate Debtor

MEMO OF PARTIES:

Hellmann Worldwide Logistics India Pvt. Ltd.
Having Registered Office at 1st Floor,
Infotech Center, 14/2, Old Gurgaon Delhi Road,
Udyog Vihar Gurgaon - 122016, Haryana

... APPLICANT/OPERATIONAL CREDITOR

VERSUS

Sea Air Consolidators India Pvt. Ltd.
Having Registered Office at : 5041/6,
First Floor, Netaji Subhash Marg,
New Delhi 110002.

...RESPONDENT/CORPORATE DEBTOR

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ORDER PRONOUNCED ON: 17.08.2022

CORAM:
SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)
SH.L.N GUPTA, HON'BLE MEMBER(TECHNICAL)

ORDER

Per- Dharminder Singh, Member-Judicial

This is an application filed by Hellmann Worldwide Logistics India Private Limited, the applicant/operational creditor seeking (for brevity Operational Creditor) to initiate CIRP against the Respondent company/Corporate Debtor (for brevity Corporate Debtor) M/s Sea Air Consolidators India Private Limited and Anr., under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 93,71,138 /- on account of services in relation to the freight forwarding of Air Export/ Air Import consignment to the corporate debtor. The details of transactions leading to the filing of this petition as averred by the applicant are as follows:-

a. It is submitted that the operational creditor since 2007 have been offering individual solutions for transports and logistics of all kinds. Further, the corporate debtor had availed services of the operational creditor in relation to freight forwarding of Air Export/ Air Import consignment rendered to the Corporate Debtor at different dates.

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b. It is stated that the debt accrued on account of unpaid invoices raised towards for providing services relating to freight - forwarding and logistics.

c. Further, it is stated that the cause of action first arose when the Corporate Debtor failed to pay its dues to the Operational Creditor herein. It arose on 17.9.2016, when the corporate debtor failed to make payment in terms of first invoice and again it arose on 14.01.2017 when the last invoice raised on the corporate debtor fell due. Thereafter it again arose on 14.12.2017 when the Corporate Debtor failed to reply to the Statutory Notice issued by the Operational Creditor under Section 8(1) IBC, 2016 to the Corporate Debtor herein.

d. It is stated that the Corporate Debtor being in a financial crisis and being insolvent, is unable to pay debts of the Operational Creditor. Furthermore, the corporate debtor has admitted in its letter to make payment to the ·operational creditor but failed to make any payment.

e. On account Of the Corporate Debtor not paying the due amount to the applicant, the Operational Creditor is facing severe financial problems for payment of dues to its employees and staff.

f. It is submitted that in spite of repeated oral as well as written requests, the Corporate Debtor failed to discharge its debts towards the outstanding salaries and emoluments of the

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Operational Creditors, for the services rendered. The Corporate Debtor failed to pay the legally payable debt of Rs. 93,71,138/- since the Corporate Debtor is insolvent and is unable to pay the same.

g. It is stated that, the Operational Creditor has neither received any email/correspondence/letter from the Corporate Debtor nor any complaint/any kind of objection has been raised by the Corporate Debtor with respect to the operational debt of the Corporate Debtor payable to the Operational Creditors. Hence there is no dispute raised by the Corporate Debtor with regard to the dues payable towards the Operational Creditor.

h. As per part-IV of the application an amount of Rs. 93,71,138/- is still due and outstanding to be paid by the corporate debtor. The debt become due on 14.01.2017, i.e. the last payment made by corporate debtor.

i. The applicant issued Demand Notice u/s 8 of the Code on 14.12.2017 duly served at the registered office of the corporate debtor. The postal receipts and tracking report has been placed on record. The applicant has filed an affidavit under Section 9 (3) (b) stating that no payment or notice of dispute has been received by applicant after service of demand Notice. Further, Inspite of receipt of said Notice, the Corporate Debtor has neither paid the dues of the Operational Creditors nor replied to the said Notice.

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j. It is therefore claimed that the Corporate Debtor is not in a position to meet its financial commitments and is unable to pay its debts to its creditors in the normal and ordinary course of business, it is just and equitable and in the interest of justice that corporate insolvency resolution process may be initiated against the Corporate Debtor and an order requiring the Corporate Debtor to be liquidated may be passed.

2. Despite opportunities provided to the Respondent, none appeared on behalf of the corporate debtor, as a result the Respondent was proceeded ex-parte vide order dated 11.04.2022.

3. We have heard the matter and perused the case records. It is seen that the applicant is part of group company and offering individual solutions for transportations and logistic to the corporate debtor since the year 2007. Since then, the corporate debtor was paying the invoice payments to applicant, but after 17.09.2016 the corporate debtor has committed default in making payments of invoices due to be payable. Pursuant to which, the applicant made several oral and written request to make payment for the unpaid dues. Though, the corporate debtor never raised any dispute nor any objection with regards to the to the quality of services provided by corporate debtor.

4. Relatively, the corporate debtor has made part payments towards running ledger of the goods supplied by the operational creditor. This leaves no doubt that the default has occurred for the payment of the

Sd-unpaid operational debt to the applicant. It is reiterated that despite service of demand notice and notices by this court no objection has been raised by corporate debtor. The corporate debtor has chose to remain absent. Furthermore, on the service of the present petition, inspite of various opportunities, the corporate debtor did not appear before the bench to present his defence. Therefore, in the given facts and circumstances, since no objection has ever been raised by corporate debtor, it can be concluded that the applicant has established its claim which is due and payable by the corporate debtor. The present application is admitted.

5. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Rakesh Kumar Jindal, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N01148/2021-2022/13963 and email id iprakesh.jindal@gmail.com . IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against her. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

6. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Rakesh Kumar Jindal to meet out the expense to perform the functions assigned to her in accordance with

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regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

7. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

8. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

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(L.N GUPTA)
Member(T)

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(DHARMINDER SINGH)
Member(J)