

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH - I
KOLKATA
C.P. (IB) No. 1227/KB/2019**

Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Trux App Private Limited [CIN : U63033DL2015PTC327070]

... Operational Creditor

-Versus-

Safe Cargo Movers Private Limited [CIN : U74999WB2011PTC168764]

... Corporate Debtor

Date of Hearing: 01.04.2022

Date of pronouncing the order: 18.04.2022

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing):

For the Operational Creditor : Mr. Shashi Agarwal, CA

For the Corporate Debtor : Ms. Suman Sankar Chatterjee, Advocate

ORDER

Per Balraj Joshi, Member (Technical):

1. This Court convened *via* video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) by Trux App Private Limited (*'Operational Creditor'*), having its registered office at 316/274 Second Floor, Front Portion Saidullajab Western Marg, Garden of Five Sense Road, New Delhi, South Delhi - 110030, filed by Mr Manmohan Agarwal, Director of the Company and Mr. Srikant, Company Secretary of the Operational Creditor¹, seeking to initiate Corporate Insolvency Resolution Process (*'CIRP'*) against Safe Cargo Movers

¹ Page – 113 of the Petition.

Private Limited (*'Corporate Debtor'*), having its registered office at 7/11/A, Bijoygarh Colony, Jadavpur, Kolkata – 700032.

3. The present petition was filed on 25.07.2019, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.81,65,861/- (Rupees Eighty One Lakh Sixty Five Thousand Eight Hundred Sixty One only). The date of default is **10 October, 2017**.
4. As per part II of the Form, the Authorized Share Capital of the Corporate Debtor is Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakh only) and Paid-up Capital of Rs.50,36,550/- (Rupees Fifty Lakh Thirty Six Thousand Five Hundred Fifty only)
5. The Authorized Representative for the Operational Creditor submits that on different occasions the Corporate Debtor had engaged the Operational Creditor for providing Transportation Service. Separate invoices from 06 December, 2016 to 04, July, 2017 were raised by the Operational Creditor against such transportation services.² The last part payment made by the Corporate Debtor was on 09 October, 2017. Since, then the outstanding dues remained un-cleared.
6. The Operational Creditor issued a statutory demand notice dated 07 April, 2019 under section 8 of the Code to the Corporate Debtor and was delivered on 15 May, 2019.³ Pursuant to such demand notice, the Corporate Debtor *vide* its letter dated 23 May, 2019 replied to the Operational Creditor stating that the present notice is invalid and incomplete as per the provision of the Code. Further, the Corporate Debtor in its reply letter states that no proper information with respect to total amount of Debt and the date from which the amount felt due was mentioned.

Analysis and Finding

7. Heard the Authorized Representative appearing on behalf of the Operational Creditor and perused the record. Further, it is observed that the Corporate Debtor *vide* order dated 17 February, 2020 was allowed to file its reply on

² Pages 21-35 of the Petition.

³ Annexure – C of the Petition.

payment of cost of Rs.20,000/- (Rupees Twenty Thousand only) from the earlier cost of Rs.10,000/- (Rupees Ten Thousand) imposed *vide* order dated 12 December, 2019 in respect of repeated opportunities. However, still the Corporate Debtor chose not to file the reply. Accordingly, the Corporate Debtor was set *ex-parte* on 25 February, 2022.

8. Further, upon perusal of the e-mail dated 11 February, 2017 from the Corporate Debtor at page 92 of the Petition it is apparent that the Corporate Debtor had accepted the fact that there is a debt and also promised to pay within the stipulated time period.
9. As envisaged under section 9(3)(b) of the Code, an affidavit has been filed by the Operational Creditor. From the available record, it is apparent that the Corporate Debtor had never raised any dispute with respect to the services of the Operational Creditor until they received the statutory notice under section 8 of the Code.
10. This application was filed on 25 July, 2019 and as submitted by the Operational Creditor the date of default is 10 October, 2017. Hence, the application falls within the limitation period of three years.
11. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, i.e., Rupees one lakh, at the relevant time, and since there is no pre-existing dispute, there is no defence available to the Corporate Debtor in these circumstances.
12. It is, accordingly, hereby ordered as follows:-
 - a. The application bearing *C.P. (IB) No. 1227/KB/2019* filed by Trux App Private Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating

Authority) Rules, 2016 for initiating CIRP against Safe Cargo Movers Private Limited, the Corporate Debtor, is *admitted*.

- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Surendra Kumar Agarwal**, registration number **IBBI/IPA-001/IP-P00825/2017-2018/11401**, email: **surendraca@gmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

- g. The IRP/RP shall submit to this Adjudicating Authority progress reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Operational Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees 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).
- i. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

13. *C.P. (IB) No. 1227/KB/2019* to come up on **21 July, 2022** for filing the progress

14. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

BALRAJ
JOSHI Digitally signed
by BALRAJ JOSHI
Date: 2022.04.18
17:06:32 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar
V K Digitally signed by
Rajasekhar V K
Date: 2022.04.18
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Rajasekhar V.K.
Member (Judicial)

The Order is pronounced on 18 day of April, 2022

SA, LRA