

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.301  
**CP/IB/789/AHM/2019**

**Order under Section 9 of IBC, 2016**

**IN THE MATTER OF:**

Broadwings logistics Pvt. Ltd.

.....Applicant

V/s

New Horizons Asphalt Private Limited (Formerly known as  
GP Global Asphalt Pvt. Ltd.) (Formerly known as Gulf Asphalt  
Pvt. Ltd.)

.....Respondent

**Order delivered on: 13/03/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

**-SD-**

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**-SD-**

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

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C.P. (IB) No.789/AHM/2019  
Broadwings Logistics Pvt. Ltd. Vs. New Horizons Asphalt Private Limited  
(Formerly known as GP Global Asphalt Pvt. Ltd.)

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
(COURT-I)**

**CP (IB) No.789/AHM/2019**

*(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**IN THE MATTER OF:**

**Broadwings logistics Pvt. Ltd.**

Registered office at:

Khasra No:15/24, Building No.3

Nr. Telephone Exchange,

Samalkha, New Delhi-110037

CIN:U74900DL2011PTC21937284

**Applicant/  
Operational  
Creditor**

**VERSUS**

**New Horizons Asphalt  
Private Limited (Formerly  
known as GP Global  
Asphalt Pvt. Ltd.)**

**(Formerly known as Gulf  
Asphalt Pvt. Ltd.)**

Registered office at:

Plot No.745, GIDC, Manjusar,

Tal: Savli, Vadodara-391775

CIN:U11100GJ2011PTC108646

**Respondent/  
Corporate  
Debtor**

**Order pronounced on: 12.03.2024**

**CORAM:**

**MR. SHAMMI KHAN (MEMBER JUDICIAL)**

**MR. SAMEER KAKAR (MEMBER TECHNICAL)**

**APPEARANCE:**

For the Operational Creditor: Mr. Vipin Kumar Yadav, Adv.

For the Corporate Debtor: Mr. Rajesh Rawa; Adv. a.w Mr.  
Pranav Thakkar, Adv.

**O R D E R**

1. This is an application filed by Broadwings logistics Pvt. Ltd. (Operation Creditor) against GP Global Asphalt Pvt. Ltd. (Formerly known as Gulf Asphalt Pvt. Ltd.) having registered office at Plot No.745, GIDC, Manjusar, Tal: Savli, Vadodara-391775 u/s 9 r.w Rule 6 with request to initiate Corporate Insolvency Resolution Process on the Respondent, to appoint IRP and to declare moratorium.
2. Perusal of Part-I of the Form-V reveals that the Applicant/Operational Creditor is one Broadwings Logistics Pvt. Ltd. having CIN: U74900DL2011PTC21937284. The registered office of the Applicant/Operational Creditor is situated at Khasra No: 15/24, Building No.3 Nr. Telephone Exchange, Samalkha, New Delhi-110037.
3. Perusal of Part-II of the Form-V reveals that the Respondent/Corporate Debtor is one GP Global Asphalt Pvt. Ltd. (Formerly known as Gulf Asphalt Pvt. Ltd.) having

CIN:U11100GJ2011PTC108646. The registered office of the Respondent/ Corporate Debtor is situated at Plot No.745, GIDC, Manjusar, Tal: Savli, Vadodara-391775.

4. The Applicant has not proposed name of IRP. On perusal of the Part-IV, total amount of debt claim in the application is Rs.31,57,691/-. It is stated that the Operational Creditor is warehousing and custom clearing agent. That vide Bonded Warehousing agreement entered into between the Operational Creditor and Corporate Debtor in January, 2015 for storage of consignment of Corporate Debtor imported vide Bill of entry No.7699865 dated 15.12.2024. That 500 Sq. Meters of space was given by the Operational Creditor to the Corporate Debtor @ of Rs.100 per Sq. Mtr. Per week. For the aforesaid facilities, invoices at agreed rate was raised upon the Corporate Debtor from 02.02.2015.
5. Invoices so raised were paid till May 2018. However, invoices raised from 30.06.2018 till date are pending and have not been paid by the Respondent.
6. The date of default mentioned is 30.06.2018.
7. The Applicant relied upon Section 73 of the Indian Contract Act, 1872 and Bonded Warehouse proposal entered between the parties which are annexed at Annexure-IV. The Applicant has attached a copy of ledger account of the Corporate Debtor for the period 02.02.2015 to 02.01.2019 alongwith application. This

application was affirmed on 27.05.2019 and filed on 07.11.2019. It is stated that despite repeated reminders from the Applicant company, the Respondent company failed to respond to all communications and has not made any payment to the Operational Creditor. "The Applicant addressed demand notice dated 13.05.2019 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The said notice was delivered on 17.05.2019 and was replied belatedly by the Corporate Debtor on 27.05.2019. In reply to demand notice, the Corporate Debtor has stated that" (i) Applicant is not an Operational Creditor (ii) Applicant has lien on the products & (iii) Matter is subjudice before Custom Department and (iv) warehouse is operated being an extension of arm of the Government, therefore, their exist pre-existing disputes.

8. Reply was filed by the Corporate Debtor signed by one Mr. Surendra Kumar Gupta. Summary of the reply of the Corporate Debtor is as below:

- (i) There is no cause of action against the answering Respondent.
- (ii) Present application is not maintainable as there is privity of contracts since the goods which are stored with the Applicant are being stored by department of Custom, New Delhi and the same be released by them only.
- (iii) There is no direct agreement ever entered between the parties as against

- (iv) Goods are under the control of Department of Customs.
  - (v) From the reply, the Respondent admits that goods in questions were purchased, stock imported by them under invoice No.EXP/INV/5774/14 dated 21.11.2014 from UAE. Net weight of the goods was 422.980 MT which was imported in 25 containers, 2000 drums.
  - (vi) The said container reached ICD, Tughlakabad, New Delhi on 15.12.2014. The custom duty was paid. However, clearance from Custom was taking time. Thereafter, goods were sent for testing with Custom and goods were reported as "*hazardous waste*". The Corporate Debtor thereafter requested for re-testing which was not accepted.
  - (vii) The Applicant are provided Bonded Warehouse vendor of the Department of Customs under Chapter IX, Section 58 of the Indian Custom Act, 1962. The goods were stored with the Applicant and have not been cleared till now.
  - (viii) It is further stated that writ petition is pending with respect to the goods against the Custom Department being Writ Petition No.10336/2019. Respondent states that they have not in possession of the goods which are under lien since they have not committed default, present application is not maintainable.
9. Rejoinder was filed by the Applicant vide inward diary no. D547 dated 02.02.2022. Under rejoinder, the Applicant states that Respondent Company entered in Broad Warehouse proposal with Applicant Company in January 2015 which is placed as Annexure-2 of the main application. Respondent has paid

warehousing charges from February 2015 to May 2018 without any dispute, hence, bogey of no privity of contract does not arise.

10. It is stated that upon written requests dated 13.01.2015 by Respondent, Custom Department has allowed them to shift the goods to Bonded Warehouse u/s 49 of the Customs Act. It is clearly stated that Applicant are not arm of the government.
11. Petition filed before Delhi High Court was belatedly filed after issuance of the demand notice. Moreover, Applicant is not a party and no relief is sought against the Applicant.
12. The Applicant thereafter attached a letter of 13.01.2015 written by Respondent to the Deputy Commissioner of Customs at page No.9 requesting warehousing.
13. IA 967 of 2020 was filed by the Respondent in the matter seeking following reliefs:
  - (a) Allow the present application under the provisions of IBC, 2016 and dismiss CP(IB) No.789 of 2019;
  - (b) Pass such other and further orders as deemed fit and proper in the facts and circumstances of the case and in the interest of justice, against the Respondent and in favour of the Applicant.
14. The Applicant has challenged the maintainability of CP(IB) 789 of 2019. Regarding statement for the counsel for the Applicant in IA 966 of 2022 that subject matter has since become infructuous, IA 966 of 2022 was disposed-off vide order dated 27.10.2023.

15. Both sides have filed written submissions in the matter which has been considered by us. For the first time, in the Written submission filed by the respondent further disclosed that the name of the respondent Corporate Debtor has again changed from M/s G P Global Asphalt Pvt. Ltd. to M/s New Horizons Asphalt Private Limited vide written Submission dated 03.11.2023 which was uploaded on the DMS Portal only on 24.11.2023.
16. We have heard and perused the documents placed before us. It is admitted position that both parties have entered into warehousing agreement some time in January 2015 for allocation of 500 Sq. mtr of warehouse space by the Applicant as mutually agreed rate and that the Corporate Debtor has paid such rents to the operational creditor till may 2018.
17. It is also admitted position that the goods were imported by the Corporate Debtor and that due to certain irregularities noticed, Custom Department has not cleared the goods imported by the Corporate Debtor and said goods are still lying in the warehouse of the Applicant. On the other hand, Learned Counsel for the Respondent had vehemently argued on the provisions of the Custom Act stating that Applicant are agent of the government and they cannot be treated as operational creditor herein. The Respondent thereafter has pleaded existence of pre-existing disputes for which they said that writ petition is pending before Hon'ble Delhi High Court.

18. From perusal of the interim order of Hon'ble Delhi High Court and copy of writ petition placed before us, it is seen that in the said petition, Applicant is not a party "**at all**" and no relief is claim against the Applicant.
19. Without going into the technicalities of the Custom Act, from the pleadings placed before us, it appears that there was a valid agreement between the parties for taking certain space on rent and Corporate Debtor has paid rent for more than three years and thereafter stopped paying the same despite repeated reminder.
20. In our view, Applicant has proved that there is a valid debt which is over Rs.1 lakh (Pecuniary limit at the time when application was instituted) and such debt has not been paid despite valid demand. As such we are forced to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
21. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-
- (i) The **Respondent/Corporate Debtor New Horizons Asphalt Private Limited (formerly known as GP Global Asphalt Pvt. Ltd. formerly known as Gulf Asphalt Pvt. Ltd.)** is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.

- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
- a. 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;
  - b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - c. 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;

- d. 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. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or

suspended, or interrupted during the moratorium period.

- (v) As the Applicant/Operational Creditor has not named any IRP in the matter, we hereby appoint **Mr. Parag Sheth**, Registered Insolvency Professional having Reg. No. IBBI/IPA-002/IP-N00142/2017-18/10381 under section 13 (1) (c) of the Code to act as Interim Resolution Professional (IRP). She shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and

cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/-** (Rupees Two Lakh Only) in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.
- (xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

22. It has come to our knowledge that the name of the Corporate Debtor was again changed from GP Global

Asphalt Pvt. Ltd. (CIN: U11100GJ2011PTC108646) to New Horizons Asphalt Private Limited (CIN: U11100GJ2011PTC108646).

23. Since the present matter is pending from 2019 we change the name of the Corporate Debtor in the present Application.
24. The Registry is here by directed to make the necessary changes in the records.
25. Accordingly, this Application **CP (IB)/789/AHM/2019** is allowed and stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**-SD-**

**SAMEER KAKAR  
MEMBER (TECHNICAL)**

**-SD-**

**SHAMMI KHAN  
MEMBER (JUDICIAL)**

Sandeep Pandey- LRA  
Prakash Chauhan- Steno