

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**C.P. (IB) No. 454 /KB/2019**

***In the matter of:***

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

***In the matter of:***

DNK Lorry Services, through Proprietor Nawal Kishor Gupta, having its registered office at D – 170, Sector – 1, Rohini, New Delhi – 110085.

...Operational Creditor

-Versus-

Accutime Logistic Private Limited (CIN U63090WB2007PTC114917), a Company incorporated under the Companies Act, 1956, having its registered office at 78, Bentick Street, Room No. 3 B, 2<sup>nd</sup> Floor, Kolkata, West Bengal.

... Corporate Debtor

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Harish Chander Suri, Member (Technical)**

**Appearances (via video conferencing):**

For the Operational Creditor : Mr. Nirmalya Dasgupta, Advocate.

: Mr. Jitendra Patnaik, Advocate.

For the Corporate Debtor : Mr. Abhishek Sikdar, Advocate.

**Date of Hearing: 06.12.2021**

**Date of pronouncing the order: 14.01.2022**

**ORDER**

***Per : Harish Chander Suri, Member (Technical):***

1. This Court convened through video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) by DNK Lorry Services, through Proprietor Nawal Kishor Gupta (“Operational Creditor”), having its registered office at D – 170, Sector – 1, Rohini, New Delhi – 110085, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Accutime Logistic Private Limited (CIN U63090WB2007PTC114917), a Company incorporated under the Companies Act, 1956, having its registered office at 78, Bentick Street, Room No. 3 B, 2<sup>nd</sup> Floor, Kolkata, West Bengal (“Corporate Debtor”).
3. The present petition was filed on 29.03.2019, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment for a sum of Rs. 33,78,983/- (Rupees Thirty Three Lakh Seventy Eight Thousand Nine Hundred Eighty Three only) as on 01.09.2018, which is stated to be the date of default.
4. ***Submission of the learned Counsel for the Operational Creditor***
  - (i) The Operational Creditor, DNK Lorry Services, is a proprietorship concern with Mr. Nawal Kishor Gupta as proprietor. The Corporate Debtor had entered into an Agreement dated 20 September, 2018<sup>1</sup> with the Operational Creditor for providing lorry services for transportation of goods of the Corporate Debtor.
  - (ii) Subsequently, the Operational Creditor provided services i.e., transportation of goods from one place to another as per the Corporate Debtor and invoices were raised between 15 July, 2018 to 18 September, 2018<sup>2</sup>, total amounting to Rs.34,67,720/- (Rupee Thirty Four Lakh Sixty Seven Thousand Seven Hundred Twenty only). Out of total amount, only a sum of Rs.2,80,000/- (Rupees Two Lakh Eighty Thousand only) was received by the Operational

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<sup>1</sup> Annexure P3, Pages – 20 – 26 of the Petition.

<sup>2</sup> Annexure P4, Pages – 27 – 42 of the Petition

Creditor on 03 September, 2018. The Ledger Statement of the Operational Creditor from 01 April, 2018 to 31 December, 2018 reflects that part payment of Rs.2,80,000/- (Rupees Two Lakh Eighty Thousand only) was made by the Corporate Debtor<sup>3</sup>. However, no further payments were made after that.

- (iii) Several communications were made by the Operational Creditor to release the outstanding amount<sup>4</sup>, where on several occasions the Corporate Debtor has admitted of the outstanding debts;

Email dated **03 December, 2018** by the Corporate Debtor

*“We regret to share that releasing of your dues will take little more time and once the bank accounts are restored we will start paying your dues...and request your kind patience on the same.”*

Email dated **16 February, 2019** by the Corporate Debtor

*“As we have discussed with you in our Gurgaon Office on your balance due payment of Rs.31,87,720/- . There is some delay due to fund shortage with us”.*

- (iv) The Operational Creditor issued a statutory demand notice on 23 February, 2019<sup>5</sup>, under section 8 of the Insolvency and Bankruptcy Code, 2016 seeking release of Rs. 33,78,983/- (Rupees Three Crores Eighty Six Lakhs Sixteen Thousand Nine Hundred Eighty Six Paise only) [including interest], which was duly received by the Corporate Debtor on 25 February, 2019.
- (v) The Corporate Debtor replied to such statutory notice of the Operational Creditor *vide* letter dated 04 March, 2019<sup>6</sup>, where the Corporate Debtor has stated that there is no outstanding due and payable. Further, as per the Agreement signed between the parties on 15 June, 2018, Operational Creditor has failed and neglected to comply with the terms and conditions, the Operational Creditor has not provided the waterproof containers and

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<sup>3</sup> Annexure P5, Pages 43 – 45 of the Petition.

<sup>4</sup> Annexure P6, Pages 46 – 51 of the Petition

<sup>5</sup> Annexure P7, Pages 42 – 58 of the Petition

<sup>6</sup> Annexure P8, Pages 59 – 60 of the Petition

there was water leakage inside the container, which resulted in damage of the goods.

- (vi) That the Operational Creditor is entitled to a sum of Rs. 33,78,983/- (Rupees Thirty Three Lakh Seventy Eight Thousand Nine Hundred Eighty Three only) comprising of the outstanding Principal sum of Rs.31,87,720/- (Rupees Thirty One Lakh Eighty Seven Thousand Seven Hundred Twenty only) and interest amounting to Rs. 1,91,263/- (Rupees One Lakh Ninty One Thousand Two Hundred Sixty Three only) calculated on the principal sum.

**5. *Submissions of the learned Counsel appearing on behalf of the Corporate Debtor***

- (i) Learned Counsel on behalf of the Corporate Debtor submits that the Application filed by the Operational Creditor is not maintainable in law and there is no cause of action for the Application.
- (ii) It also submits that the Applicant has deliberately suppressed and concealed in the application that the Applicant was negligent in the services provided to the Corporate Debtor and there were several quantity and quality related issues pertaining to the services provided by the Applicant. A huge loss and damage was also caused to the Corporate Debtor and there were several complaints received by the Corporate Debtors customers relating to either short supply of good and/or damaged goods.
- (iii) All the complaints were deliberately brought into the notice of Operational creditor but the Operational Creditor failed to resolve any such issues or to issue Credit Note in the favour of the Corporate Debtor<sup>7</sup>. Even after assuring the Corporate Debtor that the Operational Creditor will take necessary steps to resolve the issue and to issue appropriate Credit Note in favour of the Corporate Debtor, the Applicant has failed to do so.
- (iv) A letter dated 02 September, 2018 was also issued by the Corporate Debtor with regards to huge discrepancies in the invoices submitted by the Applicant and also the invoices were not as per the contract between them.

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<sup>7</sup> Annexure – A, Pages 15 – 17 of the Reply

- (v) The Operational Creditor has deliberately suppressed the mails<sup>8</sup> of Corporate Debtor, where the disputes regarding the deficient quality of services have been reiterated by the Corporate Debtor.
- (vi) In the above circumstances, the Corporate Debtor had to incur unnecessary expenses from its own pocket by issuing Credit Notes in favour of its customers.
6. On 26 September, 2019 the Operational Creditor has filed their Rejoinder, where they have disputed and denied the averments made by the Corporate Debtor in its reply. Further, the Operational Creditor categorically submits that the notice by the Corporate Debtor in Annexure – A of the reply, was never brought into their knowledge any time before the statutory demand notice under Section 8 of the Code. Moreover, the goods referred by the Corporate Debtor being DKT No.AA000003736\*127 was delivered to the owner safely and without any damages.
7. A sur-rejoinder has also been filed by the Corporate Debtor disputing the allegation as raised by the Operational Creditor in their rejoinder. The Corporate Debtor also denies the fact that the letter annexed by the Corporate Debtor in their reply, as Annexure – C, is forged or fabricated.
8. Heard the Ld. Counsel appearing for the Financial Creditor and the Ld. Counsel appearing for the Corporate Debtor and have perused the records and the concerned documents annexed to the Petition.
9. It is pertinent to mention that even if the Corporate Debtor had raised dispute against the services by the Operational Creditor and the said plea was accepted by the Operational Creditor, who agreed to issue Credit Notes<sup>9</sup> for Rs.4,01,238/- (Rupees Four Lakh One Thousand Two Hundred Thirty Eight). Be that as it may, the principal default amount will still come within the default amount as envisaged under Section 4 (1) of the Code, even after deducting the value in the Credit Note.

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<sup>8</sup> Page 23 of the Reply

<sup>9</sup> Page 23 of the Reply.

10. Further, there is an admission of debt by the corporate Debtor in their email dated **16 February, 2019** by the Corporate Debtor stating that “As we have discussed with you in our Gurgaon Office on your balance due payment of Rs.31,87,720/- . There is some delay due to fund shortage with us”.

11. Present application has been filed by a Proprietorship Firm represented by its proprietor. It has been held by the Hon’ble NCLAT in ***Fipola Retail (India) Private Limited V. M2N Interiors***<sup>10</sup> that as per Section 3(23) of the IBC 2016 only a person as defined therein can approach the NCLT and an opportunity was given to the Sole Proprietor as a Petitioner/Applicant as the case may be to approach the Adjudicating Authority. The Appellate Authority also observed that

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“In so far as this Petition is concerned, the Petitioner as reflected in the cause title contains both the name of the Sole Proprietor as well as the name of the Sole Proprietary concern and hence the Petition can be taken on record.”

12. It is, accordingly, hereby ordered as follows:-

- a. The application bearing CP (IB) No. 454/KB/2019 filed by DNK Lorry Services, through Proprietor Nawal Kishor Gupta, the Operational Creditor, under section 9 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Accutime Logistic 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.

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<sup>10</sup> Company Appeal (AT) (CH) (INS) No. 89 of 2021

- 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. Seikh Abdul Salam**, registration number – **IBBI/IPA-003/IPA-ICAI-N-00250/2019-2020/12966**, email: **ipsalamkol2019@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 periodical 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.3,00,000/-** (Rupees Three 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. **CP (IB) No. 454/KB/2019** to come up on **22.03.2022** for filing the periodical report.
14. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

Order dated January 14, 2022

SA, LRA