

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

**RCP(IB)/5(MB)2024
connected to C.P. (IB) NO.
4575 (MB) 2019**

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

All Cargo Logistics Ltd.

[CIN:L63010MH2004PLC
073508]

...Applicant/Operational
Creditor

Versus

Gallictrans Cargo Logistics
Pvt. Ltd.

[CIN:U63090MH2012PTC
229399]

...Respondent/Corporate
Debtor

Order pronounced on 01.05.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Applicant/Operational Creditor: Mr. Nirav Barot,
Advocate

For the Respondent : Mr. Jamsheed Master,
Advocate

ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

Brief facts:

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **All Cargo Logistics Ltd.**("hereinafter referred to as the Operational Creditor /Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Gallictrans Cargo Logistics** ("hereafter referred to as the Corporate Debtor/Respondent").
2. The Applicant bears CIN L63010MH2004PLC073508 having its registered office at 6th Floor, Avvashya House, CST Road, Kalina, Santacruz East, Mumbai - 400098. The Applicant is being represented by Mr. Rakesh Vishwakarma.
3. The Respondent was incorporated on 10.04.2012 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U63090MH2012PTC229399 and registered office is at Office 5,6 & 7, Ground floor, Vaidya Wada Veer Swarkar Peth, Opp. St. John Baptist School, Thane, Maharashtra - 400601. Therefore, this Bench has jurisdiction to entertain and decide the Petition. The Authorized share capital of the Respondent is Rs. 1,00,000/- whereas the paid up share capital is Rs. 1,00,000/-.
4. The Principal Amount claimed to be in default is Rs. 1,03,11,362.58/- (Rupees One Crore Three Lakhs Eleven

Thousand Three Hundred Sixty-Two and Fifty-Eight Paisa only) which includes interest of Rs. 18,07,471.50/- (Rupees Eighteen Lacs Seven Thousand Four Hundred Seventy-One and Fifty Paisa Only) aggregating to a sum of Rs. 1,21,18,834.08/- (Rupees One Crore Twenty-One Lacs Eighteen Thousand Eight Hundred and Thirty-Four and Eight Paisa only) and further interest at 18% per annum until payment and/or realization.

Submissions of the Applicant:

5. The Operational Creditor had provided its services to the Corporate Debtor, for various shipments exported from Nhava Sheva, Hazira, Kolkata to Casablanca, etc. during the period of June 2018 to October 2018, and said services were accepted and enjoyed without any complaint or dispute by the Corporate Debtor.
6. It was represented and assured and agreed by Corporate Debtor that the Freight charges, Origin Local charges, Detention Charges, and such other charges collectible from Corporate Debtor would be paid by Corporate Debtor on the due dates specified for the same. Towards the aforesaid charges payable by Corporate Debtor, Operational Creditor issued several invoices to Corporate Debtor for its services, which are accepted by the Corporate Debtor without any demur and protest.
7. The total outstanding amount is Rs. 1,03,11,362.58/- (Rupees One Crore Three Lakhs Eleven Thousand Three Hundred Sixty-Two and Fifty-Eight Only). The Corporate Debtor vide a Settlement Agreement dated 09.10.2018 confirmed aforesaid liability towards payment of the outstanding amounts. In pursuance of the said Settlement Agreement, Corporate Debtor

issued in favour of Operational Creditor 71 (Seventy-One) cheques, towards part-payment of outstanding dues under various Invoices. None of the Invoices and/or the amount mentioned therein has been disputed and/or paid by Corporate Debtor. All the aforesaid cheques stood bounced and/or dishonored when the same were presented for clearance.

8. On numerous occasions the Operational Creditor through various emails has requested Corporate Debtor to pay the outstanding amount, till date there has been no response from Corporate Debtor and the Corporate Debtor has cleared the outstanding dues.
9. The Operational Creditor issued statutory demand notice upon the Corporate Debtor calling upon and/or otherwise raised a demand for payment of unpaid operational debt under the provisions of IBC through their Advocate's Notice dated 08.08.2019, which was received by the Corporate Debtor. Despite of this the Operational Creditor has failed and neglected to abide by the same and hence the present petition has been filed.
10. The principal default amount is stated to be Rs. 1,03,11,362.58/, along with interest of Rs. 18,07,471.50/- thereby amounting to a total of Rs. 1,21,18,834.08/- from the date of default till 31.07.2019 and further interest at the rate of 18% per annum until payment and/or realization.
11. Vide order dated 19.09.2022, the Corporate debtor was set exparte as it failed to appear even after being served. However, the Respondent appeared before this bench on 08.02.2024 and this bench had allowed the Respondent to file its reply as the Ld. Counsel for the Applicant had no objection to the same.

12. The petition was dismissed vide order dated 27.07.2023 since none appeared for the Operational Creditor not only on 27.07.2023 but also on 06.07.2023. Thereafter, the Applicant filed a restoration application no.40/2023 to restore the present petition which was allowed vide order dated 15.01.2024 and hence restored the present petition.

Submissions of the Respondent:

13. The Respondent has contested that they are an MSME in the business of being forwarding agents for shippers or importers acting for and on behalf of known principals. All transactions (save three B/Ls) that the respondent facilitated through the purported operational creditor were as forwarding agents and thus the claim as claimed is wrongly claimed. In the set of B/Ls produced by the Applicants, in only three B/Ls respondents are the named shippers. For all other B/Ls, they were the forwarding agent where the principal was known and the claims for which are not enforceable against them as “*Agent cannot personally enforce, nor be bound by, contracts on behalf of principal*” as embodied in section 230 of the Contract Act.
14. The petition is declared and sworn by Mr. Rakesh Vishwakarma who is authorized by an Executive Committee of the Board of Directors not the Board of Directors within whom the management of the company lies, thereby making this Petition unverified and inchoate document.
15. The Applicant has claimed outstanding for services provided from June 2018 to October 2018. Applicant has placed on record a Settlement Agreement dated 09.10.2018.

16. A major fire occurred in M.V. Maersk Honamto's cargo in hold no. 3 on 06.03.2018. The amount of Rs. 75 lakhs was agreed in the settlement agreement as an indemnity amount, the terms were recorded, and 45 lakhs were paid. To date, the Applicant has not provided details of the amount it had to pay Maersk if at all they paid, without details being provided. Respondent has submitted that it is legally entitled to credit of 45 lakhs paid to the Applicant. As per Clause 3.3 forwarding services were rendered for shipments/imports of Respondent's clients/principal amounting to Rs. 38,77,613 as of 09.10.2018.
17. Further as far as payment of Ankitraj is concerned, regarding payment of Rs.45 lakhs, no accounts and supporting proof have been presented to reflect that the said Rs.45 lakhs were paid to Maersk and the balance was being claimed for the same to be payable for and on behalf of Ankitraj thus they are entitled to credit thereto. As to Part IV(ii)(5)(6)(7) it is submitted the amount of Rs 75 lakhs was an indemnity and to date, Applicant has not accounted for the amount of Rs 45 lakhs so collected, it is denied by the Respondent that the amounts so claimed are legally payable by them, notwithstanding the incongruent claims being made the amount of Rs 45 lakhs offset the outstanding on account of their clients outstanding as pencilled in the settlement agreement.

Findings:

1. Heard the submissions of learned Counsel for the Applicant and Respondent. Perused records.
2. Upon perusal of the settlement agreement dated 09.10.2018 placed on record, it is evident that the Respondent has

acknowledged the debt claimed by the Applicant. The same is evident upon the perusal of invoices attached to the demand notice dated 08.08.2019 and the settlement agreement 09.10.2018. Hence the debt is clearly established. Clause 3 Promise to Pay of the settlement agreement is produced verbatim hereunder:

“3.1 Gallictrans hereby agrees, confirms and declares to pay to Allcargo an amount of Rs. 75,00,000/- (Rupees Seventy-Five Lakhs only) as on 10.10.18 in respect of the aforementioned detention charges; and In pursuance of the same it has already paid part payment of Rs. 45,00,000/- (Rupees Forty-Five Lakhs only) in three different instalments through NEFT in the following manner:

- i. Rs. 20,00,000/- (Rupees Twenty Lakhs only) through NEFT vide reference number KKBKK52018092900756782 Dated 29.09.2018.*
- ii. Rs. 15,00,000/- (Rupees Fifteen Lakhs only) through NEFT vide reference number KKBKR52018100800840018 Dated 08.10.2018.*
- iii. Rs. 10,00,000/- (Rupees Ten Lakhs only) through NEFT vide reference number 08.10.2018 KKBKR52018100800874199 Dated 08.10.2018.*

3.2 Gallictrans hereby further agrees, confirms and declares to pay to Allcargo remaining amount of Rs. 11,25,000/- (Rupees Eleven Lakh Twenty-Five Thousand Rupees only) and other balance amount if any shall be paid later in respect of the aforementioned detention charges by post cheque bearing number 2251 drawn on Kotak Mahindra Bank.

3.3 Gallictrans hereby also agrees, confirms and declares to pay to Allcargo an amount of Rs. 38,77,613/- (Rupees Thirty-Eight Lakhs Seventy-Seven Thousand Six Hundred and Thirteen only) in respect of forwarding services which Allcargo has already provided to Gallictrans or to its other client/s pertaining to other transactions; the details of the services and mode of the payment are mentioned in detailed in Annexure A.”

3. We note that, the payment of Rs. 75 Lakhs Rupees was to be made without any stipulation that the Operational Creditor has to submit evidence of back to back payment to Maersk line India Pvt. Ltd. and the Settlement agreement takes note of the fact that the Operational Creditor is liable to pay the amount so settled. Accordingly, we do not find any merit in the claim of credit of sum of Rs. 45 Lakhs by the corporate debtor against the outstanding claimed.
4. We further note that the Corporate Debtor agreed to pay a sum of Rs. 38,77,613/- as detailed in Annexure A of the settlement agreement. Upon perusal of the Annexure A we find that it contains list of outstanding invoices for a sum Rs. 11,672,594.32/- and a sum of Rs. 7,794,981/- has been deducted therefrom on account of post-dated cheques issued by the Corporate Debtor. It is the case of Operational Creditor that these cheques were never honoured when presented for payment, however, some of the invoices appearing in Annexure A were cleared. Accordingly, an amount of Rs. 1,16,72,594.32/- less amount of invoices since paid is still outstanding and duly acknowledged as due from the Corporate Debtor as evidenced by the Settlement agreement.

5. We further find from the details of the pending invoices forming part of 1,03,11,362.58/-, that out of total 147 invoices listed in details attached to the demand notice 144 invoices are appearing in the Annexure A to the settlement agreement and remaining 3 invoices were raised after 09.10.208 i.e. the date of settlement agreement. In view of this we have no hesitation to hold that the amount of invoices was payable by the Corporate Debtor and it cannot take shelter and recourse to S.230 of the Contract Act in view of specific, clear and categorical acknowledgement of its liability conveyed by the Settlement Agreement.
6. We also find that the invoices raised clearly stipulate payment of interest at the rate of 18% per annum in case the payment is made beyond due date.
7. In view of above facts and findings, we are of considered view that an operational debt of more than Rs. 1 Crore is due and in default and there is no dispute in relation to debt in default. The Application is complete in all respect. Hence, we find the same liable to be admitted.

Order:

1. The Petition bearing **RCP(IB)/5(MB)2024 connected to C.P. (IB) NO. 4575 (MB) 2019** filed by All Cargo Logistics Ltd. [CIN:L63010MH2004PLC073508], the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Gallictrans Cargo Logistics Pvt. Ltd. [CIN:U63090MH2012PTC229399], the Corporate Debtor, is **admitted**.

2. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
3. Notwithstanding the above, during the period of moratorium: -
 - i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
4. 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.

5. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
6. The Applicant has not proposed name of any Interim Resolution Professional (IRP) and hence, we hereby appoint **Mr. Anish Gupta** having registration no. **IBBI/IPA-002/IP-N00285/2017-18/10843**, **Mobile no. 9821099720** and **email ID ipanishgupta@gmail.com** as the IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
7. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
8. 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).
9. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by

Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

10. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

11. Ordered accordingly.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
<MK>

Sd/-

JUSTICE V. G. BISHT
MEMBER (JUDICIAL)