

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/240(CHE)2022

*(filed 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 **M/s. Meenakshi Cargo Forwarders Pvt. Ltd.***

M/s. INDEX LOGISTICS PRIVATE LIMITED,

Through its Authorised Representative
Mr. Prabhat Rai,
105, Ascot Centre, Near Hilton Hotel,
Sahar Road, Andheri (E),
Mumbai-400 099

... Applicant / Operational Creditor

-Vs-

M/s. MEENAKSHI CARGO FORWARDERS PVT. LTD.,

Plot No.1, Door No. 10A,
S2, Second Floor,
Chozha Residency, North Raja Street,
Alandur, Chennai-600 016

... Respondent / Corporate Debtor

*Order Pronounced on **10th July, 2023***

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Operational Creditor: Mr. Murari Kumar, Advocate

Ms. Lisha Saha, Advocate

For Corporate Debtor: Mr. R. Kannan, PCS

ORDER

(Hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and

Bankruptcy (Application to Adjudicating Authority), Rules, 2016 has been filed by **M/s. Index Logistics Private Limited**, ("hereinafter referred to as **Operational Creditor**") against **M/s. Meenakshi Cargo Forwarders Private Limited** ("hereinafter referred to as "**Corporate Debtor**") for initiating Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor.

2. Part-I of the application discloses the particulars of the Applicant. Part-II of the application sets out the particulars of the Corporate Debtor, inter alia, that the Corporate Debtor was incorporated on 18.05.2017 having CIN: U74140TN2017PTC11660 with Authorized Share Capital as Rs.10,00,000/- (Rupees Ten Lakhs only) and Paid-Up capital as Rs.2,40,000/- (Rupees Two Lakhs Forty Thousand only). The Registered Office of the Corporate Debtor is at Plot No. 1, Door No. 10A, S2, Second Floor, Chozha Residency, North Raja Street, Alandur, Chennai-600 016 within the jurisdiction of this Tribunal. Part-IV of the application contains the particulars of the operational debt being Rs.3,44,25,447/- (Rupees Three Crores Forty Four Lakhs Twenty Five Thousand Four Hundred and Forty Seven only). The date of default is stated as 16.03.2020. Part-V contains the documents, records and evidence of default. List of the other documents attached to this application in order to prove the existence of

operational debt and the amount in default as mentioned in **Annexure-OC-1 to Annexure-OC-10** which are reproduced as below:

1. *A copy of the Master Data of the Corporate Debtor taken from the website of MCA.*
2. *Copy of the ledger summary of the Operational Creditor with respect to the Corporate Debtor.*
3. *Copy of the invoices of the services rendered by the Operational Creditor to the Corporate Debtor.*
4. *Copy of the email dated 18.07.2020 where the Corporate Debtor's acknowledged the debt liability and amount pending due.*
5. *Copies of the emails dated 16.03.2020, 17.03.2020, 18.07.2020, 14.08.2020 & 20.01.2021 where the Operational Creditor send reminder the Corporate Debtor to remit the debt liability.*
6. *A copy of the email dated 18.02.2022 by the Operational Creditor to the Corporate Debtor.*
7. *Copy of the demand notice dated 21.02.2022 sent to the Corporate Debtor by the Corporate Debtor along with the postal receipt & tracking report.*
8. *A copy of the reply against the demand notice dated 21.02.2022 by the Corporate Debtor to the Operational Creditor.*
9. *A copy of the table showing computation of the amount and date of default.*
10. *Copies of the bank statements of ICICI Bank till date showing the transaction between the parties against the invoices raised by the Operational Creditor.*

3. The case of the Applicant in brief is that the Corporate Debtor through its director had approached the Operational Creditor for availing the services of air freight/Express Logistics on

Pan India basis. Acting upon the representations and warranties, the Operational Creditor rendered the services to the Corporate Debtor and raised the invoices. It is alleged that the Corporate Debtor after winning the trust of the Operational Creditor, took credit of crores. The Operational Creditor sent mails and made telephone calls asking the Corporate Debtor to make the payment but the Corporate Debtor though assuring the Operational Creditor to clear the pending dues within few days, did not pay the dues and continued availing the services. At the end of the financial year 2020-21, an amount of Rs.2,57,47,573/- (Two Crores Fifty Seven Lakhs Forty Seven Thousand Five Hundred and Seventy Three only) became due and payable by the Corporate Debtor. The Operational Creditor vide email dated 18.07.2020 sent reminder to the Corporate Debtor regarding the balance confirmation for the Financial Year 2019-20 and account reconciliation, however, it did not get any response. The Operational Creditor sent various mails dated 16.03.2020, 17.03.2020, 18.07.2020, 14.08.2020, 20.01.2021, 22.01.2021 and 18.02.2022 requesting the Corporate Debtor to release the unpaid operational debt but the Corporate Debtor did not remit any amount nor replied to the mails. The Operational Creditor then served a Demand Notice dated 21.02.2022 upon the Corporate Debtor under Section 8(2) of the Insolvency & Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016. Although the Corporate Debtor sent a reply dated 21.03.2022 but did not make any payment and cited several frivolous and spurious plea. It is alleged that the plea is after thought after the admission of the debt amount as the Corporate Debtor never showed any existence of disputes, if any.

4. On getting notice of the application, the Corporate Debtor/Respondent filed the reply though admitted to have availed the cargo services from the Operational Creditor but stated that the Corporate Debtor had raised many disputes even before two years in the matter of providing services and raising bills, details given in **Annexure-I**, emails in Annexure-II, emails in **Annexure-III** with the reply. It is stated that the Corporate Debtor had sent reconciliation for Rs.2,11,07,286/- (Rupees Two Crores Eleven Lakhs Seven Thousand Two Hundred and Eighty Six only) and ~~the~~ Rs.46,40,287/- (Rupees Forty Six Lakhs Forty Thousand Two Hundred and Eighty Seven only) was the disputed amount. It is stated that the Respondent nowhere accepted the interest @ 18% per annum as claimed by the Operational Creditor. In reply to the demand notice also, it had referred to the existence of dispute prior to the receipt of the demand notice which the Operational Creditor failed to address. It is stated that the details of invoices/services were not provided by the Operational Creditor

to the Corporate Debtor and the figures mentioned by the Applicant are all disputed.

5. The Operational Creditor filed the rejoinder wherein it denied the averments made in the reply. It is stated that the Operational Creditor had informed the Corporate Debtor about the due amount as per the books of account but the Corporate Debtor did not pay any heed nor paid the amount. It is stated that as on date of filing the application, the principal amount due against the Corporate Debtor was Rs.2,57,47,573/- (Rupees Two Cores Fifty Seven Lakhs Forty Seven Thousand Five Hundred and Seventy Three only) for the period from April 2019 to March 2021. It reconciled its accounts and after adjustment, the principal amount stood as Rs.2,27,06,435/- (Rupees Two Crores Twenty Seven Lakhs Six Thousand Four Hundred and Thirty Five only) which it had also shared with the Corporate Debtor vide emails dated 06.09.2022 and 07.09.2022. It is stated that there is a clear admission of due debt to the tune of Rs.2,11,07,286/- (Rupees Two Cores Eleven Lakhs Seven Thousand Two Hundred and Eighty Six only) vide email dated 06.09.2022 sent by the Corporate Debtor in response to the reconciliation of the account.

6. We have heard Ld. Counsel for the parties and perused the documents on record.



7. It is an admitted case of the parties that the Respondent/Corporate Debtor had availed the cargo and the logistic services from the Operational Creditor during the period from 2019-20. The Operational Creditor raised the invoices for the services rendered to the Corporate Debtor. It has maintained a ledger in respect of the above services which shows an outstanding balance of Rs.2,57,47,573/- (Rupees Two Cores Fifty Seven Lakhs Forty Seven Thousand Five Hundred and Seventy Three only) against the Corporate Debtor as on 31.08.2021. The invoices show that GST at the rate of 18% was payable on the services. The Operational Creditor had sent mails to the Corporate Debtor. There was a mail from the side of the Corporate Debtor dated 17.03.2020 which is reproduced as under:

From: suresh@meenakshicargo.com [mailto:suresh@meenakshicargo.com]
Sent: Tuesday, March 17, 2020 4:57 PM
To: Vinay Lal
Cc: prem@meenakshicargo.com; Ismai M Khan; Chennai Index; Index Logistics Credit Control Delhi; Accounts HO Index; Bashir H Siddique
Subject: Re[2]: MEENAKSHI CARGO FORWARDERS PRIVATE LIMITED

Dear vinay Sir,

pls wait untill this month end. I ll close maximum o/standing.

Note: last week only i spoke with mr ismail sir n mr bashir bahi i gave commitment 60l to 1cr before end of this month.

Thanks & Regards

Suresh Kumar A.

MCFPL

8056000213



8. No dispute was raised in the aforesaid mail as to the deficiency of services on the part of the Operational Creditor. Further, the Corporate Debtor had not responded to some of the mails sent by the Operational Creditor asking the Corporate Debtor to acknowledge debt/amount due. In reply to the Demand Notice, the Corporate Debtor only highlighted the discrepancies close to Rs.46,40,287/- (Rupees Forty Six Lakhs Forty Thousand Two Hundred and Eighty Seven only). It was stated that they can have more time to reconcile the discrepancies in the statement of account to arrive at final amount that is payable.

9. For the sake of arguments, even if it is assumed that there is a discrepancy of Rs.46,40,287/- (Rupees Forty Six Lakhs Forty Thousand Two Hundred and Eighty Seven only) still the debt exceeds the threshold limit of Rs.1.00 Crore (Rupees One Core only) as provided under Section 4 of IBC,2016 for initiating CIRP against the Corporate Debtor. The last transaction is of dated 01.05.2021. This application has been filed on 13.09.2022 i.e. within the period of limitation. The date of default is stated to be 16.03.2020.

10. At this juncture, we find it relevant to refer to the Judgment of Hon'ble NCLAT in the matter of ***Clicbrics Technologies Pvt. Ltd. -Vs- Ansal Housing Ltd. in Company Appeal***

(AT)(Insolvency) No. 1268 of 2022 wherein at para 23 and 24,
it was held as follows;

23. We also notice that Adjudicating Authority has relied on the judgment of the Hon'ble Apex Court in M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd., 2022 SCC OnLine SC 1385, Civil Appeal No. 4583 of 2022, in that it is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an Operational Creditor. We are constrained to note that the Adjudicating Authority has hopelessly failed to appreciate the overall tenor and spirit of the principles of law as settled down in the judgment of S.S. Engineers supra wherein it has been clearly held that if the claim of an Operational Creditor is undisputed and the operational debt remains unpaid, CIRP must commence for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor.

24. To sum up, the operational debt which had admittedly become due and payable having not been disputed prior to issue of demand notice and not been discharged by the Corporate Debtor, this is a fit case for admission of CIRP. Further seen upon the touchstone of law as laid down in Mobilox and S.S. Engineers supra, the dismissal of the Section 9 petition by the Adjudicating Authority is perverse and illegal and liable to be set aside. (Emphasis Supplied)

25. With the aforesaid discussion, we are of the considered view that the Adjudicating Authority has erroneously rejected the application under Section 9 of IBC. We therefore set aside the impugned order with the following directions:-

(i) The Corporate Debtor will release payment of Rs.12,72,741.74 by way of Demand Draft in favour of the Operational Creditor being the admitted and undisputed operational debt.

(ii) The above payment shall be released within 30 days from the date of uploading of this order failing which the Corporate Debtor would come under the rigours of CIRP on the expiry of said 30 days period.

(iii) In case, the Operational Creditor refuses to accept the above sum as payment towards operational debt, the Section 9 petition shall become infructuous and deemed to have been dismissed.

(iv) No order as to costs

11. The Operational Creditor in its rejoinder has placed the mails dated 06.09.2022 exchanged between the Operational Creditor and the Corporate Debtor which are reproduced as under:

11 messages
Mohsin Khan IndEx Mumbai <mohsin@indexlogistics.com> Tue, Sep 6, 2022 at 3:09 PM
 To: meenakshicargo@gmail.com, Suresh Kumar <suresh@meenakshicargo.com>, "Rtn. Prem" <rpm@meenakshicargo.com>, sales@meenakshicargo.com
 Cc: "Farzana Sayyad IndEx Logistics, Mumbai" <farzana@indexlogistics.com>, "Subramanian Iyer (IndEx)" <siyer@indexlogistics.com>, Vinay Lal <vinaylal@indexlogistics.com>, Hitesh Patel <hitesh@indexlogistics.com>, anand.pgn@gmail.com, Ismail M Khan <ismailm@indexlogistics.in>, Suresh Kumar IndEx RHQ Delhi <sewesh@indexlogistics.com>

Dear Mr Suresh,

We thank you for your visit to our Mumbai office and meeting with our Managing Director Mr Ismail M Khan sir and Mr Anand Raj Sir last week. As you have shared the total Ledger and reconciliation of accounts with Mr Lal sir and the same has been cross verified by us and it's the same F&F balance as we had concluded at Mumbai amounting to Rs. 2,27,06,435.00 (Rupees Two Crore Twenty Seven Lacs & Four Thousand Four Hundred and Thirty Five Only).

We now can sign up the balance confirmation and settlement document for which we request you to provide details of cheques (complete details) clearing Rs 5,00,000.00 every fortnight or Rs 10L monthly to procure your agreement for signing.

SRL NO.	CHEQUE DATE	BANK / BRANCH	CHEQUE NUMBER	AMOUNT (INR)
01	16/09/2022			500000.00
02	01/10/2022			500000.00
03	16/10/2022			500000.00

We request and look forward to your earliest revert to proceed with the documentation preparation, sign up and cheque collection.

Thanks & Regards
 Mohsin Khan
 Accounts Department
 Fur Index Logistics Pvt Ltd
 Head Office - 105, Aseel center, Sahar Airport Road, Next to Hilton
 Andheri (East), Mumbai - 400 085.
 Contact No - 022 61112922
 Mobile No - 7440055506

Meenakshi Cargo <meenakshicargo@gmail.com> Tue, Sep 6, 2022 at 4:54 PM
 Reply To: Meenakshi Cargo <meenakshicargo@gmail.com>
 To: Suresh Kumar <suresh@meenakshicargo.com>, "Rtn. Prem" <rpm@meenakshicargo.com>, sales@meenakshicargo.com <sales@meenakshicargo.com>, mohsin@meenakshicargo.com, Mohsin Khan IndEx Mumbai <mohsin@indexlogistics.com>
 Cc: "Farzana Sayyad IndEx Logistics, Mumbai" <farzana@indexlogistics.com>, "Subramanian Iyer (IndEx)" <siyer@indexlogistics.com>, Vinay Lal <vinaylal@indexlogistics.com>, Hitesh Patel <hitesh@indexlogistics.com>, anand.pgn@gmail.com <anand.pgn@gmail.com>, Ismail M Khan <ismailm@indexlogistics.in>, Suresh Kumar IndEx RHQ Delhi <sewesh@indexlogistics.com>

Dear Sir,

We wish to inform you that the balance amount (Rs.2,27,06,435/-) shown in your mail is not matching with our books of accounts.

As per our books of accounts the amount to be paid stands as Rs.2,11,07,266/- only and a Reconciliation Statement along with the SoA were already given to you.

28/9/2022 10:00 AM

So, request you to provide your RECON Statement to finalise the same.

Regards,
A. Sivakumar - 7338898702.
Acct.

MEENAKSHI CARGO FORWARDERS PVT. LTD.,
Plot No.1, Door No, 10A, S2, II Floor, Chozha Residency, North Raja Street, Alandur, Chennai - 600016.
Email: info@meenakshicargo.com
PH: 044-22310393

12. In the said mail, there is a clear acknowledgement as to the amount outstanding with the Corporate Debtor to the tune of Rs.2,11,07,286/- (Rupees Two Cores Eleven Lakhs Seven Thousand Two Hundred and Eighty Six only) i.e. more than the threshold limit of Rs.1.00 Crore (Rupees One Crore only). Nothing can be made out from the mails placed by the Respondent/Corporate Debtor that there was pre-existing dispute.

13. Since the quantum of undisputed amount is more than Rs.1 Crore we are left with no other option than to initiate CIRP in respect of the Corporate Debtor. In so far as the quantum of claim of the Operational Creditor is concerned, the IRP is directed to collate the claim of the Operational Creditor after verifying the documents.

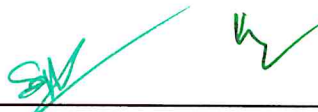
14. Thus, taking into consideration the facts and circumstances of the case, we allow the application filed by the Operational Creditor. The Corporate Debtor **M/s. Meenakshi Cargo Forwarders Private Limited** is admitted to CIRP under Section 9(5) of the IBC, 2016.



15. Since the Operational Creditor has not proposed the name of the Interim Resolution Professional in Part-III, this Tribunal based on the latest list furnished by the Insolvency and Bankruptcy Board of India applicable for the period between July 2023-December 2023, hereby appoints **R. Thamodharan** with **Registration Number IBBI/IPA-001/IP-P-02292/2021-2022/13592** (AFA valid till 31.03.2024) as the "Interim Resolution Professional". The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the Code before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

16. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including the 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

Explanation.-For the purposes of this subsection, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

17. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:



(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

18. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:



- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

19. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. Based on the above terms, CP(IB)/240(CHE)/2022 stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records.

Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI is also furnished with a copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

— sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

Suguna

— sd —

SANJIV JAIN
MEMBER (JUDICIAL)