



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-1089(ND)/2020

IN THE MATTER OF:

Trans Asian Shipping Services Private Limited

Registered Office at:

Trans Asia Corporate Park, XIV/396-C

Seaport-Airport Road, Chittethukara,

Kakkanad, Ernakulam, Kerala - 682037

...Applicant

VERSUS

Loom Crafts Furniture (India) Private Limited
(Formerly known as R.K. Loom Crafts Pvt. Ltd.)

Registered Office at:

204-205, Pankaj Plaza,

15 LSC (Behind Kalkaji Post Office)

Kalkaji, New Delhi-110019

...Respondent

Section: 9 of IBC, 2016

Order Delivered on: 08.09.2022

CORAM:

SH. DHARMINDER, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Aditi Sinha, Adv. Akshay Srivastava

For the Respondent : Ms. Rajdipa Behura, Ms. Chandrani Prasad,
Mr. Anuj Jain, Advocates



ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/S Trans Asian Shipping Services Private Limited (for brevity the **'Applicant/Operational Creditor'**), has filed the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity **'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/S Loom Crafts Furniture (India) Private Limited (for brevity the **'Respondent'**).

2. That the Respondent namely, Loom Crafts Furniture (India) Private Limited is a Company incorporated on 02.09.2005 with CIN U18101DL2005PTC140305 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 204-205, Pankaj Plaza, 15 LSC (Behind Kalkaji Post Office), Kalkaji, New Delhi-110019, which is within the jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Respondent is Rs. 1,00,00,000/- and Paid-up Share Capital is Rs. 1,00,00,000/- as per the Master Data of the Corporate Debtor.

4. It is stated by the Applicant that the Respondent as consignee imported "Remelted Lead Ignots/Blocks" from Port Klang, Malaysia to Tughlakabad, New Delhi in 04 x 20 DV Containers bearing no. CAXU3113874, TLXU3002567, TLXU3004852 and TLXU3004940.



5. It is further stated by the Applicant that the Respondent's counterpart Shipper "Alcomet Industries SDN BHD., 4 Jalan Intan 15, Taman Yayasan, 42600 Jenjarom, Kuala Lanngat, Selangor, Malaysia Darul Ehsaan, booked the consignment as per Booking No. 120473 and a Bill of Lading No. TALTPK00269447 was raised to the Respondent as consignee on 15.11.2007. The consignment reached at the Inland Container Depot (ICD) Tughlakabad on 23.11.2007.
6. It is stated by the Applicant that upon arrival of the consignment, it had duly intimated the Respondent vide Cargo arrival notice dated 23.11.2007. The Applicant also issued a Delivery Order dated 15.02.2008 to the Respondent. Thereafter, reminder notices were issued on 10.12.2007 and 31.12.2007. Finally, a notice dated 17.06.2013 was issued requesting the Respondent to clear the shipment and settle the amounts dues to the Operational Creditor.
7. The detailed particulars of the operational debt claimed, invoice raised, and the date of default as stated by the applicant in Part IV of its application, are reproduced overleaf for the sake of convenience:



Part-IV
PARTICULARS OF THE OPERATIONAL DEBT

1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	The Corporate Debtor as consignee imported "Remelted Lead Ingots/Blocks" from Port Klang, Malaysia to Tuglakabad, New Delhi in 04 x 20 DV Containers bearing No. CAXU3113874, TLXU3002567, TLXU3004852, and TLXU3004940. In this regard Corporate Debtor's counterpart shipper "Alcomet Industries SDN BHD., 4 Jalan Intan 15, Taman Yayasan, 42600 Jenjarom, Kuala Langkat, Selangor, Malaysia Darul Ehsan, booked a consignment per Booking No.: 120473 and a Bill of Lading No: TALTPK00269447 was issued to Corporate Debtor as consignee on 15.11.2007. The consignment reached ICD Tughlakabad on 23.11.2007. That the clause 22.3 of the bill of lading dated 15.11.2007 states that: <i>"22.3 If the goods are unclaimed within a reasonable time or whenever, in the Carrier's opinion the goods are likely to deteriorate, decay or become worthless, or incur charges whether</i>
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(Signature)

- Sd/-



for storage or otherwise in excess of their value, the carrier may at his discretion and without prejudice to any other rights which he may have against the Merchant without notice and without attaching any responsibility to himself, abandon or otherwise dispose of the Goods at the sole risk and expense of the Merchant and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this bill of lading."

A copy of the Bill of Lading no. TALTPK00269447 issued on 15.11.2007 is annexed herewith and marked as **Annexure-A**.

Upon arrival of the consignment the Operational Creditor duly intimated the arrival of cargo to the Corporate Debtor as per cargo arrival notice dated 23.11.2007. The Operational Creditor also issued Delivery Order dated 15.02.2008, to the Corporate Debtor. Thereafter reminder notices were issued on 10.12.2007 and 31.12.2007. Finally a notice dated 17.06.2013 was issued to the requesting Corporate Debtor to clear the shipment and settle the amounts due to Operational Creditor.

A copy of Delivery order No. 35924 dated 15.02.2008 is annexed herewith and marked as **Annexure-B**.

A copy of the Notice issued by the



Operational Creditor to the Corporate Debtor dated 17.06.2013 along with the Postal Receipt dated 24.06.2013 are annexed herewith and marked as Annexure-C(colly.).

However, for reasons best known to Corporate Debtor, the cargo was not cleared and the containers of Operational Creditor were kept idling. The containers were idling in the port premises for a fairly long period incurring several charges.

Finally the Authorities decided to dispose the cargo by way of auction. After completion of the auction procedures the containers were returned on several dates. The container bearing no. CAXU3113874 was returned to the Operational Creditor only on 23.09.2017. The containers bearing no. TLXU3002567 and TLXU3004852 were returned to the Operational Creditor only on 22.04.2014. The container bearing no. TLXU3004940 was returned to the Operational Creditor only on 26.03.2013.

Due to the inaction on the part of Corporate Debtor in clearing the cargo within the stipulated time, they are liable to pay the container detention charges as per the tariff of the Operational Creditor including on-carriage, terminal handling charges, container maintenance charges, container cleaning charges, delivery order charges, storage charges, lift on lift off charges as enumerated in the above referred invoice.



Therefore an invoice dated 23.09.2017 was issued to Corporate Debtor in respect of a total amount of Rs. 3,92,23,873/- (Rupees Three Crore Ninety Two Lakh Twenty Three Thousand Eight Hundred and Seventy Three Only).

A copy of Invoice No. 120473 dated 23.09.2017 is annexed herewith and marked as **Annexure-D**.

That the Operational Creditor on repeated occasions asked the Corporate Debtor to clear all dues but the Corporate Debtor kept giving false assurances that the same shall be done soon.

That since the Corporate Debtor was in clear default and was unable to pay off the Operational Debt, the Operational Creditor decided to issue Demand Notice dated 13.04.2018 in the form of Form-3 under Section 8 of the Insolvency & Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the Corporate Debtor to clear the amount of default i.e. Rs. 3,92,23,873/- (Rupees Three Crore Ninety Two Lakh Twenty Three Thousand Eight Hundred and Seventy Three Only) within a period of ten days of receipt of the demand notice. It is stated that the Corporate Debtor despite being in receipt of the demand notice dated 13.04.2018 has neither cleared the amount of the operational debt of Rs. 3,92,23,873/- (Rupees Three Crore Ninety Two Lakh Twenty Three Thousand Eight Hundred and Seventy Three Only) nor has



the Corporate Debtor brought to notice of the Operational Creditor existence of any dispute in relation to the Operational Debt.

A copy of Form 3 Demand Notice dated 13.04.2018 issued by Operational Creditor to the Corporate Debtor along with the Postal Receipt dated 13.04.2018 are annexed herewith and marked as Annexure-E(Colly).

That the Corporate Debtor replied to the Demand Notice vide reply dated 10.05.2018 whereby the Corporate Debtor did not bring to notice of Operational Creditor existence of any dispute.

A copy of the Reply dated 10.05.2018 sent by Corporate Debtor to the Operational Creditor is annexed herewith and marked as Annexure-F.

That the Corporate Debtor was duty bound to make payment to the Operational Creditor upon the various invoices raised by the Operational Creditor in terms of the Bill of Lading dated 15.11.2007. The Corporate Debtor has grossly failed to abide by the terms and conditions of the Bill of Lading dated 15.11.2007 despite unequivocally accepting the services of the Operational Creditor. It is stated that the invoice raised by the Operational Creditor is in respect of shipping services rendered by it to the Corporate Debtor and therefore the amount in default falls squarely within the definition of operational debt as stipulate in Section 5(21) of the Insolvency & Bankruptcy Code, 2016.



		That the Operational Creditor has till date not received any amount from the Corporate Debtor since the issuance of the Bill of Lading dated 15.11.2007. Further, the Corporate Debtor has failed to make any payment to the Operational Creditor from the date of receipt of the demand notice dated 13.04.2018 till the filing of the present Application. Copy of Bank Statements of the Operational Creditor along with certificate issued by the banker of the Operational Creditor under Section 9(3)(c) of the Insolvency & Bankruptcy Code, 2016 are annexed herewith and marked as Annexure-G(Colly.). That the registered office of the Corporate Debtor is located within the territorial jurisdiction of this Hon'ble Tribunal and hence this Hon'ble Tribunal has the requisite jurisdiction to entertain the present application. Copy of Master Data of the Corporate Debtor is annexed herewith and marked as Annexure-H.
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	Total amount due and payable is Rs. 3,92,23,873.00/- (Rupees Three Crore Ninety Two Lakhs Twenty Three Thousand Eight Hundred and Seventy Three) as per Invoice dated 23.09.2017. The Invoice dated 23.09.2017 contains an elaborate description of the amount and days of default in the tabular form, which is annexed herewith and marked as Annexure-C.



8. From perusal of the Part IV of the Application, it is observed that the Applicant has claimed an amount of Rs.3,92,23,873/- as an unpaid operational debt and the date of default to be 23.09.2017.
9. It is stated by the Applicant that since the Respondent did not make the payment of his operational debt due, it had issued a Demand Notice dated 13.04.2018 under Section 8 of IBC 2016, which was served by speed post at the registered office of the Respondent. The Applicant has annexed the reply dated 10.05.2018, received in response to the demand notice, sent through Advocate Mr. Sulabh Sharma. The Applicant has also filed the Affidavit under Section 9(3)(b) of IBC, 2016. Basing on the abovementioned facts, the Applicant has prayed for initiation of CIRP against the Respondent.
10. On issuance of notice, the Respondent has filed its reply dated 18.10.2021 and opposed the prayer of the Applicant. The Respondent has raised the following defense:
- a. That the present petition under section 9 of IBC, 2016 has been instituted with *mala fide* intention against the Respondent and the Petition is bereft of any material details to show as to how the Respondent is liable to pay an amount of Rs. 3,92,23,873/- as claimed by the petitioner.
 - b. The Petitioner has not complied with the mandatory requirements of Section 8 and 9(1) of the IBC. The present



Petition has been filed after more than 2 years of sending the demand notice.

c. That the Respondent did not initiate any kind of import process for "Remelted lead Ingots/Blocks" or any other material from the Malaysia-based company as mentioned in the Application. It has stated that the answering Respondent has not entered into any commercial transaction with "Alcomet Industries SDN BHD".

d. That the Respondent states that the signature of the Director and Seal of the Company on the bill of lading no. TALTPK00269447 dated 15.11.2007 are forged. The answering Respondent has not given any kind of acceptance towards the Delivery order issued by the Petitioner. It has further stated that even otherwise, Bill of Lading is an instrument that is executed between the Shipper i.e., the Consignee and the Carrier and it governs the legal obligations between them and no liability can be placed on the Respondent herein on the basis of the Bill of Lading. The Respondent at no time has entered into any type of agreement/contract with the Petitioner herein and no jural relationship exists between the Petitioner and the Respondent herein. That in the case of M/s Trans Asian Shipping Services Pvt Ltd Vs Mis Pota Global Logistics (India) Pvt Ltd, CP 1928/IB/2018, the Hon'ble NCLT, Division Bench, Chennai, held that a Bill of Lading is primarily between a Shipper and a



Carrier and even when the consignee does not take delivery of the goods, the creditor (Carrier) should automatically fall back on the Debtor (Shipper) to realise the debt as there is a jural relationship that is created between them in terms of a Bill of Lading and, that they alone are bound by it. That as far as the liability is concerned, in such a situation, the relationship between the Carrier and the Shipper becomes that of a Creditor and Debtor.

e. That, in the present case, the Shipper i.e., Alcomet Industries SDN BHD is the Corporate Debtor and the Carrier i.e., the Petitioner herein is the Operational Creditor. The Respondent was allegedly the consignee, who had not taken the delivery of the consignment as per the case of the Petitioner. Therefore, even if it is assumed that the Respondent was the consignee and that it was to take delivery and it did not, even then liability cannot be assigned to the consignee because the primary jural relationship exists between the Carrier as the Operational Creditor and the Shipper as the Corporate Debtor. Therefore, the present petition is not maintainable against the Respondent.

f. That the Malaysian Company Alcomet Industries SDN BHD is the original Corporate Debtor in the present case being the Shipper, who entered into an arrangement with the Petitioner Carrier by way of a Bill of Lading. Thus, the insolvency



petition should have been filed against the Alcomet Industries SDN BHD. It is further added that the answering Respondent had given intimation to the operational creditor against the final notice dated 17.06.2013, that the transaction was never initiated by the answering Respondent and categorially denied the existence of any such order placed by them. The Petitioner herein has failed to place on record its correspondence if any with Alcomet Industries SDN BHD and the steps taken by it to verify the claim against the Respondent and to collect its alleged dues from Alcomet Industries SDN BHD. This clearly shows the malafide intention of the Petitioner to make the Respondent herein a scapegoat.

11. It is further submitted that the Respondent neither initiated the above said transaction nor has any connection with it. It has added that it is the case of the Petitioner itself that one Alcomet Industries SDN BHD, Malaysia booked the consignment. Hence, any difficulty faced by the Petitioner with the consignment has to be taken up by the Petitioner with Alcomet Industries SDN BHD, Malaysia and not with the Respondent herein, especially when the Respondent has categorically denied having any relationship with Alcomet Industries SDN BHD, Malaysia or booking the consignment. That moreover, the Respondent never took delivery of the consignment.

12. It is further submitted by the Respondent that as per Clause 22.3 of the Bill of Lading as quoted by the Petitioner, in case the delivery



was not taken on time, the Carrier was well within its rights to sell-off the goods in question, and/or dispose them off and attach the sale proceeds against the amount owed (if any) in terms of the Bill of Lading. However, rather than disposing off the said goods, the Petitioner kept on sending alleged reminders and invoices to the Respondent and kept the goods lying idle at ICD Tughlakabad for a considerable period of time, after which, according to the Petitioner, the consignment was auctioned by the authorities. All this while, the Respondent kept on reiterating the fact that there was no relationship between it and the Petitioner has never booked any consignment from Alcomet Industries SDN BHD and hence, was not obligated to collect the same. That in the event the Respondent was not taking delivery, the Petitioner should have contacted the Shipper i.e., Alcomet Industries SDN BHD and in the event the Shipper does not agree to do anything, the Petitioner should have sold/disposed of the goods. The Petitioner in fact would have made a profit out of such a disposal because in any manner the freight charges for the consignment were already paid. The Petitioner however, rather than taking any of the above-mentioned steps, placed the complete onus of taking delivery of the consignment on the Respondent in the present case and kept the goods lying idle for years even when the Respondent protested time and again and made it clear that it had no intention of taking delivery as it had never placed any such order.

13. It is further stated by the Respondent that the Invoice/ final bill dated 23.09.2017 appears to be wrongly addressed to the answering



Respondent as the answering Respondent has already raised the dispute and denied the above said transaction and hence, the service of invoice/ final bill dated 23 .09.2017 was not properly done as per the law.

14. It is further stated by the Respondent that the present petition filed by the Petitioner is barred by the Limitation Act, 1963. The Petitioner has himself stated in his application that the date of default was 23.09.2017 and the alleged dispute pertains to the year 2007. The demand notice was duly replied by the Respondent, rejecting the claim of the Petitioner and categorically stating that the Respondent never booked any consignment with Alcomet Industries SDN BHD, Malaysia. The present proceeding being instituted in November 2020 is clearly time-barred and filed after expiry of limitation period of three years.

15. The Operational Creditor has filed its Rejoinder and Written Submissions. It is stated by the Operational Creditor that as per the Bill of Lading, issued on 15.11.2007 annexed at page 24 of the Application the Corporate Debtor was the "Consignee". It is further stated by the Operational Creditor that the word "Consignee" is covered under the term "merchant" as defined under the terms of bill of lading. The definition of "merchant" is reproduced below –

"Merchant" includes the Shipper, Holder, Consignee, Receiver of the Goods, any Person owning or entitled to the possession of the Goods or of this bill of lading and anyone acting on behalf of such Person.



16. The Applicant has further stated that as per clause 15 of the Bill of Lading, it is the responsibility of Merchant for fulfillment of all obligations to the carrier. The Clause 15 is reproduced below :

“15. Merchant's Responsibility 15.1 All of the Persons coming within the definition of Merchant in clause 1 shall be jointly and severally liable to the Carrier for the due fulfillment of all obligations undertaken by the Merchant in this bill of lading.

17. The Respondent has also filed its Written Submissions and stated that the Applicant had sent notices to the Respondent asking for collection of containers and payment of detention charges etc. but the Respondent had never admitted any claim and has always denied any legal dealings with the Applicant. The Respondent has denied the claim of the Operational Creditor and has stated that the Bill of Lading dated 15.11.2017 on the basis of which the Operational Creditor has attempted to categorize the Respondent as merchant, bears forged signatures. The Respondent has further contended that Alcomct Industries (a company located in Malaysia), being the Consignor/Shipper, is ultimately responsible for payment of the dues of the Applicant. Hence, the Applicant should proceed against the Consignor/Shipper.

18. After hearing submissions of both the parties and perusing the all the documents placed on the record, this Bench observes that the Applicant is mainly claiming the (container) detention charges etc. on the

-sd-



basis of the invoice dated 23.09.2017 raised by it. The copy of the said invoice, as attached with the application, is reproduced below -

ANNEXURE D 2

TRANS ASIAN SHIPPING SERVICES (P) LTD
DLF TOWER - A, FLAT NO.410, 4TH FLOOR, JASOLA DISTRICT CENTRE, JASOLA
NEW DELHI, DELHI, INDIA 110025
Ph : 011 46515773-77, Fax : 011 41674454

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Centralized Registered office at Cochin
TRANS ASIA CORPORATE PARK
XIV/396C, SEAPORT AIRPORT ROAD, CHITTETHUKARA, KAKKANAD- 682037. Ph: 0484-4096016

S Tax Regn No: AABCT2760JST004 PAN No: AABCT2760J

Invoice - Import

To, R.K. LOOM CRAFTS PVT.LIMITED,
A-7/98,SOUTH SIDE G.T.ROAD,
INDUSTRIAL AREA, GAZIABAD, U.P.
INDIA. MR.KRISHNA SWARUP, MOBILE **
CHA :

Invoice No : 120473
Invoice Date : 23-09-2017
Ves/Voy : SILVER BAY /009W
Ex Rate : 66.10
BL Ref : TALTPK00269447
Job No : 120473
Arrival Date : 23-11-2007

Container No.	Type	De-Stuffing	Total Weight	Landed On	Moved Out	Released On	Returned On	ONG
CAXU3113874	20DV	FD	28,468	27-11-2007	23-11-2007	23-09-2017	23-09-2017	35,550.00
TLXU3002567	20DV	FD	28,468	27-11-2007	23-11-2007	22-04-2014	22-04-2014	35,550.00
TLXU3004852	20DV	FD	28,468	27-11-2007	23-11-2007	22-04-2014	22-04-2014	35,550.00
TLXU3004940	20DV	FD	28,468	27-11-2007	23-11-2007	22-04-2014	22-04-2014	35,550.00
						23-03-2013	26-03-2013	35,550.00

Charges

Particulars	Amount	C/P	Taxable	Total
DETENTION	34,675,399.00	C	34,675,399.00	34,675,399.00
ON-CARRIAGE	142,200.00	C	142,200.00	142,200.00
TERMINAL HANDLING CHARGES DISCHARGE	18,300.00	C	18,300.00	18,300.00
CONTAINER MAINTENANCE CHARGES	33,424.35	C	33,424.35	33,424.35
CONTAINER CLEANING CHARGE	5,000.00	C	5,000.00	5,000.00
DELIVERY ORDER CHARGES	3,500.00	C	3,500.00	3,500.00
STORAGE CHARGES - EMPTY	1,450.00	C	1,450.00	1,450.00
LIFT ON / LIFT OFF CHARGES	2,400.00	C	2,400.00	2,400.00
LIFT ON / LIFT OFF CHARGES	1,000.00	C	1,000.00	1,000.00
Gross Total	34,882,673.35		34,882,673.35	34,882,673.35
S.Tax@14.00%:65322 E.Cess@0.00%:0 SHE.Cess@0.00%:0				
Total Service Tax			4,883,574.27	
Grand Total				39,766,248.00
Received Amount				542,375.00
Refunds/Adjustments				0.00
Balance				39,223,873.00

THREE CRORES NINETY TWO LAKHS TWENTY THREE THOUSAND EIGHT HUNDRED AND SEVENTY THREE ONLY

19. From the aforesaid invoice, which is raised by the Applicant on 23.09.2017 (after a gap of nearly 10 years) for the material transported and brought at ICD Tughlakabad on 23.11.2007, it is seen that the amount



claimed in the invoice mainly consists of detention, on-carriage, terminal handling, container maintenance charges etc.

20. We further notice that whereas the case of the Applicant /Operational creditor is that that as per the Bill of Lading dated 15.11.2007, the Respondent was the "Consignee". And the word Consignee is included in and covered under the definition of "Merchant" and the respondent, being the Merchant, was responsible for fulfillment of all obligations to the carrier (i.e., the Applicant) in the Bill of Lading.

21. Per contra, the contention of the Respondent is that the transaction/import process of the goods in reference was never initiated by it. The respondent has argued that neither it had entered into any commercial transaction with the Shipper i.e., "Alcomet Industries SDN BHD" nor there exists any jural relationship between the Petitioner herein and the Respondent. Further, it has not accepted the delivery order or taken the delivery of the consignment and therefore, the liability cannot be assigned to or thrust upon the Respondent.

22. After going through the pleadings on record, we observe that the consignment of goods was booked by the Shipper i.e., Alcomet Industries SDN BHD, the Malaysia based Company. The Applicant has failed to place any direct contract between the petitioner and the Respondent. Since there is nothing placed on record to show that either the Respondent initiated the import process or entered into any contract with the petitioner, the transportation services rendered by the applicant were not directly for the



Respondent. The debt comprising of detention charges, on-carriage, terminal handling, container maintenance charges etc in question is being claimed out of import of goods lying unclaimed at ICD Tughlakabad, though the Applicant has failed to place or produce on record any order placed/contract entered into by the respondent or any document to demonstrate that the applicant was designated as the Importer of the Goods.

23. We further observe that the claim of the Operational Creditor is mainly arising out of damages/compensation claimed for detention/idling of its containers for 10 years from 2007 to 2017. As specifically mentioned in para 1 of the part IV of its Application, the Applicant had the remedy available in Clause 22.3 of the Bill of Lading, which is reproduced below:

That the clause 22.3 of the bill of lading dated 15.11.2007 states that:

"22.3 If the goods are unclaimed within a reasonable time or whenever, in the Carrier's opinion the goods are likely to deteriorate, decay or become worthless, or incur charges whether

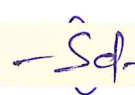


for storage or otherwise in excess of their value, the carrier may at his discretion and without prejudice to any other rights which he may have against the Merchant without notice and without attaching any responsibility to himself, abandon or otherwise dispose of the Goods at the sole risk and expense of the Merchant and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this bill of lading."

It is not understood and clear from the application as to why and how the Applicant, despite having the specific remedy available in Clause 22.3 of the Bill of Lading, did not take any steps to auction the goods for recovery of its dues/charges as claimed.

24. We further observe that the Applicant has failed to demonstrate as to how it has crystallized its dues relating to the detention and other charges /debt to the tune of Rs 3,92,23,873/- in the absence of any direct explicit agreement or rate contract between the Applicant and the Respondent.

25. Further, in our view, the compensation/damage arising on account of detention of containers rendering services on behalf of a third company (the shipper, which booked the Petitioner), does not constitute an Operational Debt within the meaning of Section 5(21) of IBC, 2016. At this juncture, we consider it worthwhile to refer to the Judgement dated 24.02.2020 of Hon'ble





NCLAT in the matter of **Neeraj Jain vs Cloudwalker Streaming Technologies Private Limited; Company Appeal (AT) (Insolvency) No. 1354 of 2019**, the relevant extract of which is quoted below :

*“74. The claims in the heads mentioned above, **seeking damages on account of Custom Charges; interest charges; interest amount; and loss on account non-taking of delivery of items imported based on the order and assurance of the Corporate Debtor has not been crystallized, and the Adjudicating Authority under summary jurisdiction cannot adjudicate and determine the claim amount payable to the Operational Creditor.**”*

(Emphasis supplied)

Moreover, the claim for compensation/damages is not based on any order by the Respondent in the instant case.

26. The Respondent has also stated that the Bill of Lading dated 15.11.2017, on the basis of which the Operational Creditor has attempted to categorize the Respondent as merchant, bears forged signatures. Examination of such a document may require adducing of further evidence from all concerned, which is beyond the scope of the Summary Jurisdiction of this Adjudicating Authority.

27. Lastly, we further note that the sole objective of the Applicant behind filing this Application is to recover its detention, on-carriage, terminal handling, container maintenance charges etc, which is not the objective of IBC 2016 as held by the Hon'ble Supreme court in a catena of judgements. Here,



we would like to refer to the recent Judgement dated 15.07.2022 passed in Civil Appeal No.4583 of 2022 **[2022 LiveLaw (SC) 617]** in the matter of **M/s. S.S. Engineers & Ors. Vs. Hindustan Petroleum Corporation LTD.** The relevant paragraph is reproduced below :

31. The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for nonpayment of disputed dues claimed by an operational creditor.

(Emphasis supplied)

28. **In sequel to the aforesaid discussion, the Application is Dismissed.**

29. It is, however, made clear that any of the observations made in this Order shall not be construed as an expression of opinion on the merits of the claim and the rights of the Applicant before any other forum shall not be prejudiced on account of dismissal of the present Application.

(L. N. GUPTA)
MEMBER (T)

(DHARMINDER SINGH)
MEMBER (J)