

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH-IV**

**IB-139/(ND)/2021**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**M/s Tarannom Shargh International Transportation Company**

...Operational Creditor/Applicant

**Versus**

**M/s Lark Logistics Private Limited**

...Corporate Debtor/Respondent

**Coram:**

**MR. DHARMINDER SINGH, Hon'ble Member (Judicial)**

**MS. SUMITA PURKAYASTHA, Hon'ble Member (Technical)**

**Order Delivered on: 20.06.2022**

**ORDER**

**PER: SHRI DHARMINDER SINGH, MEMBER (JUDICIAL)**

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.



2. The applicant, M/s Tarannom Shargh International Transportation Company has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.

3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

a. The Operational Creditor started doing business with the Corporate Debtor in the year 2014 for engaging the services of the Operational Creditor in connection with transportation of goods and movement of freight into various countries of the Commonwealth of Independent States such as Uzbekistan, Kazakhstan, etc.

b. Operational Creditor further states that the Corporate Debtor from the financial year 2016 to financial year 2019 placed several orders against which the Operational Creditor raised 304 invoices out of which 56 remain unpaid.

c. Operational Creditor alleges that there is a balance amount in default of USD 3,16,217/- (Rs. 2,45,72,796.18/-) as on 04.10.2019 after adjusting/setting off the last payment of USD 18,000/- dated 04.10.2019 received from the Corporate Debtor. The Operational Creditor more

over stated that they didn't receive any payment starting from invoice no. 597 dated 19.02.2019 to the last invoice no. 652 dated 01.12.2020.

d. Operational Creditor submits that the Corporate Debtor used to promise the payment of arrears and used to simultaneously request the continuation of business, to which the Operational Creditor agreed on trust and faith of the Corporate Debtor.

e. The Operational Creditor time and again requested for their old outstanding which was never disputed by the Corporate Debtor however failed to clear the same.

f. The Operational Creditor sent a Demand Notice dated 16.12.2020 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via Speed Post as well as via email.

4. The Corporate Debtor has submitted his reply . The main objections raised by the corporate debtor are as follows:

a. The Corporate Debtor submits that they used to provide its logistics services to exporters.

The Operational Creditor was engaged by the

Corporate Debtor to transport their goods to the final destination. The final destination includes Almaty and other locations in the region.

b. The Corporate Debtor submits that there has been Longstanding disputes between the parties in respect of discrepancies in invoices. The specific discrepancies (on account of overcharging, difference in rates, etc.) had been raised vide e-mails by the Corporate Debtor. The same was acknowledged and assured by the Operational Creditor stating that the accounts are under consideration. However, the disputes were never resolved.

c. The Corporate Debtor further alleged that the Operational Creditor on several occasions had also illegally stopped the Corporate Debtor's cargo In respect of the consignment for medical supplies and the belongings of personnel of the Indian Embassy in Kyrgyzstan; the Operational Creditor has held the cargo despite repeated requests to release the same.

d. The Corporate Debtor further submitted that the pressure was created on them with respect to one of the container which was in

possession of the Operational Creditor and to which they were planning to sell to cover their charges. With reference to the same, the Corporate Debtor proposed a detailed solution vide e-mail dated 11.01.2020 which would have resolved all claims raised by the Operational Creditor and the same was also acknowledged by the Operational Creditor via email dated 11.01.2020.

e. It's been alleged by the Corporate Debtor that The Operational Creditor decided to 'donate' the consignments with medical supplies to Afghanistan to which the Corporate Debtor never agreed to and the same was also objected by them.

f. Corporate Debtor further submits that due to unprofessional behaviour of the Operational Creditor they had lost their several containers and in this regard they also emailed them on 24.08.2020.

g. Corporate Debtor submits that at several occasions they have reminded the Operational Creditor regarding the discrepancies in the invoices vide emails dated 02.06.2018, 22.12.2020.

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h. The Corporate Debtor also stated that they replied to the demand notice vide letter dated 06.04.2021 stating therein disputes previously raised by the Corporate Debtor on the subject of discrepancies in invoices, overcharging, delay in issue of documents, stoppage of cargo, loss of customers and revenue due to the Applicant's actions etc.

5. The operational creditor has filed its rejoinder and submitted as follows:

a. The Operational Creditor submits that there had been the email correspondence from 11.11.2019 to 11.01.2020 between the parties with respect to the quantum of debt on the Corporate Debtor and enough opportunities to clear the debt of more than 200K USD was given to the Corporate Debtor.

b. The Operational Creditor also stated that the Corporate Debtor has annexed emails stating certain discrepancies in the SOA, which were not resolved according to the Corporate Debtor but the same was never attached with the emails send on 16.7.2018 and 17.07.2018.

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6. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and rejoinder and additional affidavits filed by the parties. An Application under Section 9 can only be filed on “occurrence of default”, therefore, we would like to examine the definition of “default” as defined under Section 3(12) of IBC, 2016 –

***“(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;”***

7. Since the term default refers to the terms like non-payment of debt and debt becoming due and payable, we would like to examine the definition of “debt” as defined under Section 3(11) of IBC, 2016. The contents of the same are reproduced below –

***(11) “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;***

8. Since the term debt means a liability or obligation in respect of a claim, we visit the definition of “claim” as defined under Section 3(6)-

***“(6) “claim” means - “(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal,***

*equitable, secured, or unsecured; (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;”*

9. In the present matter, the Corporate Debtor in his reply has admitted the fact that till mid-2019, all the transactions between the Applicant and the Corporate Debtor were conducted without any disputes or disagreement. And the Corporate Debtor had withheld payments towards the Applicant due to the conditions beyond their control. Herein, reference can be made to judgment passed by the Hon’ble Supreme Court in the case of “**Mobilox Innovative Private Limited vs. Kirusa Software Private Limited**” in **civil appeal number 9405 of 2017 ([2017] 01 SC)** vide order dated 21.09.2017 wherein, it was held that:

*“Therefore, all the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the*

*chaff and to reject a spurious defence which is mere bluster. However, in doing so, the court does not need to be satisfied that the defence is likely to succeed. The court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application. In the present case the respondent has raised dispute with sufficient particulars. Besides the case records reveal that there was existence of dispute much prior to the issuance of notice under section 8 of the code. The claims of the dispute suggest the need of elaborate investigation. The moment there is existence of such a pre-existence dispute, the corporate debtor gets out of the clutches of the code.”*

10. Henceforth, the dispute raised by the Corporate Debtor herein is only feeble and it is relevant to note that the admission with respect to no dispute or disagreement and also toward the debt of USD 60,000/- pose a reasonable inference that it is an admitted fact that 'debt' and 'default'

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exists. The Corporate Debtor was in a bad financial position and has failed to pay the debts due towards them.

11. In view of the foregoing documents, this Tribunal is of the affirm view that there was default on the part of the respondent in pursuance of invoices raised on behalf of the applicant, accordingly, the present application stands admitted in terms of Section 9(5) of the Code and CIRP is hereby ordered to be initiated against the respondent Corporate Debtor, forthwith.
12. The operational creditor has not proposed the name of an Interim Resolution Professional therefore this bench appoints Mr. Pramod Kumar Gupta as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P01329/2018-2019/20175 with email id: [variety.financial@gmail.com](mailto:variety.financial@gmail.com) who has also agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by IRP above named as per the requirement of the IBBI Regulations.
13. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Pramod Kumar Gupta to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful

shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

8. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
9. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Consign the file to the record room.

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**(SUMITA PURKAYASTHA)**  
**MEMBER (T)**

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**(DHARMINDER SINGH)**  
**MEMBER (J)**

Pronounced today under Rule 151 of the NCLT Rules, 2016 as the Hon'ble Member (Technical) Ms. Sumita Purkayastha is not holding the court today.

*Vishal Rana*  
20-06-2022  
**Court Officer**