

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI (COURT NO. IV)  
Company Petition No. IB-05/ND/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:**

**M/s. ASHTBHUI OCEAN MOVERS PVT LTD**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s. SARASH EXPORTS SERVICES PVT LTD**

**...Respondent/Corporate Debtor**

**Pronounced on: 30.09.2019**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SHRI HEMANT KUMAR SARANGI**

**HON'BLE MEMBER (Technical)**

For the Applicant: Ms. Neha Behl, Adv

For the Respondent:

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*(Signature)*  
11/10/2019

## MEMO OF PARTIES

**M/s ASHTBHUIJ OCEAN MOVERS PVT LTD**

HAVING ITS REGISTERED OFFICE AT:

Goodown No. 32,  
ACAAI Agents Cargo Terminal,  
Near Centaur Hotel,  
New Delhi-110037

**...Applicant/Operational Creditor**

**VERSUS**

**M/s SARASH EXPORTS SERVICES PVT. LTD**

HAVING ITS REGISTERED OFFICE AT:

M-70, Greater Kailash, Part-I  
New Delhi- 110048

**...Respondent/ Corporate Debtor**

## **JUDGEMENT**

**PER-SHRI HEMANT KUMAR SARANGI MEMBER (T)**

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. Ashtbhuj Ocean Movers Pvt. Ltd. (for brevity

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'Applicant'), through its director Mr. Captain S. Kapoor, authorizing him to file present application vide Board resolution dated 10.10.2018, with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Sarash Exports Services Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, is a company incorporated on 12.12.2000, under the provisions of Companies Act, 1956 with CIN No.U74899DL2000PTC108837, having its registered office at Godown No. 32, ACAAI Agents Cargo Terminal, Near Centaur Hotel, New Delhi-110037 and is inter alia involved in the business of providing logistic services of freight and custom clearance with respect to import both by air and sea.
3. The Respondent, namely M/s. Sarash Exports Services Private Limited is a company incorporated on 24.09.2009, under the provisions of Companies Act, 1956 with CIN No.U51909DL2009PTC194669, having its registered office at M-70, Greater Kailash, Part-1, New Delhi-110048. The Authorised Share Capital of the respondent company is Rs.10,00,000/- (Rupees Ten Lakhs) and Paid Up Share

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Capital of the company is Rs.2,56,000/- (Rupees Two Lakhs Fifty Six Thousand) as per Master Data of the company.

4. It is the case of the applicant that, in the year 2011, the respondent approached the applicant for providing logistic services for import and export, freight and custom clearance of goods from Delhi to London. The said services were provided by the applicant to the respondent to its full satisfaction and dispute whatsoever was raised by the respondent. The applicant issued various invoices for the period from 29.08.2016 to 10.12.2016. It has been stated by the applicant that, with effect from August 2016, the corporate debtor has continuously defaulted in payments, whereby an amount of Rs.13,40,680/- (Rupees Thirteen Lakhs Forty Thousand Six Hundred Eighty Only), has become due from the respondent.
5. Pursuant to the above stated dues, the Corporate Debtor made payment by way of two cheques for a sum amounting to Rs.1,46,603/- (Rupees One Lakh Forty Six Thousand Six Hundred and Three) and Rs.1,40,596/- (Rupees One Lakh Forty Thousand Five Hundred and Ninety Six) respectively,

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both dated 31.01.2017. The cheques issued by the Corporate Debtor, were dishonored and returned by the bank, with the remarks 'Payment Stopped by the Drawer'. The copies of the above mentioned cheques, along with return memo, are annexed.

6. The applicant further states that, pursuant to the dishonor of cheques, he filed a complaint in the court of Ld. MM, Patiala House Courts, under section 138 of the Negotiable Instruments Act, against the respondent. The copy of said complaint is annexed along with the application.
7. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 18.10.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the payment of entire dues of Rs.13,40,680/- (Rupees Thirteen Lakhs Forty Thousand Six Hundred and Eight) inclusive of interest of Rs.4,49,075/- (Rupees Four Lakhs Forty Nine Thousand and Seventy Five), calculated @ 24 % per annum, on delayed payments, within 10 days from receipt of the notice, failing which the applicant

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shall initiate the Corporate Insolvency Resolution process against the Respondent.

8. The said section 8 notice has been sent by registered post as well as by dasti, to the respondent by the applicant. The applicant has also placed on record, the postal receipt along with the tracking report, showing the demand notice been delivered to the registered office of the corporate debtor.
9. Despite the demand notice sent under Section 8 of the Code, the Respondent failed to pay the amount demanded and has neither raised any notice of dispute, nor replied to the said notice.
10. Hence, the present application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The learned counsel for the applicant has also filed affidavit of service, showing service through dasti and speed post has been effected on the respondent. The acknowledgement received in respect of service of the said notice by the learned counsel has also been annexed along with this application.
11. In spite of service of application under section 9, the corporate debtor has not filed any reply.

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12. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.
13. The applicant has attached the copy of Bank statements issued by M/s. Kotak Mahindra Bank Limited, in compliance with the requirement of Section 9(3)(C) of the IBC 2016.
14. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
15. On perusal of the record it is clear that the default has occurred on 29.08.2016, when the first invoice fell due. Hence, the claim is not time barred and the present application is well within the limitation period.
16. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, more so when the debt has remained undisputed, in spite of service of section 8 notice and present application. Requirements under section 9(5) of the Code are fulfilled. Hence, the present application is admitted.



17. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Rajeev Kumar Raizada having registration no. IBBI/IPA-001/IP-P01460/2018-2019/12337 and email address rajeevraizada@ymail.com and contact number is 8800915565, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
18. We direct the Operational Creditor to deposit a sum of Rs. 2 lakhs with the Interim Resolution Professional Mr. Rajeev Kumar Raizada, to meet out the expenses 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 three days, 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.

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19. 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 Respondent, prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
20. The registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.



Sd/-

(HEMANT KUMAR SARANGI)  
MEMBER (Technical)

Sd/-

(DR. DEEPTI MUKESH)  
MEMBER (Judicial)

Deputy Registrar  
National Company Law Tribunal  
Complex, New Delhi  
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