

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

CP (IB) No.09/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

M/s Index Logistics Private Limited.

[CIN: U63090MH2005PTC152924]

...Operational Creditor

v/s.

M/s JMS Logistics and Express Pvt Ltd.

[CIN: U64204MH2014PTC256722]

...Corporate Debtor

Order Delivered on: 06.06.2023.

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via video conferencing):

For the Petitioner:

Mr. Murari Kumar, Ld. Counsel

For the Respondent:

None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) M/s Index Logistics Private Limited, ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process

(CIRP) against M/s JMS Logistics and Express Pvt Ltd., (“the Corporate Debtor”).

- 1.1. The petition is filed on 20/11/2020 claiming an amount of Rs.6,92,30,281/- (interest @ 18 %) is due and payable by the Corporate Debtor. The date of default is not clearly mentioned in Part IV of the Petition.
- 1.2. The Corporate Debtor (M/s JMS Logistics and Express Pvt. Ltd.) through its Directors/Promoters approached the Operational Creditor on June 2016 and showed willingness to do business with us for airfreight/ express logistics at Pan India Level.
- 1.3. The Operational Creditor vide various mails and verbally kept informing the Corporate Debtor about their due amount pending as per books of accounts but the Corporate Debtor paid no heed to the request of Operational Creditor of remitting the due amount that was pending.
- 1.4. The Corporate Debtor vide mail dated 27.08.2020, admitted the debt liability of Rs.5,22,58,376/- against the pending due amount of Rs. 6,92,30,281/-.
- 1.5. It is submitted that even after several reminders, the Corporate Debtor did not remit the due pending amount and cited excuses of some more time to pay as due to slump in the market, several of Corporate Debtor's amount/invoices have not been cleared by Corporate Debtor's customers. Moreover, the Corporate Debtor issued cheques for Rs.50,00,000/- towards past payment of liability, however the same got dis-honoured on account of reason "Funds Insufficient".

- 1.6. In such situation, the Operational Creditor, having no alternative remedy, issued a statutory demand notice on 15.10.2020 under Section 8 of The Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. However, even after the expiry of the term of 10 days from the date of issue of demand notice, the Corporate Debtor cited several frivolous and spurious pleas which is nothing but a clear case of afterthought plea after admittance of the debt amount.
2. The Corporate Debtor in its reply states that, present purported debt is time barred and has not raised any claims for these grossly time barred alleged debts; the petition is filed in violation of Section 10A of the IBC as it pertains to purported defaults that occurred after March 25,2020; IBC is not a debt recovery mechanism; there is no acknowledgement or admission of any debt.

Findings:

3. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.

3.1. This Bench finds that as per material on record the Corporate Debtor's representative Mr. Suresh Prajapati, vide e-mail dated 27.08.2020 communicated to Mr. Vinaylal of the Corporate Debtor acknowledging a debt of Rs.5,22,58,376/- as payable after discussion in meeting dated 27.08.2020. The relevant statement of reconciliation from the said mail is reproduced below:

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.09/MB-IV/2021

From: SURESH PRAJAPATI [mailto:suresh.prajapati@wowexpress.in]
Sent: Thursday, August 27, 2020 4:59 PM
To: vlnayati@indexlogistics.com
Cc: Ismail H Khan; Mozhar Faruqi; Amil Polekar; Accounts Accounts
Subject: Index Working discussed in meeting

Dear Sir,

Attached is the working filed as we have discussed in the meeting date: 27 Aug 2020.

Index Reco:

From 01 April 2018 till as on date

Particulars	As per Tally	Booked	Final Balance as per Wow	As per Index	To be Booked by Index	Final Balance as per Index	Diff
Opening Balance	1,62,82,131	-	1,62,82,131	1,69,21,721	-	1,69,21,721	-6,39,591
Invoice (Net TDS)	8,93,59,844	3,19,15,412	12,12,75,256	12,31,86,644	-18,65,942	12,13,20,702	-45,446
Payment	7,45,02,873	-	7,45,02,873	7,45,02,873	-	7,45,02,873	-
DN	1,07,96,138	-	1,07,96,138	12,892	1,07,83,247	1,07,96,138	-
Total	2,03,42,964	3,19,15,412	5,22,58,376	6,55,92,601		5,29,43,412	-6,85,036

TDS	15,40,604	5,51,132	20,91,736	2,25,794			18,65,942
-----	-----------	----------	-----------	----------	--	--	-----------

12,33,66,993 12,34,12,438 -45,446 Note Invoices belongs to FY 18

Diff as per Summary 1,33,34,225

Diff as per Ledger 1,33,12,096

TDS diff 22,129

Regards,

Suresh Prajapati

Finance Controller (Wow Express)

3.2. Further, this bench notices from the reconciliation chart placed at page 32 of the petition that a sum of Rs. 1,64,27,184 is stated to be payable as on 01.04.2018 and a sum of Rs. 6,35,02,920/- is stated to be payable as on 31.03.2020. It follows there from that a sum of Rs. 4,69,75,736/- became due and payable during the period from 01.04.2018 to 31.03.2020, which is more than the threshold limit prescribed u/s 4 of the Code. Accordingly, this bench no merit on the ground of limitation raised by the Corporate Debtor. The relevant statement is reproduced herein below:

ANNEXURE-OC-2

32


Date : October 15, 2020. ANNEXURE - I

Reconciliation - JMS Logistics and Express Pvt. Ltd. (WOW Express)
Period 01st Apr-2016 to 15th Oct-2020

Details	2016-17	2017-18	2018-19	2019-20	2020-21	Grand Total
Opening Balance		403,123	16,427,184	26,785,372	63,502,920	
Add : Bill Raised	1,623,616	31,820,114	40,981,646	78,635,648	11,627,362	164,688,387
Less : Credit Note Issued	8,120		12,892			21,011
Total Collectable	1,615,497	32,223,237	57,395,939	105,421,020	75,130,282	164,667,376
Less : Payment Recd	1,181,228	15,254,301	30,384,773	41,918,100	5,900,001	94,638,403
Less : TDS (As per 26 AS)	31,146	541,752	225,794			798,692
Closing Balance	403,123	16,427,184	26,785,372	63,502,920	69,230,281	69,230,281

For Index Logistics Pvt. Ltd.

Authorised Signatory



- 3.3. Further, the above statement also shows that there is an increase in the total outstanding by a sum of Rs. 4,69,75,736/- till 31.03.2020 and the total debt payable as on that date is Rs.6,35,02,920/-. Further, as per invoice raised details appended with the petition, the total value of invoice raised in 10A period is stated to be Rs.1,16,27,362/-. The period stated section 10A of the Code starts from 25.03.2020 and ends on 24.03.2021. Accordingly, the plea of default occurring in 10A period is also without any substance.
- 3.4. As regards contention that the present petition is a pressure tactic for recovery in view of the fact that the Corporate Debtor has issued 2 cheques of Rs.25,00,000/- each as security cover, which were deposited on the date stated therein, this bench feels that existence of security or intention of the Corporate Debtor are not relevant factors so long as there exists a debt and default in payment thereof.
- 3.5. The plea of pre-existing dispute has no substance in view of findings at Para 3.1 of this order where there is clear admission of a debt of requisite amount.
- 3.6. Hence, this Bench feels that the defense of Corporate Debtor has no substance. In view of the above-mentioned points, this bench finds no merit in the contentions of the Corporate Debtor w.r.t purported debt is a time barred debt.
4. Based on the documents placed on record it is clearly evident that the Corporate Debtor availed the services of the Operational Creditor and defaulted in making the payment of the Invoice(s) due. Further in the facts and circumstances as set out, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and has deemed to become commercially insolvent.

5. As per the material on record this Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.
6. Considering the facts placed before us, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated against the Corporate Debtor. In view of the above, we find that the present case deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

7. The petition bearing CP (IB) No.09/MB-IV/2021 filed by M/s Index Logistics Private Limited., (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in case of M/s JMS Logistics and Express Pvt Ltd, (“the Corporate Debtor”) is **Admitted**.

- I. That this Bench as a result of this prohibits:
- a) 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;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints Mr. Pranab Kumar Kar, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00569/2017-2018/11110 Email: pranab.k.kar@gmail.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- VII. 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.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees two lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- IX. 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.
- X. 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.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
06.06.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)