

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) 4675/MB/C-IV/2018

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Aramex India Private Limited
...Operational Creditor

Versus

Salelink Ecom Private Limited
Corporate Debtor

Order Delivered on 22.10.2019

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Mr. KH Halai i/b Halai & Co,
Advocate
For the Corporate Debtor : Mr. Dubey i/b Mishra & Co,
Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Aramex India Private Limited

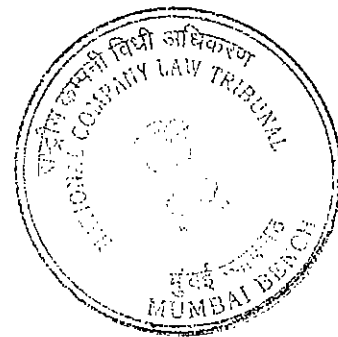


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("the Operational Creditor"), a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Assistant Manager (Legal), Shraddha Ashok Chavan, on the basis of a Board Resolution dated 14.11.2013 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Salelink Ecom Private Limited ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares and incorporated on 18.06.2016 under the Companies Act, 2013, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U74999MH2016PTC282578. Its registered office is at No.37, 3rd Floor, Plot No.115/117, Trinity Chambers, Bora Bazaar Street, Fort, Mumbai, Maharashtra 400 001. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 18.12.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.6,12,355.30 (Rupees six lakh twelve thousand three hundred and fifty-five and paise thirty only) as principal and Rs.1,10,223.95 (Rupees one lakh ten thousand two hundred and twenty-three and paise ninety-five only) as interest as on 18.12.2018, *i.e.*, upto the date of filing of the present Petition.
4. The case of the Operational Creditor is as follows: -
 - (a) The Operational Creditor and the Corporate Debtor had entered into a Client Service Agreement dated 14.07.2016 for



rendering courier, transportation and other support services to the Corporate Debtor. The said Agreement is placed as **Exhibit 'A'** at p.18 of the Petition (para 1 of Part IV at page 4 of the Petition);

(b) In terms of the said Agreement, the Operational Creditor rendered the services as and when called upon to do so., and duly raised six invoices on the following dates: -

(1) 31.03.2017 (2 nos.);

(2) 15.04.2017 (2 nos.);

(3) 30.04.2017;

(4) 15.05.2017; and

(5) 31.05.2017

(para 1 of Part IV at page 5 of the Petition);

(c) The Operational Creditor requested for confirmation of balance *vide* letter placed as Exhibit 'G' at p.56 of the petition. The balance was also confirmed by the Corporate Debtor as on 30.04.2017 (para 1 of Part IV at page 10 of the Petition);

5. The Operational Creditor issued Demand Notice dated 08.05.2018 (**Exhibit 'H'**, pp.57-64 of the Petition) to the Corporate Debtor under section 8 of the IBC. The same has also been received by the Corporate Debtor, as evidenced by the Postal Acknowledgement Card placed as **Exhibit 'J'** at p.66 of the Petition. However, there is no reply to the Demand Notice.

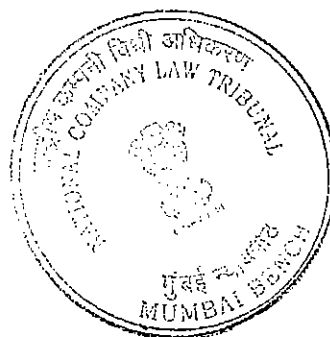


6. Invoices have been placed on record as **Exhibit 'B'** at pp.24-51. The invoices provide for interest in case of delayed payments, to be charged at the rate of 18% per annum. The total debt due and payable to the Operational Creditor is Rs.7,22,579.25 (Rupees seven lakh twenty-two thousand five hundred and seventy-nine and paise twenty-five only), as mentioned at page 3 of the Petition.
7. The Corporate Debtor has also not submitted any reply to the Petition in spite of our order dated 19.08.2019. However, on 03.09.2019, when the matter was taken up for admission, Mr Dubey, Advocate i/b Mishra & Co appeared for the Corporate Debtor and made oral submissions.
8. We have heard the arguments of both sides and perused the records.
9. It is seen that the Client Services Agreement dated 14.07.2016 at Exhibit 'A' was entered into by the parties. This Agreement provides for interest on delayed payments at the rate of 18% per annum. The credit limit indicated in the Agreement is Rs.1,00,000/- (Rupees one lakh only) [page 18 of the Petition].
10. It is the stand taken by the Learned Counsel for the Corporate Debtor that the Operational Creditor was not obliged to honour any consignment handed over to the Operational Creditor once the credit limit of Rs.1,00,000/- was exhausted. It is also his specific submission that any amount in excess of the said sum of Rs.1,00,000/- which was the credit limit granted in terms of the



Client Services Agreement dated 14.07.2016 (p.18 of the petition) was at the risk of the Operational Creditor and that the Corporate Debtor should not be held responsible for the same.

11. It is difficult to appreciate this argument in the light of the fact that there is no denial whatsoever about utilisation of services of the Operational Creditor. In normal business practice, this argument cannot be countenanced because credit limits are likely to be exceeded in the exigencies of business. If we accept the argument of the Corporate Debtor, then the Corporate Debtor itself should be deemed to have violated the terms of the Agreement.
12. Further, the balance confirmation letter placed at **Exhibit 'G'** at p.56 of the petition contains the seal of the Corporate Debtor and a signature. At the very least, the Corporate Debtor could have submitted a reply denying that the balance confirmation letter was issued by the Corporate Debtor. There is not even a perfunctory denial in this regard.
13. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.



14. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
15. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP(IB)-4675/MB-IV/2018** filed by **Aramex India Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Salelink Ecom Private Limited [CIN: U74999MH2016PTC282578]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 Securitisation



- and Reconstruction of Operational Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) 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;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



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- (f) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, the IRP shall be appointed by this Adjudicating Authority by a separate order. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out her functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) 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.
- (h) The Operational Creditor shall deposit a sum of Rs. 1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by



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Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) 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/-

RAVIKUMAR DURAISAMY
Member (Technical)

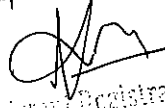
22.10.2019

SD/-

RAJASEKHAR V.K.
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 03/12/2019


Assistant Registrar
National Company Law Tribunal Mumbai Bench