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

(IB)-353(ND)2020

IN THE MATTER OF:

M/s. TCI International Logistics GMBH
 # 20457, Hamburg Germany
Communication Address :
35A, Siddharth Chamber-Ii
Kalu Sarai, Hauz Khas,
New Delhi - 110016

...Applicant/Operational Creditor

VERSUS

M/s. Logistics Linkage India Private Limited
Registered Office at :
Flat No. 109, Plot No. 4,
1st Floor, National Arcade,
Ghazipur, Delhi - 110096

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on: 17.05.2022

CORAM:

SHRI ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)
SHRI L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	**:**	Adv. Uday Kumar
For the Respondent	**:**	Adv. Vinay Shankar Dubey

ORDER

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

M/s. TCI International Logistics GMBH (for brevity **'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. Logistics Linkage India Private Limited (for brevity **'Respondent/Corporate Debtor'**).

2. That the Corporate Debtor namely, M/s. Logistics Linkage India Private Limited is a Company incorporated on 11.05.1999 with CIN U63090DL1999PTC099706 under the provisions of the Companies Act, 1956 having its registered Office at Flat No. 109, Plot No. 4, 1st Floor, National Arcade, Ghazipur, Delhi - 110096, which falls within the jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs.25,00,000/- and Paid-up Share Capital is Rs.24,72,000/- as per the Master Data of the Corporate Debtor annexed.

4. It is submitted by the Applicant that it is engaged in the business of handling and airlifting shipments by Air from Frankfurt, Germany to Air Port at Delhi. It is added that the Corporate Debtor has been involved

in the logistics services and is collecting the goods lifted by the Operational Creditor by Air for Delhi, India.

5. It is stated by the Applicant that it had rendered services to the Corporate Debtor against various invoices. The details of the particulars of operational debt as provided in the Part IV of the application are reproduced below :

Part - IV

	PARTICULARS OF OPERATIONA	L DEBT
1	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT BECOME DUE , AND THE DATE FROM WHICH SUCH DEBT BECOME DUE	1. That The Operational Creditor's has extended the Air Freight services where as shipments have been air lifted from Frankfort, Germany to Delhi, India whereas Corporate Debtor has received the shipments are collected the Air Freight Charges for two shipments for which invoices were issued by the Operation Creditor in favour of the Corporate Debtor 2. All the invoices and services issued/ Provided by the Operational Creditor during the month of December 18 to March 2019 for which on receipt of the invoices Corporate Debtor promised to make the payment in respect of the invoices shortly. 3. Invoices are exclusive contract between the Operational Creditor and Corporate Debtor and terms of the invoices are binding btween the Operational Creditor and Corporate Debtor . Details of due invoices are given hereunder

Invoice Number	Invoice Dates	Amount in Euro	Amount in INR
188904231	11/02/2018	205.25	16779
188904468	11/08/2018	167.75	13714
188905125	12/03/2018	464.5	37973
188905321	12/07/2018	166.05	13575
188905408	12/10/2018	70	5723
188905410	12/10/2018	546.5	44676
188905414	12/10/2018	205.45	16796
188905498	12/14/2018	72.38	5917
488905499	12/14/2018	73.5	6009
188905500	12/14/2018	181	14797
188905501	12/14/2018	124	10137
188905806	12/21/2018	161.8	13227
188905946	12/28/2018	680	55590
188906064	01/03/2019	137.13	11210
198900060	01/09/2019	196.58	16070
198900137	01/14/2019	118.8	9712
198900143	01/14/2019	162	13244
198900178	01/15/2019	119.73	9788
198900315	01/21/2019	386.31	31581
198901160	02/20/2019	1057.5	86451
Total Overdue amount in INR		5296.23	432967

2.Amount Claimed to be in Default and the Date on which the defa - -ult occured(Attached the work - -ing for computation of amount and dates of default in tabular Form)	Operational Creditor has issued one invoice in respect of services extended to the Corporate Debtor in respectof the Air Freight charges & services extended to the Corporate Debtor, Total 20 invoices are unpaid for which Corporate Debtor promised to make the payment but did not pay yet. Transacgtion in question is duly admitted by the Corporate Debtor amounting to EURO 5296.23 converted in Indian Rupees of Rs. 4,32,967/- (Rupees four lakh
	thirty two thousand nine hundred sixty seven only) Exchange rate may vary on actual realization of the amount. Moreover This is being a Commercial Transaction Interest of 24% shall be applicable from the date of the invoice and shall be payable by the Corporate Debtor who has defaulted the payment and compelled to approach this Hon'Ble Tribunal for a natural justics It is Important to submit that the Corporate Debtor has become threat to the Financial market this Company is Liable to be proceeded as per Law.

	A Notice under the Provision of I B Act 2016 has been issued to the Corporate Debtor by way of the registered speed post at the registered office of the Corporate Debtor as well as Address of its Directors , Demand Notice had been sent the notice by way of E-Mail as well , Notice sent by speed post has been duly delivered nowever no response has been issued. Notice issued by E_Mail to the Corporate Debtor has been responded by the Corporate Debtor whereas again priomise for payment has beem made however so far did not make any payment to the Operational Creditor so far. Hence present petition Hence Corporate Debtor /Company is required to be proceeded under the provisions of the I B Act 2016 in order to prevent the financial threat to the market. It is most respectfully prayed that in the interest of justice and equity Insolvency process be started againt the Corporate Debtor. It is Prayed Accordingly.

6. That from perusal of the Part IV of the Application, it is observed that the Applicant has claimed an operational debt of Rs.4,32,967/- only. It is further observed that the claims of the Applicant are based on invoices running from 02.11.2018 to 20.02.2019.

7. It is submitted by the Applicant that since the Corporate Debtor did not make the payment of his operational debt due and payable, it had issued a Demand Notice dated 04.12.2019 under Section 8 of IBC 2016 at the registered office of the Corporate Debtor vide speed post which was

delivered to the Corporate Debtor on 05.12.2019. The Tracking Report of the delivery has been placed by the Applicant on record at page no. 72 of the application. The Applicant has averred that no reply to the demand notice has been received by him. The Applicant has filed the Affidavit under Section 9(3)(b) of IBC, 2016 stating that no notice of dispute has been received by it.

8. That during the course of hearing on 22.04.2022, the Operational Creditor has drawn our attention towards the email dated 17.12.2019 sent by the Corporate Debtor to the Applicant regarding arrangement of payment. The same is reproduced overleaf :

Schlapper, Marcus <m.schlapper@mytcigroup.com> Tue, Dec 17, 2019 at 11:47 AM
To: Uday Kumar <advudaykumar@gmail.com>, "vipin@logisticlinkage.com" <vipin@logisticlinkage.com>, "nitin@logisticlinkage.com" <nitin@logisticlinkage.com>, "manhar@logisticlinkage.com" <manhar@logisticlinkage.com>, "sanjay.kumar@logisticlinkage.com" <sanjay.kumar@logisticlinkage.com>, "accounts@logisticlinkage.com" <accounts@logisticlinkage.com>, "sanjay@logisticlinkage.com" <sanjay@logisticlinkage.com>, "accounts2@logisticlinkage.com" <accounts2@logisticlinkage.com> 75
Cc: "Antropov, Nina" <n.antropov@mytcigroup.com>, "Ertel, Serkan" <s.ertel@mytcigroup.com>

Dear Uday,

no money received till today.

Please go ahead to file bankruptcy

Mit freundlichen Grüßen / With kind regards,

Marcus Schlapper
Managing Director

TCI INTER NATIONAL LOGISTICS

TCI International Logistics GmbH

Afrikastrasse 2, 20457
Hamburg, Germany
T: +49 40 41364-498 | F: +49 40 41364-595
m.schlapper@mytcigroup.com |
www.myTCIgroup.com

Hamburg – Bayreuth – Biberach – Dortmund – Frankfurt Leipzig – Munich – Stuttgart – Le Havre – Rotterdam – Mexico City Hong Kong – Ningbo – Shanghai – Shenzhen – Xiamen

Plus 156 exclusive logistics partners at all important destinations around the globe!

Sitz der Gesellschaft / Registered office: Hamburg – Handelsregister / Commercial register: Hamburg HRB 105931
Gerichtsstand / Place of jurisdiction: Hamburg – Geschäftsführer / Managing directors: Ralf Nörtemann • Marcus Schlapper • Kai Tessen

[Quoted text hidden]

LEGAL DEMAND NOTICE TO LOGISTIC LINKAGE.PDF
2095K

Manhar Sood | Logistic Linkage | New Delhi | <manhar@logisticlinkage.com> Tue, Dec 17, 2019 at 12:00 PM
To: "Schlapper, Marcus" <m.schlapper@mytcigroup.com>, Uday Kumar <advudaykumar@gmail.com>, vipin@logisticlinkage.com, nitin@logisticlinkage.com, sanjay.kumar@logisticlinkage.com, accounts@logisticlinkage.com, sanjay@logisticlinkage.com, accounts2@logisticlinkage.com
Cc: "Antropov, Nina" <n.antropov@mytcigroup.com>, "Ertel, Serkan" <s.ertel@mytcigroup.com>

Dear Sir,

Greetings!!

We r in the JOB. We will arrange the payment very soon.

Kumar, Pls arrange payment.

9. That on issuance of the notice, the Corporate Debtor has filed its reply. It is stated by the Corporate Debtor that there is a pre-existing dispute between the parties and the service of the Operational Creditor was defective in terms of timely delivery of goods to the Consignee.

10. That the following is averred by the Corporate Debtor in its reply *:*

> "8. *That the overall dispute is between Corporate Creditor and Consignee and terms are governing as per the German Freight Forwarder General Terms and Conditions 2017 Code on each INVOICE referred by the Corporate Creditor in second last para of the bottom of the invoice. It is further submitted that the Corporate Creditor in the Application neither mentioned about it relating the applicable law."*

11. After hearing submissions of both the parties and perusing the documents placed on the record, this Bench is of the view that the Corporate Debtor has failed to produce or bring any document of the period prior to the issuance of the demand notice on record, which could suggest that any dispute truly pre-exists between the parties. Further, as evident from the email dated 17.12.2019 to the Operational Creditor, Corporate Debtor itself has admitted its liability.

12. That from perusal of the pleadings and material on record, we are of the considered view that the Operational Creditor has established the default on the part of Corporate Debtor in payment of the operational debt. The Petition filed under Section 9 fulfills all the requirements of law.

Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

"(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 Financial 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 the possession of the corporate debtor."

13. As proposed by the Operational Creditor, this Bench appoints Mr. Ashok Kriplani as IRP having Registration No. IBBI/IPA-003/IP-N00009/2016-17/10071 (Email:ashok.kriplani1956@gmail.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016

are made by him within a period of one week from this Order. This Adjudicating Authority orders that :

> *"Mr. Ashok Kriplani as IRP having Registration No. IBBI/IPA-003/IP-N00009/2016-17/10071, (Email: ashok.kriplani1956 @gmail.com) is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes."*

The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

14. The Operational Creditor is directed to deposit Rs.1,00,000/- (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

15. A copy of this Order shall be communicated to the Operational Creditor / Applicant, the Corporate Debtor and the IRP mentioned above by the Registry of this Tribunal.

16. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer to the IBBI for their records.

Sd/-	**Sd/-**
(L. N. GUPTA)	**(ABNI RANJAN KUMAR SINHA)**
MEMBER (T)	**MEMBER (J)**

Since the Hon'ble Judicial Member Sh. Abni Ranjan Kumar Sinha is on leave, the pronouncement of the Order is made under Rule 151 of the NCLT Rules, 2016 in the open Court today i.e., on 17.05.2022 on behalf of the Bench.

(T.S. Singh)
Court Officer