

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. III)****Company Petition No. IB-54/ND/2020**

(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 BHAGWATI AIR EXPRESS PVT LTD****...Applicant/Operational Creditor****VERSUS****M/S DHARMRAJ LOGISTICS INDIA PVT LTD. & ANR****...Respondent/ Corporate Debtor****Pronounced on:21.12.2021****CORAM:****SHRI BACHU VENKAT BALARAM DAS****MEMBER (JUDICIAL)****SHRI NARENDER KUMAR BHOLA****MEMBER (TECHNICAL)***IB-54/ND/2020*

MEMO OF PARTIES**M/S Bhagwati Air Express Pvt Ltd****Registered office at** DD-34, Second Floor, Kalkaji

New Delhi-110019

...Applicant/Operational Creditor**VERSUS****M/S DHARMRAJ LOGISTICS INDIA PVT LTD****Registered Office At** 16A No. 17/12 Block-B

Arjun Park Nangil, Dairy Najafgarh

New Delhi-110043

...Respondent No. 1**Union Of India****Ministry Of Corporate Affairs**

Through Its Secretary

A Wing Shastri Bhawan Garage,

No 14, Dr Rajendra Prasad Rd

New Delhi-10001

...Respondent No. 2**For the Applicant:** Mr Rishab dua & Apoorva kumar, advocates**For the Respondent:** ----*IB-54/ND/2020*

ORDER**Per-Shri Bachu Venkat Balaram Das, Member (J)**

1. The Present Application has been 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 Bhagwati Air Express Pvt Ltd. (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/S Dharmraj Logistics India Pvt Ltd. (for brevity 'Corporate Debtor').
2. The Applicant submitted that the corporate debtor had approached the applicant in the year 2017 for the purpose of availing the services rendered by the applicant of forwarding the goods from port to port and pursuant to negotiations and discussions, the applicant agreed to provide services of forwarding cargo to the corporate debtor and had raised the invoices from 31.03.2019 to 01.07.2019.
3. The Applicant submits that the corporate debtor made part payment to the applicant of Rs 1,56,55,435/- out of total of Rs 1,66,63,662/- and as on date an amount of Rs 10,14,227/- is due upon the corporate debtor, payable to the applicant.
4. The Applicant issued a demand notice dated 29.11.2019 in Form 3 under the provisions of section 8 of I&B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the total outstanding amount of Rs. 11,30,869/- (Rs 10,14,227/- plus 24% interest i.e. Rs 1,16,642/-). The said notice was sent by Speed Post at the registered address of the corporate debtor as reflected in the master data, which is duly delivered to the Corporate Debtor. The tracking report is filed, which

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mentions 'Item Delivered' at the registered address as per master data. The Corporate Debtor has neither raised any dispute to the aforesaid notice nor made any payment towards the outstanding dues.

5. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application through email at the registered email address as reflected on the MCA website, which was duly delivered to the corporate debtor. The copy of the Application was also duly served through speed post at its registered address as reflected on the MCA website, which was duly delivered reflecting remark 'Item Delivery Confirmed'.
6. The Corporate Debtor has neither filed any reply nor appeared before the Bench. The Corporate Debtor was proceeded ex-parte on 17.11.2021.
7. As per Form V, Part IV, the Corporate Debtor is liable to pay an outstanding sum of Rs. 11,51,154/-. The date of default is 01.07.2019 and the present application was filed on 26.12.2019, hence the debt is not time barred and the application is filed within the period of limitation.
8. The Applicant has filed an affidavit under section 9(3)(b) dated 18.12.2019 affirming that no notice of dispute has been given by the corporate debtor relating to dispute of the unpaid operational debt.
9. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
10. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt



beyond doubt. The present application is admitted, in terms of section 9 (5) of IBC, 2016.

11. The applicant has proposed the name of the IRP of Ms. Nisha Malpani, with registration number IBBI/IPA-001/IP-P00058/2017-18/10136, email: (ip.nmalpani@gmail.com) who is and hereby appointed as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate debtor and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.
12. We direct the Operational Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Ms. Nisha Malpani 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.
13. 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

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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.

14. 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 be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



(BACHU VENKAT BALARAM DAS)

MEMBER (Judicial)



(NARENDER KUMAR BHOLA)

MEMBER (Technical)