

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, SPECIAL BENCH (COURT NO. IV)**

Company Petition No. IB-947/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. INTERNATIONAL CARGO TERMINAL
AND INFRASTRUCTURE PRIVATE LIMITED**

...Applicant/Operational Creditor

VERSUS

**M/s. CROSS LINK SHIPPING
PRIVATE LIMITED**

...Respondent/ Corporate Debtor

Pronounced on: 16.12.2019

CORAM:

**SMT. INA MALHOTRA
HON'BLE MEMBER (Judicial)
SHRI HEMANT KUMAR SARANGI
HON'BLE MEMBER (Technical)**

For the Applicant : Ms. Kanika Sinha, Adv.

For the Respondent : Mr. Avdesh Chaudhary, Mr. Akshat Gupta,
Mr. Lovedeep Raghav, Advocates



MEMO OF PARTIES

M/s. INTERNATINAL CARGO TERMINAL AND INFRASTRUCTURE PVT. LTD.

Having its registered office at:

Godrej Coliseum, Office No. 801,

C-Wing, Behind Everard Nagar,

Sion East, Mumbai-4000022 MH

Corporate Office at:

A-08, Sector 136, Noida 201301

...Applicant/Operational Creditor

VERSUS

M/s. CROSS LINK SHIPPING PRIVATE LIMITED

Having its registered office at:

35-A, Siddharth Chambers-II,

Kalu Sarai, Hauz Khas,

New Delhi- 110016

...Respondent/Corporate Debtor

ORDER

PER- SH. 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

Page | 2

IB-947/(ND)/2019

M/s. INTERNATIONAL CARGO TERMINAL & INFRASTRUCTURE PVT.LTD

VS. M/s. CROSS LINK SHIPPING PVT. LTD.



Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s International Cargo Terminal & Infrastructure Private Limited (for brevity 'Applicant'), through its authorized signatory Mr. Amit Walia, authorizing him to file present application vide Board resolution dated 31.01.2019, with a prayer to initiate the Corporate Insolvency Resolution Process against (CIRP) against M/s Cross Link Shipping Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, namely M/s International Cargo Terminal & Infrastructure Private Limited is a company incorporated on 06.11.1947, under the provisions of Companies Act, 1956 with CIN No. U63090MH1947PTC251291, having its registered office at Godrej Coliseum, Office No. 801, C-Wing, Behind Everard Nagar, Off Somaiya Office, Hospital Road, Sion East, Mumbai-400022, Maharashtra, inter alia, engaged in the business of providing container freight station operations and handling of containerized cargo services to its clients along



with other ancillary services including container rail freight services.

3. The Respondent, namely M/s Cross Link Shipping Private Limited, is a company incorporated on 30.07.2015 under the provisions of Companies Act, 1956 with CIN No. U74899DL1993PTC051733, having its registered office at 35-A, Siddharth Chambers-II, Kalu Sarai, Hauz Khas, New Delhi-110016. The Authorised Share Capital of the respondent company is Rs.10,00,000/- and Paid Up Share Capital of the company is Rs.10,00,000/- as per Master Data of the company.
4. It is the case of the applicant, that the Corporate Debtor frequently availed the services of the Operational Creditor including but not limited to Container Rail Freight Services. The Operational Creditor diligently and consistently delivered these services to the Corporate Debtor and performed all its obligations in terms of the services to be rendered. Towards the said services availed by the Corporate Debtor, regular running tax invoices were raised by the Operational Creditor



from time to time. It is pertinent to mention herein that the said invoices have been acknowledged by the Corporate Debtor.

5. The Applicant further states that, ever since 06.08.2018, the Corporate Debtor started defaulting in payment of amounts due under the invoices and in fact no payment has been made by the Corporate Debtor towards outstanding amounts since 06.08.2018 to 03.12.2018.
6. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 05.02.2019, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire payment of Rs. 80,72,422/- (Rupees Eighty Lakhs Seventy Two Thousand Four Hundred Twenty Two) along with Rs. 5,52,236/- (Rupees Five Lakhs Fifty Two Thousand Two Hundred Thirty Six) towards interest @ 24% per annum as on 05.12.2019 amounting to total of Rs.86,24,658/- (Rupees Eighty Six Lakhs Twenty Four



Thousand Six Hundred Fifty Eight), within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

7. The applicant has annexed postal receipt, along with the tracking report, showing the delivery of the said demand notice at the registered office of the Corporate Debtor.
8. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has not filed its reply to the said notice, nor raised any dispute by way of notice. As no payment was coming, hence this application, seeking to unfold the process of CIRP.
9. The applicant has stated that total debt due and payable is Rs. 80,72,422/- (Rupees Eighty Lakhs Seventy Two Thousand Four Hundred Twenty Two) along with Rs. 5,52,236/- (Rupees Five Lakhs Fifty Two Thousand Two Hundred Thirty Six) towards interest @ 24% per annum as on 05.12.2019 amounting to total of Rs.86,24,658/- (Rupees Eighty Six Lakhs Twenty Four Thousand Six Hundred Fifty Eight). As



per the invoices issued during the period 06.08.2018 to 03.12.2018.

10. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The applicant has also filed affidavit of service wherein he states that the respondent has been served dasti on 15.04.2019. The receiving of the Corporate Debtor in this regard has also been annexed along with the affidavit.
11. After the service of said notice, the respondents have caused appearance in the matter and have filed their reply, in its reply to the present section 9 application, the respondent states that, while executing the work there were several breaches committed by the Applicant. The work executed by the Applicant was of extremely poor quality. Owing to the same, the Respondents received a wide number of complaints from their various clients, namely, DD International, Santoshi Rice, K.S. Overseas, Goel International, Etc. Further, there were huge delays in the shipments. Some buyers also refused the shipment delivery and all of those buyers were to be



compensated. There were many defects in the transportation and raiment due to which goods could not be loaded on the appropriate vessel from the port. The respondents suffered huge losses owing to these faults and misgivings of the Applicant.

12. The respondent further states that, the Applicant, in clear breach of the terms of understanding and trust between themselves and Respondent, completely unethically, grabbed the business of Respondent's client. This lead to huge financial losses, running in several crores once again, to the Respondent. In addition to this, the Applicant also defamed the Respondent in the market. Applicant created rumors/ruckus about the Respondent, spreading a bad word throughout. All such allegations were completely unfounded ad were without any evidence or any shred of truth.
13. The Respondent in its reply also states that, there were huge charges towards detention, demurages, shifting, roll over and huge damage due to repeated handling of the cargo. All of these defects, issues and problems were informed to the



Applicant, as and when they arose. The applicant were also duly notified about the levy of liquidated damages incurred by them on account of extremely poor services offered by them. There were absolutely no debts due to the Applicant from the Respondent. On account of faulty services rendered by the Applicant for DD International, Santoshi Rice, K.S. Overseas, Goel International, all of which are international clients of the Respondent, it was agreed to be accommodated in the Applicant's ledger. However, the same was not done. It is submitted that the Applicant itself is in debt of over Rs. 1.5 crore to be payable to the respondent.

14. It is pertinent to note that the applicant has placed on record all the invoices, stating that the respondent itself had acknowledged the said invoices. Once the debt is shown as due, it is for respondent to prove that there are no outstanding dues to be paid to the applicant. There has been much cloud in the submission of the respondent. Therefore, without any specific details of material particulars or evidence the fact of existence of a dispute cannot be sustained.



does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

In the present case, there is no such dispute as pre-existing, the dispute which was being claimed to be pre-existing by the corporate debtor did not survive.

17. The applicant has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.
18. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.



19. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
20. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints the Mr. Rajesh Jangra, having registration no. IBBI/IPA-003/IP-N00181/2018-2019/12298, email address is jangraadvocate@gmail.com and contact number is +91-9958726491, 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.
21. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional Mr. Rajesh Jangra 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

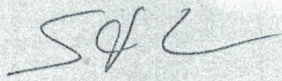


for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

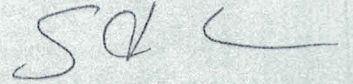
22. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
23. 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 their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

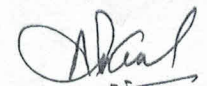


(HEMANT KUMAR SARANGI)
MEMBER (Technical)




(INA MALHOTRA)
MEMBER (Judicial)

Pronounced today under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (Judicial) Mrs. Ina Malhotra is not holding the court today.


Court Officer
16.12.2019.




16.12.19

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 16.12.19
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003