

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-1488/ND/2018

(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 KAPOOR LOGISTICS

(Through Sanjeev Kapoor, Proprietor)

...Applicant/ Operational Creditor

VERSUS

FLYWHEEL LOGISTICS SOLUTIONS PRIVATE LIMITED

...Respondent/ Corporate Debtor

Judgment Pronounced on: 02.09.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

C.P. NO IB-1488/ND/2018
M/S Kapoor Logistics vs Flywheel Logistics Solution Pvt Ltd.



MEMO OF PARTIES**M/S Kapoor Logistics****(Through Its Proprietor)****Mr. Sanjeev Kapoor****Registered office at: A-26, Shivam Apartment****Vikas Puri, New Delhi-110018****...Applicant/Operational Creditor****VERSUS****Flywheel Logistics Solutions Private Limited****Registered office at: F-213/E-1, Old B. Road, Lado Sarai****New Delhi-110030****...Respondent/ Corporate Debtor****For the Applicant: Mr. J.M Kalia, Adv. Ms. Sudha Sachdev, Adv.****For the Respondent: Mr. Arvind Kumar Gupta, Adv. Mr. Manohar Malik, Adv.****Ms. Henna George, Adv.**

C.P. NO IB-1488/ND/2018
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JUDGEMENT**Dr. Deepti Mukesh, Member (J)**

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 Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/S Kapoor Logistics (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Flywheel Logistics Solutions Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a proprietorship concern having PAN AEIPK4449P, having its office at A -26, Shivam Apartment, Vikas Puri, New Delhi-110018. The Corporate Debtor is a limited company incorporated under the provisions of the Companies Act, 1956 on 17.12.2015 having CIN U6023DL2015PTC288609 as per Master Data and having registered office at F-213/E-1, Old B. Road, Lado Sarai, New Delhi-110030. The Authorized Share Capital of the Corporate Debtor is Rs. 501,00,000/- and Paid Up Share Capital is Rs. 35,53,000/- as per Master Data of the company.
3. The Applicant has stated that logistics services were provided by the applicant to the corporate debtor and pursuant to that invoices were raised

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for the amount totaling to Rs 66,00,860/- (Sixty-Six Lakhs Eight Hundred and Sixty Only) from the period January 2017 to August 2017. The Applicant submits that part payment of Rs 35,68,484/- (Thirty-Five Lacs Sixty-Eight Thousand Four Hundred and Eighty-Four Only) was received from the corporate debtor against the pending bills.

4. The Applicant submitted that the balance confirmation of Rs 30 plus lakhs was admitted by the corporate debtor vide email dated 27.07.2018. The invoices for the month of July/August 2017 and some other previous trips were ignored by the corporate debtor and thus the same has been accounted for final outstanding balance.
5. The Applicant submits that inspite of repeated emails, reminders, meetings with the directors and official of the corporate debtor, no payment was ever made by the corporate debtor to the applicant as per the payment terms.
6. The Applicant issued a demand notice dated 01.08.2018 in Form 3 & Form 4, 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. 33,69,997/- (Thirty-Three Lakhs Sixty Nine Thousand Nine Hundred and Ninety-Seven Only) i.e. Rs 28,92,701/- (Twenty-Eight Lakhs Ninety-Two Thousand Seven Hundred and One Only) principal amount



with overdue interest of Rs 4,77,296 (Four Lakhs Seventy-Seven Thousand Two Hundred and Ninety-Six Only). The said notice was served through speed post as well as via email as reflected in master data of MCA website and has been received by the corporate debtor.

7. The Corporate Debtor has replied to section 8 notice thereby denying its liability to pay an outstanding amount of Rs 33,69,997/- and contended that the services rendered by the applicant were settled for a sum of Rs 35,68,484/- and further that the last payment made by the corporate debtor was on 22.08.2017 amounting to Rs 12,02,266/- for settling all dues and pending payments to the applicant and thereafter no payment is pending or no operational debt is payable to the applicant. The corporate debtor had stated that there was a poor and substandard performance on part of the applicant due to which the corporate debtor had suffered huge monetary losses and therefore had raised debit notes against the applicant.
8. The Applicant claims that as on date, the corporate debtor is liable to pay an amount of Rs. Rs. 33,69,997/- (Thirty-Three Lakhs Sixty Nine Thousand Nine Hundred and Ninety-Seven Only) i.e. Rs 28,92,701/- (Twenty-Eight Lakhs Ninety-Two Thousand Seven Hundred and One Only) principal amount with overdue interest of Rs 4,77,296 (Four Lakhs



Seventy-Seven Thousand Two Hundred and Ninety-Six Only) which is due and payable as per Part IV of the application.

9. The Applicant has filed present Application on 25.10.2018 under section 9 of IBC, 2016 and served the copy of this application through speed post which has been duly delivered to the corporate debtor as per the tracking report.
10. The Corporate Debtor has replied to the application controverting the averments made in the application and has asserted the same contentions as made in the reply of the demand notice under section 8 of I & B Code. It has been submitted that the corporate debtor has no policy to accept any physical invoice/bills from the vendors, but uses trip sheets and have no vendor invoices process. The corporate debtor asserts that the arrangement between the applicant and corporate debtor was on a temporary basis.
11. The Applicant has filed a rejoinder to the reply of the corporate debtor and has submitted that corporate debtor has submitted that as they have not received the invoices the application is not maintainable. Thus, the statement of corporate debtor in its reply to the demand notice and in its reply to the petition are contradictory. The applicant submits that two agreements for running route vehicles were entered between corporate



debtor and applicant dated 20.01.2017 and 01.04.2017 relate to period from 20.01.2017 to 20.01.2019 and are already enclosed to the application.

12. The Applicant further submitted that the debit notes were never issued earlier by corporate debtor but was immediately issued after receipt of the section 8 demand notice. The applicant submits that the averments made by corporate debtor, that there is no outstanding balance is completely false as corporate debtor has itself confirmed via email dated 27.07.2018 giving outstanding balance which is Rs 30 lakhs plus.
13. Having heard the learned counsel for the applicant and having perused the paper books submitted by the corporate debtor, it has been concluded from the contentions of the corporate debtor that the corporate debtor has tried to create and raise a pre-existing dispute by asserting that the entire gamut of dispute is amongst the applicant and the corporate debtor with respect to the quality of the product being rendered by the applicant and by annexing the debit notes which were never issued to the applicant prior but were raised only after the issuance of the section 8 demand notice. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to Section 8 demand notice and in the reply to the application. Further, this



leaves no doubt that the default has occurred with respect to the payment of the operational debt of the applicant.

14. In this regard, the application is complete as per the requirements of section 9 of the code. Further the date of default occurred from 31.08.2017 and hence the debt is not time barred and the application is filed within the period of limitation.
15. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
16. The present application is complete and perusing the documents on records it goes beyond doubt that 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. In the light of above facts and records the present application is admitted.
17. The Applicant has named the Insolvency Resolution Professional, to be appointed by the order of Tribunal, as Mr. Suresh Kumar Goyal, with registration number IBBI/IPA-001/IP-P00948/2017-18/11568 (email – suresh@spjca.in) 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 Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy



Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the corporate debtor and the applicant herein 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.

18. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Suresh Kumar Goyal 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.
19. 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 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.

20. In terms of the above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (T)

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)


सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003

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