

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**C.P.(I.B)No.-398/(ND)/2020**

**In the matter of:**

**Ajay Singh @ Ajay Chauhan**  
Proprietor, Galaxy Logistics Services,  
Gurugram-Sohna Road,  
Bhondsi, Gurugram,  
Haryana-122102.

...Operational Creditor/Petitioner

**Versus**

**Trim India Private Limitede**  
Flat No.1235, Sector-B,  
Pocket-I, VasantKunj,  
New Delhi-110070 IN.

..... Corporate Debtor/Respondent

**Coram:**

**SHRI P.S.N. PRASAD**  
**Hon'ble Member (Judicial)**

**DR. V.K. SUBBURAJ**  
**Hon'ble Member (Technical)**

**ORDER**

**PER DR. V.K.SUBBURAJ, MEMBER (T)**

1. This is a petition filed by the petitioner Shri Ajay Singh @ AajyChauhan, Proprietor of M/s Galaxy Logistics Services seeking to initiate CIRP against M/s Trim India Pvt. Ltd., the respondent/corporate debtor for the alleged default on the part of the corporate debtor in settling an amount of Rs. 96,66,919/- including the interest component towards the services offered by the petitioner/operational creditor. The details of the transactions as averred by the petitioner are as follows:-
  - i. That the operational creditor is the proprietor of M/s Galaxy Logistics Services engaged in the business of providing Freight Forwarding Services to its clients and is also registered as a micro industrial unit under the MSME.
  - ii. The corporate debtor approached the applicant in the year 2014-15 for availing courier and transportation services for its goods from

one place to another. Based upon the representations made by the corporate debtor, the operational creditor agreed for the same and duly transported the goods i.e. Auto Components and Raw Materials of the corporate debtor from one destination to another from time to time and raised invoices accordingly for every corresponding delivery made by the operational creditor.

- iii. That as a matter of business practice the corporate debtor shall acknowledge the receipt of the invoices raised by the operational creditor about 4-5 days post-delivery of their goods at the intended destination having verified the veracity and authenticity of the invoices and it was assured by the Directors/Officers of the corporate debtor that the payment for the aforesaid invoices will be made at the earliest or within two weeks from the date of each invoice and as part of the settled agreement the difference/discrepancy, if any, in the invoices were to be notified within 03 days from the receipt of the invoices.
- iv. The operational creditor herein approached the debtor for the payment of the outstanding dues in December, 2018 as the same

roe to 1 crore approximately thereby causing immense hardships in providing the logistics support to the debtor. It is pertinent to note herein that Mr. RakeshSood, the Director of the Debtor herein, while citing financial crisis and inability of the corporate debtor to clear its dues, paid Rs. 25,00,000/-(Rupees Twenty Five Lakhs Only) from his personal account into the creditor herein on behalf of the debtor, and further promised to clear the outstanding amount alongwith the ones that shall be created during the course of the business transactions in future within four-five months.

- v. The relations between the parties were cordial until August, 2019 whereby, Mr. RakeshSood with an ill intention to usurp the entire outstanding amount of the operational creditor not only refused to make payments towards the outstanding amount rather alleged that the operational creditor is looting the corporate debtor under the garb of charging excess rates and further threatened to issue debit notes upon the operational creditor which shall further entitle the corporate debtor for a counter claim.

- vi. That being shocked by the conduct of Mr. Sood, being the Director of the corporate debtor, the operational creditor visited the corporate debtor twice or thrice in the month of August and September and deliberated at length with Mr. Sood upon all the issues concerning both the parties. That the operational creditor duly communicated to the Debtor that he shall forthwith withdraw from all the pending and on going works undertaken by him unless his payments are secured by means of a written contract/document. Mr. Sood after taking into consideration the loss that may be caused to the businesses of both the parties by an abrupt stoppage of trade between the parties, acceded to the request of the operational creditor and as such in order to inspire confidence in the creditor, acknowledged the debt of the corporate debtor by issuing its account statement for the relevant period of 2018-2019 at the insistence of the operational creditor.
- vii. That despite having admitted its liability to the tune of Rs. 93,04,641/-(as on 31.08.202019) just a few days back, the corporate debtor sent frivolous E-mails dated 16.09.2019 and

18.09.2019, whereby, a debit note amounting to Rs. 1,01,23,915/- (Rupees One Crore, One Lakh Twenty Three Thousand Nine Hundred and Fifteen Only) was threatened to be issued upon the operational creditor by 21.09.2019 post his confirmation. What is most staring to note here is that on 18.09.2019, the corporate debtor sent two emails where, by virtue of the first email the corporate debtor debits the entire amount of Rs. 1,01,23,915/- as threatened by it in its preceding mail dated 16.09.2019 without even waiting till 21.09.2019, i.e. the deadline provided by the corporate debtor itself for confirmation or reply by the operational creditor, thereby putting to rest all justifications for the haste in issuing the said debit note and by virtue of the second email of the even date the corporate debtor issued a work order w.r.t. the work which was supposed to have been taken from April to August 2019, despite having complete knowledge that the said work was not only completed but was billed and was duly acknowledged by the corporate debtor. It is further astonishing to note that even if the whatsapp communication mentioned above, without admitting

the only assuming, were to be taken at their face value would reveal that the CFT rates that Mr. Sood referred to therein stood at Rs.5, however, the email dated 18.09.2019 which contained the aforesaid work order clearly shows the CFT charges as Rs.2.60, thereby evidencing that no rates were ever discussed and mutually decided and that all the bills were raised in the manner as they were raised previously.

- viii. That being terrified by the evil designs of the corporate debtor, the operational creditor vide two distinct E-mails dated 20.09.2019 replied to the aforesaid emails of the corporate debtor thereby vehemently denying the submissions and allegations made by the corporate debtor and also vide another Email of the even date got a demand notice dated 19.09.2019, under section 8 IBC, 2016 read with Rule 5 of the IBC (Application to the Adjudicating Authority) Rules, 2016 issued upon the corporate debtor.
- ix. It is pertinent to mention here that the demand notice dated 19.09.2019 as mentioned above was withdrawn by the operational creditor vide email dated 28.09.2019 pursuant to the specific

objection, amongst others, was taken by the corporate debtor in its reply dated 26.09.2019 that an incomplete account statement had been annexed with impugned demand notice.

- x. That pursuant to the rectifications of the inadvertence, an identical statutory demand notice dated 28.09.2019 under Section 8 IBC, 2016 Read with Rule 5 of the IBC (Application to the Adjudicating Authority) Rules, 2016 was served afresh upon the corporate debtor vide Email dated 28.09.2019 which was also replied to by the corporate debtor vide email dated 05.10.2019
- xi. The corporate debtor vide its reply dated 04.10.2019 has refuted the claim of the operational creditor on many grounds.
- xii. That it is humbly submitted that the conduct of Mr. Sood who is controlling the affairs of the corporate debtor being a director is extremely stupefying. The following submissions are significant to decipher the misdeeds undertaken by him to give colour to his evil designs;
  - a. The operational creditor herein is providing courier services to the corporate debtor since 2014-15 and transportation

services since 2017, however not even once has the corporate debtor ever communicated with the operational creditor w.r.t the rates at which the invoices were raised or has indicated any overcharging, let alone returning the invoices.

- b. That Mr. Sood on one hand raised the issue of excess charges in the invoices, however, on the other hand kept acknowledging the invoices raised even till 31.08.2019 on identical rates raised previously and none of the raised invoices were ever returned back, thus evidencing that there were no excess charges.
- c. That the work order issued by the corporate debtor vide its Email dated 18.09.2019 is patently incoherent as the same has been issued rather belatedly and that too for the work which was not only completed in the preceding months, but were duly acknowledged by the corporate debtor as well.
- d. The debit notes issued by the corporate debtor is devoid of any logic as the same related back to the amounts

deductible for the year 2017 and 2018, payments for which have not only been received by the operational creditor but have further been disbursed to its respective vendors. The reply email dated 20.09.2019 in this regard is self-explanatory and nothing more needs to be explained. It is pertinent to mention here that impugned debit note and the work order were issued merely to galvanize the whatsapp communication that ensued between the operational creditor and corporate debtor from 26.08.2019 till 13.09.2019 into a dispute thereby doing away with the acknowledgement of debt by the corporate debtor.

- e. The plea of the corporate debtor in its reply dated 04.10.2019 that the operational creditor has cheated it and that the role of the operational creditor is under scanner by virtue of the FIR bearing no. 137, does not hold any ground as no FIR has been registered against the operational creditor at the first instance. Also, the fact that the corporate debtor kept taking services of the operational creditor

despite the knowledge that operational creditor has cheated it and considering the fact that a part of its debt was paid by Mr. Sood, its director from its personal account to ensure smooth business functioning belies all plausible explanation.

- f. It is further noteworthy that the work order as issued by the corporate debtor is also contradictory with the contents of the Whatsapp Communication whereby Mr. Sood alleged that the CFT rate was Rs. 5/- whereas the CFT rate mentioned in the work order is Rs. 2.60.

2. Consequent to the issuing of notice by this Tribunal, the respondent/corporate debtor filed its reply on 03.03.2020 in which the following submissions are made:-

- i. That there exists a dispute pending between the applicant and the respondent regarding the excess billing for the courier services and logistics provided by the applicant. It is stated that on various

occasions the rates of the services were discussed and mutually set, but the applicant continued to charge the old and high rates for the services. Further, the respondent vide e-mail dated 16.09.2019 and 18.09.2019 intimated the applicant about the debit notes of an amount of Rs. 1,01,23,915/- (Rupees One Crore One Lakh Twenty Three Thousand Nine Hundred and Fifteen Only) with regard to the excess charges in freight in transportation to which the applicant have accepted the default in billing on their part as their account person had charged the old and high CFT rate of Rs. 10 whereas the rate was settled at Rs. 5. It hence proves the existence of a real dispute between the applicant and the respondent and accordingly this application holds no merits in the eyes of law whatsoever.

- ii. It is further submitted that the applicant had approached the Managing Director of the respondent –CD in early 2018 and took a loan of Rs. 35,00,000/- (Rupees Thirty Five Lakh Only) at an interest of 24% p.a, accordingly the Managing Director of

Respondent-CD had provided applicant with two cheque detailed below given as Loan;

a. 20.01.2018- Rs. 10,00,000/- vide Cheque No.116 drawn on HDFC Bank.

b. 04.12.2018- Rs. 25,00,000/- vide Cheque No.130 drawn on HDFC Bank.

iii. It is further submitted that after daily follow ups, the applicant had returned Rs. 15,00,000/-(Rupees Fifteen Lakhs Only) dated 30.03.2019 as interest towards the loan and had promised to pay the rest by April of 2019. Thereafter, again due to some urgent need of money, the applicant borrowed Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) from the Managing Director of corporate debtor and promised to pay the entire loan amount along with the interest by 30<sup>th</sup> April 2019. Thereafter, the Managing Director of respondent-CD again lent Rs.15,00,000/- vide cheque no.002 drawn on HDFC Bank dated 05.04.2019. That the respondent has for the next five months requested the applicant to pay back the loan amount at the promised rate of interest but the applicant has

delayed the payment and has instead promised again and again that he would return the said loan amount, the interest and an added bonus for the delay. It is further submitted that instead of returning the said loan and interest amount, the applicant has served a false and frivolous demand notice to the respondent, with intention to **misaarppriate** the loan extended to him.

- iv. That it is pertinent to note that the calculation of the billing amount as annexed in the notice (from page no.4 to page no.6) has been stated as Rs. 94,94,150/-, which is wrong and completely miscalculated. It is to be noted that the applicant has accepted the 'On account received amount' as only Rs. 25,00,000/-, whereas Ledger Accounts annexed (from page no.7 to page no.27 of your legal notice) clearly exhibits the amounts received in the applicant account to be Rs. 4,40,53,558.03 (Rs. 2,84,52,726.03 + Rs. 66,98,355.00 + Rs.89,02,477.00). Therefore, the application has been claimed without any proper calculation. Furthermore, the calculation of the interest of Rs. 1,72,769/- also does not in any

manner specify as to how the respondent owed the alleged above mentioned amount and is thus defective and liable to be dismissed.

- v. That one Mr. Anil Khatana was the employee of the respondent who connived with the others including the applicant and caused huge financial losses to the corporate debtor.
- vi. That it was Anil Khatana who had introduced “Galaxy Logistics Services” to the respondent for transportation of goods and courier services. This was done in total connivance with the applicant, who was an ex-employee of Beacon courier and had then formed “Galaxy Logistics Services” as a proprietor in order to defraud the respondent-CD in connivance with said Anil Khatana.
- vii. That when the respondent-CD finally understood the entire design of conspiracy hatched to cheat by way of bogus billing and excess billing, Police, Gurugram and subsequently an FIR No.137 dated 25.06.2018 u/s 420/467/468/471/406/120 IPC was registered at P.S.:Sector-37, Gurugram against Anil Khatana, Lakshmi Raj Solanki, VikasSolanki, ManjuSolanki and others regarding the over invoicing made by Beacon Courier and Cargo Pvt. Ltd. It is pertinent to mention that in the reply

dated 21.09.2019 filed by the respondent-CD in pursuance to the Section 91 Cr. P.C., the respondent-CD have submitted that Galaxy Logistic Services was introduced to them through Mr. Anil Khatana and that the applicant in connivance with Mr. Anil Khatana charge for boxes in excess of actual box sizes, local transportation. It was further admitted by the applicant that he paid lakhs of rupees every month to Anil Khatana in his various meetings with Mr. Chatterpal Singh Shekhawat, CEO of Trim India. It is submitted that the applicant has also been served notice to join investigation regarding the same. His role is also under deeply investigated by the Police as per the reply dated 24.11.2019 filed by he Assistant Commissioner of Police, Manesar, Gurugram on behalf of State of Haryana in Cri. Misc. No. 42201-M of 2019. It is further pertinent to mention that Lakshmi Raj Solanki and his son Vikas Solanki, Directors of M/s Beacon Courier are still in judicial custody in the above said FIR.

- viii. That pertinently, the respondent-CD has already filed a Civil Suit No.4119 of 2019 on 09.12.2019 in the Court Civil Judge, Senior Division, Gurugram against the Applicant in a suit for recovery of an amount of Rs. 77,38,995/- ( Rupees Seventy Seven Lakhs Thirty Eight

Thousand Nine Hundred and Fifty Five Only) in the form of damages along with interest @18% per annum against applicant for over-invoicing and over-charging. It is further submitted that there exist a pending dispute between the applicant and the respondent.

Therefore, the applicant is very much a suspect in this abovementioned case regarding which appropriate civil and criminal proceedings are pending before respective courts.

Thus, in view of the aforesaid facts and circumstances there is a clear existence of a real dispute between the applicant and respondent. Accordingly, the application does hold any merit in the eyes of law and is liable to be dismissed.

- ix. That the respondent-CD have time and again disputed the rate of CFT in the various Whatsapp chats and emails exchanged between the applicant and the respondent even before the notice dated 28.09.2019 was sent to the respondent. Hence, clearly there is a dispute in the amount claimed and so this applicant is not maintainable under the Code. Whatsappconversation between 23.02.2019 to 19.09.2019 clearly indicate the dispute between the respondent and applicant.

3. We have heard the arguments put forth by both the parties and both the counsels were directed to file their written submissions which they did .
  
4. We have gone through the documents submitted by both the parties. Perusal of the documents reveal that the petitioner/operational creditor has sent the notice under Section 8 of IBC 2016 which was served on the corporate debtor on 28.09.2019. However, the Whatsapp chats and emails exchanged between the petitioner and the respondent between 23.02.2019 and 19.09.2019 clearly reveal that there is a dispute between the parties on the rat of CFT charged by the petitioner as well as matters relating to excess billing on the part of the petitioner/operational creditor. Further the respondent/corporate debtor vide email dated 16.09.2019 and 18.09.2019 intimated the petitioner/operational creditor about the debit notes of an amount of Rs.1,01,23,915/-. In tis reply to the first Section 8 notice dated 20.09.2019 sent by the operational creditor, the corporate debtor has replied on 26.09.2019 in which he has clearly stated that existence of pre-existing dispute qua the demands made in the notice. All these clearly

indicate the existence of dispute between the parties prior to the issue of notice under Section 8 of IBC 2016 by the petitioner/operational creditor.

In the above circumstances this petition fails and this Tribunal dismisses the petition.

5. We make it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the petitioner before any other forum shall not be prejudiced on account of dismissal of this instant petition.
  
6. Let copy of the order be served on the parties.

**(-Sd)**

**(Dr. V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**

**(-Sd)**

**(P.S.N. PRASAD)**  
**MEMBER (JUDICIAL)**

Deepak