

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**C.P. NO. IB-867(PB)/2019**

**IN THE MATTER OF:**

S.A. Consultants & Forwarders Private Limited

....Petitioner

Vs.

Cargo Planners Limited

....Respondent

**SECTION: Under Section 9 of the Insolvency and Bankruptcy Code, 2016**

**Order delivered on: 08.08.2019**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**Hon'ble President**

**SHRI S.K. MOHAPATRA**  
**Hon'ble Member (Technical)**

**PRESENTS:**

For Petitioner : Mr. S.P. Singh Chawla, Advocate  
 For Respondent : Mr. PBA Srinivasan, Mr. Avinash Mohapatra,  
 Advs.

**ORDER**

**M.M.KUMAR, PRESIDENT**

The Petitioner claiming to be operational creditor has filed the instant Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules')



with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Cargo Planners Limited (for brevity the 'corporate debtor'). It is appropriate to mention that the 'operational creditor' is a company incorporated under the provisions of the Companies Act, 1956.

2. The Corporate Debtor - Cargo Planners Limited was incorporated on 22.09.2000 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN U63013DL2000PLC107868.
3. It is submitted by the petitioner that it had rendered AIR Freight Services to the Respondent- Corporate Debtor and had raised various invoices from 13.12.2017 to 31.01.2018 for the payment of the amount due for the services rendered. True copies of the invoices have been placed on record [Annexure-1(Colly)].
4. The precise case of the Petitioners is that the total amount in default due to the operational creditor by the corporate debtor is Rs. 1,21,72,597/- (inclusive of interest @ 24% per annum). It is further submitted that the default occurred on various dates from 13.12.2017 to 31.01.2018 (Annexure-3).



5. In Part-IV of the Petition, the Operational Creditor has given the details of the total amount of the debt along with the dates of disbursement. In Column 2 of Part-IV of the Application the Operational Creditor has mentioned the amount claimed in default and the date of the default.
6. In Part V of the Petition the Operational Creditor has mentioned the invoices, bank statements, emails and other related documents under which the operational debt has become due. The petitioner has also placed on record a copy of the certificate from the statutory auditor stating that no payment has been made in respect of the operational debt claimed (Annexure-6).
7. It is further submitted by the petitioner – operational creditor that it had served a demand notice to the respondent-corporate debtor dated 08.03.2019 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. True Copies of the demand notice along with the proof of dispatch and delivery have been placed on record [Annexure-5(Colly)]. It is further submitted that no reply was received by the respondent- corporate debtor to the said notice within the statutory 10 days time as prescribed.





8. A reply to the petition has been filed by the respondent and a rejoinder has also been filed by the petitioner. The respondent- corporate debtor has pointed out certain defects in the petition and the same have been successfully controverted by the petitioner- operational creditor. Further, the respondent has submitted that complaint under Sections 138 and 139 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 is pending consideration before the Patiala House Court, New Delhi and therefore there is an existence of a dispute.

The petitioner has categorically denied that there is an existence of any dispute and has placed reliance on the Order of the Hon'ble Appellate Tribunal in the case of **Sudhi Sachdev vs. APPL Industries Ltd. [Company Appeal (AT) (Insolvency) No. 623 of 2018] dated 13.11.2018** where it has been held that:

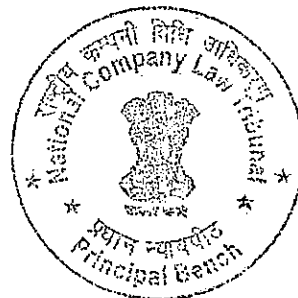
"The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a court of law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute."



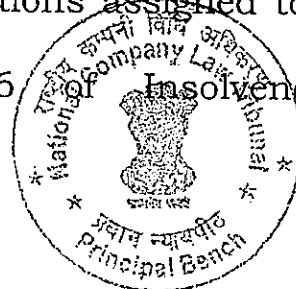


A copy of the cheque has also been placed on record in the rejoinder filed by the petitioner-operational creditor (Annexure-1).

9. Therefore, the default stands established and there is no reason to deny the admission of the petition. It is needless to say that if any payment has been made that would be looked into by the Resolution Professional. In view of the above this Tribunal is inclined to admit this petition and accordingly initiate the process of CIRP of the Respondent-Corporate debtor. The Petitioner has proposed the name of the insolvency resolution professional being Mr. Ashok Kumar Juneja, with registration number IBBI/IPA-002/IP-N00117/2017-18/10286, email-id [ashokjuneja@gmail.com](mailto:ashokjuneja@gmail.com) and address 1203-1205, Vijaya Building, 17 Barakhamba Road, Connaught Place, New Delhi-110001 as the Interim Resolution Professional. He has filed his written communication as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.



10. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
11. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 9 of the Code.
12. We direct the Operational Creditor to deposit a sum of Rs. 1 Lac with the Interim Resolution Professional 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 is 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. Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the admission of the petition to the IRP, otherwise coercive steps to follow.

14. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a times the rate of interest is alleged to be exorbitant and allegations are levelled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case



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the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.

15. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than three days from today. 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.



*S.K.*  
08.08.2019

(M.M.KUMAR)  
PRESIDENT

*S.K.*

(S.K. MOHAPATRA)  
MEMBER (TECHNICAL)

08.08.2019  
(VIDYA)

*S.K.*  
7/8/19  
सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
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