

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. (IB) 1577/2019

Under section 9 of the IBC, 2016

In the matter of

FedEx Express Transportation &
Supply Chain Services (India) Pvt.
Ltd.,

Boomerang, Unit No 801, Wings A &
B1, 8th Floor, Chandivali Farm Road,
Andheri East, Mumbai-400072

.... Petitioner

v/s.

Beackon Logistics Private Limited

27/C, Dewan Apartment No: 1,
Navghar, Vasai East, Maharashtra-
401210

.... Corporate Debtor

Order delivered on: 05.11.2019

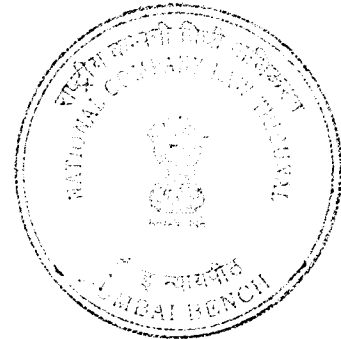
Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shyam Babu Gautam, Member (Technical)

For the Petitioner: Priyanka Shah and Reshmi Nair, Advocates, i/b
Apex Law Partners

For the Respondent: None

Per: Shyam Babu Gautam, Member

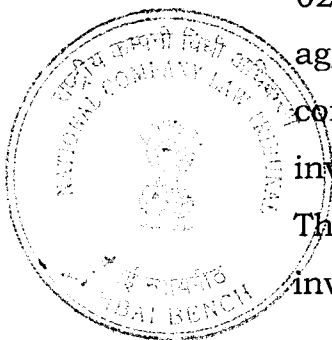
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1. This Company Petition is filed by FedEx Express Transportation and Supply Chain Services (India) Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Beackon Logistics

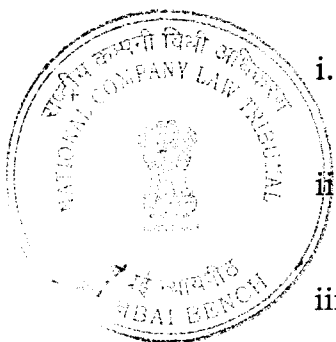
Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the petitioner in view of services provided by them by invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petitioner is a company bearing CIN U60231MH2010FTC211583 whereas the Corporate Debtor is a company incorporated on 16/02/2010 bearing CIN U74900MH2010PTC200127 and having authorized share capital Rs. 5,00,000/- and paid up capital Rs.1,00,000/-.
3. There were several occasions when the copy was served by the petitioner to the Corporate Debtor but despite that, the Corporate Debtor did not appear before this Bench. Last warning was given to the Corporate Debtor vide the order of this Tribunal dated 17/09/2019, making it clear that if the Corporate Debtor failed to appear the matter would be proceeded on merit in their absence. Still they did not consider it important to tender the presence before this Bench and hence this Ex-Parte order is being passed after hearing the petitioner at length. The petitioner mentioned the following points:
 4. That there was a contract dated 27/08/2015 entered between both the parties wherein various consignments to be delivered at various places to the Corporate Debtor by the petitioner. The petitioner mentioned that there was receipt by the Corporate Debtor at their address.
 5. According to the petitioner various invoices starting from 02/11/2017 to 16/08/2018 were raised by the applicant total aggregating to Rs.10,64,970.90/-. A detailed chart showing the computation of the default amount along with the copies of all the invoices are annexed by the petitioner in the copy of the petition. The due date of first invoice was 17/11/2017 and that of the last invoice was 31/08/2018.
 6. The amount in default according to the petitioner is Rs.12,33,153.44/- including outstanding amount of



Rs.10,64,970.90/- and interest of Rs.1,68,182,54 at 18% p.a. on the outstanding invoiced amount from the respective due dates of the invoices till 16.11.2018 along with further interest thereon at 18% p.a. on the outstanding invoices amounts from 17.11.2018 till the payment and/or realization. This interest @18% is specifically mentioned under Clause 8.4 of the contract dated 27/08/2015 entered between both the parties.

7. The petitioner has also annexed the Certificate from Bank of America, Mumbai Branch confirming that there is no payment of the unpaid debt by the Corporate Debtor wherein it is clearly mentioned that there is no credit of any sum of money through domestic or electronic funds transfer into the account of the petitioner during the period from April 2018 to January 2019.
8. The petitioner further mentioned that there were numerous follow ups through e-mails on 3rd, 8th, 9th, 13th, 17th, 20th, 21st of August and 4th October 2018. The petitioner time and again had requested to make the payment and to allow the Corporate Debtor to deposit the cheque. The Corporate Debtor in their e-mail dated 21/08/2018 have clearly mentioned that they are willing to clear the dues but are running out of funds and therefore requested time.
9. Also, a demand notice dated 17/11/2018 was issued for unpaid operational debt on the part of the Corporate Debtor. Despite of this there was no response nor payment by the Corporate Debtor and therefore, this petition was preferred by them under Section 9 of the Insolvency and Bankruptcy Code, 2016.
10. The professional appearing for the petitioner has annexed the following documents in support of the petition:
 - i. Copy of Power of Attorney/Board Resolution authorizing Ms. Pavitra Padhi-CFS Representative-Senior
 - ii. Copy of written communication by proposed Interim Resolution Professional.
 - iii. Copy of the invoices.
 - iv. Copy of Detailed working for computation of default amount.

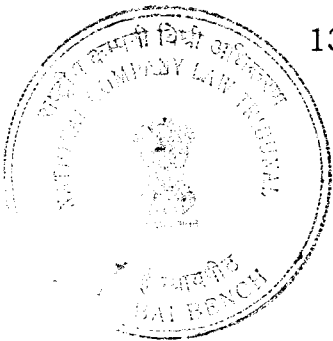


- v. Copy of certificate from Bank confirming that there is no payment of the unpaid operational debt by the Corporate Debtor.
- vi. Copy of Contract dated 27/08/2015 executed between the petitioner and the Corporate Debtor.
- vii. Copy of Demand Notice dated 17/11/2018 issued by the petitioner along with Postal Tracking Receipt.
- viii. Copies of e-mails exchanged between both the parties.

11. We have heard the petitioner at length and perused all the documents placed on record after giving ample opportunity to the Corporate Debtor to present his case before this Bench, but he has failed to do so. Based on the facts and arguments presented we hereby pass the following order:

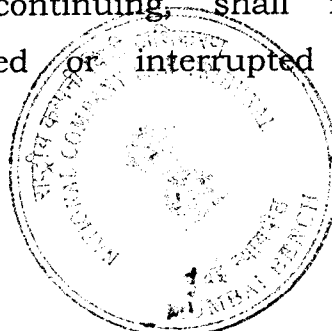
ORDER

12. There were several attempts by the petitioner to serve notice on the Corporate Debtor and also this Bench has given ample of chances to appear but despite this the Corporate Debtor did not turn up before this Bench and therefore we had to proceed in their absence on merits.
13. Based on the documents annexed by the Petitioner with his petition, there is no doubt on the fact that there were various consignments delivered by the petitioner to the Corporate Debtor for which various invoices were raised aggregating to Rs.10,64,970.90. The petitioner has annexed the invoices and the statements of accounts for the same.
14. The petitioner has even vide several e-mails had requested the Corporate Debtor to repay the outstanding amount and had also sent demand notice dated 17/11/2018 wherein a demand of principal amount of Rs.10,64,971.10/- was made along with interest of Rs.1,68,182.57/- total amounting to Rs. 12,33,153.67/-
15. After going through the e-mail dated 21/08/2018 by the Corporate Debtor it can be concluded that they did not deny the existence of debt and that there was default on their part by



showing willingness to pay all the dues but need time due to unavailability of funds.

16. Therefore, it can be concluded that the documents submitted by the petitioner are enough to establish the debt upon the Corporate Debtor and that they defaulted in repaying the debt. Also, the amount of debt is much above the minimum required amount of Rs.1,00,000/- Hence, all the requisite conditions necessary for admission of a petition under Section 9 have been found to be fulfilled and therefore, this petition deserves to be admitted.
17. Therefore, this Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring moratorium with the directions as mentioned below:
- (a) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from 05.11.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Devang P. Sampat, having his registered office at Bunglow No: 4, Shiv Pooja, Plot 100, Sector 29, Vashi, Mumbai 400 703 and having Registration No: IBBI/IPA-001/IP-P00224/2017-18/10423 as an interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.

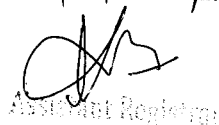
18. Accordingly, this Petition is allowed.

19. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
BHASKARA PANTULA MOHAN
Member (Judicial)

Certified True Copy
Copy Issued "Free of cost"
On 27/11/2019


Assistant Registrar

National Company Law Tribunal Mumbai Bench