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**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (Court-II)**

(IB)-1670(ND)2019

**IN THE MATTER OF:**

M/s. Consolidated Shipping Line (India) Pvt Ltd.  
505 5<sup>th</sup> Floor, Madhuban Building  
55 Nehru Place  
New Delhi-110019

...Operational Creditor

VERSUS

M/Technofab Engineering Limited  
913, Hemkunt Chambers,  
89, Nehru Place  
New Delhi-110019

... Corporate Debtor

Section: 9 of IBC, 2016

Judgement Delivered on: 30.01.2020

**CORAM:**

SMT. INA MALHOTRA, HON'BLE MEMBER (J)  
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

**PRESENT:**


For the Petitioner : Mr. G. Ananda Selvam, Advocate  
For the Respondent : Mr. Ajay Singh, Advocate



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31/1/2020

## JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under the Section 9 of the 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 Consolidated Shipping Line (India) Pvt. Ltd. through its authorized Representative Mr. Biltu Mitra (for brevity 'Operational Creditor'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Technofab Engineers Limited (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s Consolidated Shipping Line (India) Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U63012KL2002PTC015351, having its office at 505, 5<sup>th</sup> Floor, Madhubhan Building, 55 Nehru Place, New Delhi-110019.

3. The Corporate Debtor namely, M/s. Technofab Engineering Limited. is a Company incorporated on 20.07.1971 under the provisions of Companies Act, 1956 with CIN No. L74210DL1971PLC005712, having its registered Office at 913, Hemkunt Chambers 89, Nehru Place New Delhi-110019.



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4. The Authorized Share Capital of the Corporate Debtor is Rs.18,00,00,000 and Paid up Share Capital is Rs.1,04,90,000 as per the Master Data of the Company annexed.
5. As per Averments, the Operational Creditor is a global Freight Forwarder operating in and out of India and offering a wide range of Shipping and Logistics Solutions since 2002.
6. It is stated by the Operational Creditor that in the course of the business, during the year 2018, the Corporate Debtor had approached it with specific ocean freight requirements for transport of various consignments from Tughlakabad, India to Mombasa, Kenya as well as Port Victoria (Seychelles) etc.
7. It is submitted by the Operational Creditor that the Corporate Debtor had submitted a credit application form, whereby the Corporate Debtor had requested a sanction period of 60 days from the date of invoices. Therefore, the Operational Creditor maintains running accounts towards the commercial transactions entered with the Corporate Debtor.
8. The details of the unpaid invoices as provided by the Operational Creditor against the Freight services rendered are reproduced overleaf :

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Date	Invoice No.	Amount (Rs.)
14.08.2018	DEL-F00135	6,64,494
17.09.2018	DEL-F00162	5,05,796
19.09.2018	DEL-F00166	3,570
14.11.2018	DEL-F00202	1,07,850

9. It is submitted by the Operational Creditor that the last payment made by the Corporate Debtor is of Rs.8,50,000 on 06.11.2018 and thereafter, the balance principal liability of the Corporate Debtor comes to Rs.12,81,710 as on 13.01.2019 along with interest @ 18% per annum for the period from respective due date (i.e., post giving credit for 60 days from the date of invoices), for which it had sent a Demand Notice dated 26.03.2019, under Section 8 of IBC 2016 vide Speed Post at the Registered Office of the Corporate Debtor. It is further submitted by the Operational Creditor that the Corporate Debtor had replied to the Demand Notice vide its Letter dated 20.04.2019. The same has been averred in its Affidavit filed under Section 9(3)(b) of IBC, 2016. Further, the Operational Creditor has annexed the certificate issued by HDFC Bank, dated 21.03.2019 in compliance of the Section 9(3)(c) of IBC 2016.

*(Handwritten signature)*

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10. That the Operational Creditor has also annexed the Record of Financial Information - Form C of National E-Governance Services Ltd. (NeSL), Information Utility as per which Principle debt outstanding is Rs.12,81,710 which tallies with the amount quoted by the Operational Creditor.

11. That the Corporate Debtor has filed its reply on 18.10.2019 and has taken certain objections in terms of dispute, delay in submission of Bills of Lading by the Operational Creditor and substantial demurrages suffered by it. The Corporate Debtor has submitted the following :

*"13. That there was a considerable delay on Operational Creditor's part for giving over to the Corporate Debtor the Bill of Lading pertaining to invoice No DEL-F00135 dated 14.08.2018. As a result which Corporate Debtor was not able to take the delivery of its essential goods, which made Corporate Debtor to suffer inconvenience and its work was put on hold at the site and its entire staff had to sit idle. Corporate Debtor had to incur detention/demurrage charges of Rs. 1,37,875.92 for the delay and the same is recoverable from Operational Creditor.*

*15. That there was a considerable delay on the part of the Operational Creditor in handing over to the Corporate Debtor the Bill of Lading pertaining to invoice No. DEL-F00162 dated 17.09.2018 as a result of which, the Corporate Debtor was not able to take the delivery of its essential goods, which made it to suffer inconvenience and its work was put on hold at the site and out entire staff had to sit idle. In these circumstances, Corporate Debtor has already intimated Operational Creditor that there is delay in releasing the Bill of Lading regarding which Operational Creditor did not take any measures. Thus it is manifested that Operational Creditor was deficient in rendering the services and therefore, in addition to above mentioned demurrage charges, Corporate Debtor is also entitled to recover establishment cost from Operational Creditor pertaining to the period, to be reckoned from the date*

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*the said Bill of Lading ought to have been given to Corporate Debtor i.e. 17.10.2018 (Date when goods reached Seychelles) till the period it has been actually given to Corporate Debtor i.e. 14.12.2018.*

16. That Corporate Debtor has suffered inconvenience at various levels as well as substantial demurrages. In context of the invoice No.DEL-F00135 dated 14.08.2018 and Invoice no. DEL-F00162 dated 17.09.2018, where the release of Bill of Lading was substantially delayed, Corporate Debtor has suffered following damages :

i. Demurrage charges incurred and recoverable from Operational Creditor pertaining to invoice No. DEL-F00135 dated 14.08.2018 are Rs. 1,37,875.92.

ii. Demurrage calculation of both containers pertaining to invoice no DEL-F00162 dated 17.09.2018 from 01.11.2018 to 14.12.2018 (charge for the use of the containers). Total liability in Indian Rupees as on 15.04.2019 (64798.72 + 129597.44) = Rs. 1,94,396.16.

iii. Demurrage calculation of both containers from 01.11.2018 to 14.12.2018 (Rent for the use of warehouse). Total liability in Indian Rupees as on 15.04.2019 (72448 + 0144896) = Rs. 2,17,344.

iv. Salary of permanent employees, deputed at Seychelles, pertaining to aforesaid disputed period. Salary calculation of the staff deputed at Seychelles = Rs. 14,96,627.14.

v. Total damage : 1,37,875.92 + 1,94,396.16 + 2,17,344.00 + 14,96,627.14 = Rs. 20,46,243.22.

*Corporate Debtor, hence states that it has a claim of damages against such invoice upon Operational Creditor amounting to Rs. 20,46,243.22. A detailed chart of the above calculations is annexed here to."*

12. That the Operational Creditor has placed reliance on an e-mail dated 20.11.2018 to show the admission of the debt made by the Corporate Debtor. The contents of the e-mail are reproduced overleaf :

*(Signature)*

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Dear Sir,

This has reference to our meeting in your office yesterday on the above subject

As you are aware of that full set of BL for an export cargo is hold by you to have due payment first.

In this connection we had expressed that holding this BL is attracting huge demurrage and port rent as well as incurring consequential losses and damages.

**Please also note that we have agreed to pay INR 6,64,494.00 towards the past outstanding amount.**

**Balance due payment shall also be released within next 15 days.**

Request you to kindly do the needful and send your representative tomorrow with full set of BL documents to hand over the same to us and also collect cheque for INR. 6,64,494.00.

Thanks and Best Regards  
D. Varshey  
Vice President (Project Management)  
Technofab Engineering Limited

13. After hearing submissions of both the Parties, this Bench is of the view that the Corporate Debtor had clearly acknowledged its liability in its e-mail dated 20.11.2018.

14. In the given facts and circumstances, the present Petition being complete and establishing the default in payment of the Operational Debt beyond doubt, the Operational Creditor is entitled to claim its dues. The amount of default being above Rs.1,00,000 for the unpaid invoices, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly.



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moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry :

- “(a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

15. As proposed by the Operational Creditor, this Bench appoints Sh. Anurag Gupta, having his Office at 498, Second Floor, Niti Khand-1, Indirapuram, Ghaziabad-201014 (email id- anurag.gupta.fcs@gmail.com) and Registration No. IBBI/IPA-002/IP-N00833/2019-20/12613, subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is



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directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

16. The Operational Creditor is directed to deposit Rs.1,00,000 (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid-back to the Operational Creditor.

17. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. Gupta)  
Member (T)





(Ina Malhotra)  
Member (J)

  
31.1.2020  
Deputy Registrar  
National Company Law Tribunal  
CGO Complex, New Delhi-110003