

**NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 311/Chd/Pb/2018

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

In the matter of :

M/s Haiko Logistics India Pvt. Ltd.

having its registered office at
A-133, Road No. 4, Street No. 5,
Mahipalpur Extension, New Delhi,
through its Authorized Signatory.

...Petitioner/Operational Creditor

Versus

1. M/s Datawind Innovations Pvt. Ltd.

having its registered office at
94, City Centre Opposite Guru Nanak Bhawan,
Amritsar, through its Director.

2. Shri Tejinder Singh, Director

M/s Datawind Innovations Pvt. Ltd.
J-8-1457, Opposite New Amritsar,
G.T. Road, Amritsar,
Punjab-143001

...Respondents/Corporate Debtors

Judgement delivered on: 13.11.2019

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the petitioner-
Operational Creditor : 1). Mr. Anand Chhibbar, Senior Advocate
: 2). Mr. Shikhar Sarin, Advocate
: 3). Mr. Raj Kumar Rana, Advocate

For the respondents-
corporate debtors : Mr. Prashant Gupta, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short hereinafter referred to as '**Rules**') by M/s Haiko Logistics India Pvt. Ltd. (**Operational Creditor**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Datawind Innovations Private Limited (**Corporate Debtor**). The Identification Number of the operational creditor is U63011DL2005PTC132126 and the address of its registered office is A-133, Road No. 4, Street No. 5, Mahipalpur Extension, New Delhi. The petitioner-operational creditor has authorized Mr. Parveen Kumar to file petition on its behalf. The copy of the Resolution passed by the Board of Directors of the company is annexed as Annexure A-3. There is also an affidavit in support of the contents of the application which at Page 33. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. M/s Datawind Innovations Pvt. Ltd. (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 2013 with authorized share capital of ₹1,00,00,000/- and paid up share capital of ₹81,00,000/-. The registered office of the respondent-corporate debtor is situated in

Amritsar in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The facts of the case, briefly, as stated in the petition, are that the petitioner is a company registered as per the norms under Company Act running its business of International Freight Forwarding since the year 2005. The respondent was availing the freight forwarding services of the petitioner company for Air import and related services of its shipment. All the services were provided to the respondent company by the petitioner company from its Delhi office. The respondents and the petitioner mutually agreed upon that the petitioner shall provide its services to the respondent for import of goods and the respondents shall pay the amount as per the bills raised by the petitioner. The relationship between the parties started when the respondent company approached the petitioner for giving business of freight forwarding. In June 2016 the petitioner submitted its quotation to the respondent company which was agreed between the parties after some clarifications and the respondent company started giving its shipments to the petitioner. The print out of abovementioned communications between the parties are annexed herewith as Annexure-P/4 (Colly).

4. On 26.08.2016 operational creditor raised its first invoice vide invoice Number 116-60826930874 dated 26.08.2016 which is annexed herewith as Annexure-P/5. Petitioner provided its services of freight forwarding and customs clearance etc to respondent company till

08.12.2016 vide last invoice number 116-61226930212. Petitioner raised all the invoices from 26.08.2016 to 08.12.2016 for providing its services to respondent company and all the invoices were received and accepted by respondent company. Copies of invoices available with the petitioner are attached herewith as Annexure-P/6 (Colly). It is stated that the respondent-corporate debtor has failed to discharge its obligations towards the applicant-operational creditor, inasmuch as have failed to make the payment due to the applicant-operational creditor despite various reminders.

5. After a lot of follow ups of petitioner's officers, respondent company released part payment and the balance outstanding as on 15.04.2017 towards corporate debtor was ₹86,07,122/- (Rupees Eighty Six Lakh Seven Thousand One Hundred Twenty Two Only). Calculation with details of invoices of the amount of operational debtor is annexed as Annexure-P/7. On 21.04.2017 the respondent company again issued a cheque of ₹4,00,000/- (Four Lakh Only) issued from HDFC Bank, vide cheque No. 15571 to the petitioner. The petitioner presented the said cheque before its bank but the same got bounced due to the reason "Payment Stopped by the Drawer". The copy of the bounced cheque and the bank memo dated 26.04.2017 are annexed as Annexure-P/8.

6. A demand notice in Form No.3 is stated to be issued on 09.05.2018 (Annexure P-16 of the petition). The demand notice was accompanied by the duly issued invoice in the name of the corporate

debtor along with working computation of principal amount and interest. The corporate debtor vide this demand notice was called upon to repay the unpaid operational debt (in default) of ₹86,07,122/- within 10 days from the receipt of the notice.

7. The corporate debtor in its reply to the demand notice dated 27.05.2018 has denied that any services were ever rendered to the corporate debtor. Also the operational creditor was supposed to provide professional logistics services i.e. air freight services for handling of valuable import shipments from Hong Kong to Chennai and Hong Kong to Delhi in a flexible, professional and cost-conscious manner but unfortunately it did not render the services to the best of the specific requirements of the corporate debtor. Also as per the records of corporate debtor there was a delay of 428 days in shipments. It is also stated that the operational creditor has rendered inferior and unprofessional service which is equivalent to under cheaper sea freight service. Copy of the demand notice dated 09.05.2018 along with the reply of the demand notice is at Annexure P-16 & 17 (Colly) of the petition.

8. In Part III of Form 5, the operational creditor has not proposed the name of the Interim Resolution Professional.

9. Notice of this petition was issued to the Corporate Debtor on 11.10.2018 to show cause as to why this petition be not admitted and the next date of hearing was 11.12.2018.

10. The Corporate Debtor filed reply vide Diary No. 141 dated 11.01.2019 by way of affidavit of Mr. Rupinder Singh, Executive Vice President and Authorised Representative of the Corporate Debtor. It is submitted that the corporate debtor has already disputed the existence of claim on behalf of the operational creditor vide its response to the demand notice. It is further stated that the corporate debtor has already disputed the existence of any debt in favour of operational creditor in its response to the demand notice. There are numerous e-mails showing pendency/existence of pre-existing dispute. It is mentioned that there is a pending insurance claim against the operational creditor at Ontario, Canada. There is also a police complaint dated 09.06.2018 pending against operational creditor in Delhi for misappropriation of goods, loss of shipment, breach of trust etc. Copy of the complaint is attached at Annexure R/3 (Colly). There is also a police complaint pending at UK with regard to their existing client in France.

11. The operational creditor filed rejoinder vide Diary No. 649 dated 08.02.2019 wherein the petitioner has reiterated the facts already mentioned in the petition.

12. We have carefully considered the submissions of the learned counsel for the corporate debtor and operational creditor and have also perused the records.

13. The first issue for consideration is whether the demand notice in Form No.3 dated 09.05.2018 was properly served. The demand

notice dated 09.05.2018 was sent at the address as per the master data at Page No. 257 of the petition in which the registered office is shown as 94, City Centre, Opposite Guru Nanak Bhawan, Amritsar, Punjab-143001. The reply to demand notice is at page 270 of the petition.

14. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor in its reply to the demand notice dated 27.05.2018 has disputed the liability towards the operational creditor and stated that there was a delay of 428 days in shipments and that the operational creditor has provided inferior and unprofessional services.

15. The provisions of Section 9(5)(i) of the Code are as follows:-

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

- (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*
 - (a) the application made under sub-section (2) is complete;*
 - (b) there is no payment of the unpaid operational debt;*
 - (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*
 - (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*
 - (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”*

16. The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017***, held as under:-

"51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(ii)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

17. We have gone through the contents of the application filed in Form No.5 and find the same to be complete. As discussed above, there is an unpaid operational debt amounting to ₹86,07,122/-. Copy of Ledger Account of the corporate debtor in the books of the financial creditor for the period of 01.04.2016 to 12.06.2017 (page 161 of the petition) has been filed. The copy of invoice has been filed at Annexure P-5 & P-6 (Colly) of the petition. Moreover, demand notice in Form No.3 was also sent on 15.05.2018 stating that the amount due from the corporate debtor to the operational creditor is ₹86,07,122. The corporate debtor in its reply to the demand notice dated 27.05.2018 has not disputed its liability and towards operational creditor and has instead

asked for some time to clear the debt. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 10.08.2018 has been placed by the operational creditor stating that there is no dispute of unpaid operational debt pending between the parties in any court of law or authorities as on today. We have held above that the demand notice in form No.3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

18. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. The applicant-operational creditor states that from the abovementioned fact it is clear that the liability of the respondent-corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

19. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP process in the case of the Corporate Debtor M/s Datawind Innovations Pvt. Ltd. and direct moratorium and appointment of Interim Resolution Professional as below.

20. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

21. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any

operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

22. The order of moratorium shall have effect from the date of this order till 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.

23. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also, the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for Corporate Insolvency Resolution Process is made by an operational creditor and –

“a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;
b) x x x x x”

24. Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency

professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

25. In this regard a letter bearing File No.25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02/ dated 24.06.2019 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.07.2019 to 31.12.2019. We select Mr. Arvind Kumar appearing at Serial No. 104 of the panel to be appointed as Interim Resolution Professional.

26. The Law Research Associate of this Tribunal has checked the credentials of Mr. Arvind Kumar and there is nothing adverse against him. In view of the above, we appoint Mr. Arvind Kumar, Registration No. IBBI/IPA-001/IP-P00178/2017-2018/10357, R/o # 303, 3rd Floor, Plot No.D-190, Phase 8-B, Sector 74, Industrial Area, SAS Nagar, Mohali-160071, E-mail: sankhyain@gmail.com, M: 98160-55657 as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Arvind Kumar shall be in accordance with the provisions of Section 16(5) of the Code;

- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency

Professional with high standards of ethics and moral;

- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor

constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

- vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

November 13th, 2019
Yashpal