

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
SPECIAL BENCH (COURT-VI)**

**IB-2745/(ND)/2019**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**SPJ Cargo Private Limited**

Registered office at:  
D9/3, Okhla Industrial Area,  
Phase- 1, South Delhi,  
New Delhi- 110020

...Applicant/Operational Creditor

**Versus**

**Sanya Exim Private Limited**

Registered Office at:  
A-145/75, Gali No.1, Krishna Puri,  
Mandawali,  
New Delhi- 110092

...Respondent/Corporate Debtor

**Coram:**

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

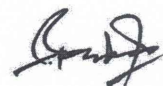
**SHRI. L.N. GUPTA, Hon'ble Member (Technical)**

**Counsel for Applicant:** Mr. Anirudh, Advocate

**Counsel for Respondent:** Mr. Nitesh Kumar Sinha, Advocate

IB-2745/ND/2019

SPJ Cargo Private Limited vs. Sanya Exim Private Limited



**ORDER**

**Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)**

**Date: 31.03.2021**

1. This is an application filed by the Applicant SPJ Cargo Private Limited through its Authorized Representative Mr. Puneet Kashyap seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent Sanya Exim Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 18,97,130/- (Rupees Eighteen Lakhs Ninety-Seven Thousand One-Hundred and Thirty only), as alleged by the applicant, towards the services provided by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the applicant is engaged in providing services of cargo handling such as freight forwarding, custom clearance and other allied activities. That the Respondent is engaged in the business of processing and exporting Halal meats in the form of frozen foods in the global market.

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- ii. The applicant stated that the Respondent for export of meat, availed the services of the applicant for freight forwarding, custom clearance and allied services against which the applicant raised several invoices.
- iii. The applicant submitted that two cheques amounting to Rs. 3,12,750/- and Rs.3,26,298/- dated 09.05.2019 and 15.05.2019 respectively were issued by the Respondent and both were dishonored by the bank with remark as "Payment stopped by the Drawer".
- iv. The applicant stated that the Respondent on 22.06.2019 sent an Email requesting the Applicant not to present the cheques and that the Respondent would clear all the dues within 15 days. Further, the applicant submitted that he made several follow ups with the Respondent through emails for payment of the outstanding amount but the Respondent failed to clear the outstanding dues.
- v. That applicant submits that a statutory Demand notice dated 02.08.2019 under section 8 of IBC,



2016 was delivered to the Respondent dated 09.08.2019. It was further submitted by the applicant that no reply or payment of any dues has been received till date.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Respondent filed its reply Affidavit on behalf of the Respondents stating that:

- i. The parties herein had agreed on a dispute resolution mechanism during the course of the business. That in the event of a dispute, the parties would first explore the possibility of conciliation. If the same fails, they would adopt arbitration route in order to resolve the dispute. The Respondent further stated that the applicant has not followed the dispute resolution mechanism.
- ii. The Respondent stated that the alleged debt is disputed and that in the month of March, 2019, the respondent booked a shipment through the Applicant to deliver at Chittagong, Bangladesh. The value of the shipment was Rs. 36,73,175/-. In April 2019, the cargo

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reached its destination at Bangladesh and the consignee M/s Oyshe Enterprises did not take the cargo at Bangladesh. Further, the cargo was put on auction by CMA / CGM at Bangladesh. The Respondent further alleges that Mr. Pawan Shretsh, an employee of the applicant did not timely inform the Respondent that the cargo was on auction at the Bangladesh port. Hence, the Respondent alleges that it suffered huge losses.

3. The Counsel for the Respondent appeared before the Hon'ble Tribunal and submitted that the Respondent is keen in settling the matter. Further on 04.02.2020, the Learned counsels for both the parties made the submission that that the parties have settled the matter outside the Tribunal, consequent to which this Tribunal directed the parties to move necessary Application in this regard.
4. The Learned counsel for the applicant on 13.03.2020 again submitted before the Tribunal that the matter has been settled and the applicant has received the cheques for the defaulted amount. The counsel was directed to file the

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withdrawal application. That the applicant thereafter filed the Application I.A. No.2018 of 2020, craving the leave of the Tribunal to withdraw the said Interim Application and to proceed with the main matter and accordingly, the application was allowed. That the Respondent continuously failed to appear in the matter and as a result the Respondent was proceeded ex-parte on 07.01.2021.

5. The Corporate Debtor was absent even during the hearing on 16.02.2021. We heard the arguments made by the Operational Creditor and perused the documents filed by him. The Operational Creditor has established the existence of debt and default on the part of the Corporate Debtor. The Corporate Debtor's plea of disputed debt and pre-existence of dispute does not stand any merit as no documentary evidence substantiating the Corporate Debtor's claim was annexed in the reply. In view of the above, this Tribunal **admits** this petition and **initiates CIRP** on the Respondent with immediate effect.

1. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:



“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

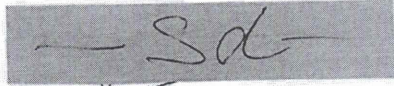
(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

A handwritten signature in black ink, appearing to be 'S. J. S.', with a small superscript '7' to its upper right.

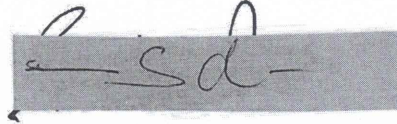
- (2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

7. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Amit Agrawal, (Email - [amitagcs@gmail.com](mailto:amitagcs@gmail.com)), (Mobile No.- 9811272307) Reg. No: IBBI/IPA-002/IP-N00185/2017-2018/10456 is appointed to carry forward the process of CIRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17

and 18 of the Code and file his report within 30 days  
before this Bench.



**(SH. L.N. GUPTA)**  
**MEMBER (TECHNICAL)**



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

RDS

Pronounced today under Rule 151 of NCLT Rules, 2016 as  
Hon'ble Member (T) Shri. L.N. Gupta is not holding the court  
today.