

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

CP No. 1562/IBC/NCLT/MB/MAH/2017

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

In the matter of

Percula Shipping and Trading Inc.

..... Operational Creditor  
(Petitioner/Applicant)

v.

M/s. Dadi Impex Private Limited

..... Corporate Debtor  
(Respondent)

Heard on : 16.05.2018

Order delivered on : 22.05.2018

**Coram :**

Hon'ble M.K. Shrawat, Member (J)

**For the Petitioner :**

Mr. Rohan Janardhan, Advocate i/b. Rex Legalis – Advocates for the Petitioner/Operational Creditor.

**For the Respondent :**

None Present.

*Per: M. K. Shrawat, Member (J)*

**ORDER**

1. M/s. Percula Shipping and Trading Inc. (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 06.11.2017 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as, 'Dadi Impex Private Limited' (hereinafter as **Debtor**) having registered address at, 614, Laxmi Plaza, Laxmi Industrial Estate, Off Link Road, Andheri (W), Mumbai, Maharashtra – 400053.





3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as USD 880,331.22/- and further Interest amount of USD 99,086/-.

**Submissions by the Operational Creditor :**

4. The Learned Advocate for the Operational Creditor has submitted that, the nature of the Debt is that, the Debtor has hired a vessel namely 'M/V Achilles S' for its use and hired for 108.79 days.
5. For the service rendered the Operational Creditor has raised various invoices, time and again but the Debtor has failed to pay the amount. The copies of the said Invoices are annexed with the Petition/Application.
6. It is further submitted that, the Debtor has acknowledged its liability vide an e-mail dated 23.06.2017 stating that the '*Dadi Impex will fully cooperate with owners and will full fill all obligations.*' The copy of the said e-mail is annexed with the Petition/Application.
7. It is further stated that, till Sep. 2017 the Debtor has not repaid the amount hence, feeling aggrieved the Operational Creditor has issued a Demand Notice U/s. 8 of the Code demanding the outstanding un-paid amount from the Debtor on 27.09.2017.
8. It is further submitted that, this Notice has been duly served upon the Debtor but the Debtor has neither replied to the notice nor repaid the claimed amount. Hence, the Operational Creditor has filed this Petition/Application.
9. It is further stated that, the Operational Creditor has time and again informed the Debtor about the hearing of this Petition/Application through a written notice but the Debtor has refused to take service of the said notice. To this effect **Affidavit of Service** is also filed.
10. It is finally submitted that, since the Debtor has chosen to remain absent for the hearing it can be stated that, he has nothing to say in his defence; hence, this Petition/Application may be Admitted for the commencement of CIRP.

**Findings :**

11. I have gone through the submissions and pleadings on record. On the basis of the evidences on record the Operational Creditor has established that, the Operational Creditor has rendered a service to the Debtor and raised valid invoice for the same. But the Debtor has failed to make the payment for the availed services. Considering these facts and circumstances, in my humble opinion the nature of the Debt is an



‘Operational Debt’ as defined under section 5 (21) of the Definitions under The Code and there is a “Default” as defined under section 3 (12) of The Code on the part of the Debtor.


12. I have also perused the notice sent under Section 8 (2) of the Code and it came to my notice that, the Debtor has received the same but has not paid the claimed amount. Further, if the Debtor wanted to place on record evidence of ‘Dispute’ then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no ‘Dispute’ in respect of the outstanding Debt.
13. I have also perused the Affidavit of Service placed on record by the Operational Creditor and found that, the Notice of Hearing which was sent by the Advocate of the Operational Creditor has returned back marked as “Refused”. Hence, this can be treated as Sufficient Service.
14. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/Applicant it is my conscientious view that this Petition deserves ‘**Admission**’ specially where the Debtor has not remained present for the hearing.
15. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Mr. Sudip Bhattacharya**, having registration no. as IBBI/IPA-003/IP-P00080/2017-18/10703, having address as 903, Queensgate, Hiranandani Estate, Thane (W), Maharashtra – 400607, as Interim Resolution Professional for initiation of CIRP.
16. During the hearing it also came to my notice that, there is another Application filed by another Operational Creditor namely, “New Venture Inc.” against the same Debtor i.e. “M/s. Dadi Impex Private Limited” bearing no. CP No. 1734/IBC/NCLT/MB/MAH/2017. Hence, as this Petition/Application is Admitted against the Debtor there cannot be subsequent event where the another petition/application be Admitted. Hence, it may not be out of place to mention that, the CP No. 1734/IBC/NCLT/MB/MAH/2017 is now **Infructuous** with a liberty to the Operational Creditor therein viz. “New Venture Inc.” to file its claim before the aforesaid appointed IRP.

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17. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
18. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
19. The appointed IRP shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
20. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

**Dated : 22.05.2018**

  
**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

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