

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III

C.P. No. IB - 1056/(ND)/2018

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:

M/s BSL Freight Solutions Pvt. Ltd.
Registered Office:

4th Floor, Himalayas Building Geetmala Complex,
Next to Shah Industrial Estate, Govandi,
Mumbai-400088.

Also at:

1. 301-302, 3rd Floor,
Plot No. 16 & 17, Commercial Complex,
Okhla Phase-1,
New Delhi-110020
2. 1st Floor, Plot No. 50, Sector-08,
Meridian House, Near Hotel Shiv Grand,
Gandhidham, Gujarat-370201

...Applicant

17/12/18 Versus

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M/s Kairali Shipping Agencies Pvt. Ltd.
 Registered Office:
 FF-12, R-23, 1st Floor, Nehru Enclave,
 New Delhi, India-110019

Also at:

1. D-745, Gali No.3, Ashok Nagar,
 Shahdara, New Delhi-110093
2. C-44B, Cabin No.5, Kalkaji,
 New Delhi, India-110019
3. A-89, 2nd Floor, Sector-65,
 Gautam Budh Nagar, Noida,
 Uttar Pradesh, India-201301
4. Flot No.705, Tower-J,
 Amrapali Zodiac, Sector-120,
 Noida, Uttar Pradesh, India-201301

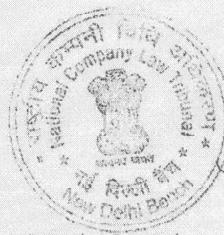
...Responde

Coram:

Shri. R. VARADHARAJAN,
Hon'ble Member (Judicial)

Dr. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Operational Creditor: Mr. Lakshay Dhamija & Mr. Sunav
 Rastogi, Advocates



M. V. M.

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ORDER

Date:17.12.2018

1. This is an application filed by M/s BSL Freight Solutions Pvt. Ltd. against the Respondent M/s Kairali Shipping Agencies Pvt. Ltd. seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) u/s 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for the alleged default in settling the dues of the Applicant Company for the services rendered by the Applicant Company in freight forwarding and transportation services. The facts leading to the filing of this application are as follows:

i. The Respondent approached the Applicant in the month of May 2017 for availing forwarding and transportation services.

As per the arrangements, requests were made to the representative of the Applicant for availing forwarding and transportation services by the Respondent either on telephone or through e-mail. Against the request made by the Respondent, the Applicant rendered effective and successful services to the Respondent.

ii. The Applicant used to raise various invoices upon the Respondent against the effective and successful service

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rendered by the Applicant pursuant to which the Respondent has made part payment to the Applicant.

- iii. That as per the ledger account of the Applicant, total amount of invoices raised by the Applicant is of Rs. 11,36,508.33/- (Rupees Eleven Lakhs Thirty-Six Thousand Five Hundred Eight and Thirty-Three Paisa Only) listed in the application.
- iv. Out of Rs. 11,36,508.33/-, Rs. 2,71,412/- (Rupees Two Lacs Seventy-One Thousand Four Hundred and Twelve Only) has been paid by the Respondent. Further, Respondent deducted TDS of Rs. 4,406/-, thereby the balance amount of Rs. 8,60,667.55/- (Rupees Eight Lacs Sixty Thousand Six Hundred Sixty-Seven and Fifty-Five Paisa Only) remains outstanding.
- v. The director of the Respondent i.e. Mr. Hari Narayan had accepted his liability towards payment of outstanding debt vide an email dated 06.09.2017. It is pertinent to mention that vide an email dated 03.11.2017, Mr. Hari Narayan, director of the Respondent showed the hardship of the Respondent to clear the outstanding dues and gave assurance to the Petitioner to clear the outstanding dues on or before 15.11.2017. That again vide an email dated 13.12.2017, the representative of the Respondent had promised and agreed to clear the outstanding dues at the earliest. However, till date the Respondent failed to



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release the outstanding balance amount despite numerous exchanges of communications between the Respondent and Applicant.

- vi. Demand notice u/s 8 of the Code was issued to the Respondent at its registered office and branch offices through courier and registered post on 13.06.2018 and 14.06.2018 respectively however, all the demand notices were returned back to the Applicant.
- vii. Demand notice dated 06.06.2018 was sent via email to the director of the Respondent i.e. Mr. Hari Narayan as well as on the official email address of the Respondent as mentioned on the official website of the Respondent and the same was duly received by the Respondent. Therefore, the demand notice was duly served/delivered upon the Respondent as per Rule 5(2)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (“the Rules”).
- viii. Last date for the Respondent to repay the unpaid amount or raise a dispute in terms of Section 8(2) of the Code is 23.06.2018. However, no reply or payment was received on behalf of the Respondent.



It is represented by Ld. counsel for the Applicant that the Applicant has not been successful in serving the Respondent either Section 8

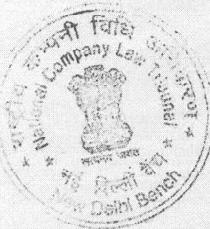
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notice or an advance copy of the application as filed before this Tribunal. Further, notice directed to be issued vide order dated 27.08.2018 in relation to the proceedings as well as in relation to today's date of hearing has been successfully served through e-mail communication made to the whole-time director of the Respondent, Hari Narayan on the email id hari@kairalishippingagencies.com, which is also reflected on the master data of the Respondent. It is further pointed out that the director Hari Narayan used this email id to contact the Applicant on behalf of the Respondent on 13.12.2017.

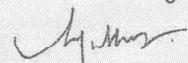
3. Taking into consideration all the communications which have been sent by e-mail, it is seen that the Respondent is aware of the proceedings pending before this Tribunal but despite this fact, Respondent has not entered its appearance nor defended its case. In the circumstances, this Tribunal was constrained to proceed with the matter in the absence of Respondent.

4. The matter was heard in the absence of the Respondent and the Tribunal comes to the conclusion that the Respondent has failed to clear the dues of the Applicant Company and the Applicant has clearly established the existence of debt and default on the part of the Respondent, which has been specifically acknowledged by the

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director of the Respondent in email dated 03.11.2017 and 13.11.2017, and this Tribunal is inclined to initiate CIRP against the Respondent Company.

5. In view of the above this the Tribunal is inclined to admit this application and accordingly initiate the process of CIRP of the Respondent. Since the Applicant has not named the insolvency resolution professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Ms. Maya Gupta, with registration number IBBI/IPA-002/IP-N00363/2017-18/11061 (email – fcsmayagupta@gmail.com, Mobile No. 7838777116) as the Interim Resolution Professional (“IRP”) subject to the condition that no disciplinary proceedings are pending against such an IRP named and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the application being admitted in terms of Section 9(5) of the Code the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Respondent:



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- 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.

6. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

- (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.

7. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of respondent under section 33, the moratorium



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shall cease to have effect from the date of such approval or liquidation order, as the case may be.

8. The Applicant is directed to pay a sum of Rs.2,00,000/- to the interim resolution professional ("IRP") upon the IRP filing the necessary declaration form as required under the provisions of the Code to mete out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

9. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the registry. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of resolution professionals forwarded by IBBI be also furnished with copy of this order forthwith by the registry.



Sd/- 17/12/2018

(Dr. V.K. SUBBURAJ)

MEMBER (TECHNICAL)

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Sd/- 17/12/18
(R. VARADHARAJAN)

MEMBER (JUDICIAL)

V.V.B. RAJU 17/12/2018
DEPUTY REGISTRAR
मुख्य पंजीकरण अधिकारी
नेशनल कंपनी लॉ ट्रिब्यूनल
NATIONAL COMPANY LAW TRIBUNAL
Block 3, 6th Floor, CGO COMPLEX