

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

IB No. (IB)-450(ND)/2017

In the matter of

**Toll Global Forwarding (India) Private Limited Operational
Creditor**

V/s.

Sarash Exports Services Private Limited Corporate Debtor

SECTION: U/s 9 of IBC, 2016

Order delivered on : 22.11.2017

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SH. S. K. MOHAPATRA, HON'BLE MEMBER (T)

For the Petitioner (s) : Mr. Anuj Mirdha, Advocate

For the Respondent (s) : None

ORDER

AS PER SMT. INA MALHOTRA, MEMBER (J)

1. The petitioner, a private limited company, has filed this application u/s 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') claiming to be an Operational



Creditor. As per the averments made, they are engaged in the business of providing logistics services for importing certain shipments. During the course of its business, it had provided services to the respondent/ Corporate Debtor and raised invoices. Some of the invoices, more specifically 11 in number, raised for services rendered during the period of May, 2016 and July 2016 are outstanding. The total liability under the aforesaid bills amount to Rs. 8,58,426.87 It is submitted that despite demands made from time to time, the Corporate Debtor has failed to liquidate its liability.

2. The present petition has been filed in the form and manner prescribed under the Code. It is annexed with the copies of the invoices and delivery receipts. Due notice u/s 8 of the Code was sent by the Director of the Operational Creditor authorised to initiate the present proceeding vide a Board Resolution. The notice, which was annexed with the required invoices and other documents, remained unreplied. The petitioner has maintained a ledger account reflecting the statement of debit and credit in respect of their dealings with the Corporate Debtor.

3. The Bankers of the Operational Creditor viz. Standard Chartered, vide their letter dated 23.10.2017 have certified that the

amount of Rs. 8,58,426.87 in the account of the Operational Creditor has not been received from the Corporate Debtor.

4. It is submitted by the Ld. Counsel for the Operational Creditor that they have duly complied with the mandatory requirements of Section 9 (3) (a), (b) & (c). In terms of the provisions of section 9(3)(b), the Operational Creditor has deposed that the Corporate Debtor has not raised any dispute with respect to the un-paid operational debt. It is submitted that even otherwise, the Corporate Debtor was fully satisfied with the services rendered and had never raised any grievance in respect of the same.

5. Despite service on the Corporate Debtor vide different modes, none has appeared on behalf of the respondents to offer any resistance. From the facts of the case, this Bench is satisfied that the Operational Creditor is entitled to initiate the Insolvency Resolution Process against the Corporate Debtor for non payment of its dues. This petition u/s 9 of the Code is therefore Admitted.

6. A moratorium in terms of section 14 of the Code is being issued prohibiting the following:

- (a) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - (d) recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
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7. It is further directed that:

- (a) 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.
- (b) The provisions of sub-section (1) of section 14 of the Code shall not apply to such transactions as may be




notified by the Central Government in consultation with any financial sector regulator.


8. The Financial Creditor has also proposed the name of Mr. Rakesh Wadhwa, Insolvency Professional, (Email ID: rwadhwa.ip@gmail.com). His consent has been placed on record along with his certification that there is no disciplinary proceeding pending against him and that he is duly empanelled with the IBBI vide Registration No. IBBI/IPA-002/IP-N00159/2017-18/10428.

9. As the petition fulfils the required criterion for invoking the Resolution Process, this petition stands Admitted. Moratorium in terms of Section 14 of the Code comes into effect.

10. The Interim Resolution Professional is directed to take necessary steps as per Sections 15, 17 & 18 and file his report within the statutory period. Be listed before this Bench for the IRP's Report on 15th January, 2018.

11. Copy of the order be communicated to both the parties.


(S. K. Mohapatra)
Member (T)


(Ina Malhotra)
Member (J)