

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB-1023/ND/2018**

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

IN THE MATTER OF:

M/S MODEL LOGISTICS PVT. LTD.

...Applicant/Operational Creditor

VERSUS

M/S ADVANCE HOME & PERSONAL CARE LTD.

...Respondent/Corporate Debtor

Pronounced on: 05.09.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant: Mr. Aaditya A. Pande. Adv.

For the Respondent: Mr. Tarak Khanna. Adv.

MEMO OF PARTIES

M/s MODEL LOGISTICS PVT. LTD.

Having its office at:

Aniruddha Enclave, Plot No. 10,
Sector-25, Kamothe, Navi Mumbai,
Maharashtra-410209

...Applicant/Operational Creditor

VERSUS

M/s ADVANCE HOME & PERSONAL CARE LTD.

Having its registered office at:

511/2/1, Village Rajokri
New Delhi- 110038

...Respondent/ Corporate Debtor

ORDER

PER-SHRI HEMANT KUMAR SARANGI MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by

M/s Model Logistics Pvt. Ltd. (for brevity 'Applicant'), through its director Mr. Rajeev Jaiswal authorizing him to file present application vide Board resolution dated 19.06.2018, with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Advance Home & personal Care Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor namely M/s Model Logistics Private Limited is a company incorporated on 09.06.2004 under the provisions of Companies Act, 1956 with CIN No. U63090MH200PTC146856, having its office at 10 & 11, Aniruddha Enclave, Plot No. 10, Sector 25, Kamothe, Navi Mumbai, Maharashtra 410209, inter alia, is involved in the business of providing freight services.
3. The Respondent, namely M/s Advance Home & Personal Care Limited is a company incorporated on 02.07.1985 under the provisions of Companies Act, 1956 with CIN No. U24243DL1985PLC021386, having its registered office at 511/2/1, Village Rajokari, New Delhi 110038. The Authorised Share Capital of the respondent company is

Rs.12,00,00,000/- and Paid Up Share Capital of the company is Rs.10,13,40,000/-as per Master Data of the company.

4. It is the case of the applicant that, the respondent approached him for providing freight services to it for transportation of various materials to different destinations as per invoice. The applicant agreed to the same and started transporting the heavy materials. The Operational Creditor also raised various invoices from 02.01.2017 to 04.04.2017 to the respondent. The copies of said invoices have been annexed.
5. The applicant further states that, he continues to transport the required materials for the corporate debtor. The Last invoice raised by the applicant towards the respondent was raised on 04.04.2017.
6. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 11.05.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire payment of Rs.6,02,000/- (Rupees Six Lac Two Thousand only) along with interest @ 18% per annum from 02.01.2017, within 10

days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

7. The said section 8 notice was sent by registered post to the registered office of the Corporate Debtor by the Applicant. The tracking report attached by the applicant reveals that the notice sent by post to the registered office of the corporate debtor was delivered to the said address on 14.05.2018.
8. Despite the demand notice sent under Section 8 of the Code, the Respondent has failed to pay the amount demanded and has neither raised any notice of dispute nor replied to the said notice.
9. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The respondents have caused appearance in the matter and have even filed reply in the present application. In their reply the respondents have clearly denied the existence of any outstanding payments to the applicant. However, as per the records of the applicant the respondents have acknowledged the debt vide email dated

14.09.2017, whereby; the respondents can be clearly seen asking for some more time to make the payment of dues.

10. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.

11. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

12. On perusal of the record it is clear that the default has occurred on 02.01.2017 when the last invoice fell due. It was again acknowledged on 14.09.2017 by way of email. Hence, the claim is not time barred. And the present application is well within the limitation period.

13. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.

14. The Applicant has proposed the name of Interim Resolution Professional, Mr. Vivek Parti, having registration no. IBBI/IPA-

001/IP-p00813/2017-2018/11376, who is appointed as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

15. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
16. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (T)

Sd/-

DR. DEEPTI MUKESH

HON'BLE MEMBER (J)