

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-II

CP (IB) No.1001/MB/2024

[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

GOODRICH LOGISTICS PRIVATE LIMITED

[CIN: U61100MH1999PTC119246]

801, 8th Floor, Meraki Arena,

Sion-Trombay Road, Ghatla,

Chembur, Mumbai-400071

Maharashtra.

...Operational Creditor/Applicant

VERSUS

TRANSRAIL LIGHTING LIMITED

[CIN: U31506MH2008PLC179012]

501 A, B, C, E Fortune 2000,

Block G, Bandra Kurla Complex,

Bandra East, Mumbai-400023

Maharashtra.

...Corporate Debtor/Respondent

Ordered on: 02.12.2025

CORAM:

HON'BLE SHRI AASHISH KALIA, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor : Adv. Shyam Kapadia, Adv. Mr. Shamant Satya a/w Adv. Ms.
Taranjeet Phull

Corporate Debtor : Sr. Adv. Vikram Nankani a/w Adv. Nousher Kohli, Anisha
Didwani, Zaki Ansari i/b Agarwal & Dhanuka Legal

ORDER***[PER: SANJIV DUTT, MEMBER (TECHNICAL)]*****1 BACKGROUND**

- 1.1 This Application bearing C.P.(IB) No.1001/MB/2024 was filed by Goodrich Logistics Private Limited, (hereinafter referred to as “the Applicant/Operational Creditor”), on 02.12.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 through its Senior Manager (Accounts) and Authorised Representative, Mr. Neetu Kumar for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Transrail Lighting Limited, (herein referred to as “the Corporate Debtor”).
- 1.2 The Operational Creditor is engaged in the business of providing international shipping, transportation and related logistic services. The Corporate Debtor is engaged in providing turnkey solutions in transmission, distribution and rail electrification.
- 1.3 Pursuant to Service Orders dated 12.03.2020 executed between the parties, the Operational Creditor provided empty containers to the Corporate Debtor for transportation of equipment and accessories related to the 330 KV DC Transmission Line Project in Nigeria, Africa. In accordance with the agreed terms, a total of 63 containers of various types were allotted and shipped from Nhava Sheva (Maharashtra) and Hazira (Gujarat) Ports, India, to Tincan Port, Nigeria. The Corporate Debtor was required to return all containers in empty condition and without damage within 30 days from the date of discharge during which no

detention charges would apply. Beyond this period, detention charges at the agreed rates became payable. It was further stipulated that in case of non-return, the Corporate Debtor would pay USD 2,800 per 20' container and USD 4,200 per 40' High Cube container towards container value.

- 1.4 The Corporate Debtor returned only 22 containers and made partial payment towards detention charges, leaving 41 containers unreturned. Despite repeated notices and settlement discussions, the Corporate Debtor failed to clear the outstanding dues or return the containers. Consequently, the Operational Creditor raised proforma invoices towards detention charges and value of unreturned containers amounting to Rs.59,47,72,404/- and Rs.1,19,39,200/- respectively, aggregating to Rs.60,67,11,604/-.
- 1.5 The Operational Creditor thereafter issued a Demand Notice dated 26.06.2024 under Section 8 of Code which was duly served upon the Corporate Debtor. As neither any payment nor any response was made, the present Application under Section 9 of the Code was filed seeking initiation of CIRP against the Corporate Debtor.

2 AVERMENTS OF OPERATIONAL CREDITOR

- 2.1 Pursuant to the Service Orders bearing Nos.TLL/G222/NIGERIA/TOWER/LOT-2 and TLL/G222/NIGERIA/HWSLV/LOT-2, both dated 12.03.2020 and under multiple ocean carriage contracts (Bills of Lading), the Operational Creditor provided several containers to the Corporate Debtor for transportation of equipment and accessories required for execution of its 330 KV DC Transmission Line Project in Nigeria, Africa.

- 2.2 The goods and containers were shipped from Nhava Sheva (Maharashtra) and Hazira (Gujarat) Ports, India, to Tincan Port, Nigeria. The Operational Creditor allotted a total of 63 containers of various types, including 20' and 40' High Cube containers, under multiple Bills of Lading.
- 2.3 As per the terms of the agreement and Bills of Lading, the Corporate Debtor was bound to return all 63 containers, in empty and undamaged condition (subject to normal wear and tear), within 30 days from the date of discharge at Tincan Port, Nigeria. After taking delivery of the goods, the empty containers were to be handed over to the Operational Creditor's/agent's nominated yard.
- 2.4 The parties had agreed to a 30 days detention free period, after which detention charges would become payable at the agreed rates until return of the containers. Further, in the event of non-return, as per the contract and indemnity letter dated 28.03.2022 executed by the Corporate Debtor, it was liable to pay USD 2,800 per 20' container and USD 4,200 per 40' High Cube container towards the value of the unreturned containers.
- 2.5 The shipments were duly delivered at the port of discharge on various dates. However, till issuance of the Demand Notice dated 26.06.2024, the Corporate Debtor had returned only 19 empty containers. Subsequently, upon receipt of the notice and invoices, the Corporate Debtor returned 03 additional containers which were accepted under protest by the Operational Creditor. Thus, in all 22 containers were returned and the remaining 41 containers continue to be unreturned despite repeated requests.
- 2.6 Despite repeated follow-ups, notices and reminders for payment of the outstanding detention charges and return of empty containers, the Corporate

Debtor has failed to fulfil its contractual obligations. The agreed detention rates were clearly specified in the transportation agreements, but the Corporate Debtor consistently failed to make such payments and thereby violated the terms and conditions of the agreement.

- 2.7 Owing to the Corporate Debtor's continued default and its expression of financial inability to make payment, the Operational Creditor exercised its contractual right, effective 01.06.2024, to recover the agreed value of the unreturned containers. Accordingly, on 24.06.2024, the Operational Creditor raised Proforma Invoices Nos.PROEFFMUM06240005 amounting to Rs.59,47,72,404/- (USD 7,253,322) towards detention charges and PROEFFMUM06240006 dated 25.06.2024, amounting to Rs.1,19,39,200/- (USD 1,45,600) towards the container value.
- 2.8 Even thereafter, only two containers were returned on 30.07.2024 and one on 30.09.2024, which were accepted under protest. Hence, the Corporate Debtor has become liable for a crystallized debt of Rs.59,47,72,404/- towards unpaid detention charges and Rs.1,19,39,200/- towards container value under the contract.

3 CONTENTIONS OF CORPORATE DEBTOR

- 3.1 In or around March, 2021, the Applicant had approached the Corporate Debtor with a request to amend the existing Service Orders so that payments for the logistics and detention charges could be made directly to Goodrich FZE, a sister concern of the Applicant based in Dubai. Pursuant to this request, the following three invoices were raised by Goodrich FZE towards the same work orders:-
(i) Invoice No.I dated 22.05.2021 for USD 3,18,638/- (Rs. 2,73,39,156/-) towards detention charges for 25 containers; (ii) Invoice No.II dated 22.02.2022 for USD

3,01,965/- (Rs.2,59,08,612/-) towards detention charges for 38 containers for the period from 12.08.2020 to 15.02.2022; and (iii) Invoice No.III dated 21.03.2022 for USD 55,000/- (Rs.47,19,002/-) towards detention charges for 38 containers up to 07.04.2022. The aforesaid invoices collectively amounting to USD 6,75,603/- (Rs.5,79,48,496/-) were duly paid by the Corporate Debtor to Goodrich FZE, the sister concern of the Applicant. Payment receipts evidencing such transactions are annexed with the Reply.

3.2 Subsequently, on 01.02.2022, a revised service order was issued in favour of Goodrich FZE upon the request of the Applicant, thereby novating the original work orders. Thereafter, on 15.02.2022, Goodrich FZE raised an invoice for USD 3,01,965/- (Rs.2,26,47,375/-), which was duly paid and discharged by the Corporate Debtor on 04.03.2022.

3.3 A meeting was held between the parties on 17.03.2022 to discuss the outstanding payments for the containers in Nigeria. The minutes of this meeting recorded that the Corporate Debtor had already paid detention charges:

(i) For Lot-I (38 containers) till 15.02.2022 and agreed to make an additional payment of USD 55,000/- on 22.03.2022 for the period till 07.04.2022, after which no further payments would be made for Lot-I.

(ii) For Lot-II (25 containers), it was agreed that 50% of the detention charges would be paid on 10.04.2022 and the balance 50% on 30.04.2022.

(iii) For Delivered at Place (DAP) charges, the Applicant had requested a 50% advance towards destination handling services in Nigeria, which was rejected by the Corporate Debtor. It was thereafter agreed that local transport, clearance and

handling of all 63 containers would be carried out through the Corporate Debtor's nominated logistics agency in Nigeria.

- 3.4 As per the terms of the minutes and pursuant to the same, Goodrich FZE raised Invoice dated 21.03.2022 for USD 55,000/-, which was duly paid by the Corporate Debtor on 28.03.2022. Thus, all agreed payments towards detention charges for the 63 containers were duly made to Goodrich FZE and no amount remains due or payable to the Applicant towards Detention Charges for 63 Containers.
- 3.5 The Applicant issued a Demand Notice dated 26.06.2024 under Section 8 of the Code, alleging a default of Rs.59,47,72,404/- towards detention charges for 63 containers and Rs.1,19,39,200/- towards Depreciated Residual Value (DRV) of 44 containers. Subsequently, the Corporate Debtor, vide notice dated 25.07.2024, replied to the said Demand Notice, wherein it denied all claims, contentions, assertions and allegations made by the Applicant and further highlighted the payment of detention charges made to the sister concern of the Applicant Company. Thereafter, on 16.07.2024, the Applicant responded to the Reply to the Demand Notice, wherein the Applicant failed to acknowledge the payment of detention charges made in 2022, despite being made aware of the said Agreement and the transactions made therein.
- 3.6 The Application is not maintainable under Section 10A of the Code, as the alleged defaults towards detention charges of Rs.59,47,72,404/- and Depreciated Residual Value (DRV) of Rs.1,19,39,200/- pertain to the period between March, 2020 and March, 2021. The alleged defaults for all 63 containers fall within the said period, the earliest being 04.09.2020 and the latest being 26.02.2021. As per Section 10A, no CIRP application can be filed for any default arising during

25.03.2020 to 25.03.2021. Hence, the present Application, based on defaults falling within the prohibited period, is barred by law and liable to be dismissed.

- 3.7 The present Application is wholly based on two proforma invoices and, therefore, is not maintainable under law. The proforma invoices were raised for an amount of Rs.59,47,72,404/- towards detention charges for 63 containers and Rs.1,19,39,200/- towards Depreciated Residual Value (DRV) of 44 containers. Both these invoices are not genuine tax invoices but merely indicative documents, incapable of establishing any legally enforceable debt. It is a settled law that an operational debt must be supported by valid tax invoices and not proforma invoices. Since the Applicant has relied only on proforma invoices, no legally enforceable debt is established. Hence, the present Application is not maintainable and is liable to be dismissed.
- 3.8 The Applicant has approached this Tribunal with unclean hands by concealing material facts, including the revised work order dated 01.02.2022 issued in favour of Goodrich FZE (sister concern), invoices raised by Goodrich FZE on 22.05.2021, 15.02.2022 and 21.03.2022 for detention charges of 25 and 38 containers respectively; the corresponding payments made by the Corporate Debtor on 23.06.2021, 05.03.2022 and 28.03.2022 and the minutes of the meeting dated 17.03.2022. The Applicant has further concealed that the contractual rights were subrogated to Goodrich FZE, and therefore, it has no right to raise any claim against the Corporate Debtor. Hence, the present Application, being filed with mala fide intent and on false and concocted facts, is not maintainable and liable to be dismissed.

3.9 There exists no operational debt payable to the Applicant, as the claims of Rs.59,47,72,404/- towards detention charges and Rs.1,19,39,200/- towards Depreciated Residual Value (DRV) of 44 containers are baseless, without any contractual right or obligation. The Corporate Debtor has already made payments under the revised and novated Work Orders in favour of Goodrich FZE and an indemnity letter dated 28.03.2022 was issued only for 38 containers under LOT-I, of which 33 were returned and 5 were attempted to be returned but refused by the Applicant. The Applicant's claim for 44 containers is fabricated and legally untenable, as the alleged amount under indemnity arises from purported damages and not from goods or services. Hence, such a claim does not fall within the ambit of "operational debt" under Section 5(21) of the Code.

4 REJOINDER OF OPERATIONAL CREDITOR

4.1 The Operational Creditor specifically denies that the Logistics Service Orders dated 12.03.2020 contain any reference to a 30 days detention free period or demurrage charges of USD 75/20' and USD 150/40'. The said terms are mentioned only in the Bills of Lading executed between the parties. The Corporate Debtor's attempt to introduce a forged document in the form of a fabricated and concocted work order dated 01.02.2022 is fraudulent and made with mala fide intent to mislead this Tribunal. The Applicant reserves its right to initiate appropriate legal proceedings against the Corporate Debtor for perjury and forgery.

4.2 The allegation that the Operational Creditor approached the Corporate Debtor for an amendment to the work order is baseless, false and devoid of any evidence.

There was no occasion or necessity for the Operational Creditor to approach the Corporate Debtor for any such amendment.

- 4.3 The contention that the contract has been subrogated to Goodrich Logistics FZE is false. Goodrich Logistics FZE is merely the agent of the Operational Creditor, as expressly defined in the Service Agreements dated 12.03.2020. Hence, the payments received by Goodrich Logistics FZE were on behalf of the Applicant and do not amount to novation of contract.
- 4.4 The Operational Creditor admits receipt of USD 55,000/- towards partial payment of detention charges for Lot-1 (38 containers) up to 07.04.2022. However, the said payment was made under a conditional offer, contingent upon the Corporate Debtor returning all 38 containers by 07.04.2022. The said condition was not fulfilled by the Corporate Debtor, thereby causing the conditional offer to lapse. Consequently, the Corporate Debtor remains liable for the full detention charges under the service orders.
- 4.5 It is clarified that no further payments have been made by the Corporate Debtor after the said amount of USD 55,000/-. The outstanding debt includes (i) unpaid detention charges for Lot-1 from 07.04.2022 onwards and (ii) detention charges for Lot-2 (25 containers) from the date of expiry of the 30-day free detention period. Thus, the total claim of Rs.60,67,11,604/- pertains solely to unpaid detention and container charges, after accounting for part payments received through the Applicant's agent.
- 4.6 The contention that the present claim is based on proforma invoices and is thus non-maintainable is wholly untenable. The outstanding dues arise from binding contractual obligations between the parties. The Corporate Debtor has previously

accepted and made payments against proforma invoices, thereby establishing that such invoices were mutually accepted and acted upon. Hence, the Corporate Debtor's objection is an afterthought to evade liability.

- 4.7 The contention that the claim is barred under Section 10A of the Code is incorrect and devoid of merit. The containers in question arrived between 13.07.2020 and 27.01.2021 and detention charges accrued after the expiry of the free period. The unpaid detention charges pertain to defaults that occurred after 16.02.2022 and thereafter, which fall outside the Section 10A moratorium period. The claim is, therefore, legally maintainable. Moreover, detention charges are recurring in nature and each month's non-payment constitutes a fresh default.
- 4.8 The Operational Creditor categorically denies the Corporate Debtor's allegation that 33 containers were returned and only 5 were denied acceptance. In reality, only 22 containers from Lot-1 have been returned, while all 25 containers from Lot-2 remain unreturned and laden at the Port of Discharge, incurring continuous detention charges. The said outstanding amounts squarely fall within the definition of operational debt under Section 5(21) of the Code, as they arise from the provision of logistics services, including transportation and storage.
- 4.9 The Operational Creditor further clarifies that the meeting feedback report dated 17.03.2022 relied upon by the Corporate Debtor was merely a discussion note and not a binding agreement. The alleged statement that "no further payment will be made" was only part of the agenda for negotiation and was never acted upon. The Corporate Debtor's failure to return the containers within the agreed date of 07.04.2022 led to the lapse of the conditional waiver. Subsequent e-mail

communications exchanged thereafter reaffirm the outstanding and undisputed liability of the Corporate Debtor.

- 4.10 In view of the above, the Operational Creditor submits that the Corporate Debtor's reply fails to raise any bona fide dispute or valid defence. The outstanding debt remains due and payable and the Corporate Debtor continues to be in default under Section 3(12) of the Code. The Operational Creditor has also submitted a compilation of judgments in support of its case.

5 SUR-REJOINDER BY CORPORATE DEBTOR

- 5.1 The documents annexed to the Rejoinder by the Applicant themselves establish that the alleged amount claimed in default is in the nature of uncrystallised and unliquidated damages, being merely an estimation of alleged loss and not an admitted or contractual liability. The email dated 21.03.2022 which is annexed at the Rejoinder, on a plain reading, demonstrates that no crystallised sum or agreed amount exists between the parties.
- 5.2 Any alleged claim towards damages cannot be entertained under Section 9 of the Code, as such a claim is neither an operational debt nor a debt arising out of goods supplied or services rendered. The Application being founded on an unascertained, unliquidated claim of damages is, therefore, not maintainable and deserves dismissal with exemplary and compensatory costs.
- 5.3 The Corporate Debtor further submits that the Application is premised upon Bills of Lading. The Corporate Debtor had endorsed the said Bills of Lading in favour of the consignee, the Central Bank of Nigeria and, therefore, in terms of Section 1 of the Bills of Lading Act, 1856, all rights and liabilities arising thereunder vested in the consignee upon such endorsement. Consequently, no liability can be

fastened upon the Corporate Debtor in respect of the said containers or any alleged detention/demurrage charges.

- 5.4 It is also submitted that under clause "Object PO" of the Service Order dated 12.03.2020, the Corporate Debtor's role was limited to performing due diligence and ensuring transportation up to the place of delivery. The Service Order makes it abundantly clear that the Corporate Debtor had no contractual obligation towards port-related charges or penalties at the discharge port in Nigeria. The Applicant's attempt to attribute liability upon the Corporate Debtor in respect of such charges is contrary to the terms of contract and wholly untenable.
- 5.5 The claim towards alleged demurrage and container detention charges is outside the scope of the Service Orders and contrary to the agreed contractual framework. The Applicant is attempting to rewrite the terms of a written contract and to convert an alleged claim for damages requiring detailed evidence and proof into an operational debt. Such disputed and unascertained claims fall outside the limited jurisdiction of this Tribunal under Section 9 proceedings.
- 5.6 It is further submitted that the Applicant has suppressed material facts and misrepresented the contractual arrangements between the parties. The Service Order dated 01.02.2022 was issued by Goodrich FZE on instructions of the Applicant and payments were duly made by the Corporate Debtor to Goodrich FZE. The Applicant itself, by email dated 21.05.2021, had directed that all payments be made to its Dubai entity, Goodrich FZE. Hence, the contractual obligations were novated by the Applicant and all liabilities were discharged by the Corporate Debtor accordingly.

- 5.7 The Applicant's own admission in the Rejoinder confirms that payments were made by the Corporate Debtor to Goodrich FZE. Having acknowledged such payments, the Applicant cannot now seek to rely on the earlier service order or attempt to claim the same dues once again under the guise of a separate operational debt. The Applicant's inconsistent and contradictory averments clearly demonstrate suppression and mala fide intent to mislead this Tribunal.
- 5.8 It is categorically denied that the Service Order dated 01.02.2022 is false or fabricated. The said Service Order, though inadvertently mentioning the Applicant's name in one paragraph, is addressed to Goodrich FZE and thus constitutes a typographical error only. The Applicant's reliance on such minor clerical error to mislead this Tribunal is entirely misconceived and mala fide.
- 5.9 In conclusion, the claim of the Applicant is speculative, uncrystallised and purely in the nature of damages, requiring detailed evidence and contractual interpretation, which cannot be adjudicated in a summary proceeding under Section 9 of the Code. Accordingly, the present Application is liable to be dismissed. The Corporate Debtor has placed on record a compilation of judgments in support of its pleadings and submissions.

6 ANALYSIS AND FINDINGS

- 6.1 We have duly considered the detailed pleadings along with the materials and judicial decisions placed on record by both parties and heard the Ld. Counsel for the Operational Creditor and Ld. Sr. Counsel for the Corporate Debtor at length. In our opinion, the following issues arise for determination in the matter:-

- i. Whether there exists an “operational debt” as defined under Section 5(21) exceeding the threshold limit prescribed under Section 4 of the Code;
- ii. Whether the claim of the Operational Creditor based on Proforma Invoices constitutes a valid and legally enforceable debt;
- iii. Whether the documentary evidence furnished with the Application shows that such debt is crystallised, due and payable and has not yet been paid; and
- iv. Whether there exists a pre-existing dispute between the parties arising before the receipt of the Demand Notice in relation to such dispute?

6.2 It is now proposed to deal with the aforesaid issues on merits. **Issue Nos.(i) and (ii)** being inter-related are first taken up together. In order to ascertain the nature of debt, it would be pertinent to consider the terms and conditions of the Service Orders dated 12.03.2020 placed by the Corporate Debtor on the Operational Creditor for handling logistics services for shipment of hardware fittings from Silvassa factory of the former to Nigeria on DAP (Delivered at Place) terms. As per the Service Order, “Logistics Services” means handling, transportation, storage, customs clearance and all other undertakings necessary for the correct performance of the agreement. The “Scope of Work” comprised booking of vessel place, empty pick up from Port of Loading in India, pick up of material from Silvassa factory, transport, customs clearance, ocean freight up to Port of Discharge in Nigeria, customs clearance at destination, Shipping Line formalities, transportation up to project site location in Nigeria and all other activity that was required at the Origin Port and Destination Port.

- 6.3 As per the agreed payment terms, the Operational Creditor was to be paid its charges at the end of 30 days from the delivery date of cargo and submission of proof of delivery signed by the project site office. Among the other terms of the Service Order, it was agreed that *“the Prices are inclusive of container detention/ demurrages, deposit waiver at destination port in Nigeria”*. Further, it was agreed that *“the Contract can be modified upon negotiation or in accordance with stipulations in the Agreement in which case the modification can be in writing agreed by all parties”*. Thus, on careful perusal of the two Service Orders dated 12.03.2020, it clearly emerges that no separate charge was stipulated therein for container detention/ demurrages at destination port in Nigeria which already formed a part of the prices agreed between the parties.
- 6.4 In Part-V of its Application in Form 5, the Operational Creditor has also relied on various Bills of Lading pertaining to carriage of goods in order to prove the existence of operational debt and the amount in default. It is the aforesaid Bills of Lading (B/L) forming part of the shipping contract which outline the terms and conditions related to various charges such as container detention. For example, a perusal of B/L No.FCLHZRTIN003630 dated 16.09.2020 issued by the Operational Creditor on behalf of the Carrier *inter alia* reveals as under:-

“30 DAYS CONTAINER DETENTION FREE PERIOD FROM THE DATE OF ARRIVAL OF VESSEL AT TINCAN PORT, NIGERIA. CHARGES THEREAFTER USD 75/20GP PER CONTAINER PER DAY AND USD 150/40HC PER CONTAINER PER DAY”.

As per the said B/L, empty containers were to be returned to a specific Operational Creditor nominated yard in Nigeria. Identical terms pertaining to container detention charges are found to have been mentioned in all B/Ls placed on record.

However, it is noticed from the record that there is no provision in the B/Ls with regard to payment of container charges in the event of non-return of the empty containers by the consignee to the carrier. In this regard, the Operational Creditor has annexed copy of Letter of Indemnity dated 28.03.2022 wherein the Corporate Debtor accepted responsibility to pay the container charges at the rate of USD 2800 per 20 ft. and USD 4200 per 40 ft. to the Operational Creditor in case the containers were not returned by the consignee/client at Nigeria.

- 6.5 As stated above, the amount claimed by the Applicant/ Operational Creditor to be in default in the present Application is towards unpaid container detention charges till 30.06.2024 (Rs.59,47,72,404/-) and DRV of unreturned containers till 25.06.2024 i.e., the date of Proforma Invoice (Rs.1,19,39,200/-). In this connection, it is pertinent to note that unlike demurrage charges which are imposed by port authorities or terminal agencies for the use of port and storage facilities, detention charges are levied by shipping lines or container leasing companies for the use of container facilities beyond the designated free period with a view to ensuring timely return of their containers. Detention charges are designed to compensate the shipping line for the loss of business and loss of profits on account of detention of containers. Thus, detention charges in shipping are considered a form of liquidated damages for breach of contract. Similarly, DRV for unreturned containers which was not pre-determined in the Service Orders dated 12.03.2020 represents unliquidated damages for breach of contract which have to be assessed by a court or arbitral tribunal based on the actual loss suffered by the injured party after the breach occurs.

- 6.6 It is a settled principle of law that 'operational debt' within the meaning of Section 5(21) of the Code does not include damages, whether liquidated or unliquidated. A claim for damages does not become an operational debt until the liability is adjudicated upon by a civil court and the damages are assessed and crystallised. Claim for liquidated damages for breach of contractual obligations cannot trigger insolvency process unless adjudicated by a court of competent jurisdiction. The Adjudicating Authority under Section 9 of the Code has no jurisdiction to adjudicate upon contractual disputes. Liquidated damages, even if stipulated, can be crystallised only upon adjudication by a civil court or arbitral tribunal. The issue regarding the liability of the Corporate Debtor to pay detention charges requires extensive evidence which cannot be decided under summary jurisdiction conferred on the Adjudicating Authority under the Code. This Adjudicating Authority is not the proper forum to decide on the question of reasonableness or quantum of liquidated damages. Proceedings under Section 9 of the Code are not meant for ascertaining or crystallising the quantum of damages.
- 6.7 In light of aforesaid settled legal position, we find merit in the Corporate Debtor's contention that the alleged amount claimed to be in default in the present Application is in the nature of damages, whether liquidated or unliquidated, for breach of contract or compensation for alleged loss involving examination of detailed evidence which can neither be determined under the limited summary jurisdiction of this Adjudicating Authority nor entertained under Section 9 of the Code. Therefore, such a claim does not represent a debt arising from goods supplied or services rendered. In other words, the liability towards container detention charges as well as DRV for containers does not constitute a claim or

debt in respect of provision of goods or services and hence, the same can by no stretch of imagination be treated as 'operational debt' within the meaning of Section 5(21) of the Code.

6.8 It is well-settled that the onus lies on the Operational Creditor to place on record credible materials to prove that the claim is in respect of provision of goods or services so as to qualify as 'operational debt' within the meaning of Section 5(21) of the Code and that there has been a default in payment thereof. In view of failure of the Applicant/Operational Creditor to discharge such onus in the present case, its entire claim is found to be an unascertained and uncrystallised claim which cannot be adjudicated by us in exercise of our summary jurisdiction. Hence, the entire amount of container detention charges and DRV of containers/ indemnity claimed by the Applicant/Operational Creditor is held to be not eligible for being categorised as 'operational debt' in terms of Section 5(21) of the Code. **Issue No.(i)** is accordingly decided against the Applicant/ Operational Creditor.

6.9 Coming now to **Issue No.(ii)**, it is evident upon perusal of the record that the Applicant/Operational Creditor has relied primarily upon two Proforma Invoices dated 25.06.2024, various Bills of Lading and Indemnity Letter dated 28.03.2022 to establish its claim of unpaid operational debt. However, no final tax invoices or Ledger/financial accounts have been placed on record to substantiate that the amount claimed represents a crystallised debt due and payable by the Corporate Debtor. It is well-settled that proforma invoices do not create a binding obligation or constitute valid evidence of a crystallised debt under the Code. It is pertinent to note that Regulation 2B of the IBBI (CIRP) Regulations, 2016 mandates furnishing of Forms GSTR-1 and GSTR-3B extracts as proof of debt for GST-

related claims. The Applicant/Operational Creditor's failure to furnish extracts of Form GSTR-1 and Form GSTR-3B thus renders its claim to be legally untenable. Merely contending that the Corporate Debtor had previously accepted and made payments against proforma invoices will not lend legal validity to the Proforma Invoices in question. Likewise, the reliance placed by the Operational Creditor on the judgment of Hon'ble Supreme Court in **Consolidated Construction Consortium Ltd. vs. Hitro Energy Solutions Pvt. Ltd. (2022) 7 SCC 164** will be of no avail, because the Hon'ble Court while pronouncing its judgment on 04.02.2022 had no occasion to deal with Regulation 2B of CIRP Regulations which was inserted w.e.f.14.06.2022. Thus, we have no hesitation in holding that the two Proforma Invoices dated 25.06.2024 aggregating Rs.60,67,11,604/- raised by the Applicant/Operational Creditor on the Corporate Debtor fail to establish a legally enforceable debt. Hence, both **Issue Nos.(i) and (ii)** are decided against the Applicant/Operational Creditor and consequently, the present Application is liable to be dismissed as non-maintainable on these grounds alone.

6.10 Without prejudice to the above, however, it is now proposed to deal with **Issue Nos.(iii) and (iv)** which are also inter-related. Having already held above that the alleged debt claimed to be in default is in the nature of damages or compensation for loss or breach of contract, it follows as a logical corollary that such debt is yet to be ascertained and crystallised upon examination of elaborate evidence to be adduced by both the parties before a civil court or arbitral tribunal. In the absence of crystallisation of debt, it can by no means be said that such debt has become due and payable by the Corporate Debtor or that a default has

occurred in payment of such debt by the Corporate Debtor. Unless the extent of damages is determined and adjudicated by a court of competent jurisdiction, container detention charges and DRV of containers would not become due and payable by the Corporate Debtor.

6.11 That the alleged debt claimed by the Applicant/Operational Creditor in the Application is far from being a crystallised and undisputed debt is borne out from the evidences placed on record by both the parties. For instance, a careful perusal of the Final Invoice dated 21.03.2022 raised by Goodrich Logistics (FZE) on the Corporate Debtor towards detention charges for 38 containers up to 07.04.2022 reveals that while the Total Detention Amount after 30 days free period was calculated at the rate of USD 75 per 20' per day and USD 150 per 40' per day as per the respective B/Ls, the Corporate Debtor was allowed an initial discount of 60% on the Total Detention Amount and an additional 10% discount on the balance detention amount payable after considering the amount already received on this account. Further, the Corporate Debtor has furnished copy of Final Invoice dated 22.05.2021 issued by Goodrich Logistics (FZE) for USD 3,18,638 allowing 50% discount on the total amount of detention charges for 25 containers up to 31.05.2021.

6.12 Similarly, the Applicant/Operational Creditor has in its Additional Affidavit furnished copies of certain emails such as email dated 13.04.2023 intimating updated detention dues as on 31.05.2023 to the Corporate Debtor and email dated 21.10.2023 forwarding "container detention calculation details up to 30.11.2023" incorporating same initial and additional discounts as above for 38 containers Lot and 70% discount on Total Detention Amount for 25 containers

Lot. All this also clearly shows that the rates of USD 75 per 20' per day and USD 150 per 40' per day towards container detention charges specified in the B/Ls were not final or absolute and were always the bone of contention between the parties. As per the clause dealing with "Resolution of Dispute" in the Service Orders dated 12.03.2020, in case of dispute, the matter in question was to be resolved through mutual discussion/negotiation and amicable settlement or reference to an arbitrator. As brought out above, both parties have placed on record copies of invoices as well as emails exchanged between them wherein the dispute raised by the Corporate Debtor with regard to detention charges was mutually settled after allowing discounts as high as 60% to 70%.

6.13 This brings us to consideration of **Issue No.(iv)** dealing with pre-existing dispute arising before the receipt of the Demand Notice dated 26.06.2024. In its Affidavit dated 02.12.2024 annexed to the Application, the Operational Creditor had affirmed that Demand Notice in Form 3 dated 26.06.2024 under Section 8 of the Code was duly issued and served on the Corporate Debtor; that the Corporate Debtor had not paid the outstanding amount in question but had responded to the said Notice with "*false claims*" and that "*no dispute has been raised by the Corporate Debtor for the unpaid operational debt*". However, it is noticed that the contents of the said Affidavit are contrary to the documentary evidence and materials available on record. For example, in its reply to the said Demand Notice vide letter dated 05.07.2024, the Corporate Debtor had denied "*each and every claim, contention and allegation contained in the notice*" dated 26.06.2024 and *inter alia* contended that the said notice "*suppresses material facts and documents*" and that the claims made therein were "*highly disputed*". Thereafter,

even the Applicant/Operational Creditor in its rejoinder to the Corporate Debtor's reply vide letter dated 16.07.2024 had admitted that "*for the past two years, we have been requesting your company (the Corporate Debtor) to settle a **live dispute***".

6.14 Finally, it is observed that the Corporate Debtor had addressed its detailed response to the Operational Creditor vide letter dated 25.07.2024 raising various objections to the said Demand Notice on the grounds that there was no operational debt payable by the Corporate Debtor to the Operational Creditor as the monies claimed were in the nature of a claim for damages; that there was gross suppression of material facts including subsequent documents demonstrating that no monies were payable to the Operational Creditor and that the said Notice was defective and claimed inflated sums of money. In these circumstances, we find the Applicant /Operational Creditor's plea that no notice of dispute had been received from the Corporate Debtor is devoid of merit and is accordingly rejected. Prima facie, the rival contentions made by both parties clearly bring out existence of dispute which needs to be investigated by a civil court or arbitral tribunal and it is beyond the purview of this Adjudicating Authority to enquire into the merits of such dispute. In the result, **Issue Nos.(iii) and (iv)** are also decided against the Operational Creditor.

6.15 It is well-established that the Code is not intended as a mechanism for debt recovery. The present Application seems to have been filed by the Applicant with a view to enforcing recovery amid ongoing contractual disputes which is neither in consonance with the objects and scheme of the Code nor permissible under

the Code. The provisions of the Code cannot be turned into a debt recovery proceeding.

6.16 We also find merit in the Corporate Debtor's contention that the Applicant/Operational Creditor has not approached this Tribunal with clean hands. Although both parties have been carrying on business dealings since 2020, the Operational Creditor has not furnished its financial accounts including Ledger Account of the Corporate Debtor for the relevant periods up to the date of filing the present Application. Besides, no container-wise computation or quantification of the alleged claim has been annexed clearly indicating the period for which and the rate at which the container detention charges and DRV for containers have been calculated.

6.17 Moreover, it is noticed that both the parties have levelled serious allegations of suppression of material facts, fraud, forgery, etc. against each other, as brought out in Paras 3.8 and 4.1 above. In this connection, it is pertinent to note that allegations of fabrication of documents, forgery and fraud require determination by a competent court of law and cannot be the subject matter of a summary proceedings under Section 9 of the Code. It is well-accepted that issues of fraud, forgery, manipulation, fabricated documents, false statements etc. cannot be decided by this Tribunal in exercise of its summary jurisdiction as these require examination of elaborate evidence.

6.18 In light of aforesaid discussions and findings, we are of the considered view that the Applicant having failed to establish the essential pre-requisites of Section 9 viz., existence of a crystallised and undisputed operational debt, occurrence of

default and absence of pre-existing dispute, the present Application is not maintainable at all under Section 9 of the Code and is liable to be dismissed.

ORDER

This Application bearing C.P.(IB) No.1001/MB/2024 filed under Section 9 of the Code by Goodrich Logistic Private Limited, the Applicant, for initiating CIRP in respect of Transrail Lighting Limited, the Corporate Debtor is **dismissed**.

However, the dismissal of this Application shall not cause any prejudice to the right of the Operational Creditor to pursue such other remedies as may be available in accordance with law.

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

Vaishnavi Shah

Sd/-

**ASHISH KALIA
MEMBER (JUDICIAL)**