IN THE NATIONAL COMPANY LAW TRIBUNAL

BENCH – VI, NEW DELHI

Company Petition in CP IB-6/ND/2025

An application 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. SEAWAY PAPER AND PULP LTD.
Through its Authorized Representative/ Director,
Namrata Hiwalkar
203, Senate, Aura Biplex, S. V. Road,
Borivali West, Mumbai – 400092

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/s. DEVPRIYA INDUSTRIES PVT. LTD.
Through its Managing Director
Having its registered office at:
3rd floor, F-14, Vikas Marg, Preet Vihar,
East Delhi, Shahdara, Delhi, India - 110092

... RESPONDENT /CORPORATE DEBTOR

Order Delivered on: 15.07.2026

CORAM:

JUSTICE JYOTSNA SHARMA
HON'BLE MEMBER (JUDICIAL)

MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Adv. Mr. Rohan Rai, Ms. Kaninika, Advs.

For the Respondent : Mr. Kumar Manish, Mr. Pankaj Singh, Advs.

ORDER

1. The instant application is filed by **M/S Seaway Paper And Pulp Ltd.** (hereinafter referred as **'Applicant'/ 'Operational Creditor'**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the CODE/IBC') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process ("CIRP") against **M/S Devpriya Industries Pvt. Ltd.** (hereinafter referred as **'Respondent/Corporate Debtor'**) for failing to make the payment of Operational Debtor amount of **INR 3,49,40,891.87/-** (Rupees Three Crore Forty-Nine Lac Forty Thousand Eight Hundred Ninety-One and Eighty-Seven Paisa only) . The ***date of default*** is stated to be on 21.04.2024.

2. The Respondent Company **M/S Devpriya Industries Pvt. Ltd.**, having its registered office situated at Property 3rd floor, F-14, Vikas Marg, Preet Vihar, last Delhi, Shahdara, Delhi, India - 110092. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent/Corporate Debtor.

3. **Averments of the Applicant:**

   i. The Corporate Debtor and the Operational Creditor entered into a contract dated 17.11.2023 for the purchase and sale of recovered paper (OCC 90:10). Under the said contract, the parties agreed that payment for the goods would be made on a Documents Against Payment (D/P) basis, subject to the terms and conditions stipulated therein. The copy of contract dated 17.11.2023 is annexed as **Annexure-4.**

   ii. That the Operational Creditor duly communicated the shipment details, including Bill of Lading No. MEDUUP621797 pertaining to 248.35 MT of recovered paper, and forwarded the requisite documents to the Corporate Debtor's bank via DHL on 09.12.2023.

iii. That the **Clause 18** of the contract obligated the Corporate Debtor to purchase the shipping documents within seven working days of their receipt by the buyer's bank, failing which the Operational Creditor was entitled to recover any losses and expenses arising therefrom. The Corporate Debtor failed to comply with the said contractual obligation.

iv. That the Operational Creditor, through coordination with the shipping line, facilitated the transportation of the consignment to ICD Palwal and incurred additional expenses towards IGM amendment. The consignment arrived at ICD Palwal on 07.04.2024; however, neither party was aware of its arrival, and by the time the same came to notice, the free clearance period had expired, resulting in demurrage and detention charges.

v. That the Operational Creditor, vide email dated 29.04.2024, had requested the Corporate Debtor to issue a No Objection Certificate (NOC) to facilitate the sale of the stranded goods to an alternative buyer. However, according to the Operational Creditor, the Corporate Debtor failed to cooperate with the said request, thereby hindering mitigation of losses and aggravating the situation.

vi. That the Corporate Debtor has not purchased the documents nor have collected the goods. As a result, the cargo remains stranded at the ICD Palwal port, due to which the Operational Creditor is incurring detention charges and additional costs.

vii. That, the Operational Creditor issued a Demand Notice dated 16.08.2024 under Section 8 of the Insolvency and Bankruptcy Code, 2016, calling upon the Corporate Debtor to make payment of an amount of INR 2,96,86,690/- (Rupees Two Crore Ninety-Six Lakh Eighty-Six Thousand Six Hundred Ninety Only), which was stated to be outstanding as on 15.07.2024. In response thereto, the Corporate Debtor, vide reply dated 03.09.2024, denied the claims raised by the Operational Creditor and disputed its liability. The Corporate Debtor further alleged that the

Operational Creditor had failed to deliver the consignment. However, it is the case of the Operational Creditor that the said allegation is contrary to the factual position, as the consignment had reached the destination and the Corporate Debtor had repeatedly failed and neglected to take delivery thereof, resulting in the goods remaining stranded at the port.

viii. That pursuant to **Clause 15** of the Contract dated 17.11.2023, the parties agreed that: "*Price includes 12 days free time at final destination not Beyond 12 days, demurrage & detention cost is on account of the buyer*". Consequently, the Corporate Debtor is liable for the demurrage and detention charges, which stood at INR 3,13,89,131/- as on 04.10.2024. The Corporate Debtor is also liable for the value of the goods amounting to USD 42,219, equivalent to INR 35,51,760.87/- these amounts are still due on behalf of Corporate Debtor towards Operational Creditor. Therefore, the present application is being filed by the Operational Creditor for initiation of the Corporate Insolvency Resolution Process.

4. Submission of the Corporate Debtor:

i. That the Corporate Debtor is not liable to pay the alleged outstanding amount claimed by the Operational Creditor. It was contended that the Operational Creditor failed to supply the goods and perform its contractual obligations in terms of the agreement between the parties. According to the Corporate Debtor, such failure on the part of the Operational Creditor resulted in substantial operational and financial losses to the Corporate Debtor. Consequently, the liability claimed by the Operational Creditor was specifically denied.

ii. That the delay in delivery of the consignment was attributable to the Operational Creditor, who allegedly failed to resolve issues with the shipping line and clear the detention charges, ground rent and customs penalties. The Corporate Debtor denied that it had failed to collect the documents or take delivery of the goods and contended that the cargo remained stranded due to the acts and omissions of the Operational Creditor.

iii. As per the contractual terms, the shipment was required to arrive on or before 31.12.2023. The consignment did not arrive within the agreed timeline. The Corporate Debtor contended that it was informed about the arrival of the cargo only on 19.04.2024, by which time the free period had already expired and non-routine charges had escalated to more than Rs. 36.9 lakhs.

iv. That it did not take delivery of the documents or cargo as the non-routine charges had exceeded the value of the shipment. It was contended that despite repeated requests, the Operational Creditor failed to clear such charges, thereby preventing the Corporate Debtor from obtaining the documents and taking delivery of the cargo.

v. That the Corporate Debtor denied that it had failed to cooperate in mitigating losses and contended that no NOC was required for the return or resale of the goods. It was further submitted that the Operational Creditor neither shared any draft NOC nor sought any specific approval from the Corporate Debtor. According to the Corporate Debtor, it had extended all necessary cooperation, except financial assistance, and the transaction stood mutually concluded between the parties. Therefore, the allegation regarding non-issuance of an NOC is denied.

vi. That the Corporate Debtor admitted receipt of the Demand Notice dated 16.08.2024 and submitted that the claim of INR 2,96,86,690/- towards detention charges and ground rent was specifically disputed and denied vide reply dated 03.09.2024.

vii. That the amounts claimed towards detention charges, ground rent, and customs penalties cannot be treated as transportation charges or operational debt. It was contended that such charges arose due to the alleged failures and omissions of the Operational Creditor, including delay in delivery of the shipment and failure to clear the non-routine charges. The Corporate Debtor further submitted that it had never accepted liability for the said charges and, therefore, the same cannot be recovered as an operational debt.

viii. That although the Operational Creditor had agreed to pay the non-routine charges, including detention charges, ground rent, and customs penalties, as quantified on 23.04.2024, it failed to discharge the same. The Corporate Debtor further contended that despite repeatedly calling upon the Operational Creditor to clear such charges, no payment was made, which ultimately resulted in the frustration of the contract.

ix. That it is a settled position of law that the existence of a genuine dispute with respect to the debt or its nature prior to the initiation of insolvency proceedings renders an application under the Insolvency and Bankruptcy code, 2016 (IBC) non-maintainable.

x. That the principal amount of goods to be delivered was USD 42219 USD (roughly INR 35.51 Lakhs), where neither goods were delivered nor the principal amount was demanded. Had the good been delivered and principal amount demanded, then also it won't have fulfilled the requirement of threshold amount.

<u>Analysis and Findings</u>

5. We have heard Ld. Counsel for both parties and perused the records.

6. We note that the parties entered into a Contract dated 17.11.2023, whereby as per **clause 13** of the contract the Operational Creditor was required to deliver the consignment to ICD Palwal on or before 31.12.2023. Due to delay in arrival of the goods, non-routine charges including interest, detention and demurrage charges were levied by the port authorities.

7. The CD in its reply has raised objections on account of (i) pre-existing dispute prior to the issue of demand notice, (ii) issue of threshold as per section 4 of the Code.

8. Regarding the objection on account of pre-existing disputes, the Corporate Debtor relies on various email between the two parties to show that prior to the issue of the demand notice, dispute has arisen between the parties regarding delayed delivery, payment of non-routine charges, and refusal of the Corporate Debtor to lift the goods due to non-payment of the port charges by the Operational Creditor.

9. We have perused the Contract dated 17.11.2023 entered between the parties, the relevant extracts whereof are reproduced below:

NewYork 06/10 172.764 MSC-m- Palwal

Annexure - A - 4

CONTRACT

Date: November 17, 2023
Contract No: 098/IND/23-24

BUYER : **DEV PRIYA INDUSTRIES PVT. LTD.**
IEC Code : 0 5 9 1 0 2 3 8 8 1
PAN : AACD4171A GST : 09AAACD4171A1Z5
8th KM, Village Saini, Mawana Road
Meerut – 250 002, UP, India
☎ + 91 99270 36084 +91 98370 22130
: imports@devpriya.in

SELLER: **SEAWAY PAPER AND PULP LTD.**
3550 Victoria Park Ave, Suite 456
Toronto, ON, M2H 2N5, Canada
☎ + 1 (416) 756-7889 +1 (437) 880-8284
: docs@seawaypaper.com

This contract is made by and between the buyer and the seller, whereby the buyer agree to buy and the seller agree to sell the under mentioned commodities on the terms and conditions as stipulated below :-

1.	Name of commodity	: Waste Paper – **OCC 90:10**
2.	Quantity	: 550 MT (Tolerance: ±10%)
3.	Price term	: USD 170/MT CIF Mundra
4.	Total value	: USD 93,500 (USD Ninety-Three Thousand Five Hundred Only)
5.	Country of origin	: U.S.A.
6.	Packing	: In standard export packing with 40' standard/HC containers.
7.	Term of payment	: 100% D/P at sight
8.	Port of loading	: Any port in U.S.A.
9.	Port of destination	: Mundra, India
10.	Final destination	: ICD Palwal, India *(IHC is on the account of the buyer)*
11.	Transshipment	: Allowed
12.	Partial shipment	: Allowed, shipments prior to contract date is allowed
13.	Shipment time	: On/Before 31.12.2023
14.	Shipping line	: MSC Line
15.	Free time	: Price includes 12 days free time at final destination port. Beyond 12 days, demurrage & detention cost is on account of buyer.
16.	Weight tolerance	: ±2% of total quantity is allowed.
17.	Loading	: ±24MT around on average.

18. Buyer should buy the documents within 07 working days after the documents reach buyer's bank and clear cargo within stipulated time without any conditions. If the Buyer failed to do so. Seller is entitled to claim against the Buyer for any lose and expenses occurred relating to this contract.

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10. It is evident from **Clause 13** of the Contract, reproduced hereinabove, that the consignment was required to reach the agreed destination on or before 31.12.2023. It is an undisputed fact that the consignment reached ICD Palwal only on 07.04.2024, well beyond the stipulated contractual timeline. Significantly, even before the goods landed on the port ICD Palwal, the Operational Creditor itself acknowledged the issue and, vide email dated 02.02.2024, agreed to bear the detention and demurrage charges. The relevant extract of the email dated 02.02.2024 which is sent by the Operational Creditor in reply to the query raised by the Corporate Debtor is annexed as **Annexure-3** and is reproduced below:

From: Arindam Bhawani [mailto:ab@ogogroup.com]

Sent: 02 February 2024 18:58

To: 'Amit Gupta'

Cc: 'Suyash'; michael@buffalopulpandpaper.com; 'Janvi Kanojia'; 'docs docs'; lena.huang@seawaypaper.com

Subject: RE: SHIPPING ADVICE AND DOC COPY FOR DEV PRIYA INDUSTRIES PVT. LTD. I 098/IND/23-24 | BL# MEDUUP621797 I INV-10813 I REQUEST IGM AMENDMENT

custom penalty, ground rent, detention and all extra charges if any will born by shipper and Dev Priya Industries not be liable for any extra charges.

Confirmed – Arindam Bhawani

11. Subsequently, when the goods finally reached the port ICD Palwal, vide email dated 19.04.2024 the Operational Creditor requested the Corporate Debtor to immediately arrange for clearance of the consignment through its CHA and specifically called upon the Corporate Debtor to intimate any additional charges, if any, payable towards such clearance. The relevant extract of the email dated 19.04.2024 is reproduced below:

On Fri, 19 Apr, 2024, 2:32 pm Arindam Bhawani, <arindam@forest-eagle.com > wrote:

Dear Suyash Ji,

10/18/2024

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I learnt today that subject consignment has reached ICD Palwal on 07.04.2024 after a long wait at Mundra. I think free days finished yesterday 18.04.2024.

Please depute your CHA urgently on the job and clear the consignment. Please let us know additional charges, if any.

Regards,

Arindam Bhawani

12. Pursuant to the request made by the Operational Creditor vide email dated 19.04.2024 seeking details of the additional charges, the Corporate Debtor, vide email dated 23.04.2024, intimated the non-routine charges for clearance of the consignment. Relevant extract of the email dated 23.04.2024 is reproduced below:

From: Suyash [mailto:info@devpriya.in]
Sent: 23 April 2024 10:43
To: 'arindam@forest-eagle.com '; 'Off Amit Import'
Cc: 'Michael Majka'; 'Janvi Kanojia'; 'Namrata Hiwalkar'; 'w wu'; 'Amit Gupta'
Subject: RE: SHIPPING ADVICE AND DOC COPY FOR DEV PRIYA INDUSTRIES PVT. LTD. I 098/IND/23-24 | BL# MEDUUP621797 I INV-10813 I ETA PALWAL 07.04.2024

Dear Arindam Ji,

We have checked with CHA the non- routine charges are as under:

Custom Penalty	-	Rs.1,60,000.00 till today
Ground rent	-	Rs.1,00,000.00 Approx
Detention	-	Rs.34,30,000.00 Approx

Thanks & Regards
Suyash Mittal
Dev Priya Industries Pvt. Ltd.

From: Arindam Bhawani [mailto:arindam@forest-eagle.com]
Sent: 21 April 2024 17:26
To: 'Suyash'; 'Off Amit Import'

10/18/2024

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13. Vide email dated 25.04.2024, the Corporate Debtor informed the Operational Creditor that the free period of 14 days had expired on 20.04.2024 and requested the Operational Creditor to take up the matter with MSC for resolution of the issue pertaining to the non-routine charges, including detention and ground rent, as the consignment had already incurred such charges. Relevant extract of the email dated 25.04.2024 is reproduced below:

From: Suyash <info@devpriya.in >
Sent: Thursday, April 25, 2024 9:59 AM
To: 'Michael Majka' <michael@buffalopulpandpaper.com >
Cc: arindam@forest-eagle.com <arindam@forest-eagle.com >; 'Off Amit Import' <imports@devpriya.in >; 'Janvi Kanojia' <janvi.kanojia@ogoglobe.ca >; Namrata Hiwalkar <namrata@bvpwood.com >; 'wwu' <wwu@ogoglobe.ca >; 'Amit Gupta' <amit@devpriya.in >
Subject: RE: SHIPPING ADVICE AND DOC COPY FOR DEV PRIYA INDUSTRIES PVT. LTD. I 098/IND/23-24 | BL# MEDUUP621797 I INV-10813 I ETA PALWAL 07.04.2024

Dear Sir,

Yes 14 days free time is updated.

10/18/2024

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now please take-up with MSC clear the issue all non-routine charges like detention, ground rent etc., as 14 days' free time was expired on dated 20.04.2024 and shipment is under detention and ground rent.

Thanks & Regards
Suyash Mittal
Dev Priya Industries Pvt. Ltd.

14. From a perusal of the email dated 25.04.2024 placed on record, it is evident that the Operational Creditor acknowledged its liability towards the non-routine charges, including detention and ground rent that had accrued on account of the delayed arrival of the consignment and requested the Corporate Debtor to furnish the corresponding invoices for the same. The relevant extract of the email and reply of the Corporate Debtor dated 25.04.2024 is reproduced below:

On Thu, 25 Apr, 2024, 10:08 am Namrata Hiwalkar, <namrata@bvpwood.com > wrote:

Dear Suyash,

Noted we agreed to pay the additional charges; Kindly share the invoices.

we request you to take the cargo out on immediate basis.

Your immediate actions will be appreciated.

Thanks for your support!

Regards,

Namrata Hiwalkar

From: Suyash <info@devpriya.in >
Sent: Thursday, April 25, 2024 9:59 AM
To: 'Michael Majka' <michael@buffalopulpandpaper.com >
Cc: arindam@forest-eagle.com <arindam@forest-eagle.com >; 'Off Amit Import' <imports@devpriya.in >; 'Janvi Kanojia' <janvi.kanojia@ogoglobe.ca >; Namrata Hiwalkar <namrata@bvpwood.com >; 'wwu' <wwu@ogoglobe.ca >; 'Amit Gupta' <amit@devpriya.in >
Subject: RE: SHIPPING ADVICE AND DOC COPY FOR DEV PRIYA INDUSTRIES PVT. LTD. I 098/IND/23-24 | BL# MEDUUP621797 I INV-10813 I ETA PALWAL 07.04.2024

From: Amit Gupta <amit@devpriya.in >
Sent: 25 April 2024 11:08
To: Namrata Hiwalkar <namrata@bvpwood.com >
Cc: Suyash <info@devpriya.in >; Michael Majka <michael@buffalopulpandpaper.com >; ARINDAM BHAWANI <arindam@forest-eagle.com >; Off Amit Import <imports@devpriya.in >; Janvi Kanojia <janvi.kanojia@ogoglobe.ca >; wwu <wwu@ogoglobe.ca >
Subject: Re: SHIPPING ADVICE AND DOC COPY FOR DEV PRIYA INDUSTRIES PVT. LTD. I 098/IND/23-24 | BL# MEDUUP621797 I INV-10813 I ETA PALWAL 07.04.2024

We have already told u 100 times what to do so pls donot pressure uselessly to us for your faults etc

15. Perusal of the correspondence between the two parties clearly reveals a dispute due to delayed arrival of the goods.

16. In this context, recently, Hon'ble Supreme Court in the case of ***GLS Films Industries Private Limited vs Chemical Suppliers India Private Limited***, ***Civil Appeal No. 4019 of 2025*** decided on 09.04.2026 has considered the issue of pre-existing dispute in Section 9 IBC Petition in the light of law laid down in ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (2018) 1 SCC 353***, *and* has observed as under:

> *"21. Given the obtaining facts and the aforestated settled legal position, it was not for the NCLAT to delve into the appellant's dispute to decide whether it had actual merit. All that is required is for the adjudicating authority to satisfy itself as to the existence of a plausible pre-existing dispute, which was not spurious, hypothetical or illusory. Whether the party raising that dispute would succeed on the strength thereof is not within the ken of such inquiry. That being so, we are of the opinion that the NCLT was correct in concluding that the application filed by the respondent under Section 9 of the Code did not merit consideration, owing to pre-existing disputes. The NCLAT was not justified in reversing the said decision. There was clearly no consensus between the parties as to who was liable to pay to the other and the amount that was payable."*

17. In the present case it is evident from the material placed on record that the subject consignment reached ICD Palwal on 07.04.2024, well beyond the stipulated delivery period under **Clause 13** of the Contract, which required the consignment to be delivered on or before 31.12.2023.

18. Consequently, the delay in arrival resulted in the accrual of detention, demurrage, ground rent and other incidental charges. The email exchanges placed on record reveal that the Corporate Debtor repeatedly intimated the Operational Creditor of the additional charges and sought necessary action for clearance of the consignment. Significantly, the Operational Creditor, both prior to the arrival of the consignment, vide email dated 02.02.2024, and subsequently after its arrival, vide email dated 25.04.2024, expressly agreed to bear the additional charges and requested the Corporate Debtor to furnish the invoices.

19. However, despite such acknowledgment, the record does not indicate that the Operational Creditor discharged the said liability. Consequently, dispute arose between the parties regarding the clearance of the consignment and the payment of the detention, demurrage, ground rent and other incidental charges. These contemporaneous email exchanges, much prior to the issuance of the demand notice under Section 8 of the Code, clearly demonstrate the existence of a genuine and pre-existing dispute between the parties.

20. Regarding the second issue raised by the Corporate Debtor that the petition falls below threshold as prescribed under section 4 of the Code, it is the Corporate Debtor's contention that the total value of the subject consignment was USD 42,219 (approximately ₹35.51 lakhs) The consignment remained uncleared due to the dispute regarding the payment of detention, demurrage and other incidental charges to the port authorities. Therefore, the value of the transaction falls below the threshold limit. It is observed from the records that the Operational Creditor had accepted responsibility for paying the non-routine charges, including detention and ground rent and accordingly the Corporate Debtor's liability was limited to the payment for the goods supplied (if the Corporate Debtor had taken delivery). We are therefore, inclined to agree with the contention of the Corporate Debtor that the petition falls well below the threshold prescribed under the Code.

21. Therefore, in view of our observation that there were pre-existing dispute between the two parties on account of delayed arrival of goods as also the threshold as prescribed under section 4 of the Code, is not met, this petition is not maintainable and therefore, the instant petition bearing **CP (IB) No. 6/ND/2025** is dismissed.

S/d-	**Sd/-**
(ANU JAGMOHAN SINGH)	**(JYOTSNA SHARMA)**
MEMBER (T)	**MEMBER (J)**