

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No.78/NCLT/AHM/2020

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.11.2020**

Name of the Company: Manpower Group Services India Pvt Ltd
V/s
Euphoria Technologies Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code,
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				


ORDER

(Through Video Conferencing)

Advocate, Mr. Tarak Damani appeared on behalf of the petitioner.

The order is pronounced in the open court, vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**


**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 23rd day of November, 2020.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

C.P. No. (IB) 78/9/NCLT/AHM/2020

In the matter of:

ManpowerGroup Services India Private Limited

Unit No. 4-A/1,4-A/2

Non Hierarchical Commercial Center

Plot No. 6, Jasola

NEW DELHI 110 025

:

Petitioner

Operational Creditor

Versus

M/s. Euphoria Technologies Private Limited

403, 4th Floor,

Nishal Arcade Shopping,

Nr. Vaishali Row House

Green City Road

Pal Surat

SURAT 395 009

Gujarat State

:

Respondent

[Corporate Debtor]

Order delivered on 23rd November, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

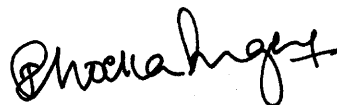
Petitioner : Mr. Tarak Damani, Advocate


Respondent : Mr. Kunjal Dalal, PCS

ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

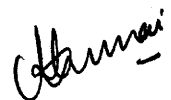
1. Mr. Sudeep Pramanik, Director – Human Resource, being the authorised signatory, on behalf of **M/s. ManpowerGroup Services India Private Limited**, filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating





Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

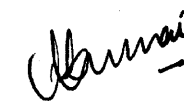
2. The applicant/operational creditor is a private limited company having its registered office at New Delhi engaged in contractual staffing and permanent recruitment services and having identification No. U74910DL1997PTC085591.
3. The respondent/corporate debtor is a private limited company registered on 31.12.2010 under the provisions Companies Act and having identification No. U72900GJ2010PTC063439 and having registered office at Surat, Gujarat State. Authorised share capital of the respondent company is Rs. 50,00,000/- and paid up share capital is Rs. 50,00,000/-.
4. The applicant/operational creditor has stated that, two agreements were entered into between the parties i.e. **ManpowerGroup Services India Private Limited** (operational creditor) and **Euphoria Technologies Private Limited** (corporate debtor) as contract staffing services agreement dated 29.09.2017 and permanent employee supply service agreement dated 01.03.2017. Pursuant to the said agreements, corporate debtor had contracted to pay the operational creditor for the contractual staffing and permanent recruitment services provided by the operational creditor to the corporate debtor within forty-five days and within thirty days respectively as agreed under the said agreements (15-36). Accordingly, after successful delivery of the services multiple invoices for a total amount of Rs. 2,38,53,674/- (Rupees two crores thirty-eight lacs fifty-three thousand six hundred seventy-four only) had been raised by the operational creditor and the same was accepted by the corporate debtor without any objection and corporate debtor had also admitted its liability on these



invoices. However, the corporate debtor has remitted a part payment of Rs. 1,18,92,305 (Rupees one crore eighteen lacs ninety-two thousand three hundred and five only) and remaining unpaid debt of **Rs. 1,49,45,837/- (Rupees one crore forty-nine lacs forty-five thousand eight hundred thirty-seven only)** which includes principal amount of Rs. 1,19,59,123/- along with interest at the rate of 12% per annum amounting to Rs. 26,70,821/- is due and pending as on 07.10.2019.

5. The applicant has further stated that the corporate debtor executed a duly notarised undertaking on 12.09.2018 in favour of the applicant whereby the corporate debtor unconditionally acknowledged in writing its liability to pay the operational debt of Rs. 1,13,02,538/- along with interest and statutory dues and promised to clear the operational debt in two instalments before 15th January, 2019, however, corporate debtor failed to honour its commitments.
6. The applicant/operational creditor has further stated that, the last invoice became due and payable by the corporate debtor within 30 days from 31.10.2017. In spite of repeated requests and reminders the corporate debtor failed and neglected to make payments of outstanding dues to the tune of Rs. 1,49,45,837/-.
7. It is further stated by the applicant that, having failed to receive the debt, the applicant was compelled to issue demand notice in form 3 dated 07.10.2019 in terms of Section 8 of the I & B Code which was returned undelivered. Therefore, operational creditor issued demand notice dated 05.11.2019 at the residential address of the Directors, which were served upon the Directors on 11.11.2019 and the said demand notice was also sent by e-mail address of the Directors, therefore this petition.

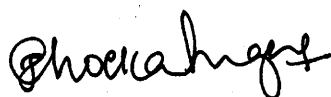



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8. The applicant in support of its claim has furnished copy of documents like affidavit in support of the application, Board Resolution dated 15.11.2019 authorising Director of the company to sign, execute and file application u/s 9 of the I & B Code, demand notice in form 3 dated 07.10.2019 and 05.11.2019, affidavit of no dispute, e-mail dated 04.11.2019, computation of the pending invoices, bank statement etc.
9. The respondent/corporate debtor filed affidavit in reply inter alia raising various objections like; no documentary evidence is produced by the applicant to establish the amount of debt or amount claimed to be in default, denying amounts payable under invoices claimed to be unpaid, non-submission of ledger account of corporate debtor in books of accounts of operational creditor and non-submission of bank statement.

Findings:

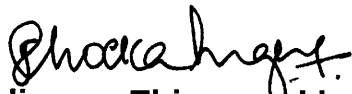
10. Heard advocates appearing for both the sides and perused the documents annexed to the application/reply.
11. On perusal of the records it is found that the demand notice which is a pre-requisite under section 8 of the Insolvency & Bankruptcy Code, 2016 for filing the petition under section 9, issued by the applicant on 07.10.2019 (page 57-74) is signed and issued by an unidentified person on behalf of the applicant company without mentioning designation or full name of the person who has signed it. On perusal of the records it is found that vide Board Resolution dated 15.11.2019 one Mr. Sudeep Pramanik, Director - Human Resource has been given authority to initiate CIRP proceedings against the corporate debtor. On perusal of




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the records it is also found that the authority letter/Board Resolution empowering Mr. Sudeep Pramanik (page 13) to initiate action under section 9 of the I & B Code, is dated 15.11.2019. While comparing with the signature appearing in the demand notice and the petition (form 5) it is found that the signatory in both the documents are different. Even assuming that the said demand notice dated 07.10.2019 was signed and issued by Mr. Sudeep Pramanik, it is evident from the records that at the time of issuing the demand notice dated 07.10.2019, Mr. Sudeep Pramanik, Director of the company had no authority to issue demand notice and the person who has signed the demand notice is somebody else who had no authority to issue such notice.

12. Under the facts and circumstances the petition is bad in the eye of law and not maintainable on the very reason that the demand notice is/was issued by an unidentified person who had no authority to issue demand notice and initiate CIRP proceedings against the corporate debtor.
13. In the result, company petition No. CP (IB) 78 of 2020 stands dismissed and disposed of without cost. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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