



**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH – V, NEW DELHI
C.P (IB)/399(ND)2023**

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:

Mr. NAZIM SHAIKH

Room No.426, Bandra East,
Bharat Nagar, BKC
Mumbai-400051.

... APPLICANT/OPERATIONAL
CREDITOR

VERSUS

M/s KARVY DIGIKONNECT LIMITED

Having its registered office at: Flat Nos.502
& 503, 05th Floor Arunachal Building,
19, Barakhamba Road, New Delhi-110001

... CORPORATE DEBTOR

Order Delivered on: 22.04.2025

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN HON'BLE MEMBER (TECHNICAL)



APPEARANCES:

For the Applicant : Mr. Dilip Taur, Adv.

For the Respondent :

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The instant Petition is filed by Nazim Shaikh, along with Mr. Sunil Devdas, Mr. Nimitt Bhatt, Mrs. Taslim Shaikh, Mr. Prabhjot Bubber, Mr. Sabir Badshah (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 Karvy Digikonnnect Limited (hereinafter referred as 'Respondent/Corporate Debtor') for failing to make the payment of Operational Debtor amounting Rs. 1,71,09,652/- (Rupees One Crore Seventy-one Lacs Ninety Thousand Six Hundred and Fifty two Only).
2. The Respondent Company "M/s Karvy Digikonnnect Limited" was incorporated under the provisions of the Companies Act, 1956 having its registered office situated Flat Nos. 502 & 503, 5th Floor, Arunachal Building, 19, Barakhamba Road, New Delhi-110001. 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.

Averments of the Applicants:

3. Briefly stated the facts of the present case as averred by the applicant are that the Applicant is the authorized representative of Mr. Sunil Devdas, Mr. Nimitt Bhatt, Mrs. Taslim Shaikh, Mr. Prabhjot Bubber, Mr. Sabir Badshah, who were the former employees of the Corporate Debtor. Applicant further submitted the Corporate Debtor is in the business of providing telephone voice and data communications services and for the smooth running of its business the Corporate Debtor appointed the Operational Creditors.
4. Applicant submitted that the appointment letters dated 25.04.2017 and 01.05.2017, were also issued by the Corporate Debtor to the Operational Creditors. The Operational Creditors were working for and under overall supervision of the Corporate Debtor from time to time and have performed all their duties as per the satisfactions to their superiors and as per responsibilities assigned to them time to time.
5. Applicant submitted that the Operational Creditors kept on working with the Corporate Debtor and used to get the salaries and conveyance reimbursement and other benefits regularly but subsequent to March 2020 the Corporate Debora did not disburse the salaries and other benefit to the employees and hence from April 2021 the Corporate debtor stopped payment of the salary and all other benefits to the operational creditor. The Operational Creditors again and again requested the Corporate Debtor to clear all their dues and despite numerous promises



of the Corporate Debtor, it failed to clear all dues of the Operational Creditors/employees.

6. Applicant submitted that from the month of March 2021 no salary slip were generated/issued to the Operational Creditors/employees by the Corporate Debtor and hence the Operational Creditors have right to demand the salary and other statutory benefits under the terms of the offer/Appointment letter & increment letter as a practice what has been given to operational creditors. Applicant submitted that the operational creditors issued email between date 18.04.2020 to 06.12.2022 demanding the arrears/dues. There has neither been any response from the Corporate Debtor nor any payment to Operational Creditors.
7. Applicant further submitted that being aggrieved by the aforesaid act of the Corporate Debtor, the Operational Creditors through its legal counsel issued Form 3 "Demand Notice", dated 15.03.2023 via Indian Postal on 16.03.2023 which has been received by the Corporate Debtor on 17.03.2023 under the provisions of the Insolvency and Bankruptcy Code 2016 for the outstanding amount. However, neither been any response from the Corporate Debtor nor any payment to Operational Creditors received. Hence the present Application under section 9 of IBC is filed.
8. On other hand, despite of several Notices served and opportunities given to the Respondent, the Respondent chose not to appear before this Adjudicating Authority. Therefore, vide order dated 21.10.2024 this Adjudicating Authority decided to proceed ex-parte against the Respondent /Corporate Debtor.

Analysis and Findings

9. We have heard Ld. Counsel for the applicant and perused the averments made in the Petition. The relevant documents annexed with the



submissions have also been examined. It is noted that the Corporate Debtor appointed as its Employees through the appointment letters dated 25.04.2017 and 01.05.2017. As per the appointment letters dated 25.04.2017 and 01.05.2017 between the parties, the Operational Creditors has provided their services to the Corporate Debtor from their date of Appointment till their date of resignation (i.e., 03.04.2021, 24.04.2021 and 02.07.2021). The default amount stated by the Applicant/Operational Creditor is 1,71,09,652/- for which a demand notice under section 8 of the Code was send by the Applicant/Operational Creditor to the Respondent/Corporate Debtor on 15.03.2023. The proof of service is also placed on record.

- 10.** Upon perusal of part IV of the present Petition, we observed that the instant Petition under Section 9 of the IBC, 2016, filed by joint employees of the Corporate Debtor for a cumulative default of ₹1,71,09,652/-.
- 11.** As mentioned in Part IV, para(2), total amount of default is Rs. 1,71,09,652/-(Rupees One Crore Seventy-one Lacs Ninety Thousand Six Hundred and Fifty two Only). Further as per Part IV para(1)(N), the break-up of the due amount in respect of each Applicatns is given in calculated sheet, annexed as Annexure F- 8 of the present petition. As per these annexure F, the Outstanding Dues of individual Operational Creditors are as follows:-

S. No.	Operational Creditor/Employee of the Corporate Debtor	Total pending amount salary
1.	Nazim Shaikh	Rs. 17,00,000/-
2.	Sunil Devdas	Rs. 74,90,881/-



3.	Nimitt A. Bhatt	Rs. 37,06,782/-
4.	Sabir Badshah	Rs. 17,71,345/-
5.	Taslim Shaikh	Rs. 17,40,644/-
6.	Prabhot Bubber	Rs. 8,00,000/-
7.	Aggregate pending salary amount.	Rs. 1,71,09,652/-

12. Upon persual of the above-mentioned fact there are two issues that needs to be adjudicated by us, i.e.,

- (i) Whether a joint application under Section 9 of the I & B Code, is permitted to be filed by the several workmen/employees claiming to be the Operational Creditors, when each of them is having claim against the same Corporate Debtor?
- (ii) In cases, where joint application under Section 9 of the Code, is permitted to be filed by the several workmen/employees claiming to be the Operational Creditors, whether the pecuniary threshold of Rs. 1 crore is mandatorily required to be met by each of them individually or jointly?

13. As to the Issue No. 1, the present case is the one, where a joint application is filed by the six (6) ex-employees of the Corporate Debtor. It is to be noted that the term ‘Operational Debt’ is defined under Section 5(21) of the Code as: ‘Operational Debt’ means a claim in respect of the provision of goods or services **including employment** or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, or any State Government, or any other local authority.’ Further, under the Code, the



manner of initiating the CIRP under Section 9 is provided under Form 5. The note to Form 5 is reproduced hereinafter as: *“Note: Where workman/ employees are operational creditors, the application may be made either in an individual capacity or in a joint capacity by one of them who is duly authorized for the purpose.”*

14. Bare perusal of the above applicable provisions of the Code, we are of the view that as mentioned in issue no. 1, a joint application by ex-employees under Section 9 of the Code is permitted to be filed, however, the said provision is not to be read in isolation and the other essential conditions, as required by the Code, shall also be mandatorily required to be fulfilled in support of the claim.

15. As to the Issue No. 2, the Hon’ble National Company Law Appellate Tribunal (NCLAT) in the case of **Mr. Suresh Narayan Singh V. Tayo Rolls Limited [Company Appeal (AT) Ins. No.112 of 2018]**, held that:

“If the application is maintainable by one of the workmen, in that capacity, it should have been treated to be an application of Operational Creditor and others could have been asked to file their respective claim before the Resolution Professional. Only if in an individual claim of Operational Creditor the amount of debt is less than one lakh rupees, it can be rejected being not maintainable.”

16. Further, in the case of **Sadashiv Nomaya Nayak &Ors. V. Gammon Engineers & Contractors Pvt. Ltd. [Company Appeal (AT) (Insolvency) No.218 of 2023]**, the Hon’ble NCLAT referred **Mr. Suresh Narayan Singh (supra)** and upheld the decision of the Adjudicating Authority (AA) in which, the AA rejected the application filed under Section 9 on the ground that the Appellants have not individually crossed the threshold of Rs. 1 Crore as provided under Section 4 of the Code. The appeal was preferred in the Hon’ble Supreme Court against



the order of the Hon'ble NCLAT upholding the decision of the AA, wherein, the Hon'ble Supreme Court vide its order dated 15.05.2023 dismissed the appeal and confirmed the decision of the Hon'ble NCLAT. The relevant extract of the decision laid down in **Sadashiv Nomaya Nayak (supra)** is reproduced hereunder: -

“9. In support of his submissions, he has relied upon a decision of this Tribunal in the case of Mr. Suresh Narayan Singh Vs. Tayo Rolls Limited, Company Appeal (AT) Ins. No. 112 of 2018, to contend that issue involved in the present case has been answered in manner that “only if in an individual claim of ‘Operational Creditor’ the amount of debt is less than one lakh rupees, it can be rejected being not maintainable”. It is further submitted that in that case, all the employees/workmen had the claim of Rs. 1 lakh which was the threshold amount at that time therefore the application was held to be maintainable.

10. We have heard Counsel for the parties and after perusal of the record are of the considered view that there is no merit in the present appeal because the Judgment relied upon by Counsel for the Appellant in the case of JK Jute Mill (supra) does not apply to the facts and circumstances of the present case because the question which has been answered in the JK Jute Mill is altogether different from the issue involved in the present appeal because the issue here in this case is as to whether all the workmen can together by adding their amount which is being claimed against the Corporate Debtor can cross the threshold set up under Section 4 of the Code. In our considered opinion, the Judgement relied upon by Counsel for the Respondent in the case of Mr. Suresh Narayan Singh (supra) answers the question.”



17. Therefore, we are of the view that a joint application by multiple Operational Creditors is not barred to be filed, however, such an application shall only be admitted when each of the Operational Creditor fulfils the threshold limit of Rs. 1 Crore (as required by Section 4 of the Code) in its individual capacity. Details of outstanding dues of each Applicant is given in para 11 of this Order. The details indicates that default amount in respect of each Applicant is below in one crore threshold. We are of the view that, in the present case, each of the operational creditors failed to meet the pecuniary threshold of Rs. 1 crore in their individual capacity. Hence, the present petition is not maintainable and is liable to be dismissed.
18. Accordingly, the application bearing CP (IB) No.399/ND/2023 filed by, Mr. Nazim Shaikh & Ors. ('Operational Creditors') under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Karvy Digikonnnect Limited ('Corporate Debtor') is not maintainable and therefore, the same stands **dismissed**. The petitioner can prosecute his claims before the courts/other legal forums, as per law.
19. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)