

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI SPECIAL BENCH (COURT-II)**

**(IB)-556(ND)2020**

**IN THE MATTER OF:**

**M/s. Computer Junction Private Limited.  
C-129, Phase-1, Naraina Industrial Area,  
New Delhi-110028**

**...Operational Creditor**

**VERSUS**

**Nysa Communications Private Limited  
1<sup>st</sup> Floor, F-18, Preet Vihar,  
Vikas Marg, New Delhi-110092**

**...Corporate Debtor**

**Section: 9 of the IBC, 2016**

**Order Delivered on: 13.10.2021**

**CORAM:**

**DR. DEEPTI MUKESH, HON'BLE MEMBER (J)**

**SHRI L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Operational Creditor : Tushar Thareja, Advocate**

**For the Corporate Debtor : None**

## **ORDER**

**PER SHRI L. N. GUPTA, MEMBER (T)**

The present Petition has been preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Computer Junction Private Limited (**for brevity, 'Operational Creditor'**), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Nysa Communications Private Limited (**for brevity, 'Corporate Debtor'**).

2. That the Corporate Debtor namely, M/s. Nysa Communications Private Limited is a Company incorporated on 16.04.2008 with CIN U72900DL2008PTC176819 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 1st Floor, F-18, Preet Vihar, Vikas Marg, New Delh-110092.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 5,00,000/- and Paid-up Share Capital is Rs. 5,00,000/- as per the Master Data of the Corporate Debtor.

4. It is submitted that the Operational Creditor and Corporate Debtor entered into an 'Agreement' dated 30.05.2018, whereby the Operational Creditor agreed to be a service provider for end to end

infrastructural support, Laptop Services etc. for the work defined in the scope of services provided in the said agreement.

5. It is added by the Operational Creditor that the Corporate Debtor, even after having duly received the services from the Operational Creditor, has failed to make payments against the duly raised Purchase Order w.e.f., 10.08.2018.

6. It has been stated by the Operational Creditor in the Part IV of its Application that the Principal Operational Debt outstanding is Rs. 2,65,77,028/-. In addition, the Operational Creditor has claimed interest for the period from 10.08.2018 to 31.12.2019 @ 2% per month, which amounts to Rs. 88,77,455.49. Thus, the total debt claimed by the Applicant aggregates to Rs. 3,54,54,483.49. The date of default given in the application is 10.08.2018.

7. That the Operational Creditor has placed on record, the copy of the Ledger Account depicting the list of unpaid invoices and part payments received from the Operational Creditor. The scanned copy of the same is reproduced overleaf :

NYS COMMUNICATIONS PVT. LTD. Pending Outstanding Dec 2019								
Date	Ref. No.	Party's Name	Opening	Pending	payment received	Against PO	Project name	ITEM
10-Aug-2018	DLTI-18-19-01153	NYS COMMUNICATIONS PVT. LTD	67614.00 Dr	67614.00 Dr	0.00	Project Training	ICAR	Services LOA
18-Jul-2018	UPTI-18-19-00400	NYS COMMUNICATIONS PVT. LTD	30090.00 Dr	30090.00 Dr	0.00	Project Training	ICAR	30 HDD RENTAL
26-May-2018	UPTI-18-19-00216	NYS COMMUNICATIONS PVT. LTD	24780.00 Dr	24780.00 Dr	0.00	Project Training	ICAR	10 Laptop Rental
28-Jun-2018	UPTI-18-19-00350	NYS COMMUNICATIONS PVT. LTD	24780.00 Dr	24780.00 Dr	0.00	Project Training	ICAR	10 Laptop Rental
18-Jul-2018	UPTI-18-19-00401	NYS COMMUNICATIONS PVT. LTD	20060.00 Dr	20060.00 Dr	0.00	Project Training	ICAR	20 HDD RENTAL
26-May-2018	UPTI-18-19-00217	NYS COMMUNICATIONS PVT. LTD	12390.00 Dr	12390.00 Dr	0.00	Project Training	ICAR	5 laptops Rental
28-Jun-2018	UPTI-18-19-00351	NYS COMMUNICATIONS PVT. LTD	12390.00 Dr	12390.00 Dr	0.00	Project Training	ICAR	2 laptops Rental
18-Jul-2018	UPTI-18-19-00399	NYS COMMUNICATIONS PVT. LTD	10030.00 Dr	10030.00 Dr	0.00	Project Training	ICAR	10 HDD RENTAL
30-May-2018	UPTI-18-19-00238	NYS COMMUNICATIONS PVT. LTD	7434.00 Dr	7434.00 Dr	0.00	Project Training	ICAR	3 laptops Rental
28-Jun-2018	UPTI-18-19-00353	NYS COMMUNICATIONS PVT. LTD	7434.00 Dr	7434.00 Dr	0.00	Project Training	ICAR	3 laptops Rental
26-May-2018	UPTI-18-19-00218	NYS COMMUNICATIONS PVT. LTD	4956.00 Dr	4956.00 Dr	0.00	Project Training	ICAR	2 laptops Rental
28-Jun-2018	UPTI-18-19-00352	NYS COMMUNICATIONS PVT. LTD	4956.00 Dr	4956.00 Dr	0.00	Project Training	ICAR	2 laptops Rental
18-Jul-2018	UPTI-18-19-00398	NYS COMMUNICATIONS PVT. LTD	2950.00 Dr	2950.00 Dr	0.00	Project Training	ICAR	1 Printer
10-Aug-2018	DLTI-18-19-01149	NYS COMMUNICATIONS PVT. LTD	37583000.00 Dr	24482750.00 Dr	13120250.00	As per contract sign for server and center booking	ICAR	ICAR EXAM
10-Aug-2018	DLTI-18-19-01156	NYS COMMUNICATIONS PVT. LTD	698324.00 Dr	698324.00 Dr	0.00	After Project	ICAR	Services extra Rental
10-Aug-2018	DLTI-18-19-01157	NYS COMMUNICATIONS PVT. LTD	639678.00 Dr	639678.00 Dr	0.00	After Project	ICAR	Material Lost
10-Aug-2018	DLTI-18-19-01151	NYS COMMUNICATIONS PVT. LTD	259600.00 Dr	259600.00 Dr	0.00	After Project	ICAR	1100 Data Card Rental
10-Aug-2018	DLTI-18-19-01154	NYS COMMUNICATIONS PVT. LTD	159726.00 Dr	159726.00 Dr	0.00	After Project	ICAR	Services extra Logistic
10-Aug-2018	DLTI-18-19-01158	NYS COMMUNICATIONS PVT. LTD	64428.00 Dr	64428.00 Dr	0.00	After Project	ICAR	Services extra Rental
10-Aug-2018	DLTI-18-19-01152	NYS COMMUNICATIONS PVT. LTD	35400.00 Dr	35400.00 Dr	0.00	After Project	ICAR	150 Data Card Rental
10-Aug-2018	DLTI-18-19-01155	NYS COMMUNICATIONS PVT. LTD	27258.00 Dr	27258.00 Dr	0.00	After Project	ICAR	Services Manpower
Total Pending				26577028.00 Dr				

8. That it is submitted by the Operational Creditor that since the Corporate Debtor did not make the due payment, it had issued a Demand Notice dated 23.12.2019 under Section 8 of IBC, 2016 at the registered office of the Corporate Debtor. In response, a notice of dispute dated 15.01.2020 was sent by the Corporate Debtor through its Advocate Sh. Tanuj Khurana. The same is averred in the Affidavit filed by the Operational Creditor under Section 9(3)(b) of 2016.

9. That the Corporate Debtor in its notice of dispute has denied the claim of the Operational Creditor. It is stated by the Corporate Debtor that the debt claimed by the Operational Creditor is not an Operational Debt and all the invoices annexed are forged and fabricated. It is added that there are pre-existing disputes between the parties regarding the performance and breach of the Facilities Agreement dated 30.05.2018. The scanned copy of the Notice of Dispute dated 15.01.2020 is reproduced below :



**SPEED POST**

**Dated: 15.01.2020**

To,

**MS. SAMRIDHI KAPUR**  
Advocate  
404-Vishal Bhawan  
95, Nehru Place,  
New Delhi-110019

Dear Madam,

1. That 'my Client' i.e. NYS COMMUNICATIONS (P) LTD., (A Company Incorporated Under The Provisions of Companies Act, 1956) Through its Authorized Representative Mr. Indrish Chandra, Having its Registered Office at F-18, Preet Vihar, Vikas Marg, Delhi-110092 and having its Corporate Office at A-100, Sector-65, Noida-201301, has placed unto my hand a Legal Notice Dated 23.12.2019, as issued by you on behalf of your client i.e. M/s Computer Junction Pvt. Ltd., having its office at C-129, Naraina Industrial Area, Phase-I, New Delhi-110028, which notice was received by 'my Client' only on 06.01.2020, with specific instructions to reply to the same, which I hereby do as under: -
2. That the contents of the Legal Notice Dated 23.12.2019, are denied. That it is specifically denied that an unpaid principle amount of Rs.2,65,77,028/- (Rupees Two Crores Sixty-Five

1

*T. J. Khurana*

Lakhs Seventy-Seven Thousand Twenty-Eight Only) along with interest is due and payable by 'my Client'. That it is further stated that all the invoices which your client is relying upon are all false and fabricated and were never received or acknowledged by 'my Client' and your client has forged and fabricated the receipt of the same, for which 'my Client' hereby reserves all its rights to take appropriate action in terms of law for forging and fabricating the seal and signatures of the authorised representatives of 'my Client'.

3. That it is stated that your client has not given you proper instructions and has failed to disclosed all the facts fully and truly to you and has further failed to bring on record as to how your client is a "Operational Creditor", as contemplated under Section 5(20) of the Code, thereby disentitling himself to maintain the claim in this form and thus the veracity of the claim(s) being made by your client.
4. That it is further vehemently denied that the 'my Client' falls within the scope and ambit of the definition of a "Operational Debtor", as contemplated under the Code, since it does not owe any "Operational Debt" to you the addressee's client.
5. That 'my Client' is an ISO 9001: 2008, ISO 27001: 2013 and CMMI Level 5 company Incorporated Under The Provisions of Companies Act, 1956 and is a leading Enterprise Resource



Planning (ERP) service provider with over years of experience and expertise. That 'my Client' has successfully provided education solution to more than 500 large and medium sized clients in the Asian region, recognized as a pioneer consultancy in ICT (Information and Communication Technology), that 'my Client' is all set to expand its foothold in the Middle East and African region. That 'my Client' is also a reckoning force in the field of data integration, Enterprise Resource Planning (ERP), business integration resource and planning.

6. That The Indian Council of Agricultural Research (ICAR), is an apex body for coordinating, guiding, and managing research, extension and education in agriculture in the entire country under the aegis of DARE, Ministry of Agriculture and Farmers Welfare, invited Technical & Financial bids under two bid system through E-tendering for conducting of online AIEE for Admission to UG, PG and Ph.D. courses including invitation of online applications, online computer based test, online counselling etc., on "end-to-end" basis by virtue of an E-Procurement Tender Notice dated 23.03.2018.
7. That 'my Client' submitted its Technical and Financial bids online as to take part in the aforesaid e-tendering process, which were scrutinized on 5<sup>th</sup> and 10<sup>th</sup> April, 2018 respectively and after evaluation, both the Technical as well as Financial bids were accepted by the Competent Authority and accordingly by virtue of

a letter dated 09.05.2018 the decision and the approval of the competent authority to award the contract for conducting of AIEE for admission to UG, PG and Ph.D. courses including invitation of online applications, online Computer Based Test (CBT), online counselling etc., on "end-to end" basis for the academic session 2018-19 to be held on 22<sup>nd</sup> and 23<sup>rd</sup> June, 2018 was conveyed to 'my Client'.

8. That on 30.05.2018, an "Facilities Agreement" was entered into between 'my Client' and you the addressee's client, for 'my Clients' requirement for end to end infrastructure support and laptops servers to be used during the conduction of the aforesaid examination. That as per Clause 1, your client was under the obligation as per the contract to provide "laptops servers 1 primary and 1 backup to be provided on average ratio of 160 candidates that is to 1000+1000 for 1.60 lacs candidates (proportionate increase for increase in candidate count) rental server laptops configuration: (HP, DELL Lenovo) core i5 or equivalent, 8GB RAM, 250 GB or above HDD and laptop". That as per Clause 2 your client was also under the obligation to provide end to end support qua "activities including booking and facilities of examination center".
9. That from the very beginning you the addressee's client, miserably failed to discharge its obligation(s) under the contract and failed to provide end to end services to 'my Client'. That your




client was duty bound to provide the details of all the examination centres as per the deadline, resulting into the delay in issuance of admit cards to the candidates who had applied for the aforesaid examination. That Statewise data was provided by 'my Client' to you the addressee's client in advance for number of examination centres to be provided Statewise, but you the addressee's client miserably failed to provide the adequate centres on time, resulting into poor attendance of candidates from the States of Kerala, Manipur, Meghalaya, etc. That further in certain centres where your client was obliged to provide adequate infrastructure for the candidates, the details of which was already shared in advance to your client, your client failed to make adequate arrangements, leading to utter chaos at the centres, resulting into cancelation of examination at various centres.

That further due to not providing of adequate infrastructures at various centres like CCTV cameras and other surveillance devises at the centre, 'my Client' was not able to contradict the allegation of mass copying at various centres due to the failure of you the addressees' client to provide the recorded CCTV footage of the relevant examination centres, due to which ICAR by virtue of its letter dated 30.07.2018, terminated the contract as executed between 'my Client' and ICAR resulting into exemplary losses to 'my Client'.

11. That all the aforesaid disputes and differences were well conveyed to you by virtue of 'my Client's' emails dated 15.06.2018 and 16.06.2018, by virtue of which the delay in issuance of admit cards were brought on record due to failure of your client to provide the details of the examination centres on time; email dated 29.06.2018, thereby asking your client to provide CCTV recording for certain centres for the examinations conducted on 22.06.2018; email dated 05.07.2018 thereby putting your client to notice to recover the CCTV recording qua certain centres in which the recording was found to be deleted.
12. That all the aforesaid emails clearly bring on record the existence of disputes, between 'my Client' and you the addressee's client for its failure to discharge its obligations under the contract which had so resulted into the termination of the contract of 'my Client'.
13. That it is stated that there are pre-existing disputes between you the addressee's client and 'my Client' qua the performance and breach of the 'Facilities Agreement' dated 30.05.2018 and all the invoices so raised by you the addressee's client are disputed in nature and are not payable by 'my Client' and hence cannot form basis of the demand notice under the reply and hence the demand notice as issued by you under instructions from your client under Section 8 of The Insolvency and Bankruptcy Code, 2016 is not maintainable and hence is denied.

6

14. That now under instructions from and on behalf of 'my Client', I hereby advice you to forthwith withdraw the notice under the reply and not to proceed with filing of false and frivolous petition against 'my Client' under The Insolvency and Bankruptcy Code, 2016, failing which 'my Client' would be left with no other alternative but to contest the aforesaid petition at your risk and cost.

  
**TANUJ KHURANA**  
Advocate  
D/814/2004

10. Since the corporate Debtor has neither filed reply nor made any representation on later dates despite opportunities, it was proceeded ex-parte vide Order of this Adjudicating Authority dated 06.09.2021.

11. After hearing submission of the Operational Creditor on 07.10.2021 and perusing the documents placed on record, this Bench observes that although, the Corporate Debtor has disputed its liability, however, there is nothing annexed with the Notice of Dispute dated 15.01.2020, which could suggest that there was a dispute existing, prior to the issuance of the Demand Notice. Further, we find no explanation given by the Corporate Debtor in its Notice of Dispute as to how the debt claimed by the Operational Creditor is not an Operational Debt.

12. Hence, in the facts and circumstances of the case as narrated above, we are of the view that the Operational Creditor has succeeded in establishing the default on the part of Corporate Debtor in making payment of the operational debt. The Application filed under Section 9 fulfills all the requirements of the law. **Therefore, we admit the Application in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of provisions of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

13. As proposed by the Operational Creditor, this Bench appoints Mr. Navjit Singh with Registration No. IBBI/IPA-001/IP-P00314/2017-18/10578 as IRP ([navjit92ca@gmail.com](mailto:navjit92ca@gmail.com)) having office at 218-A, First Floor, Shop No. 4, Rama Market, Pitampura, New Delhi-110034, subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of the IBC, 2016.

14. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

15. A copy of this order shall be communicated to the Operational Creditor, the Corporate Debtor and Mr. Navjit Singh, IRP ([navjit92ca@gmail.com](mailto:navjit92ca@gmail.com)), by the Court Officer/Registry of this Tribunal immediately. In addition, copy of this Order shall also be forwarded by the Court Officer/Registry to the ROC to update the status of the Company on its Master Data and to the IBBI for their records.

**Sd/-**  
**(L. N. GUPTA)**  
**MEMBER (T)**

**Sd/-**  
**(DR.DEEPTI MUKESH)**  
**MEMBER (J)**