

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**CP (IB) No.48/9/HDB/2018
Under Section 9 of the IB Code 2016**

In the matter of

M/s. ASAP Info Systems Private Limited
6th Floor, BMTC Commercial Complex,
80 Feet Road, Koramangala,
Banglore 560095, Karnataka

**.... Petitioner/
Operational Creditor**

Vs

M/s. BUSINESS ARTS INDIA PVT. LTD
Registered Office situated at
1st Floor, Plot No. 21,
HUDA Techno Enclave,
Survey No. 64,
Madhapur, Hitech City, Hyderabad-500081.
TELANGANA STATE

(Rep. by its Managing Director) **... Respondent/
Corporate Debtor**

Date of Order: 19.04.2018

CORAM:-

**Hon'ble Shri Bikki Raveendra Babu, Member
Judicial**

Parties/ Counsels Present

Counsels for the Petitioner/Operational Creditor:	Mr.M.Srinivas Mr.Giridharan
Counsels for the Respondent/Corporate Debtor:	None appeared



Per: Shri Bikki Raveendra Babu, Member Judicial

ORDER

1. This petition is filed by M/s ASAP Info Systems Private Limited, seeking corporate Insolvency resolution process in respect of M/s Business Arts India Private Limited styling it as corporate debtor Under Sec. 9 of the Insolvency and Bankruptcy Code 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016).
2. M/s ASAP Info Systems Private Limited is a Private Limited Company incorporated under the provisions of the Companies Act, 1956. The Board of Directors of ASAP Info Systems Private Limited passed a resolution on 04-08-2017 authorising its Director Shri Ravi Vishwanath and Shri Giridharan Viswanathan as authorised signatories to file this petition.
3. M/s Business Arts India Private Limited incorporated under the provisions of the Companies Act, 1956. The Registered Office of the corporate debtor is situated in Hitech City, Hyderabad, Telangana.
4. The corporate debtor represented by its Managing Director entered into an Agency Agreement with petitioner creditor on 22-04-2016 wherein the operational creditor agreed to provide the services of its employees to the corporate debtor. Corporate debtor agreed and undertook to pay invoiced amounts within 60 days after the last day of the month for which the amounts apply as stated in clause 4 of the agreement. In terms of the agreement, operational creditor provided the services of its employees to the corporate debtor. Operational creditor raised invoices of an aggregate value of Rs.75,80,161/- (Rupees Seventy



Five Lakhs Eighty Thousand One Hundred and Sixty one only) on the corporate debtor for the services rendered by it pursuant to the agreement. Corporate Debtor failed to make payment towards the invoices of an aggregate amount of Rs.75,80,161/- (Rupees Seventy Five Lakhs Eighty Thousand One Hundred and Sixty one only) relating to the period from May 2016 to May 2017. According to the petitioner the above said amount due to it is an operational debt and therefore, it is an operational creditor. Operational creditor issued demand notice, under rule 5(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, on 29-08-2017 and sent it by registered post with Acknowledgement Due and as well as by Speed Post to the corporate debtor. The notice sent to the corporate debtor were returned unserved with insufficient address. The notice were sent to the addresses of the corporate debtor as appearing in the website of Ministry of Corporate Affairs and as mentioned in the Service Agreement dated 22-04-2016.



5. It is stated by the operational creditor that corporate debtor committed default in repayment of the operational debt. Operational creditor proposed the name of Sri Sudhir Babu Chalasani Insolvency Professional as Interim Resolution Professional.
6. Petitioner filed proof of service of copies of petition on the respondent. This adjudicating authority directed to the petitioner to serve the notice of date hearing on the respondent and file proof of service. Petitioner filed memo of proof of service on respondent along with the acknowledgment of the Managing Director of respondent. Petitioner also filed the certificate issued by HDFC Bank under Sec. 9(3)(c) of the Insolvency and Bankruptcy Code 2016. Petitioner along with the

petition filed affidavit as required by Section 9(3) of the Insolvency and Bankruptcy Code. Petitioner filed copy of the agency agreement dated 22-04-2016, statement of outstanding amounts along with copies of invoices, copies of emails issued by operational creditor to the corporate debtor requesting payment of outstanding amounts, copies of emails from corporate debtor to operational creditor, Copy of the Board resolution passed by the operational creditor authorising the Directors to file this petition and written communication of IRP. Petitioner also filed copy of the demand notice dated 29-08-2017 and proof of dispatch of the demand notice and delivery status. Petitioner also filed copy of Bank account maintained by operational creditor with the HDFC Bank from 01-04-2016 to 31-03-2017 regarding the confirmation that there is no payment of unpaid operational debt by the corporate debtor.



7. In spite of service of notice of date of hearing on the respondent, respondent did not choose to appear and file to reply. This Tribunal listed the matter on 23-03-2018 and again on 03-04-2018 for hearing. Even on 03-04-2018 respondent did not choose to appear and file reply.
8. The perusal of the agency agreement dated 22-04-2016 coupled with the copies of the invoices, the statement of outstanding amounts, the email correspondence between operational creditor and corporate debtor clinchingly establish that operational creditor undertook to pay the due amount to the petitioner in the month of May once they received amounts.
9. The statement of Bank Account filed by the operational creditor and the certificate issued by the HDFC Bank also establish that unpaid operational debt has not

been paid by the corporate debtor to the operational creditor.

10. The amount due to the petitioner from the respondent is in respect of providing of employees by the petitioner to the respondent. Therefore, the amount claimed is in respect of providing services i.e. employment. The "Operational debt" is defined in section 5(21) of the code which reads as under:

"Operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

11. In the case on hand the amount due from the respondent to the petitioner is an operational debt. Therefore, petitioner is an operational creditor. The amount is due from the respondent Company and therefore respondent is the corporate debtor. The material on record establish that operational debt is due from the corporate debtor to the operational creditor and in respect of the same a default has been committed. Corporate debtor did not raise a plea that there exist a dispute in respect of the operational debt claimed or exist a suit or pendency of other proceeding in respect of the operational debt. The petition is complete in all respects. Therefore, this application deserves to be admitted and it is accordingly admitted.



12. This Adjudicating Authority is also appointing the Insolvency Professional, Sri. Sudhir Babu Chalasani,

301, Krishna Teja Kingdom, 2-2-20/21 D.D.Colony, Hyderabad-500007, Telangana. Email address: sudhirinc@yahoo.com REGN NO. IBBI/IPA/-N00219/2017-18/10671 as Interim Resolution Professional U/Sec. 13(1)(b) of the code.

13. Section 13 of the Code says that after admission of the application under Section 9, the Adjudicating Authority shall pass an order declaring moratorium for the purposes referred to in Section 14. Therefore, in view of the commencement of Corporate Insolvency Resolution Process with the admission of this Petition and appointment of the Interim Resolution Professional, this Adjudicating Authority hereby passes the order declaring moratorium under Section 13(1)(a) prohibiting the following as laid down in section 14 of the Code;



- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- The moratorium order in respect of (a), (b), (c) and (d) above shall not apply to the transactions notified by the Central Government.
 - However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.
 - The Applicant shall also make public announcement about initiation of Corporate Insolvency Resolution Process, as required by Section 13(1)(b) of the Code.



14. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.
15. This Petition is ordered accordingly.
16. Communicate a copy of this order to the Applicant Financial Creditor and to the Interim Insolvency Resolution Professional.

Sd/-

BIKKI RAVEENDRA BABU
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

G. Anantha Kumar
 for Dy. Regr./Asst. Regr./Court Officer/
 National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
 केस संख्या (CP(IB) No. 48/9/HDB/2018
 CASE NUMBER.....
 निर्णय का तारीख 19.4.2018
 DATE OF JUDGEMENT.....
 प्रति तैयार किया गया तारीख 20.4.2018
 COPY MADE READY ON.....