



IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No.3
CP(IB) 78 of 2020

Proceedings under Section 9 IBC

IN THE MATTER OF:

Manpower Group Services India Pvt Ltd
V/s
Euphoria Technologies Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 17/05/2023

Coram:

Mr. Deep Chandra Joshi, Hon'ble Member(J)
Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

-SD-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

**DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)**



**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
(COURT NO. II)**

CP(IB)/78/2020

(Under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of:

ManpowerGroup Services India Private Limited

**...Applicant/
Operational Creditor**

Versus

Euphoria Technologies Private Limited

**...Respondent/
Corporate Debtor**

Order Pronounced on: 17/05/2023

Coram:

**DEEP CHANDRA JOSHI,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

ManpowerGroup Services India Private Limited

Registered Office at:

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

Non-Hierarchical Commercial Centre,

Plot No. 6, Jasola New Delhi-110025.

**...Applicant/
Operational Creditor**

Versus

Euphoria Technologies Private Limited,

Registered Office at:

Office No. 403, 4th Floor,

Nishal Arcade Shopping,

Nr. Vaishali Row House,

Green City Road, Pal, Surat- 395009.

Corporate/Branch Office at:

1. B-129, 1st Floor, International Trade Centre,
B/S Radha Krishna Hotel, Majuragate,
Ring Road, Surat-395001.
2. Ellora Fiesta, Office No. 1107, Plot No. 08,
Sector 11, Sanpada, Navi Mumbai- 400706.
3. Euphoria House, A 239,
TTC Industrial Area, Thane Belapur Road,
Mahape, Navi Mumbai-400701.

**...Respondent/
Corporate Debtor**

Present:

For the Applicant:

Ms. Garima Malhotra, Adv.

For the Respondent:

Ms. Natasha D. Shah, Adv.



ORDER

1. The instant Application is filed by M/s. ManpowerGroup Services India Private Limited (for brevity 'Applicant') through Mr. Sudeep Pramanik, Director, authorized through board resolution dated 15.11.2019, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Euphoria Technologies Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company, incorporated under the provisions of the Companies Act, 1956, on 05.03.1997 registered with Registrar of Companies, New Delhi with CIN: U74910GJ1997PTC085591 and registered office located at Unit No.4-A/1, 4-A/2 Non-Hierarchical Commercial Centre, Plot No. 6, Jasola New Delhi-110025. The applicant is engaged in the business of providing contractual staff and managing/facilitating recruitment requirements for different organizations along with providing any other necessary human resource staffing solution.
3. The Corporate Debtor is a Private Limited Company, incorporated under the provisions of the Companies Act, 1956 on 31.12.2010, duly registered with Registrar of Companies, Gujarat with CIN: U72900GJ2010PTC063439 and its registered office is located at Office No. 403, 4th Floor, Nishal Arcade Shopping, Nr. Vaishali Row House, Green City Road, Pal, Surat- 395009.



The authorized share capital of the Corporate Debtor is Rs. 50,00,000/- and the Paid-up share capital of the Company is Rs.50,00,000/-.

4. In this case, Applicant Submitted that two agreements were entered into between the operational creditor and the corporate debtor, namely, a contract staffing services agreement dated 29.09.2017 and a permanent employee supply service agreement dated 01.03.2017. Pursuant to the said agreements, the 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. Accordingly, after successful delivery of the service's 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 were accepted by the corporate debtor without any objection and the corporate debtor had also admitted its liability on these Invoices. However, the corporate debtor has remitted only a part payment of Rs. 1,18,92,305 (Rupees one crore eighteen lacs ninety-two thousand three hundred and five only) and the 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 the 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. Copy of the two agreements are annexed



with the petition.

5. The applicant has further stated that the corporate debtor executed a duly notarized 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 installments before 15.01.2019. However, the corporate debtor failed to honour its commitments. A copy of the said undertaking is annexed with the petition.
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 on failure to make payment, the applicant was compelled to issue a demand notice to the corporate debtor in Form 3 dated 07.10.2019 in terms of Section 8 of the IB Code, which was returned undelivered. Therefore, the operational creditor issued a demand notice dated 05.11.2019 at the residential address of the Directors, which was served upon the Directors on 11.11.2019 and the said demand notice was also sent by e-mail address of the Directors and a copy of proof of service of demand notice through post and e-mail is annexed with the



petition. Even after issuance of demand notice, the corporate debtor neither paid the outstanding due nor replied to the said notice, nor provided any record of the existence of and/or pendency of any dispute or suit/arbitration filed before the receipt of demand notice, as contemplated under section 8(2)(a) of the IB Code, 2016.

8. Thereafter since no payment was made by Corporate Debtor, the applicant filed an application under section 9 for its unpaid debt of an amount of Rs. 1,49,45,837/- which includes principal Rs. 1,19,59,123/- along with interest @ of 12% per annum amounting to Rs. 26,70,821/-, which is reflected in Form V of Part IV.
9. The applicant in support of its claim has furnished copy of documents like an affidavit in support of the application, a Board resolution dated 15.11.2019 authorizing the Director of the company to sign, execute and file the application under section 9 of the IB Code, demand notice in form 3 dated 07.10.2019 and 04.11.2019, e-mail dated 04.11.2019, computation of the pending invoices, bank statement, etc.
10. The Respondent corporate debtor filed reply and raised the following objections-
 - a. That no documentary evidence showed by the applicant to establish the amount of debt or amount claimed to be in default.
 - b. That the Applicant has on pages 41 to 47 of the application attached



invoices for the supply of Contractual Staffing. It appears that invoices have been raised pursuant to the contractual staffing service agreement dated 29/09/2019. Pursuant to the said agreement, the applicant was required to make payments to the staff provided by the applicant and then to raise invoices. It implied that invoices will be raised only in respect of staff provided under the agreement, whose salary and other dues are paid by the applicant. The applicant has not provided any evidence in the application to prove that he has made payments to the staff in respect of whom the invoices were raised. The matter was taken up by the corporate debtor with the applicant vide email dated 13/11/2017, wherein the applicant confirmed that he could not arrange for payouts amounting to Rs, 70,25.954/- for October, 2017. A copy of the said email was enclosed with the reply. The Applicant has not submitted any proof of payment made to the employees in respect of contractual staffing bills that have been raised. The applicants are not entitled to payments for contractual staffing unless evidence of payments made to staff is produced.

- c. That the Applicant has on Page No. 48 to 56 of the application attached bills for placement charges. It appears that the bills are raised pursuant to a permanent employee supply service agreement. Under the said agreement the applicant is required to provide employees/staff to the corporate debtor in conformity with the requirements of the



client. The Applicant has not produced any document in nature of the purchase order or any other communication wherein a demand for the staff was made. In absence of supporting documents, the claim under the invoice is not justified.

- d. That the Applicant has on page 88 of the application submitted a statement giving computation of pending invoices. The Applicant has not submitted any supporting document to prove various entries made in the statement. In the table for outstanding staffing services, it has been stated in Column 9 that an amount of Rs. 1,14,41,260/- has been either received or adjusted. The Applicant has not provided the details of the amount received or adjusted. The Applicant has not provided any Credit Note in respect of which the amounts have been adjusted. The Applicant has claimed interest amounting to Rs. 25,74,158/-. However, no debit note in respect of the claim for the interest has been produced.
- e. That the Applicant has in a table for outstanding towards permanent recruitment services given a list of alleged outstanding invoices. However, as stated above no documents to prove that such services were called for by the corporate debtor, or any proof supporting that services have been actually provided, has been attached.
- f. That Part-V, Column 7 of Form 5 also mandates that a statement of



the bank account where a deposit or credit is normally received must be attached. The applicant has not attached even this bank statement. Though a bank statement is a crucial document to establish, which amounts have been received, and lack thereof, merits rejection of Section 9 Application. The Applicant has suppressed material mandatory information and misled the Adjudicating Authority by sending Bank Certificates in place of Bank Statements.

g. That the present application is defective since the mandatory requirements of the IB Code, Rules there under, and requirements under the Forms specified therein have not been complied with. Besides, the applicant has failed to prove the amount of debt and default and therefore the application should be dismissed.

11. The applicant has filed its written submission, reiterated the stand taken in pleading.

12. The respondent has filed its written submission and stated as follows-

- (a) Preliminary objections-Application filed by the Applicant is incomplete as the Applicant has failed to provide proof of service of application to the Insolvency and Bankruptcy Board of India as per Rule 4(1)(3) of the IBBI (Application to Adjudicating Authority) Rules, 2016.
- (b) An application under Section 9 is not maintainable if arising out of a settlement



- i) Affidavit Undertaking dated 12.09.2018 entered into by the parties wherein Respondent acknowledged to pay Rs. 1,13,02,538. (Page no 37-40 Annexure D of the application).
- ii) The claim of Applicant- not operational debt under Section 5(21) of the Code.
- iii) Respondent relied upon the judgment of the Hon'ble NCLAT dated 15.09.2022, in the case of Trafigura India Private Limited Vs. TDT Copper Limited [Company Appeal (AT) (Insolvency) No. 742 of 2020].

(c) Pre-existing dispute

- i) Email dated 13.11.2017 from the Respondent to the Applicant- evidencing pre-existing dispute. (Pg 8,9 Annexure A of Reply by Respondent).
- ii) Email prior to issuance of demand notice as date of demand notice 07.10.2019.
- iii) No response to refute the allegation of the pre-existing dispute was demonstrated through the email dated 13.11.2017 by the applicant.
- iv) Relied upon the judgment of the Hon'ble Supreme Court dated 04.01.2023, in the case of Sabarmati Gas Limited Versus Shah Alloys Limited (Civil Appeal No. 1669 of 2020) and the said paragraph is reproduced hereunder:



“32. A scanning of the decisions referred supra, would reveal that existence of a ‘pre-existing dispute’ should entail dismissal of an application filed under Section 9 IBC at the threshold. Therefore, the question is whether the respondent had raised a dispute describable as a ‘preexisting dispute’ so as to entail dismissal of application of the appellant under Section 9, IBC.

(Emphasis supplied)”

- (d) The applicant failed to demonstrate the existence of "operational debt"
- i) The Applicant has failed to annex a statement of account in relation to the total amount of debt.
 - ii) The Applicant has failed to give particulars/annex credit notes as stated on Page 88, Annexure I.
 - iii) The Applicant has failed to disclose the payment received as mentioned in the adjustment receipt on Page 88, Annexure I.
 - iv) No communication/letter where demand for the staff was made and filed.
 - v) No credit note: Rs. 1,14,41,260 or debit notes Rs. 25,74,158 and Rs. 26,70,821 and no ledger was filed.
 - vi) Onus is on the applicant to demonstrate the provision of services.
 - vii) Thus, the application preferred by the applicant is incomplete.
 - viii) Relied upon the Paragraph 81 of the judgement passed by the Hon'ble NCLAT on 24.02.2020 in the case of Neeraj Jain, Director



of M/s. Flipkart India Private Limited vs. Cloudwalker Streaming Technologies Private Limited and Anr. (Company Appeal (AT) (Insolvency) No. 1354 of 2019) and the said paragraph is reproduced hereunder:

“81. The copy of the order may also be communicated to IBBI and Secretary, Ministry of Corporate Affairs for reconsideration of the ‘format of Application’ in Form 5, under sub-rule (1) of Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.”

(e) IBC is not a recovery mechanism

i) The Application has been filed for recovery and not for resolution of the corporate debtor.

13.As per part IV, Form 5 total amount of debt is Rs. 1,49,45,837/- and the last invoice became due and payable within 30 days from 31.10.2017. The present application is filed on 10.01.2020, which is within limitation and not barred by law.

14.The registered office of the corporate debtor is situated in Surat, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.

15.1 Heard submissions and perused the documents on record.

15.2 The first agreement is signed on 29.09.2017 by and between the applicant and corporate debtor with respect to the contractual staffing services



wherein it is mentioned in para 2.1 that the Service Charges & other payment amounts (namely the amounts to be paid as salary to the Temporary Staff) will be invoiced by the applicant to the corporate debtor as appropriate and are payable within 45 days from the invoice date. Late payment charge was specified on invoices paid after due dates, calculated @ 1.5% per month on the due amount from the due date until payment was received.

15.3 A second agreement was signed on 01.03.2017 by and between the applicant and corporate debtor with respect to the supply of permanent employees, wherein it was mentioned in para 6(d) that all invoices for which no objection is raised by the corporate debtor shall be deemed to be in order and are payable by the corporate debtor within 30 days. The applicant has annexed copy of all invoices, payments on which were defaulted by the corporate debtor with the petition.

15.4 The corporate debtor had given an undertaking on 12.09.2018, wherein the corporate debtor had acknowledged and confirmed the total outstanding liability of Rs. 1,13,02,538/- for staffing services rendered by the applicant. Under the said undertaking, the corporate debtor had also committed to settle the outstanding liability of Rs. 1,13,02,538/- and to pay interest @12% per annum on the aforesaid outstanding.

15.5 It is undisputed fact that the corporate debtor has not replied to the notice



issued under section 8. The corporate debtor has also not denied signing the undertaking to pay Rs. 1,13,02,538/- alongwith interest @12% per annum. The attempt to take defence of pre-existing dispute after the said undertaking is not a tenable argument. The existence of pre-existing dispute is not established.

16. In light of the above discussions, it is evident that the debt was due and payable and was within limitation, and that the default has occurred. The application is complete. The present application is admitted, in terms of section 9 (5) (i) of IB Code, 2016.

17. The applicant has not proposed the name of the Interim Resolution Professional (IRP). Therefore, we hereby appoint Mr. Mahendra Prasad Jindal having an address at B-810 Fairdeal House, Near Swastik Crossroads, Navrangpura, Ahmadabad, Gujarat ,380009 with registration No. IBBI/IPA-001/IP-P00616/2017-2018/11073 and having email ID mpjindal@rediffmail.com as the interim Resolution Professional (IRP) subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are to be filed within a period of one week from the date of this order.

18. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees



two lacs only) with the Interim Resolution Professional, namely Mr. Mahendra Prasad Jindal to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

19.As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

20.A copy of the order shall be communicated to the applicant, IRP, and the corporate debtor. A copy of the order along with a complete copy of the application be served to IRP by the applicant within 7 days of the order. In addition, a copy of the order shall also be forwarded to IBBI for its records and take steps for updating the Master Data of the corporate debtor in the MCA portal and shall forward the compliance report to the Registrar, NCLT.



21.The registry is directed to communicate a copy of this order to the parties.

**-Sd-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

**-Sd-
DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)**

Abhishek Singh
LRA