



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

(IB)-669(ND)2021

IN THE MATTER OF:

Mr. Rajesh Mandal
(Proprietor of Invasion Films)
House No. 110, Basement,
Sector-27, Near Jalsha Restaurant,
Golf Course Road, Gurgaon,
Haryana - 122002

...Applicant/Operational Creditor

VERSUS

Genesis BCW Private Limited
807, New Delhi House,
Barakhamba Road,
New Delhi-110001

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on: 12.07.2022

CORAM:

SHRI. DHARMINDER SINGH, HON'BLE MEMBER (J)

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

PRESENT:

For the Applicant : Mr. Gulshan Kr. Sachdev, Adv.
For the Respondent : None



ORDER

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

Mr. Rajesh Mandal Proprietor of Invasion Films (for brevity '**Applicant/Operational Creditor**') has filed the present Petition 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 (for brevity 'the Rules') with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Genesis BCW Private Limited (for brevity '**Respondent/Corporate Debtor**').

2. That the Corporate Debtor namely, M/s. Genesis BCW Private Limited is a Company incorporated on 20.03.2002 with CIN U74899DL2002PTC114637 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 807, New Delhi House, Barakhamba Road, New Delhi-110001. Hence, the jurisdiction lies with this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 10,00,000/- and Paid-up Share Capital is Rs. 1,70,000/- as per the Master Data of the Corporate Debtor.

4. It is stated by the Operational Creditor that it is engaged in the business of providing professional photography and videography services.



5. It is further stated that the Corporate Debtor had approached the Operational Creditor for providing his professional services. Accordingly, the professional services were rendered to the Corporate Debtor and various invoices were raised during February, 2019 to July, 2019.

6. It is stated by the Operational Creditor that it had issued Demand Notices dated 28.06.2021 under Section 8 of IBC, 2016 to the Corporate Debtor.

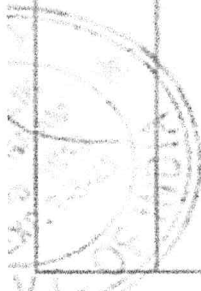
7. The detailed particulars of Operational Debt including the total amount of debt and date of default, as mentioned in Part IV of the application, are reproduced below :

Part - IV

PARTICULARS OF OPERATIONAL DEBT		
1.	Total amount of debt, details of transactions on account of which debt fell	As on date, Corporate Debtor is liable to pay to the Operational Creditor a total sum of Rs. 33,75,813/- (Rupees Thirty Three Lakh Seventy-Five Thousand Eight



	<p>due, and the date from which the debt fell due</p>	<p>Hundred Thirteen Only) including an amount of Rs. 15,10,696/- (Rupees Fifteen Lakh Ten Thousand Six Hundred Ninety-Six Only) being interest @24% per annum as per terms of the outstanding invoices from their due date i.e. from February 13, 2016 to July 24, 2019 till June 28, 2021 in respect of the outstanding invoices dated from January 29, 2016 to July 09, 2019. (The computation showing the details of the outstanding amount is annexed herewith as Annexure - C)</p>
2.	<p>Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form)</p>	<p>As on date, Corporate Debtor is liable to pay to the Operational Creditor principal sum of Rs. 18,67,363/- (Rupees Eighteen Lakh Sixty Seven Thousand Three Hundred Sixty Three Only) along with an amount of Rs. 15,10,696/- (Rupees Fifteen Lakh Ten Thousand Six Hundred Ninety-Six Only) being interest @24% per annum as per terms of the outstanding invoices from their due date of Invoices till June 28, 2021 in respect of the outstanding invoices from January 29, 2016 to July 09, 2019.</p>





8. During the course of preliminary hearing on 10.11.2021, while going through the Part IV of the Application, it was observed by this Adjudicating Authority that the Applicant has claimed dues of Rs. 18,67,363/- only as the unpaid operational debt. Further, the Applicant has claimed an interest amounting to Rs. 15,10,696/- @ 24% per annum. Since the claim of the Operational Creditor was less than the minimum threshold limit of Rs. 1 Crore and the date of default was not clear, the Operational Creditor was directed to satisfy this Bench by filing its written submission that as to how the instant application meets the pecuniary jurisdiction of this Tribunal and is filed within the period of limitation.

9. The Applicant has filed additional document annexing the order dated 01.04.2022 passed by the Hon'ble Supreme Court in the Civil Appeal No. 7032/2021 in the matter of Jumbo Paper Products Vs. Hansraj Agrofresh Private Limited. Other than this, neither any explanation nor any other document has been provided by the Applicant that as to how the present application meets the pecuniary jurisdiction and is filed within the limitation period. Hence, we would like to proceed ahead in the matter as per the material available on record.

10. At this juncture, we would like to refer to the Judgement of Hon'ble High Court of Kerala passed in the matter of **M/s. Tharakan Web Innovations Pvt. Ltd. Vs. National Company Law Tribunal**



Kochi Bench and Anr. in WP(C) NO. 27636 OF 2020 & 14158 of 2021 dated 01.02.2022.

“24. In Ext.P9 order, the Tribunal has held that the notification dated 24.03.2020 is prospective in nature and it is not retrospective or retro-active in nature. It is further stated by the Tribunal that notification will not apply to pending applications before the concerned Adjudicating Authority under the IBC prior to the issuance of the aforesaid notification. Ext.P9 was an order of the Tribunal at New Delhi and the issue was concerning an application which had been filed and was pending before the Tribunal. The order of the National Company Law Appellate Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Ins) No.813 of 2021 was placed before the Court in which the order Ext.P9 was also considered. The Appellate Tribunal found that on facts, in the case considered in Ext.P9 demand notice under Section 8 was issued on 31.7.2019 and the application under Section 9 was filed on 5.9.2019 which were both before 24.3.2020, on which date the threshold limit was increased to Rs.1 Crore. The Tribunal hence found that the said decision cannot be relied upon to decide whether a petition can be maintained for an amount of less than Rs.1 Crore after 24.3.2020. The Appellate Tribunal went on to hold that the threshold limit will be applicable for applications filed under Section 7 or Section 9 on or after 24.3.2020, even if the debt is on a date earlier than 24.3.2020. The above view of the Tribunal is in consonance with the decision of the Hon'ble Supreme Court in **Manish Kumar (supra)**.

25. Even otherwise, the Tribunal has in my opinion, gone wrong in its interpretation of Section 4 of the Act. Section 4, after amendment on 24.3.2020 clearly says that Part II of the



IBC shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of default is Rs.1 Crore. As per Section 3(12) of the IBC, "default" means nonpayment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. What is to be noted is that Corporate debtors who are in default of less than Rs.1 lakh prior to the amendment and Rs.1 Crore after the amendment, also are defaulters. However, whether a proceeding for insolvency or liquidation of such corporate debtor should be initiated would depend on the amount in default. It is only if the Corporate debtor has incurred a default of at least the minimum amount stated in Section 4 that a proceeding under the provisions of the IBC under Part II can be initiated. The minimum amount of default is statutorily fixed, with power available to the Government to re-fix, upto a sum of Rs.1 Crore. Once the Government has exercised the said power by issuance of a notification fixing the minimum amount of default as Rs.1 Crore, the Section will have to be read by replacing the words "one lakh rupees" by "rupees one crore". **As such, from the date of amendment, Part II of the IBC can apply only to matters relating to insolvency and liquidation of corporate debtors, where the minimum amount of default is Rs.1 Crore. (emphasis supplied).** Once that is the position, the application of Part II itself is taken away with effect from 24.03.2020 as far as defaults less than Rs.1 Crore are concerned and hence no application can be filed after 24.03.2020 regarding an amount where the default is less than Rs.1 Crore. By application of Section 10A, even in cases where the default is more than Rs.1 Crore, an application cannot be filed for a period of six months from 24.3.2020. There can be no other understanding of the statutory



*provisions, as there is no ambiguity in the language. It is well settled that the grammatical and ordinary sense of the words of the Statute should be adhered to, unless that would lead to absurdity, or some repugnance or inconsistency with the rest of the provisions of the statute. In the words of **Viscount Simon L.C.** “The golden rule is that the words of a statute must prima facie be given their ordinary meaning..... Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction” (see **Nokes v. Doncaster Amalgamated Collieries Ltd., [(1940) AC 1014 (HL)]**, **Chandvarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447]** and **B. Parmanand v. Mohan Koikal [(2011) 4 SCC 266]**). The above observations are fully supported by the judgment of the Apex Court in **Manish Kumar (supra)**, wherein the Hon'ble Supreme Court categorically held that the litmus test is whether there exists a default as defined in Section 4 of IBC, on the date of the application....”*

11. Further, the Hon'ble NCLAT in the matter of **Jumbo Paper Products Vs. Hansraj Agrofresh Pvt. Ltd. in Company Appeal (AT) (Ins) No. 813 of 2021 dated 25.10.2021** has held the following:

10. The other judgments cited by learned Counsel for Appellant broadly lay down that any statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. It is seen that notification dated 24.3.2020 (supra) makes it unambiguously clear that the



threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.2020 even if debt is of a date earlier than 24.3.2020. Since the application under section 9 which is the subject matter of this appeal was filed on 13.9.2020, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case.”

12. Though the Ld. Counsel for the Applicant has stated that the aforesaid Judgment of Hon’ble NCLAT is challenged before the Hon’ble Supreme Court in the matter of Civil Appeal No. 7032/2021 in Jumbo Paper Products Vs. Hansraj Agrofresh Private Limited, however, he failed to bring on record any order staying the aforesaid decision. Hence, the Judgements of the Hon’ble High Court of Kerala passed in the matter of M/s. Tharakan Web Innovations Pvt. Ltd (supra) and the Hon’ble NCLAT passed in the matter of Jumbo Paper Products (Supra) are binding precedents as on date.

13. In view of the aforesaid discussion, we are of the considered view that since the total claim of the Applicant is less than Rs. 1 Crore and the Application having been filed on 23.09.2021, the present application does not meet the minimum threshold limit and is barred by Section 4 of IBC, 2016.

14. **The Application is accordingly Dismissed.**


(L. N. GUPTA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)