

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD SPECIAL BENCH
COURT - 1

ITEM No.5
CP(IB) 29 of 2020

Order under Section 9 IBC

IN THE MATTER OF:

Jugal Hansal Brothers Through its Proprietor Smit N SoniApplicant

V/s

Octagon Communications Pvt LtdRespondent

Order delivered on ..16/03/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP (IB) No. 29/9/NCLT/AHM/2020

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the matter of:

M/s. Jugal Hansal Brothers
Through authorized signatory,
Having registered address at:
LL/2 Murlidhar Complex,
S.M Road, Ambawadi,
Ahmedabad- 380015

....Operational Creditor

Versus

M/s. Octagon Communications Pvt. Ltd.
CIN No. U74140GJ2013PTC074619
Haring registered address at:
B/2/1208, Palladium, 123, S.G Highway,
Opp. Corporate Rd.
Makarba, Ahmedabad

..... Corporate Debtor

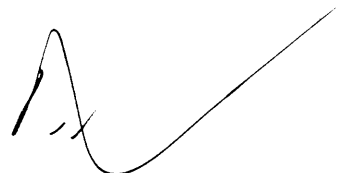
**Order Reserved on: 22.02.2022
Order Pronounced on: 16.03.2022**

**Coram: MADAN B. GOSAVI, MEMBER (J)
AJAI DAS MEHROTRA, MEMBER (T)**

Appearance:

Mr. Gaurav K. Mehta, Advocate for the applicant.

Mr. Pavan S. Godiawala, Advocate along with Mr. Naishal Mody, Advocates for the Respondent.




ORDER
[Per: BENCH]

1. The instant application has been filed on 13.12.2019 by Sumit N Soni (Proprietor of M/s. Jugal Hansal Brothers)-the Operational Creditor under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short “**IB Code**”) for initiating Corporate Insolvency Resolution Process (in short “**CIRP**”) against M/s Octagon Communications Pvt. Ltd. – the Corporate Debtor for the default amount of Rs. 19,55,342/-.
2. It is submitted by the Operational Creditor that the Corporate Debtor vide work order dated 17.10.2017 obtained services of Air-conditioning for the Exhibition venue from the Operational Creditor. The Corporate Debtor availed the services of the Operational Creditor between 16.11.2017 to 19.11.2017, the Operational Creditor issued a work completion certificate on 25.11.2017. The Operational Creditor raised an invoice of Rs. 1,23,19,200/- on 30.11.2017. Out of the said invoice amount Rs. 19,55,342/- remains to be paid by the Corporate Debtor.
3. It is further stated by the Operational Creditor that for the payment of the said outstanding amount, the Corporate Debtor issued a cheque of Rs. 5,00,000/- which was dishonored on the presentation for clearance due to “Insufficient Funds”. Thereafter, the Operational Creditor send an email dated 24.10.2019 to the Corporate Debtor for making the payment of Rs. 19,55,342. The Corporate Debtor replied to the said email on the same day wherein the Corporate Debtor acknowledged the outstanding amount. The Operational Creditor sent a number of reminders to the Corporate Debtor for the payment of the remaining



outstanding amount, but the Corporate Debtor did not pay any heed to the request of the Operational Creditor.

4. The Operational Creditor further stated that in the compelling circumstances, the Operational Creditor issued a Demand Notice under section 8 of the IB Code dated 09.11.2019 which was delivered to the Corporate Debtor on 15.11.2019. The Corporate Debtor replied dated 21.11.2019 to the said demand notice wherein the Corporate Debtor has stated that no amount is due towards the Corporate Debtor. The Corporate Debtor stated that he had issued a cheque of Rs. 5,00,000/- to settle the matter but the same was dishonored by the bank as it was presented without confirming with the Corporate Debtor. It is also stated that the said demand notice is defective being not in compliance with section 8 of IB Code and rules framed thereunder.
5. The Corporate Debtor appeared before this Authority and filed its reply and denied the averment of the Operational Creditor. The Corporate Debtor has stated that no amount is due to be paid towards the Corporate Debtor. The Corporate Debtor further contended that the Demand Notice dated 09.11.2019 sent by the Operational Creditor is defective since it is not in compliance with Rule 5 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 (hereinafter "**AA Rules**"), hence, the present application is liable to be rejected on this ground.
6. The Corporate Debtor further submitted that it is a general practice and as a custom in this business/ services which obtained from the Operational Creditor that amount of agreed terms is to be paid 50% at the time of hiring, 30%



amount is to be paid after completion of work, and rest 20% amount is to be paid within 3 to 6 month. As of now Rs. 1,04,68,258/- (Amount of Rs. 1,04,400/- has been deposited as TDS by the Corporate Debtor). The amount of Rs. 18,50,942/- was to be set off against the upcoming projects as per trade custom of the supplier of service, for continuing the business relations. Such amount was to be adjusted against payment for an exhibition scheduled for next year. Since the exhibition could not be held in the year 2020 and 2021 due to the outbreak of Covid pandemic, no amount remains outstanding to be paid to the Operational Creditor.

7. We have heard the learned counsels of the parties and perused the material on record. It appears that the Corporate Debtor has accepted the services of the operational creditor, the invoice bearing no. SAC/18 dated 30.11.2017 was raised by the Operational Creditor for the amount of Rs. 1,23,19200/-. It is an admitted fact that amount of Rs. 1,04,68,258/- has been paid to the operational creditor and at no point in time, the Corporate Debtor has disputed the invoice raised.
8. The contention of the corporate debtor that no amount remains to be paid, as the alleged outstanding amount is be set off for future services is not sustained. For the payment of the outstanding amount, the Corporate Debtor has already issued a cheque bearing no. 204716 of Rs. 5,00,000/-, and the same was dishonored due to insufficient funds. Prior to putting into the clearance of the said cheque, the Operational Creditor sent an email on 24.10.2019 and requested to the Corporate Debtor to make sure that the cheque is cleared. The




Corporate Debtor replied to the said email on the same day and requested for time, on the pretext that there is a financial crisis and also requested that cheque be not put into clearance. However, the Corporate Debtor neither raised any dispute in respect of said invoice nor raised any question for setting off the amount for future services.

9. The contention in respect that the demand notice issued in form 4 is not in compliance with AA Rules is also baseless. The Operational Creditor has already mentioned the sole invoice number and, the amount mentioned in the invoice. Moreover, after a complete understanding of the demand notice, the Corporate Debtor replied to the said demand notice. The Hon'ble NCLAT in the matter of *Crompton Greaves Consumer Electrical Limited Versus K.P.R Industries (India) Limited, Company Appeal (AT) (Insolvency) No. 12 of 2018* stated that if the existence of debt and default were satisfactorily established by Operational Creditor and no pre-existing dispute was brought to the notice of the Adjudicating Authority, technical default cannot be the basis for rejecting the application. If any defect in demand notice is found by the Adjudicating Authority, an opportunity should be granted to the Operational Creditor for its correction. For ready reference we reproduce the relevant para of the said Judgement hereunder:

“ 8. Adverting to the facts of instant matter, be it seen that the Appellant/ Operational Creditor served demand notice dated 7th April, 2017 on the Respondent/ Corporate Debtor in terms of Section 8 of the I&B Code. Respondent/ Corporate Debtor claimed that the demand notice was defective. The Adjudicating Authority observed that the demand notice had been issued by the advocate of the Operational



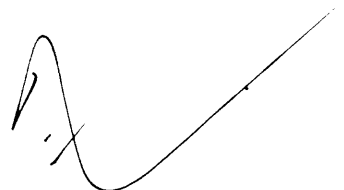
Creditor and the same was not in the format as prescribed. Relying upon the decision of this Appellate Tribunal in 'Uttam Galva Steels Limited' (Supra), the Adjudicating Authority rejected the application of Operational Creditor seeking triggering of CIRP. As already observed in this judgement elsewhere, the decision of this Appellate Tribunal in 'Uttam Galva Steels Limited' Versus 'DF Deutsche Forfait AG & Anr.' has been set aside by the Hon'ble Apex Court in 'Macquarie Bank Limited' (supra). It has been held that a notice sent on behalf of an Operational Creditor by a lawyer would perfectly be in order. The impugned order could be set aside on this ground alone. However, the second issue raised in regard to demand notice is required to be dealt with. As held by the Hon'ble Apex Court in 'Innoventive Industries Ltd.' versus 'ICICI Bank & Anr.', Civil Appeal Nos.8337-8338 of 2017 decided on 31st August, 2017, under Section 8 of I&B Code, the Operational Creditor is, on the occurrence of a default required to first deliver a demand notice of the unpaid debt to the Corporate Debtor in the manner provided in Section 8(1) of the I&B Code and the Corporate Debtor is, under Section 8(2), required to bring to the notice of the Operational Creditor, within a period of 10 days of receipt of demand notice, the existence of dispute or pendency of a suit or arbitration proceeding which is pre-existing. Proof of existence of a debt and a default in relation to such debt can be proved by documentary evidence as contemplated by Section 9(3)(d) of the I&B Code. Section 8 does not prescribe any particular method of proof of occurrence of default. In the instant case it has been noticed by the Adjudicating Authority that the Operational Creditor had submitted a letter dated 11.09.2017 from ICICI Bank confirming that no amount had been received in the account of Operational Creditor from any account of the Corporate Debtor since 07.07.2016. The existence of debt and default were satisfactorily established by the Operational Creditor. No pre-



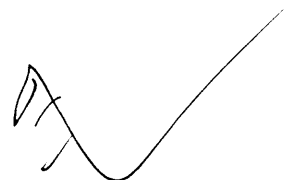
existing dispute was brought to the notice of the Adjudicating Authority to reject the application. Assuming that there was a defect in the demand notice, the Adjudicating Authority was required to provide opportunity to the Operational Creditor to remove the same. The Adjudicating Authority appears to have overlooked the legal aspects. It also appears that the Appellant had sent another demand notice which was received back as 'refused'. This is claimed to have been filed as an Annexure with Form-5 filed by the Operational Creditor before the Adjudicating Authority. The Adjudicating Authority appears to have ignored the same, for no valid reason.

10. In view of the above judgment, we are of the considered view that the debt has been clearly established by the Operational Creditor as no dispute was raised by the Corporate Debtor in respect of the invoice. Moreover cheque of Rs. 5,00,000/- was issued by the Corporate Debtor in favour of Operational Creditor which was dishonored by the bank.
11. The dispute raised in the reply of the demand notice does not sustain since no such dispute is raised by the Corporate Debtor in respect of quality of services prior to the said reply. The Demand notice contains all the relevant information in respect of the outstanding amount thereby we are of the considered view that the demand notice issued to the Corporate Debtor is complete. This present application is otherwise defect-free. It is also meeting the threshold limit as given under section 4 of the Code, and well within the limitation for initiating the CIRP against the Corporate Debtor. Accordingly, the present application is allowed with the following directions;

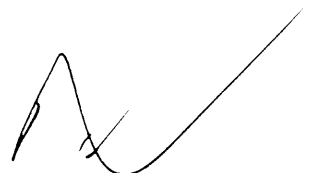
ORDER



- I. The Corporate Debtor M/s. Octagon Communication Private Limited is admitted into the Corporate Insolvency Resolution Process under Section 9 of Insolvency and Bankruptcy Code, 2016.
- II. We appoint **Mr. Sejal Ronak Agarwal, having Registration No. IBBI/IPA-002/IP-N01170/2021-2022/13885, e-mail id: swiftsejal@gmail.com** under section 13(1) (c) of the IB Code as IRP as proposed by the Financial Creditor.
- III. The Moratorium under Section 14 of the Code shall come to effect from the date of this order till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.
- IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any Court of law and further prohibits Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing of any of Corporate Debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



- V. Further, litigation or application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.
- VI. The supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended, or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.
- VII. The IRP so appointed shall make a Public announcement of the Corporate Insolvency Resolution Process (CIRP) immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.
- VIII. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with the IRP, do not assist or co-operate, the IRP is at liberty to

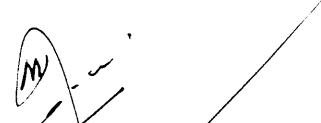


make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- X. We direct the Financial Creditor / Applicant to pay the IRP a sum of **Rs. 25,000/- (Rs. Twenty five thousand only)** as fees & expenses till the COC decides about his fees/expenses.
- XI. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after pronouncement of the order.
- XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
12. Accordingly, CP (IB) No. 29 of 2020 is allowed.



(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)



(MADAN B. GOSAVI)
MEMBER (JUDICIAL)