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

IB No. 616/ND/2020

IN THE MATTER OF:

Zoom Communications Private Limited
B-10, Greater Kailash Enclave Part – I,
New Delhi – 110048.
...PETITIONER/ OPERATIONAL CREDITOR

VERSUS

M/s Par Excellence Real Estate Private Limited
DSC-319, DLF South Court Saket,
New Delhi - 110017
...RESPONDENT/ CORPORATE DEBTOR

Order Delivered on: 17.05.2022

Section: 9 of the Insolvency and Bankruptcy Code, 2016

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	:	Mr. Nikhil Singhvi, Mr. Mohit Seth Advs.
For the CD	:	Mr. Illapakurti Navneeth Sharma Adv.

ORDER

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

Zoom Communication Private Limited (hereinafter referred to as the '**Applicant/Operational Creditor'**) has filed this Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 through its Authorized Representative, Mr. Anil Malhotra with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Par Excellence Real Estate Private Limited (hereinafter referred to as the **'Corporate Debtor/Respondent'**).

2. The Corporate Debtor namely, M/s Par Excellence Real Estate Private Limited with CIN: U70200DL2014PTC271234 is a Company incorporated on 03.09.2014 under the provisions of the Companies Act, 2013, having registered office at DSC-319, DLF, South Court, Saket New Delhi 110017, which falls within the jurisdiction of this Tribunal.

3. The Operational Creditor has submitted that the Corporate Debtor has engaged its services in procuring a loan for which it has raised an invoice for an amount of Rs.57,25,000/- including taxes against the Corporate Debtor. Besides, an interest @24% per annum was to be charged from the date of invoice till the payment of the amount.

4. The Operational Creditor/Applicant has averred the following in support of its contention towards existence of the Operational Debt :

BRIEF SYNOPSIS

The Operational Creditor, most respectfully submits as under:-

1. The Corporate Debtor is a company incorporated under the Companies Act, 1956 having its registered office at DSC-319, DLF South Court Saket, New Delhi-110017.

2. The Operational Creditor is a company incorporated under the companies Act, 1956 having its registered office at B-10, Greater Kailash Enclave, Part-I, New Delhi-110048.

3. That the Corporate Debtor engaged the services of Operational Creditor to procure a loan for which the Operational Creditor raised an invoice bearing No. ZCL/2015-16/145 dated 15.12.2015 amounting to Rs. 57,25,000/- (Rupees Fifty Seven Lacs Twenty Five Thousand Only) including taxes, further an interest of 24% p.a. was to be charged from the date the invoice till the date of realisation of the invoice amount. A copy of the invoice is attached herewith and marked as

4. That the said invoice was acknowledged and accepted by the Corporate Debtor without any protest, dissent or demur. Further, the Corporate Debtor made part-payment towards the invoices to the tune of Rs. 20,00,000/-(Rupees Twenty Lacs Only) and deposited an amount of Rs. 1,00,000/- (Rupees One Lacs Only)

towards TDS deducted on payment made to the Operational Creditor. However, the Corporate Debtor has failed to make the payment towards the balance amount of Rs.36,25,000/-(Rupees Thirty Six Lacs Twenty Five Thousand Only).

5. The Corporate Debtor sought certain period of time from the Operational Creditor to make payments towards the pending amounts and the Operational Creditor agreed to the same because of their professional relationship but the Corporate Debtor failed to make the requisite payments.

6. That on 12.11.2019, an e-mail was received from Mr. Kuldeep Sharma, representative of Corporate Debtor for confirmation of accounts which showcased that the balance of Rs. 36,25,000/-(Rupees Thirty Six Lacs Twenty Five Thousand Only) was due from the corporate debtor to the Operational creditor. A copy of the e-mail along with the letter is attached herewith and marked as **Annexure-B.**

7. That a letter dated 15.11.2019 was issued by the Operational Creditor to the corporate debtor requesting them to clear the outstanding amount which is due and payable by them as per their own e-mail dated 12.11.2019, within a period of 30 days along with interest but the Corporate Debtor failed to respond to the said letter. A copy of the letter dated 15.11.2019 is attached herewith and marked as **Annexure-C.**

8. Despite repeated reminders the Corporate Debtor has failed to clear the outstanding dues and has failed to reply to the Operational Creditor even after acknowledging the dues in its Balance Sheets. On account of failure of the Corporate Debtor to clear the unpaid debt, the Operational Creditor issued a demand notice dated 31.01.2020 under Rule 5 of Insolvency and Bankruptcy

(Application to Adjudication Authority) Rules, 2016 seeking payment of the unpaid debt of Rs. 36,25,000/- (Rupees Thirty Six Lacs Twenty Five Thousand Only) along with interest @24% p.a. amounting to Rs. 29,36,250/- (Rupees Twenty Nine Lacs Thirty Six Thousand Two Hundred and Fifty Only). A copy of demand notice along with speed post receipt and tracking report is attached herewith and marked as **Annexure-D.**

9. It is pertinent to mention that no reply to the demand notice dated 31.01.2020 was received by the Operational Creditor.

10. There is no notice of pre-existing dispute or payment of debt, as contemplated under the Code, which has been received by the Operational Creditor. Hence the present petition.

For Zoom Communications Ltd.

Operational ~~Creditor/~~Applicant

Authorised Signatory

5. That the detailed particulars of the Operational Debt as provided by the Applicant 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 DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	Rs, 36,25,000/- (Rupees Thirty Six Lacs Twenty Five Thousand only) along with interest of 24% per annum from the date of invoice. **Transaction on account of which debt fell due:** 1. Invoice dated 15.12.2015 raised
		mail was received by the corporate debtor along with books of account acknowledging an amount of Rs. 36,25,000/- (Rupees Thirty Six Lacs Twenty Five Thousand Only) outstanding in their books of accounts to be paid to the operational creditor.
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	Rs. 57,25,000/- (Rupees Fifty Seven Lac Twenty Five Thousand only) had to be paid upon issuance of the invoice on 15.12.2015. Therefore, default occurred in non-payment of the said amount on 15.12.2015 and interest at 24% per annum on 57,25,000/- (Rupees Fifty Seven Lacs Twenty Five Thousand Only) less the TDS amount of Rs.1,00,000 deducted is Rs. 10,19,050/- (Rupees Ten Lacs Nineteen Thousand and Fifty Only) was payable from 16.12.2015 till 11.08.2016 Further default occurred on 11.08.2016 when only partial amount of Rs.20,00,000 (Rupees Twenty Lacs Only) was paid. Therefore, an amount of Rs.36,25,000/- (Rupees Thirty Six Lacs Twenty Five Thousand Only) is liable to paid along with an interest at 24% per annum amounting to Rs. 29,36,250/- (Rupees Twenty Nine Lacs Thirty Six Thousand Two Hundred and Fifty Only) from 12.08.2016 till the date of issuance of demand notice. Further, interest is to

		be granted till the date of actual recovery.

AMOUNT DUE	INTEREST (@24%)
57,25,000/- as on 15.12.2015	10,19,050/- (till11.8.2016 when payment of Rs. 20,00,000/- was made and TDS of Rs. 1,00,000/- was deposited.)
36,25,000/- as on 25.2.2020	29,36,250/- (from 12.8.2016 till 31.1.2020 when demand notice was issued.)
Total interest:	Rs. 39,55,300/- (Rupees Thirty Nine Lacs Fifty Five Thousand Three Hundred Only) till 31.1.2020.

6. That the Operational Creditor has submitted that the Corporate Debtor made a part-payment of Rs.20,00,000/- only against the debt due and payable and failed to repay the balance amount of Rs.36,25,000/-. Under the circumstances, it was constrained to issue a Demand Notice dated 31.01.2020 under Section 8 of the IBC, 2016 to the Corporate Debtor seeking payment of the unpaid debt amounting to Rs.36,25,000/- along with interest @ 24% p.a. amounting to Rs.29,36,250/-, which was duly served upon the Corporate Debtor. The Corporate Debtor did not reply to the Demand Notice and no notice of dispute or payment of debt has been received by the Applicant. In support of its submission, the Applicant has filed the Affidavit under Section 9(3)(b) of the IBC 2016, which is at page 58-60 of the Application.

7. On issuance of notice, the Corporate Debtor has, however, filed its reply to the present application and objected to the prayer of the Applicant mainly on the ground of Limitation. That the Corporate Debtor has further stated that there is no debt due and payable to the Operational Creditor.

8. That for the purpose of crossing the hurdle of Limitation, the Applicant has relied upon the Part-payment made against the invoice amount on 11.08.2016, Letter of Acknowledgement of debt dated 01.04.2017 and the Email dated 12.11.2019 of the Corporate Debtor received by the Applicant.

9. That further, the Applicant has filed one IA no. 2245/2020 to bring certain additional documents on record. That these documents were taken on record vide Order dated 17.08.2020 of this Bench.

10. That vide aforesaid IA, the Applicant has filed Balance Sheets of the Corporate Debtor for the Financial Years from 2015-16 to 2018-19 to demonstrate the acknowledgement of the debt made by the Corporate Debtor in the Balance Sheets.

11. That while examining the Balance Sheet of the Corporate Debtor for the year 2017-18 for the purpose of computing the Limitation, we came across the following disclosure made by the Corporate Debtor regarding the Related Party Transactions :

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(i) Related Party Transactions:

S. No.	Name of Related Party	Nature of Relation	Transaction	Outstanding as on 31.03.2016
1.	Gulshan Kumar Jhurani	Director	Repayment of unsecured loan taken from director to the tune of Rs.7,17,65,000/- and procurement of fresh unsecured loan during the year under review of Rs. 1,26,10,000/-.	Rs. 14,73,70,414/-
2.	Randhawa Construction Pvt Ltd	Enterprises with common directorship.	Procured unsecured loan of Rs 1,55,00,000/- during the year under review.	Rs 2,05,00,000/-
3.	Zoom Communications Ltd.	Enterprise with common directorship.	Repayment of unsecured loan to the extent of Rs. 3,44,05,057/-.	NIL
4.	Zoom Communications Ltd.	Enterprise with common directorship.	Invoice of Rs. 57,25,000/- was issued by M/s. Zoom Communications Ltd. against the services rendered to Company during the year.	56,25,000/-
5.	Gulshan Kumar Jhurani	Director	TDS & Service Tax liability of company was paid by director through his reimbursement account.	39,02,357/-

For Awdhesh Kumar Singh
(Chartered Accountant)

Awdhesh Kumar Singh Chartered Accountant New Delhi

Awdhesh Kumar Singh
(Proprietor)
M. No-513423

For Par Excellence Real Estate Pvt. Ltd.

For Par Excellence Real Estate Pvt. Ltd.
Authorised Signatory/Director
Gulshan Kumar Jhurani
Director
(DIN: 00209894)

For Par Excellence Real Estate Pvt. Ltd.
Authorised Signatory/Director
Chhavi Jhurani
Director
(DIN: 00209939)

Date: 06-08-2016
Place: New Delhi

12. That from perusal of the aforesaid disclosure at Sl. No. 4 of the Related Party Transactions in the Balance Sheet of the Corporate Debtor, it has emerged that the Applicant Company i.e., Zoom Communication Private Limited is a "Related Party" to the Corporate Debtor i.e., Par Excellence Real Estate Pvt. Ltd., by virtue of both the Companies having common Directors.

13. However, from the pleadings on record, we notice that neither the Applicant nor the Corporate Debtor has revealed this material fact before this Adjudicating Authority.

14. Since the Balance Sheet for the year 2017-18 under reference has been signed by one Mr. Gulshan Kumar Jhurani, Director (DIN: 00209894) on behalf of the Corporate Debtor, therefore, we would like to examine whether Mr. Gulshan Kumar Jhurani (DIN: 00209894) was also a Director in the Applicant Company or not.

15. Therefore, at this juncture, we refer to the records available in public domain, free of cost, on the Website of the Ministry of Corporate Affairs (MCA) regarding past and present Directorships of Mr. Gulshan Kumar Jhurani (DIN: 00209894). The scanned copy of the MCA record found on the MCA website is reproduced overleaf :

Print

Ministry of Corporate Affairs

User ID : YASH18LAW

View Director / Designated Partner Details

DIN/DPIN : 00209894 **Date: 21/04/2022 10:43:05 PM**

Name : GULSHAN KUMAR JHURANI

CIN/LLPIN	Name of the Company/ LLP	Current designation of the Director/ Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/ LLP Status	Defaulting status
AAB-6859	MOOZ CRAYON EVENTS LLP	Body Corporate DP Nominee	01/08/2013	01/08/2013	-	Defunct	Yes
L65910DL1990PLC040705	GENESIS FINANCE COMPANY LIMITED	Director	10/08/1994	10/08/1994	18/12/2012	Active	-
U29190DL1954PLC002456	ASSOCIATED INFRAPROJECTS AND SERVICESLIMITED	Director	30/09/2008	01/09/2007	18/02/2015	Active	-
U29268KA2007PTC042212	BIZ INDIA VENTURES PRIVATE LIMITED	Director	19/06/2010	19/06/2010	-	Active	-
U32201DL2006PTC156387	FLASH BROADCASTING TV PRIVATE LIMITED	Director	08/12/2006	08/12/2006	17/04/2010	Active	-
U32204DL1989PTC035643	ZOOM COMMUNICATIONS PRIVATE LIMITED	Director	01/06/2010	27/03/2006	07/08/2017	Active	-
U45200DL2007PTC160326	SHOUYEE INFRASTRUCTURE PRIVATE LIMITED	Additional Director	15/06/2010	15/06/2010	15/05/2013	Strike Off	-
U45200DL2010PTC205115	RANDHAWA CONSTRUCTION PRIVATE LIMITED	Additional Director	20/04/2013	20/04/2013	13/10/2016	Active	-
U45200DL2011PTC213631	EMPI INNOVATION PARK PRIVATE LIMITED	Director	09/02/2011	09/02/2011	-	Active	-
U55101TN2014PTC095845	ZEE HOSPITALITY PRIVATE LIMITED	Director	02/04/2014	02/04/2014	-	Strike Off	-
U55209UR2022PTC013864	SHERGARH RESORTS PRIVATE LIMITED	Director	18/04/2022	18/04/2022	-	Active	-
U64202DL2016PTC290640	ZEUS WORLDCAST PRIVATE LIMITED	Director	05/02/2016	05/02/2016	-	Active	-
U70200DL2014PTC271234	PAR EXCELLENCE REAL ESTATE PRIVATELIMITED	Director	03/09/2014	03/09/2014	09/01/2017	Active	-
U72900DL2000PTC106935	Q2AMEDIA SERVICES PRIVATE LIMITED	Director	24/03/2004	24/03/2004	19/08/2017	Active	-
U72900DL2016PTC306601	IOTOMATION ECOTECH PRIVATE LIMITED	Director	29/09/2016	29/09/2016	03/06/2017	Active	-
U74140DL2010PTC206262	NATURE ECO VENTURE PRIVATE LIMITED	Director	26/07/2010	26/07/2010	-	Active	-
U74899DL1987PTC027358	SOPAN REAL ESTATES PRIVATE LIMITED	Director	08/02/2005	08/02/2005	-	Active	-
U74900KA2015PLC079017	AKSHARAGANGA RESOURCES LIMITED	Director	26/02/2015	26/02/2015	-	Active	-
U74900KA2015PTC085041	FITATO HEALTH SOLUTIONS PRIVATE LIMITED	Director	30/09/2019	03/10/2018	-	Active	-
U74999KA2011PTC061463	LEPAKSHI SCIENCE AND TECHNOLOGY PARKPRIVATE LIMITED	Director	29/09/2012	05/03/2012	-	Active	-
U75220DL2020PTC370168	UTKRISHTA DEFENSE PRIVATE LIMITED	Director	19/09/2020	19/09/2020	-	Active	-
U85100KA2010PTC053295	LEPAKSHI HERITAGE WELLNESS VILLAGEPRIVATE LIMITED	Director	29/09/2012	05/03/2012	-	Active	-
U92490DL2011PTC229050	MOOZ ENTERTAINMENT PRIVATE LIMITED	Director	21/12/2011	21/12/2011	05/12/2017	Active	-

16. That from perusal of the above, it is clear that Sh. Gulshan Kumar Jhurani (DIN: 00209894) was also the Director in the Applicant Company i.e., Zoom Communications Pvt. Ltd. during the period from 27.03.2006 to 07.08.2017 besides, being Director in the Corporate Debtor Company during the period from 03.09.2014 to 09.01.2017.

17. That from perusal of Part IV of the Application, it is seen that the Operational Debt claimed by the Applicant is arising out of an invoice amounting to Rs.57,25,000 dated 15.12.2015, which was raised by the Applicant for rendering services for procuring a loan from M/s India Bulls Finance. The scanned copy of the invoice is reproduced below :

ZOOM COMMUNICATIONS LTD

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Annexure - A

INVOICE

TO **M/s PAR EXCELLENCE REAL ESTATE PVT. LTD.** B-226A, GREATER KAILASH, PART-1, NEW DELHI -110 048	**BILL NO.** : **ZCL/2015-16/145** **DATE** : **15.12.2015** **REFERENCE** :
ATTN: MR. AJAY VERMA TEL : 91-98713 85486	

TITLE OF PRODUCTION :

PARTICULARS		**AMOUNTS (Rs.)**
TOWARDS CHARGES FOR LOAN ARRANGEMENT FEE FOR RS. 7 CRORE FROM INDIA BULLS FINANCE	50,00,000	50,00,000
	TOTAL (Rs.)	**50,00,000**
ADD SERVICE TAX @ 14.00%		**7,00,000**
ADD S.B CESS @ 0.50%		**25,000**
	TOTAL (Rs.)	**57,25,000**
Rupees Fifty Seven Lac Twenty Five Thousand Only		

Service Tax Regn.No. AAACZ0080EST001
Company Identity Number : U99999DL1989PLC035643
PAN: AAACZ0080E

For ZOOM COMMUNICATIONS LTD.

AUTHORISED SIGNATORY

TERMS & CONDITIONS:
1. CHEQUE MADE IN FAVOUR OF **"ZOOM COMMUNICATIONS LTD."**
2. PAYMENT SHOULD BE MADE IMMEDIATELY ON PRESENTATION OF THIS BILL INTEREST 24% P.A. WILL BE CHARGED FROM THE DATE OF BILL TILL REALISATION OF CHEQUE/DRAFT.
3. ALL DISPUTES SUBJECTS TO DELHI JURISDICTION.

18. That from the conjoint perusal of the MCA record of the Directorship of Sh. Gulshan Kumar Jhurani (DIN: 00209894) and the Invoice raised by the Applicant, it is evident that Sh. Gulshan Kumar Jhurani (DIN: 00209894) was Director in both the Corporate Debtor as

well as the Applicant Company on the date when the invoice under reference was raised and when the default had occurred.

19. Hence, it is clear from the aforesaid analysis that both the Applicant Company, which has claimed the operational debt based on an invoice for a loan procured for the Corporate Debtor and the Corporate Debtor against whom the Applicant is seeking to initiate CIR Process were having common Director namely, Mr. Gulshan Kumar Jhurani (DIN: 00209894). By way of visiting the records at the MCA Website and on piercing the corporate veil, it is clear that not only both the Applicant Company as well as the Corporate Debtor were 'related party' due to common Directorship on the date of the invoice but also here is a case, where Director of the Corporate Debtor (in the capacity of Director of the Applicant Company) has procured a loan for his own Company and is charging procurement fee therefor. In view of the aforesaid finding, we are of the considered view that the aforesaid transaction, which had taken place between the two related Companies in the year 2015 is sham and the CIR Process cannot be initiated on the basis of such a sham transaction.

20. That we are conscious of the provision contained in Proviso to Section 21(2) of IBC, 2016, whereby no right of representation, participation or to vote has been granted to a 'Related Party' on initiation of CIRP of the Corporate Debtor. Hence, in our considered view, the related party is having no control in the CIR Process.

Therefore, the intention of a related party of initiating the CIR Process shall always raise eyebrows.

21. The aforesaid sequence of events shows that the Application for initiating the CIR Process has been filed by concealing a material fact that the Applicant and the Corporate Debtor were related Parties at the time of transaction basing on which operational debt has been claimed. Since, the said transaction has turned out to be a sham transaction, we are of the considered view that both the parties are in collusion and the present Application has not been filed for the resolution of Insolvency rather, the parties have attempted to kickstart the CIR Process with a malicious intent for a purpose other than the resolution of insolvency of the Corporate Debtor, which is not permissible under the IBC 2016. As per the Code, if any person [as defined under Section 3(23) of IBC] initiates the Insolvency Resolution Process fraudulently or with malicious intent for any purpose other than for the resolution of the insolvency, or liquidation and such an act is punishable under Section 65 (1) of IBC 2016. Hence, before taking any action under Section 65(1) IBC 2016, we think it proper to issue a show cause notice, under Rule 59 of the National Company Law Tribunal Rules 2016, to M/s. Zoom Communications Pvt. Ltd. through its Directors and M/s Par Excellence Real Estate Pvt. Ltd. through its Directors and to Mr. Gulshan Kumar Jhurani as to why the penalty as stipulated under Section 65(1) of IBC, 2016 shall not be imposed on them. Ld. Registrar NCLT is directed to issue the show cause notice under Section 65(1) of IBC 2016 read with Rule 59 of the National Company Law Tribunal Rules, 2016 by giving

them fifteen days' time to explain and submit in writing as to why the penalty as stipulated under Section 65(1) of IBC, 2016 shall not be imposed on them. The Registry is directed to allot a Case No. for the proceedings for which the Show Cause Notice is being issued to the concerned parties under Section 65(1) of IBC, 2016. Registry/ Court Officer to list this matter on 03.06.2022.

22. **In sequel to the above, the Application is Dismissed with a cost of Rs.2 Lakh to be deposited by the Applicant Company with the Prime Minister Relief's Fund within a period of 15 days.**

23. A Copy of this order be sent by the Court Officer to IBBI for their record.

Sd/-
(L. N. Gupta)
Member (T)

Sd/-
(Abni Ranjan Kumar Sinha)
Member (J)

Since the Hon'ble Judicial Member Sh. Abni Ranjan Kumar Sinha is on leave, the pronouncement of the Order is made under Rule 151 of the NCLT Rules, 2016 in the open Court today i.e., on 17.05.2022 on behalf of the Bench.

(T.S. Singh)
Court Officer