

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-II, SPECIAL BENCH
KOLKATA**

CP (IB) No. 388/KB/2019

*An application under section 9 of the Insolvency and Bankruptcy Code,
2016 read with rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016.*

In the matter of:

Quadrum Solutions Private Limited

...Operational Creditor

Versus

**Gyan Ganga Limited
[CIN: U5396BR1994PLC005734]**

...Corporate Debtor

Date of Hearing: 09/11/2022

Date of pronouncing the order: 09/01/2023

Appearances (through hybrid mode):

For the Operational Creditor : Mr. Pratik Kothari, Advocate

For the Corporate Debtor : Mr. Nishant Maitin, CA

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(COURT-II)

CP (IB) No. 388/KB/2019
Quadrum Solutions Pvt. Ltd. v. Gyan Ganga Ltd

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Quadrum Solutions Private Limited (***“Operational Creditor”***), represented by **Shri Abhiraj Parab (Advocate)**, authorized through a Letter of Authority¹ dated 10th January, 2019 and Board Resolution dated 20.12.2018² seeking to initiate Corporate Insolvency Resolution Process (***“CIRP”***) against Gyan Ganga Limited (***“Corporate Debtor”***).
3. The present petition was filed on 6 March 2019 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.51,44,801/- (Rupees Fifty-One Crore Forty-Four Lakh Eight Hundred and One only) excluding interest as on 6th March 2019³. The date on which the debt fell due is on 31.03.2016.
4. It is submitted in Part-II of the Petition that the authorized share capital of the Corporate Debtor is Rs.3,00,00,000 (Rupees Three Crore Only) with paid up capital as Rs.3,00,00,000 (Rupees Three Crore Only).

Submission of Learned Counsel appearing for the Operational Creditor

5. The learned Counsel submitted that the Operational Creditor is a Private Limited Company and had developed content and designed book as per the requirement of the Corporate Debtor and the Operational Creditor

¹ Annexure-2 at Page 18 of the Petition

² Supplementary Affidavit filed by the Operational Creditor pursuant to the order dated 23.12.2020

³ Page 7 of the Petition

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(COURT-II)**

**CP (IB) No. 388/KB/2019
Quadrum Solutions Pvt. Ltd. v. Gyan Ganga Ltd**

raised invoices⁴ for the same. In order to discharge the said liability, cheques were issued on behalf of the Corporate Debtor which went dishonoured⁵ and cognizance has also been taken against the Corporate Debtor in a complaint filed by the Operational Creditor under Section 138 of the Negotiable Instruments Act, 1881 and the same is pending before the Learned Metropolitan Magistrate Court, Dadar.

6. It is further submitted that in respect of the abovementioned default, some emails and WhatsApp were exchanged between the parties and the said conversations are proof of acknowledgement of default of payment on behalf of the Corporate Debtor.⁶
7. The Operational Creditor had time and again reminded the Corporate Debtor to pay the dues and issued a demand notice⁷ under Section 8 of the Code on 20.12.2018 which was served by registered email id and a hard copy of the notice was also sent through registered post at the registered address of the Corporate Debtor. The statutory notice was received and the same is evident from the Registered AD card⁸ received in return.
8. The Operational Creditor submits that the Corporate Debtor has come up with a false defence that there were internal disputes with Mr. Siddharth Singh and that the publication division was closed, but this fact was never informed to the Operational Creditor. It further submits that it was merely a division of the Corporate Debtor and not a separate entity itself, therefore the Corporate Debtor is liable to pay the outstanding dues.

⁴ Annexure 3, Page 19-46 of the Petition

⁵ Annexure 4, Page 47-56 of the Petition

⁶ Annexure-5-5A at Pages 57-63 of the Petition

⁷ Annexure 6 at Page 64-71 of the Petition

⁸ Annexure-8 at Page 73-74 of the Petition

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(COURT-II)

CP (IB) No. 388/KB/2019
Quadrum Solutions Pvt. Ltd. v. Gyan Ganga Ltd

Submission of Learned Counsel appearing for the Corporate Debtor

9. The Corporate Debtor states that it was established in the year 1994 and carried on the business of retail, wholesale and distribution of Educational Books and Stationery items and in due course of time some new segments of businesses like distribution of educational aids, Teaching Aids, Games and Toys, Distribution of complete school uniforms as well as publication division were added. All such segments were divided in five different Educational Business Schemes (EBS-I, II, III, IV & V) and all of these had different works and different bank accounts.
10. It submits that the Publication Division (EBS-II) was headed by one Sri Siddhartha Singh. There were several disputes between the parties and the Publication Division (EBS-II) was closed by the Corporate Debtor w.e.f. 01.04.2016. Pursuant to such closure, Sri Siddhartha Singh got entire stock of Publication Division towards his dues with the Corporate Debtor and he started his own independent organization. A communication notice⁹ dated 31.03.2016 was issued by the Managing Director, Bharat Singh which makes it amply clear that after 31.03.2016, the Corporate Debtor had nothing to do with the publication work.
11. The Corporate Debtor had replied to the notice issued by the Operational Creditor on 07.11.2016, *vide* letters dated 14.11.2016¹⁰ and 30.11.2016¹¹ wherein it was clearly conveyed that after the closure of the Publication Division, the Corporate Debtor or any of its directors were not responsible for issuance of any cheque or business transactions. But the Operational Creditor had filed a complaint case against the Corporate Debtor and its directors even after the issuance of the above-mentioned

⁹ Annexure-A/1 at Page 11 to 12 of the Reply

¹⁰ Annexure-A/2 at Page 13 of the Reply

¹¹ Annexure-A/3 at Page 14 to 15 of the Reply

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(COURT-II)**

**CP (IB) No. 388/KB/2019
Quadrum Solutions Pvt. Ltd. v. Gyan Ganga Ltd**

letters, before the Ld. Metropolitan Magistrate, 7th Court, Dadar, Mumbai.

12. The Operational Creditor in the aforesaid complaint case have mentioned the total invoices amount as Rs.63,13,144/- whereas in the present petition it is stated to be Rs.51,44,801/- (Rupees Fifty-One Crore Forty-Four Lakh Eight Hundred and One only).
13. The Corporate Debtor submits that after getting the knowledge that the Corporate Debtor would not be liable for liability took upon by the Publication Division after 31.03.2016, the Operational Creditor had filed the present petition on the basis of false and forged invoices, all dated on or before 31.03.2016.
14. The Corporate Debtor further submits that these invoices are not genuine documents as the Operational Creditor has not filed any proof of acknowledgment/service of these invoices/ documents upon the Corporate Debtor. That if even for the sake of arguments, the said impugned invoices were due, the Operational Creditor did not issue any reminder or took steps for recovery of their illegitimate dues for long period of two and half years except under the Negotiable Instruments Act for dishonour of cheques issued by Sri Siddhartha Singh.
15. The Corporate Debtor submits that no acknowledgment of debt is discernible from the invoices as well as the excerpts of email or WhatsApp so filed as to qualify the same as debt enforceable under the provisions of IBC.
16. It is further submitted that all the cheques were issued by Sri Siddhartha Singh in the capacity of director of the Corporate Debtor whereas he was the President of the Publication Division till 31.03.2016 and also all cheques were issued in August-September 2016 i.e., the time when the said Sri Siddhartha Singh had nothing to do with the company.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(COURT-II)**

**CP (IB) No. 388/KB/2019
Quadrum Solutions Pvt. Ltd. v. Gyan Ganga Ltd**

17. The Corporate Debtor submits that the present petition has been filed for recovery of an outstanding amount of Rs.51,44,801/- (Rupees Fifty-One Crore Forty-Four Lakh Eight Hundred and One only). The Operational Creditor had in para 11¹² of the complaint case filed at Dadar accepted that the Corporate Debtor had denied liability against said bills and have taken false defence. Thus, the Operational Creditor had given false affidavit stating contradictory fact regarding no notice of dispute as required by section 9(3) (b).
18. It further submits that the claim of Rs.63,13,144/- in the complaint before Metropolitan Magistrate, Dadar was raised towards supplies effected to justify claim of cheques of Rs. 71,00,000/- whereas in the instant petition, the claim is of Rs.51,44,801/-.
19. The email correspondence on 11.08.2016¹³ lists out that sum of Rs.64 Lakh is due payment since 'last one year'. This statement implies that due invoices pertained to some period prior to August 2015 and not March 2016 as contemplated in the petition.
20. The Corporate Debtor submits that the Operational Creditor was required to serve the statutory notice in Form 4 with copies of invoices and not Form 3, which is filed in case invoices are not generated. The said notice was never issued to the Corporate Debtor and the same can be culled out from non-appearance of any representative of the Corporate Debtor in the entire proceedings conducted until late. The Corporate Debtor also disputes that the acknowledgment due of the statutory demand notice was receipted by one Sanjay Kumar Singh, however, the Corporate Debtor is not aware of any person by that name.

¹² Page 23 of the Reply.

¹³ Page 57 of the Petition

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(COURT-II)**

**CP (IB) No. 388/KB/2019
Quadrum Solutions Pvt. Ltd. v. Gyan Ganga Ltd**

Analysis and Findings

21. Heard the Learned Counsel appearing for both the parties and perused the record.
22. The Corporate Debtor in its reply to the present petition has raised a plea that the Operational Creditor has not provided any proof of acknowledgement of invoices by the Corporate Debtor. After perusing the records, we find, that the invoices on the basis of which the Operational Creditor claims its dues from the Corporate Debtor, have neither been signed/stamped nor served to the Corporate Debtor before the issuance of the statutory demand notice dated 20.12.2018. Also, the Operational Creditor did not take any steps for recovering such dues except the complaint case filed before the Learned Metropolitan Magistrate, Dadar, Mumbai under Section 138 of the Negotiable Instruments Act, 1881 which is based on the dishonour of cheques issued in August-September, 2016 by one Sri Siddhartha Singh who was the erstwhile President of the Corporate Debtor and ceased to act in such capacity since 01.04.2016 as per the notice dated 31.03.2016 which is annexed as **Annexure-A/1** at Page 11 to 12 of the Reply.
23. In view of the above observations, we find that there is no proof of any debt or default on the part of the Corporate Debtor and as such, the present petition being **C.P.(I.B.) No. 388/KB/2019** is **rejected**.
24. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on 9th day of January, 2023.

FA(LRA)