

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) No.352 of 2022

(Arising out of Order dated 15.02.2022, passed by National Company Law Tribunal, New Delhi Bench, Court – III in C.P. (IB)No.953/ND/2020)

IN THE MATTER OF:

Ashwani Atrish

**[Ex-Director, M/s. Grades
Entertainments Pvt. Ltd.]**

**Correspondence Address: 304,
Competent House, F-14, Middle Circle,
Connaught Place, New Delhi – 110001
Email Id: vipingarg@vgnc.in**

...Appellant

Versus

**1. M/s. Paras Art Studio
Block A-52/7, Middle Circle,
Connaught Place, New Delhi – 110001.
Email: accounts2@parasartstudio.com**

...Respondent No. 1

**2. Mr. Nimit Soni s/o Vijay Soni
Partner of Paras Art Studio
Block A-52/7, Middle Circle, Connaught
Place, New Delhi – 110001.
Email: accounts2@parasartstudio.com**

...Respondent No. 2

**3. Mr. Rajan Soni s/o Late Prem Soni
Partner of Paras Art Studio
Block A-52/7, Middle Circle, Connaught
Place, New Delhi – 110001.
Email: accounts2@parasartstudio.com**

...Respondent No. 3

**4. Mr. Vijay Soni s/o Late Prem Soni
Partner of Paras Art Studio
Block A-52/7, Middle Circle, Connaught
Place, New Delhi – 110001.
Email: accounts2@parasartstudio.com**

...Respondent No. 4

**5. M/s. Cox & Kings Ltd. (In Liquidation)
Through Liquidator Ashutosh Agarwala
D-1005, Ashok Towers,
Dr. S.S. Rao Road,**

Parel, Mumbai – 400012

Email:

ip.coxandkings@duffandphelps.com,
compliance@coxandkings.com

...Respondent No. 5

6. M/s. Grades Entertainments Pvt. Ltd.
(Under CIRP)

Through Mr. Nitish Kumar Chugh – [IRP]
A-802, Dharam CGHS, Plot No. 18,

Sector – 18A,

Dwarka, New Delhi – 110075

Email: cirp.grades@gmail.com,
ca.nitis@gmail.com

...Respondent No. 6

For Appellant:

Mr. Akhilesh Kumar, Mr. Vipin Garg, Mr. Arjun Agarwal & Mr. Krishna Goel, Advocates.

For Respondent No. 5:

Mr. Pulkitesh Tiwari, Ms. Bency Ramakrishnan & Mr. Akash Menon, Advocates for R-5.

For Respondent No. 6:

Mr. Rajat Chaudhary, Advocate for R-6.

J U D G E M E N T

(Per: Shreesha Merla, Member (T))

1. This Appeal is filed by the Suspended Director of *M/s. Grades Entertainment Private Limited*/ the ‘Corporate Debtor’ under Section 61 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as ‘The Code’), being aggrieved by the Impugned Order dated 15/02/2022 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi Bench) in C.P. (IB) No. 953/ND/2020, wherein the Learned Adjudicating Authority has admitted the Section 9 Application filed by *M/s. Paras Art Studio*/ the ‘Operational Creditor’.

2. Succinctly put, the facts in brief are that *M/s. Cox & Kings*, (which is in liquidation), was given the contract to organise a mega event called

Petrotech, 2019 held by the Ministry of Petroleum and Natural Gas, Government of India. M/s. Cox & Kings engaged M/s. Grades Entertainment Private Limited/the 'Corporate Debtor' which in turn engaged M/s. Paras Art Studio/the 'Operational Creditor' to provide the designing and fabrication services and other assistance for the said event.

3. It is the case of the Appellant that they were engaged by M/s. Cox & Kings as their authorised agent only to release the payments to the various Vendors/Sub-Contractors appointed by M/s. Cox & Kings, for which the 'Corporate Debtor' was paid a fixed charge of Rs.20,00,000/-. Learned Counsel for the Appellant submitted that the 'Corporate Debtor' was instructed by M/s. Cox & Kings to submit a Performa Invoice on the lines of the Invoice dated 21/01/2019 raised by the 'Operational Creditor' for the consolidated estimated sum of Rs.5,00,00,000/- + GST, on 31/01/2019 and the purchase of the Order of the same account was issued by M/s. Cox & Kings to the 'Corporate Debtor' for the aforesaid estimated sum of payments to be released by the 'Corporate Debtor' to the Vendors/Sub-Contractors. The Learned Counsel strenuously contended that the Vendors/Sub-Contractors appointed by M/s. Cox & Kings included the 'Operational Creditor' who was providing services directly to M/s. Cox & Kings and their role was only of an accounting and payment mechanism to raise Invoices in the name of the 'Corporate Debtor' and therefore never incurred any 'debt', in terms of the provisions of Section 3(11) of the Code. Learned Counsel drew our attention to the purchase Order dated 15/01/2019 issued by M/s. Cox & Kings. Thereafter on 31/01/2019, M/s. Cox & Kings appointed the

‘Corporate Debtor’ as its authorised payment agent to receive and disburse the amounts, as per instructions, the ‘Corporate Debtor had released four payments.

4. Learned Counsel argued that the ‘Operational Creditor is a direct service provider to M/s. Cox & Kings and also filed its claim with the IRP on 17/01/2020. It is also submitted that the ‘Corporate Debtor’ itself has filed their claim before the RP of M/s. Cox & Kings for an amount of Rs.2,85,00,000/- pertaining to the event Petrotech 2019 and it was during the course of discussion with IRP that the ‘Corporate Debtor’ came to know about the claim filed by the ‘Operational Creditor’. It is contended that the ‘Corporate Debtor’ is not a sister concern of M/s. Cox & Kings and both are independent Companies and therefore, there is no ‘debt’ payable by the ‘Corporate Debtor’. There was also a dispute which is raised about the liability of the claim raised by the ‘Operational Creditor’ and therefore this Application under Section 9 is not maintainable. It is also contended that M/s. Cox & Kings was a necessary party as the claim for the same amount has been made by the ‘Corporate Debtor’ and the first Respondent before the Liquidator of M/s. Cox & Kings.

5. The main point which falls for consideration in this Appeal is whether the Adjudicating Authority was justified in admitting the Application filed by the ‘Operational Creditor’ under Section 9 of the Code.

6. It is an admitted fact that the ‘Corporate Debtor’ was engaged by M/s. Cox & Kings for providing services for the event Petrotech 2019 and the ‘Corporate Debtor’ acted as an intermediary. In the meantime, CIRP Process was initiated against M/s. Cox & Kings vide Order dated 22/10/2019,

pursuant to which, the 'Corporate Debtor' filed a Claim as an 'Operational Creditor' with the Liquidator of M/s. Cox & Kings. For better understanding of the role of the Appellant and the first Respondent, the Tax Invoice dated 21/01/2019 is reproduced as hereunder:

Annexure - J

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ANNEXURE-E/3

TAX INVOICE
ORIGINAL FOR RECIPIENT

PARAS ART STUDIO
Exhibitions • Conferences • Events
www.parasartstudio.com

Invoice #: PAS/2018/01/337
₹ 2,43,08,000.00
Due on: 21/01/2019
Invoice Date: 21/01/2019
Payment Terms: Due on receipt

FROM
GSTIN: 07AAOFP1073G1Z6
PAN: AAOFP1073G
PARAS ART STUDIO
BLOCK A-25/7 MIDDLE CIRCLE
CONNAUGHT PLACE
NEW DELHI, 110001
Delhi (07)

TO
GSTIN: 09AACCG6094P1ZV
GRADES ENTERTAINMENTS PRIVATE LIMITED
D 5 Om First Apartments
32 Radhe Shyam Park, Sahibabad
Ghaziabad,
Uttar Pradesh
State Code: 09
PLACE OF SUPPLY: Uttar Pradesh (09)
Kind Attn: Mr. Anil Katoch

Event: PETROTECH 2019 to be held at India Expo Centre,
Greater Noida from 10th - 12th February 2019

S.NO	NAME	DESCRIPTION	HSN/SAC CODE	AMOUNT	TAX
1	EVENTS, EXHIBITIONS, CONVENTIONS AND TRADE SHOWS ORGANISATION ASSISTANCE SERVICES	Projected cost for designing and fabrication for Petrotech 2019	998596	20600000	18%
Payment Details To process the payment, please find our bank details as follows: A/C Name: PARAS ART STUDIO A/C Number: 912020056125854 Bank Name: Axis Bank Add: BASEMENT, GROUND AND FIRST FLOOR, SAHNI HOUSE, 26/5, EAST PATEL NAGAR, NEW DELHI 110003 Branch Code: 1006 IFSC Code: - UTIB0001006 SWIFT CODE: AXISINBBAS1				SUBTOTAL 2,06,00,000.00 Tax IGST @ 18% 37,08,000.00 ROUND OFF 0.0 Total Invoice (In figures) ₹ 2,43,08,000.00 Total Invoice (In words) Rupees Two Crore Forty Three Lakh Eight Thousand Only	

Notes

For PARAS ART STUDIO
Authorised Signatory

True Copy

7. The aforementioned Tax Invoice shows that the payment was made to the account of the 'Operational Creditor' by the 'Corporate Debtor'. The material on record evidences that the 'Corporate Debtor' deposited TDS of Rs.4,12,000/- which is the TDS on the entire amount of the Invoice of Rs.2,06,00,000/-. It is not disputed that the 'Operational Creditor' deposited the GST of Rs.37,08,000/- on the entire amount of the Invoice in favour of the 'Corporate Debtor' and the benefit of the said amount as input amount has been taken by the 'Corporate Debtor'. A perusal of the Invoices evidences that the Tax Invoice was raised in favour of the 'Corporate Debtor' and not on M/s. Cox & Kings. It is significant to mention that the part payment was also made by the 'Corporate Debtor' and not by M/s. Cox & Kings. This Tribunal is of the considered view that the privity of contract is between the 'Operational Creditor' and the 'Corporate Debtor' and therefore the amount which is in default is 'due and payable'. In so far as Pre-Existence of Dispute warranting rejection of Application of triggering of CIRP under Section 9 of the Code is concerned, a bare perusal of the material on record filed by the 'Corporate Debtor' does not evidence any dispute which is not spurious or illusory and requires investigation. Having regard to the evidence on record, we have no hesitation in holding that the Appellant has hired the services of the Respondent for executing the event and owes an obligation to pay for the same, thereby bringing it within the fold of 'Operational Debt' and therefore the first Respondent holds the status of an 'Operational Creditor' qua the Appellant. Having held so, we observe that there is no infirmity in the Order of

the Adjudicating Authority in holding that there is an 'Operational Debt' in respect of the 'default' which is alleged and is therefore payable in law.

8. The finding is perfectly justified in the facts and circumstances of the case and therefore we are of the considered view that the Impugned Order does not suffer from any factual frailty. Hence, this Appeal fails and is dismissed accordingly. No Order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Ms Shreesha Merla]
Member (Technical)**

**New Delhi
11th April, 2022**

himanshu