



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 04
IB-1027(ND)/2020

IN THE MATTER OF:

M/s. Ultratech Cement Ltd.

.....OPERATIONAL CREDITOR

Vs.

M/s. Universal Journeys India Pvt. Ltd.

.....CORPORATE DEBTOR

SECTION

U/s 9 of IBC, 2016

Order Pronounced on 01.08.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER


Order pronounced in open court vide separate sheets. IB-1027(ND)/2020
is **dismissed**.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III
IB – 1027/ND/2020**

Order 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:

M/s. ULRATECH CEMENT LTD.

..... Applicant/Operational Creditor

VERSUS

M/s. UNIVERSAL JOURNEYS (INDIA) PVT. LTD. & ORS.

..... Respondents/Corporate Debtors

MEMO OF PARTIES

M/s. ULRATECH CEMENT LTD.

Having Its Registered Office at:

B-wing, Ahura Centre, 2nd Floor,
Mahakali Caves, Road Andheri,
East Mumbai, Maharashtra-400093.

Through Its Authorised Representative/Vice-President

Mr. Subhash Mohnot

..... Applicant/Operational Creditor

VERSUS

M/s. UNIVERSAL JOURNEYS (INDIA) PVT. LTD. & ORS.

1. M/s. UNIVERSAL JOURNEYS (INDIA) PVT. LTD.

Having Its Registered Office at:

1013/6, Devika Tower-6,
Nehru Place, Delhi-110019.

..... Corporate Debtor No. 1

2. Ms. GEETANJALI ALAMSHAH

M/s. Ultratech Cement Ltd. vs. M/s. Universal Journeys (India) Pvt. Ltd. & Ors.

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Director of M/s. Universal Journeys Pvt. Ltd.

R/o S-491, Greater Kailash-II,

New Delhi-110048.

..... **Corporate Debtor No. 2**

3. Mr. STEPHEN ALAMSHAH

Director of M/s. Universal Journeys Pvt. Ltd.

R/o S-491, Greater Kailash-II,

New Delhi-110048.

..... **Corporate Debtor No. 3**

Order Pronounced On: 01.08.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS,

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI,

HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant : Ms. Deepa Sharma, Adv.

For the Respondent : Mr. Vivek Chib, Sr. Adv., Mr. Tarun
Agarwal, Mr. Shrey, Ms. Mansi, Ms.
Unnati, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by M/s. Ultratech Cement Ltd., the Applicant/Operational Creditor on 18.09.2020, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against M/s. Universal Journeys (India) Pvt. Ltd. & Ors., the

M/s. Ultratech Cement Ltd. vs. M/s. Universal Journeys (India) Pvt. Ltd. & Ors
IB - 1027/ND/2020

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Respondents/Corporate Debtors on the ground that the Corporate Debtor No. 1 has defaulted/failed to clear the outstanding amount of Rs. 4,13,42,909.95/- (Rupees Four Crore Thirteen Lakh Forty Two Thousand Nine Hundred Nine and Ninety Five Paise Only) along with interest @ 18% p.a. on the account of delay as on 02.07.2019.

2. Submissions of the Applicant:

- i.** In the year 2018, Applicant/Operational Creditor was approached by the representatives of the Corporate Debtor Company at its aforesaid office for providing its services for its wisest guides in bespoke travel itineraries (incentive tours) representing especially customized and crafted to deliver out of the box and unusual experience to the Operational Creditor Company and its team. Believing the representations made by the Corporate Debtor, the Operational Creditor started placing orders to the Corporate Debtor Company and issued various orders during the time period from June, 2018 to October, 2018 for the purpose of various domestic and International tours to various places. Within the scope of the work as agreed, Operational Creditor raised several purchase orders, advance payments were made and subsequently, the Corporate Debtor was bound to provide with respect to the services provided and actual expense incurred.
- ii.** As per the payment terms of the Purchase Orders, approximately 60% amount of the tour package was to be paid in advance along with PO (Purchase Order), 20% advance payment was to be made within 7 days prior to the tour and the balance 20% amount within 10 working days of successful completion of the tour and submission of the bills with all supporting and feedback forms. Further, it was agreed that the amount paid by the Operational Creditor to the Corporate Debtor shall be exclusively used by the Corporate Debtor for rendering services to the Operational Creditor and the Corporate Debtor shall



immediately refund the excess amount paid if any after reconciliation of the accounts.

- iii.** As agreed by the Operational Creditor, several purchase orders for the domestic and foreign tours were raised as represented and depicted by the Corporate Debtor. Via mail dated 26.02.2019, the Corporate Debtor showed their inability to conduct further tours of the Operational Creditor and left them in the lurch. Many times, payments were made to the Corporate Debtor in advance up to 80%, however, the said tour was never conducted and hence, the said amount accumulated with the Corporate Debtor. But the Corporate Debtor dishonestly failed to refund the excess amount.
- iv.** Pursuant to the purchase orders placed by the Operational Creditor, the Corporate Debtor had been sending forged and fabricated bills/claims without any supporting documents including the air tickets, boarding pass, invoices of hotel booking etc. One of such Invoice was detected by the Operational Creditor wherein without conducting any tour, the invoice was raised for Rs. 37,98,196/-.

As per the terms of the Purchase Order, the advance payment was made on the basis of an initial number of pax (persons), however, the tour was not scheduled.

The Corporate debtor neither adjusted the accumulated fund against the other trips nor refunded the same earlier on demand, not at the time of cancellation of the contract.

- v.** It is pertinent to state that the Corporate Debtor vide its email dated 10.05.2019 sent by one Ms. Vandana, duly confirmed and accepted its part outstanding liability to the tune of Rs. 2,13,06,148/- (Rupees Two Crore Thirteen Lakh Six Thousand One Hundred and Forty Eight Only) due and payable by the Corporate Debtor. It is pertinent to mention that the Operational Creditor has been trying to follow up with the Corporate Debtor for the recovery of its balance amount and every time the



Operational Creditor has assured but not adhered to by the Corporate Debtor.

- vi.** As per the Purchase Order, the Operational Creditor paid 60% to 80% amount of the various tours in advance which was neither adjusted in further payments of that particular tour nor in the other tour nor refunded and consequently accumulated in excess with Corporate Debtor. The Operational Creditor time and again has requested the Corporate Debtor to refund the excess amount and pay back the money but the Corporate Debtor failed to clear the dues of the Operational Creditor.
- vii.** The Operational Creditor made several requests and also sent several reminders to the Corporate Debtor for the payment of pending dues. The representatives of the Operational Creditor also visited the office of the Corporate Debtor and approached the Corporate Debtor for the payment due to it. However, the Corporate Debtor failed to make any payment. Pursuant to various visits and reminders, the Corporate Debtor has made the last part payment of Rs. 50 Lakh on 31.05.2019 and Rs. 18,51,806/- (Rupees Eighteen Lakh Fifty One Thousand Eight Hundred and Six Only) on 02.07.2019, in total an amount of Rs. 68,51,806/- (Rupees Sixty Eight Lakh Fifty One Thousand Eight Hundred and Six Only) leaving an outstanding amount of Rs.4,13,42,909.95/-. (Rupees Four Crore Thirteen Lakh Forty Two Thousand Nine Hundred Nine and Ninety Five Paisa Only).
- viii.** The Applicant through its Advocate served on the company a statutory demand notice dated 28.08.2019 under Section 8(1) of the Code demanding payment in respect of the unpaid Operational Debt due from Universal Journeys India Pvt. Ltd. at the registered office of the Company and all other address. The notice was dispatched by courier and by Speed Post and was duly received by the Corporate Debtor Company. As there was some typographical error in the notice, a corrigendum dated 11.03.2020 to the demand notice dated 28.08.2019 was also



sent and duly served on the Corporate Debtor as the same has not been received back.

Since the Corporate Debtor did not make any payment the present application has been filed.

3. Submissions of the Respondents:

- i.** The Operational Creditor is a large corporate house having a pan India presence dealing in the business of cement manufacturing and sale. The Operational Creditor in order to promote its business gave incentive tours to its dealers and employees across India to travel and stay for leisure in various foreign locations /countries including stay and visit at places of tourist interest in India.
- ii.** The Operational Creditor used to issue purchase orders against which advance payments were made to the Respondent for providing the services. The Operational Creditor by issuing a purchase order used to avail travel related services from the Respondent. The Corporate Debtor/Respondent agreed to provide the services to the Operational Creditor and raised its invoices from 14.07.2018 to 31.03.2019 as per the agreed rates prescribed under the purchase order.
- iii.** The Operational Creditor had served three demand notices i.e. 28.08.2019, 08.10.2019 and 11.03.2020 under Section 8(1) of the Code, while the second notice dated 08.10.2019 had been deliberately concealed by the Operational Creditor. While the first and second notice dated 28.08.2019 and 08.10.2019 were issued demanding an amount of Rs. 5,99,70,927/- towards the claim of excess amount paid in lieu of travel related services provided by the Respondent.
- iv.** After a long delay third notice dated 11.03.2020 under Section 8(1) of the Code was issued by the Operational Creditor, this time demanding an amount of Rs. 4,13,42,909/- along with the interest @18% p.a. till the actual realization of the amount.



Notably, the amount demanded in the first and the second notice dated 28.08.2019 and 08.10.2019 is different from the amount mentioned in the third demand notice sent on 11.03,2020. Under the application Rs. 4,13,42,909/- indicating that there was no clarity on the debt even by the calculations of the Operational Creditor.

This would also mean that either there was no valid demand notice or there is a defective petition before this Tribunal, thus the present petition should be dismissed on this ground alone.

- v. Further, it is submitted by the Respondent that there is a pre-existing dispute before the issuance of demand notices or invoices. The Corporate Debtor sent-various emails between 05.12.2018 to 29.05.2019 to the Operational Creditor and requested it to clear/approve the outstanding amounts on account of ROE /fuel charges/flight cancellations/hotel booking cancellations and damage claim amount, while the Operational Creditor failed to clear/approve the outstanding amount, thus the respondent adjusted the outstanding amount of Rs. 1,33,62,365.45/- on account of ROE/fuel charges/flight cancellations/hotel booking cancellations and damage claim amount and the respondent vide email dated 22.04.2019 and 19.07.2019 after reconciliation of accounts offered to return back the balance advance amount of Rs. 68,51,806.47/- to the Operational Creditor as full and final settlement to their claim amount. The Respondent duly sent two cheques one of Rs. 50,00,000/- dated 30.05.2019 and other of Rs. 18,51,806/- dated 24.04.2019 in lieu of full and final settlement and for closure of books of account till 31.03.2019. Both these cheques were duly presented and encashed on 31.05.2019 and 02.07.2019 by the Operational Creditor which proves the acceptance/acknowledgment of this amount against full and final settlement. The director of the respondent company immediately after the issuance of these two aforesaid cheques



wrote a letter dated 25.04.2019 which was addressed to Mr. Subhash Mohnot authorized representative who had instituted the present petition sent via email dated 19.07.2019. The Operational Creditor mischievously encashed both these cheques and did not dispute the emails and the letter dated 25.04.2019 but subsequently as an afterthought revived the dispute.

- vi.** The Operational Creditor did not stick to the terms of the purchase order as only 60% advance was forwarded at the time of purchase order while the remaining 40% was to be paid by the end of the tour after submission of the bill with the supporting document and feedback. The Operational Creditor acting in an oppressive manner stopped clearing the remaining payment to the extent of 40% of the purchase order on pretext or other, thus the respondent was forced to discontinue the services to the Operational Creditor.
- vii.** The bone of contention and dispute arose when the Operational Creditor refused to pay the bills/invoices raised on account of cancellation of tours/penalty surcharged by airlines and hotels /bookings/airport fuel surcharge imposed by the airlines due to hike in air-fuel prices/difference in INR due to ROE per person/Visa Cancellation charges/damage done to, the hotel, by the guest/dealers and money paid by the Corporate Debtor to the Baku, Azerbaijan Police to secure the release of the guest/dealer charge of outraging modesty of women i.e. a local belly dancer and manhandling of a tour guide by the dealer of the Operational Creditor. Further, the damage done to the hotel by the guest bills /invoices remains unpaid /cleared/approved. Belly dancer misbehaviour and police managing charges /hotel damage charges. The cumulative amount paid by the Respondent on account of damages/ROE/Fuel charges/cancellations of groups amounts to Rs. 16,42,200.15/- in Baku and Almaty.



- viii.** The Operational Creditor and the Corporate Debtor jointly reconciled the account but disputed the invoice raised by the respondent on the pretext of non-submission of supporting documents, however, the supporting documents were provided to the Operational Creditor which were reflected from the mail exchanged before receiving the amount of Rs. 68,51,806/- as full and final settlement by 02.07.2019. However, as an afterthought, the petitioner has revised their claim after 02.07.2019.

4. Analysis and Findings

- i.** We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
- ii.** We find that the Operational Creditor issued multiple demand notices to the Corporate Debtor which is not acceptable. The IBC, 2016 is a procedural Code and the process stipulated therein needs to be followed in the letter and spirit. There is no such provision in the IBC, 2016 and in the Regulation made thereunder that allows the Operational Creditor to issue multiple demand notices to the Corporate Debtor. Hence, we are of the view that the multiple demand notices are beyond the ambit of the IBC, 2016.
- iii.** We are of the opinion that the invoices raised by the Respondent amount to Rs. 12.15 crore, demonstrating that only Rs. 68.51 lakh were left to be repaid out of the Rs. 12.92 crore disbursed by the Applicant. While the Applicant has stated in the Application that the Respondent has raised fraudulent invoices, the same is not supported by any sort of documents.

There is not a single document/invoice shown by the Applicant which raises any dispute to the demands made by the Respondent in the years 2018 – 2019 with regards to the pending payments from the Applicant. Even after the demand notice was issued on 28th August 2019, the Respondent sent emails disputing the



Applicant's claims. These resulted in the Applicant revising its claim from Rs. 5.99 crores to Rs. 4.13 crores in its 11th March 2020 demand notice. This itself indicates that the Applicant's claim is subject to reconciliation of accounts and yet not crystallized.

- iv.** The Applicant has not furnished even a single document that demonstrates how for all these claims that arise out of nine different Purchase Orders, there is a common date of default of 2nd July, 2019. Further, the Applicant has not annexed all the invoices raised by the Respondent under the applicable Purchase Orders that would demonstrate the services provided by the Respondent that were availed by the Applicant.
- v.** In the judgment of **Neeraj Jain vs. Cloudwalker Streaming Technologies Private Limited and Another ("Cloudwalker Case")**, 2020 SCC OnLine NCLAT 445, wherein the Hon'ble National Company Law Appellate Tribunal stated that the filing of invoices is the sine qua non for section 9 applications pertaining to certain types of transactions:

"43. ...if the operational debt is of nature where the invoice is generated as part of the transaction, then in such cases the invoice becomes an essential document to prove the existence of the debt, and thus it has to be submitted..."

44. However, it cannot be the discretion of the Operational Creditor to deliver the Demand Notice in Form 3 even if the operational debt involves transactions where corresponding invoices are generated but are not filed in court on the pretext that the Operational Creditor has chosen to send the Notice in Form 3."

Hence, we are of the considered view that the conduct of the Operational Creditor to not attach the invoices raised by the Corporate Debtor itself permits this Tribunal towards the



dismissal of this application as it is an essential prerequisite for filing a Section 9 application under the Code.

- vi.** Again, the main defence of the Corporate Debtor is based on the existence of a prior dispute before the issuance of the Section-8 demand notice related to the travel related services provided by the Corporate Debtor. Their argument is based on the following e-mail communications dated 22.04.2019 and 19.07.2019 as extract below:

E-mail dated 22.04.2019

“As per our discussion we have completed our reconciliation, please find attached the Excel with all the bill nos and all relevant details for your reference.

.....

We have already sent you the cheque of Rs. 50,00,000. We shall be sending the balance cheque to you tomorrow.”

E-mail dated 22.04.2019

“Please note we have gone through the accounts multiple times however our accounting is rejected and disputed on your terms only. Also all supporting have been provided for our bills and on our calculation basis, we have already sent you two cheques one of Rs. 50,00,000 and one of 18.5 Lakh as a full and final settlement (Copy of the letter attached). Both cheques are cleared by our bank which proves your acceptance as 18.5 Lakhs was the full and final payment.”

- vii.** However, from the records we find that the invoices raised by the Respondent are necessary and material for a fair and complete adjudication of the dispute. In their absence, the documents annexed with the Application can't disclose the proof of debt.



It is well settled that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument it would suffice for the Adjudicating Authority to reject the application filed under Section-9 of the Code, the Adjudicating Authority being precluded from determining as to whether the Corporate Debtor would be successful or not, with regard to the said dispute, at the time of decision making.

- viii.** In the facts and circumstances of the instant case, we are of the view that the Corporate Debtor has been able to raise a plausible contention regarding the pre-existence of “dispute” between the parties.

5. **Order**

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fails to fulfill the criteria laid down under Section 9 of the Code and therefore, is inadmissible. It is accordingly, hereby ordered as follows: -

- i.** The Application bearing **IB-1027/ND/2020** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
No order as to costs.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**