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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/871/2020

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of **I HORSE TECHNOLOGIES PRIVATE LIMITED**

G.YOGANAND

Residing at No.7, (Old No.3)
Movendar Street, M.G.R. Nagar,
K.K.Nagar,
Chennai- 600 078.

... Operational Creditor

-Vs-

I HORSE TECHNOLOGIES PRIVATE LIMITED

No.388 (Old No.374),
Vazhuthuavur Main Road,
Shanmugapuram,
Puducherry-605 089.

...Corporate Debtor

*Order Pronounced on **21st March 2022***

Present:

*For Operational Creditor : Mr. Venkateshwaran, Advocate
For Corporate Debtor : Mr. Shoban Padmanaban, Advocate*

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Adjudication is an Application that has been filed by
G. YOGANAND (hereinafter referred to as 'Operational Creditor')
under Section 9 of the Insolvency & Bankruptcy Code 2016 (in

short, 'IBC,21016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **I HORSE TECHNOLOGIES PRIVATE LIMITED** (hereinafter referred to as '*Corporate Debtor*'), to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out the details of the Applicant from which, it is evident that the Operational Creditor is an individual. The address of the Applicant as mentioned in Part-I of the Application is Residing at No.7, (Old No.3) Movendar Street, M.G.R. Nagar, K.K.Nagar, Chennai- 600 078. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN: U72900PY2007PTC002068 which was incorporated on 26/07/2007 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at Old No: 374, New No: 388 Vazhuthavur Main Road, Shanmugapuram Pondicherry-605 009. From Part III of the application, it is seen that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of this Tribunal to appoint the same.



3. The Affidavit verifying the application is placed at page no's 8-11 of the Application typeset and the Applicant herein Mr. G, Yoganand in his capacity as the Operational Creditor of the Corporate Debtor has verified this Application.

4. From Part-IV of the Application, it is seen that a sum of Rs. 5,71,718/- (Rupees Five Lakhs Seventy One Thousand and Eighteen) as principal amount along with an interest of 18% of the said sum from 03.08.2017 to 07.08.2019 amounting to Rs.1,88,650/- as interest is being claimed by the Operational Creditor as the Operational debt. Thus the total operational debt amounts to Rs. 7,60,368/- (Rupees Seven Lakh Sixty Thousand Three Hundred and Sixty Eight) is claimed by the Operational Creditor. The Applicant in Part-IV of the Application had stated that the debt fell due from 03.08.2017. The present Application has been filed before this Tribunal on 10.03.2020.

5. Part – V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in order to prove the 'Operational debt' and the same is listed hereunder:-

- a) Appointment letter dated 25.03.2016
- b) Reliving order given by the Corporate Debtor to the Operational Creditor.
- c) Identity card of the Operational Creditor.
- d) Bank statement of the Operational Creditor

- e) Salary slips of the Operational Creditor from September 2016 to April 2017.
- f) Computation of the Principal amount of default along with the interest @ 18% per annum;

6. The Ld. counsel for the Operational Creditor submitted that, the Applicant was appointed as the Technical Lead – Software development in the Corporate Debtor on 25.03.2016 with a standing remuneration on CTC per annum at Rs. 9,63,000/- in which the fixed component per annum would be Rs. 8,88,000/- along with the variable component of Rs. 75,00,000/-.

7. The Ld. Counsel for the Operational Creditor submitted that the Operational Creditor was relieved from employment without notice by the Corporate Debtor through relieving letter dated 15.09.2017 and the date of relieving is 03.08.2017, in which it was stated that the full and final settlement had been processed to the Operational Creditor. However, the Ld. Counsel further stated that, salary paid, variable CTC, PF, TDS IT and Earned leave of total amounting to Rs.5,71,718/- (Principal amount) is pending and the same is yet to be paid to the Operational Creditor for his services rendered by him to the Corporate Debtor.

8. The Respondent/Corporate Debtor has filed the Counter/Reply statement in this matter. The Ld. Respondent Counsel submitted that the Applicant did not come to the office in a regular manner from the month of May 2017 stating that the Applicant

wife was having health issues and the same have been communicated by the Operational Creditor to the Corporate Debtor vide mail dated 20.06.2017. The Operational Creditor further in the mail dated 02.07.2017 had requested for transfer to Pondicherry quoting the same reason mentioned *supra*. Further from the mail communication dated 07.08.2017 it can be seen that the Operational Creditor herein had taken a long leave from work due to personal issues and the same is annexed as page 12 in the Respondent counter typeset as page no 12. Thus the Ld. counsel submitted that in furtherance of the facts stated above the Corporate Debtor was constrained to relieve the Operational Creditor vide Relieving letter dated 15.09.2017 annexed as page 13 of the Applicant typeset.

9. Further, the Ld. counsel for the Corporate Debtor submitted that the Demand notice issued by the Operational Creditor was not in the proper form and manner as prescribed by the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor counsel highlighted that the police complaint lodged by the Applicant to the Inspector of Police, Thiruvanmiyur, Chennai got closed as there was no pending dues. The communication of the Corporate Debtor to the Inspector of Police, Thiruvanmiyur is extracted hereunder:-





To
The Inspector
J6 - Thiruvanniyur Police Station
Thiruvanniyur
Chennai - 600041.

Chennai
26th September 2018

Respected Sir,

Sub: Clarification for Non Payment of Salary to Mr.Yoganand, Ex-employee of iHorse Technologies - reg

We received a call from Sub-Inspector of Police stating that they received a complaint from Mr.Yoganand, Ex-employee of iHorse Technologies Pvt Ltd., Registered Office, Pondicherry. Mr.A.P.Nandakumar, Admin Manager, iHorse Technologies Pvt Ltd., Branch Office, Chennai met Sub-Inspector of Police and gave clarification for the complaint received by him. Sub-Inspector requested us to give written clarification for the complaint for nonpayment of salary to Mr.Yoganand.

As per our records Mr.Yoganand has some personal issues and not able to concentrate on work and deliveries which he has mentioned in his mail to his project reporting person. So during those period he has taken many leaves and worked remotely sometimes with permission and sometimes without permission. As per company policy without proper approval no one should work from home because of data security reasons. He has violated the policy many times.

On 20th June 2017 Mr.Yoganand has conveyed through mail stating personal reasons (copy of the mail is enclosed). When we enquired Mr.Yoganand told us that his wife is not well as he needs to spend time with his family. Because of this reason his concentration towards work was not good which directly affected our business.

Again, on 02nd July 2017 Mr.Yoganand sent mail to his reporting manager for Transfer to Chennai office in that mail he himself has mentioned that his earlier request for working from Chennai office option was not approved by his reporting manager because of project deliverables(copy of the mail enclosed). His request was not approved, because both Pondicherry and Chennai are in two different State, we have lot of formalities to transfer the employees from one location to another. We normally will not advice because of statutory issues.

... cont. page 2.

*** P O S T A L I N F O R M A T I O N ***
S/O No. 24, New No. 286, Vazhuthavur Main Road
Chennai-600009, Pondicherry - 605 009
#2771-B, Sri Anugraha Villa, Rukmani Road Extension
Basanti Nagar, Chennai - 600 099

For iHorse Technologies Pvt. Ltd.

Director



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Mr.Yoganand last presence in office was 03rd August 2017. From next day onwards he has not come to office. On 07th August 2017 Mr.Yoganand has sent mail to HR requesting for Long Leave. Subsequently he was in touch with HR asking for his Relieving letter.

Mr.Yoganand has not given any resignation letter till date and also not served the 3 month notice period.

As per company policy employees should serve 3 months from the date of resignation, this helps the company to deploy alternate resource to handle the projects and client

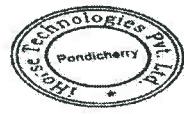
Based on his request (personal issues) we have considered this as a special case and mutually agreed to relieve him from the service. Since he has not served the 3 month notice period as per the policy we have mutually agreed to adjust the pending salary as a compensation for notice period and relieved him from the service. In Mr.Yoganand relieving order it has been clearly mentioned that his full final settlement has been processed.

So we here by officially inform that we appointed him only in our Pondicherry office and he relieved from Pondicherry office. Also as mutually agreed the full and final settlement has been processed for Mr.Yoganand, So kindly request to you check his relieving letter and close the issue.

Please let us know if you require any further clarification in this regard. Thanks.

Your Sincerely,
For iHorse Technologies Private Limited.,

[A.P. Nandakumar , Admin Manager]



*** P O S T A L I N F O R M A T I O N ***
S/O No. 24, New No. 286, Vazhuthavur Main Road
Chennai-600009, Pondicherry - 605 009
#2771-B, Sri Anugraha Villa, Rukmani Road Extension
Basanti Nagar, Chennai - 600 099

For iHorse Technologies Pvt. Ltd.

Director

10. The Ld. Counsel for the Corporate Debtor submitted that, the Operational Creditor was in office finally on 7th August 2017, subsequent to which though the Applicant had not given any resignation letter or served any 3 months' notice, it was mutually agreed to adjust the pending salary as a compensation for the notice period and relieve the Operational Creditor and in the reliving letter of the Operational Creditor it had been clearly mentioned that full and final settlement had been processed. Thus, it was submitted that the Corporate Debtor is not liable to pay any sum to the Operational Creditor and that there is a dispute pending in relation to the same.

11. Heard the submissions of both the parties. This Adjudicating Authority has jurisdiction to hear this issue since the default in the present case has occurred much prior to the default period specified under Section 10A of IBC, 2016. It is also pertinent to note here that the present Application was filed before this Tribunal on 10.03.2020 i.e. before the increase of pecuniary limit by the Central Government Notification 'S.O 1205(E) dated 24.3.2020' issued by the Ministry of Corporate Affairs, Government of India and that this Tribunal has the authority to proceed with the present matter.



12. It can be seen from the records placed before us that, the Demand notice issued by the Operational Creditor to the Corporate Debtor had not been made in the manner prescribed by law as stipulated under Section 8 (1) of IBC, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

13. Apropos, the Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd -Vs- ICICI Bank and Anr*** [Civil Appeal Nos. 8337-8338 OF 2017] has stated that the Operational Creditor shall first deliver a demand notice in the manner prescribed in Section 8 of the IBC, 2016.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”

14. Further, it can be seen from the submissions made by the Corporate Debtor that the full and final settlement has been made with regard to the alleged dues in this Application. It is seen that the Operational Creditor without informing the Corporate Debtor and without properly serving the notice period has resigned from

the Corporate Debtor. Further, the Resignation letter of the Operational Creditor has also not been placed on record. It is also pertinent to note here that the Operational Creditor has filed a complaint before the Inspector of Police, Tiruvanmiyur and the Corporate Debtor has sent a reply to the said complaint and it is stated that the Corporate Debtor had adjusted the money with the notice period of 3 months that was mandatory as per the company policy. This would prove that there exists a dispute between the parties as to the payment of money and whether the Corporate Debtor was right in deducting the 3 months salary of the Operational Creditor, is a issue which is required to be adjudicated by the Civil Court after letting in sufficient evidence and cannot be subject matter before this Tribunal which is summary in nature.

15. Further, the Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited; 2017 1 SCC Online SC 353** held that the 'existence of dispute' and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the Demand Notice or Invoice as the case may be and observed as follows;

"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding

payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be..”

At paragraph 51 it is held:

“51.Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence.”

16. Thus, from the emails referred above and by perusing the documents filed by the parties, this Adjudicating Authority is of the view that the Operational Creditor failed to prove the existence of the “debt and default” and have not placed any documents to evidence the same. Succinctly put, the Operational Creditor had suppressed the police complaint and the conclusion of the same in the Application. In this scenario, the Hon’ble Supreme Court judgement in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited** shall be applicable, and based on the submissions of the Operational Creditor and the Corporate Debtor a plausible existence of the dispute can be seen.

17. The same has been affirmed by the Hon'ble Supreme in ***Kay Bouvet Engineering Ltd. Vs Overseas Infrastructure Alliance (India) Private Limited.*** (Civil Appeal no. 1137 of 2019). The relevant para of the said judgement is extracted hereunder:-

17. It is thus clear that once the "Operational Creditor" has filed an application which is otherwise complete, the adjudicating authority has to reject the application under Section 9(5)(ii)(d) of IBC, if a notice has been received by "Operational Creditor" or if there is a record of dispute in the information utility. What is required is that the notice by the "Corporate Debtor" must bring to the notice of "Operational Creditor" the existence of a dispute or the fact that a suit or arbitration proceedings relating to a dispute is pending between the parties. All that the adjudicating authority is required to see at this stage is, whether there is a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is a mere bluster. It has been held that however, at this stage, the Court is not required to be satisfied as to whether the defence is likely to succeed or not. The Court also cannot go into the merits of the dispute except to the extent indicated hereinabove. It has been held that so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has no other option but to reject the application."

18. Thus from the facts stated *Supra* and the submissions made before us, the existence of a debt and default had not been proven beyond reasonable doubt and further the existence of a plausible dispute can be seen on the submissions made by the parties. Thus, the present Application filed by the Operational Creditor is



liable to be dismissed and accordingly, stands **dismissed**. No costs.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Vinita.K