



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 39/9/JPR/2021**

(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 STERLING ASSOCIATES**

**...Operational Creditor**

**Versus**

**M/S PRATAP FIBER COMMUNICATIONS PRIVATE LIMITED**

**...Corporate Debtor**

**MEMO OF PARTIES**

**M/s Sterling Associates**

R/o A-302, Aries Olive, Santivan Society,  
Tandalja Road, Vadodara-390020

**...Applicant**

**VERSUS**

**M/s Pratap Fiber Communications Private Limited**

R/o B-21, Shakti Bhawan, Shivaji Colony, Khatipura Road,  
Jhothwara, Jaipur-302012

**...Respondent**

**For the Applicant**

**: Siddharth Bapna, Adv.**

**For the Respondent**

**: Rachit Sharma, Adv.**

**Order Pronounced On: 13.01.2023**

**ORDER****Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application is filed by M/s Sterling Associates through its authorised signatory Mr. Ahmedbhai Adambhai Patel ('Operational Creditor' / 'Applicant'), seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against M/s Pratap Fiber Communications Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant, M/s Sterling Associates, is engaged in the business of laying optical fiber transmission lines. Their registered office is located at A-302, Aries Olive, Santivan Society, Tandlja Road, Vadodara, Gujarat-390020. The alleged default on the part of the Respondent for the non-payment of operational dues amounting to Rs. 99,82,304- (Rupees Ninety-Nine Thousand Eighty-Two Thousand Three Hundred Four Only) along with the interest @ 12% per annum being Rs. 5,65,075.83/- (Rupees Five Lakh Sixty-Five Thousand Seventy-Five Rupees and Eighty-Three paisa only).
3. The Corporate Debtor, Pratap Fiber Communications Private Limited, is a private limited company incorporated under the Companies Act, 2013, on 05.10.2018, having CIN: U74999RJ2018PTC062621. The Respondent has its office B-21, Shakti Bhawan, Shivaji Colony, Khatipura Road, Jothwara, Jaipur



Rajasthan – 302012. However, during the pendency of the proceeding in the matter name of the Corporate Debtor has been changed to Beckhual Digital Technologies Private Limited having CIN: U93000RJ2018PTC062621 has an Authorised Share Capital of Rs. 5,00,00,000/- (Rupees Crore Only) and Paid-Up Share Capital of Rs. 1,00,000/- (Rupees One Lakh Only).

4. The details of the transactions leading to the filing of this Application are averred by the Applicant *vide* Diary No. – 1454/2021 dated 28.07.2021 are as follows:

- a. The Corporate Debtor approached the Operational Creditor for laying optical fiber transmission lines at Kevadiya and Tankhla. Pursuant to that, the Applicant raised various invoices on different occasions for the value of Rs. 99,82,304/- (Rs. Ninety-Nine Thousand Eight Two Thousand Three Hundred Four Only) along with 12% interest being Rs. 5,65,076/- (Rs. Five Lakh Sixty-Five Thousand Seventy-Six Only).
- b. Thus, in compliance with Section 8 of IBC Applicant sent a statutory Demand Notice dated 14.06.2021, demanding Rs. 1,05,47,379.83/- (Rupees One Crore Five Lakh Forty-Seven Thousand Three Hundred Seventy-Nine and Eighty-Three Paise Only) inclusive of interest @12% per annum of Rs. 5,65,075.83/- (Rupees Five Lakh Sixty-Five Lakh Seventy-Five and Eighty-Three Paise Only). Copy of the Demand Notice dated 14.06.2021 and the postal receipts dated 15.06.2021 sent to the Respondent is annexed as Annexure – 5 of the Application.



c. The aforementioned details, as reflected in Part IV of the Application, are as follows:

**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.	Total amount of debt: Rs. 1,05,47,379.83/- (Rupees One Crore Five Lakh Forty-Seven Thousand Three Hundred Seventy-Nine Rupees and Eighty-Three Paise Only)
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 1,05,47,379.83/-  Total Principal Amount: Rs. 99,82,304/-  Total Interest Due: Rs.5,65,075.83/-  The debt has fallen due on 22.09.2019, 09.11.2019 and lastly on 24.04.2021.

5. Notices were issued in the aforesaid Application, and the Respondent filed a Reply *vide* Diary No.1323/2022 dated 02.05.2022 stating that: -

a. The Corporate Debtor submits that the outstanding principal amount as claimed by the Applicant is Rs. 99,82,304/- which is less than the minimum threshold limit of Rs. 1 Crore as stipulated under section 4 of the IBC.

b. It is contended that the alleged claim which is raised by the Applicant does not fall due and payable. As per the terms and conditions of the



Letter of Intent, different milestones are to be completed towards the completion of the work. However, the Applicant does not fulfil the terms and conditions of the Letter of Intent. Copy of the Letter of Intent is annexed as Annexure-6 of the Petition.

- c. It is pertinent to note that Corporate has filed a Police Complaint against the Applicant. The Corporate debtor has supplied the material for the sum of Rs. 17,94,221/- (Rupees Seventeen Lakhs Ninety-Four Thousand Two Hundred Twenty-One Only) to the Applicant in order to complete the work at the site of the Applicant. Henceforth the complaint has been filed to return the material supplied by the Corporate Debtor.
- d. Further, the work which has been done by the Applicant has quality issues. The Corporate Debtor has also done several emails to remove the defects in the work. Copy of entire trail emails dated 02.11.2020, 23.06.2020, 19.05.2020, 25.01.2020, 24.01.2020, 23.11.2019, 20.11.2019, and 08.11.2019 along with the photographs are attached as Annexure-R/4(Colly) of the Reply.
- e. Subsequently, the Corporate Debtor has sent an email dated 15.04.2021 stating the following:

*“Dear Service Partner,  
Hope you & your Family members are doing good!!!  
We have given you enough of reminders regarding completion of work in Tanakhala OLT. But you have not shown any interest in completion of your scope of work in last 18 months.*



*Because of your negligence till date we are unable to complete Tanakhala OLT, as per present scenario today we are in deep penalty condition, as whatever work is being done by you is not as per RFP norms. We are facing lot of problem in getting ITP's signed by TPA (Third Party Audit) team.*

*Any how we are trying to complete pending activities of Tanakhala OLT so that AT can be completed.*

*As T&D is not done at proper depth so at multiple location in Tanakhala Ducts & Fiber is damaged while road expansion at a depth of 500mm.*

*You are very well aware that depth should be 1.65mts in Normal section & 1.2 mts in hard rock section.*

*You have wasted a lot of materials (Duct & Fiber) because of your negligence on ground. Also because of multiple cuts material wastage is increasing day by day.*

*We are getting lot of calls & threat from your peti vendors that you have not paid them. They are threatening that they might damage GFGNL network laid in Tanakhala OLT. So requesting you to please clear his dues if any on priority.*

*Overall work completed by you is pathetic (Poorest quality of work) in terms of quality/ All time lines has crossed as per WO terms & LOI. Maximum work completed by you is rejected by TPA for which rework is done by team Pratap for which several communications was made to you on mail as well as on call, but you have never responded to mails neither on call regarding rectification of your scope of work. From last 18 months you are silent for completion of work in Tanakhala. I am attaching trail mail for reference.*

*Invoice created by you is null & void as you have submitted bills without certification of ground. Until & unless ITP's are certified by TPA/GFGNL you are not liable for any payment.*

*Also be ready for paying back paid amount because of huge penalty which is going to be imposed on you as per agreed terms & Conditions in agreement."*

From the above-mentioned email, it is evident that there is a pre-existing dispute as the Applicant has not carried out the work as per the terms of the Letter of Intent.



f. Furthermore, the Operational Creditor is liable to pay Rs. 16,56,782/- (Rupees Sixteen Lakhs Fifty-Six Thousand Seven Hundred Eighty-Two Only) to the Corporate Debtor, the details of the same as follows:

<b><i>Sterling Associate</i></b>	<b><i>Remarks</i></b>	<b><i>Amount in Rs.</i></b>
<i>Total Billable Amount (100%)</i>	<i>Actual amt. of Work certified by Corporate Debtor</i>	<i>59,11,350/-</i>
<i>Service Recovery Amount</i>	<i>Actual amount of Left-over work which was completed from other Service Provider.</i>	<i>(13,38,990/-)</i>
<i>Material Recovery Amount</i>	<i>Actual amount towards poor workmanship and the amount of material to be recovered</i>	<i>(30,86,259/-)</i>
<i>L. D. Charge per GP</i>	<i>Deductions on account of Late delivery per Gram Panchayat</i>	<i>(13,00,000/-)</i>
<i>Amount already Paid</i>	-	<i>(10,24,656/-)</i>
<i>TDS @2%</i>	-	<i>(1,18,227/-)</i>
<i>L.D. on non-delivered 7 GPs</i>	-	<i>(7,00,000/-)</i>
	<b><i>Amount to be recovered</i></b>	<b><i>(16,56,782/-)</i></b>

g. For the reasons mentioned above, while submitting the Reply, the Respondent relied upon *Mobilox Innovations Private Limited v. Kirusa Software Pvt. Ltd.*, Civil Appeal No. 9405 of 2017 held that:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties.*



*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. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

6. The Applicant filed its rejoinder *vide* Diary No. 2745/2022 dated 13.09.2022, submitting the following:

- a. The Applicant submits that the unpaid operational debt is above the threshold limit of Rs. 1 Crore, which includes the element of interest. The element of interest is based upon the oral agreement between the parties for a payment of 12% simple interest on outstanding dues.
- b. The Corporate Debtor has committed a default in payment of operational dues as per the provisions of IBC. There is no pre-existing dispute between the parties.
- c. The Applicant has completed the entire assigned work and the same is also been verified and certified in the measurement sheets annexed as Annexure-9 of the Petition.



- d. That the reports dated 19.05.2021 and 02.09.2021 have been prepared and issued by Gujarat Fibre Grid Network Limited to certify the work executed in the project. Copy of the third-party auditor reports dated 19.05.2021 and 02.09.2021 are annexed as Annexure-R-R/1 of the rejoinder.
7. The Applicant filed their written submission *vide* Dairy No. 3130/2022 dated 20.10.2022 wherein it relied on the following judgments:
- a. *Mr. Prashant Agarwal Vs Vikash Parasrampurua, Company Appeal (AT)(Ins) No. 690 of 2022 dated 15.07.2022*
  - b. *M/s D. F. Deutsche Forfait A.G. and anr. vs M/s Uttam Galva Steel Ltd. 2017 SCC Online NCLT 546 dated 10.04.2017*
8. The Respondent filed their written submissions *vide* Dairy No. 3145/2022 dated 21.10.2022 wherein it relied on the judgment of Hon'ble National Company Law Appellate Tribunal *Mr. Prashant Agarwal Vs Vikash Prasrampurua (supra)* cannot be made applicable for the reason that there is no agreement for payment of Interest in the present case, the operative part of which is read as hereunder:

*“Since, interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for “right to payment” (Section 3(6) IBC) and therefore will form part of “debt” (Section 3(11) IBC).”*



9. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder, and Documents enclosed with the Application.
10. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of Laws of Limitation, as the debt fell due in 2019, and the Application was filed before this Adjudicating Authority in 2021. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
11. Before we delve into the facts of the case it is important to mention that as per Section 8(2)(a) of the Code, *'existence of a dispute if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoices in relation to such dispute'* can interdict Section 9 proceedings under the Code. This section is restrictive in nature for filing an application under Section 9 of the Code i.e., if a valid existence of dispute or record of the pendency of a suit or arbitration proceedings which existed before the issuance of demand notice, is shared with the Creditor, within 10 days, it is presumed that there exists a pre-existing dispute between the parties with respect to the goods or services rendered by the Creditor.



12. Furthermore, the Hon'ble Supreme Court of India, in the matter of '*Mobilox Innovative Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353*', held as follows:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties.*

*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. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.*

*However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

13. The word 'dispute' as defined under Code includes a suit or arbitration proceedings relating to the existence of the amount of debt; the quality of goods or services; or the breach of a representation or warranty. It is true that the definition must fit under the parameters as defined under the code but at



the same time it must stand on a test as laid down in the recent judgment of the Hon'ble Supreme Court in *M/S S.S. Engineers Vs Hindustan Petroleum Corporation Ltd. & Ors. in Supreme Court in Civil Appeal No. 4583 OF 2022* whereby the following has been held:

*“31. The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.*

*32. There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and initiation of CIRP by an operational creditor. On a reading of Sections 8 and 9 of the IBC, it is patently clear that Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”*

14. Therefore, the Corporate Debtor is left with no option but to show that there existed a dispute with respect to the quality of goods or services before the issuance of the demand notice under Section 8 so as to ensure that CIRP is not initiated against it. Whereas the Operational Creditor is required to prove that the Corporate Debtor has not complied with Section 8(2)(a) of the Code, so as to succeed in its Application under Section 9 of the Code.



15. From the data produced before us, it is pertinent to mention these documents along with a description to understand the correspondence between the parties to the case:

- a. Email dated 28.08.2019 which was preferred by Respondent to the Applicant informing to deploy additional resources for completion of the project.
- b. Email dated 22.10.2019 which was preferred by Respondent to Applicant wherein the Corporate Debtor complained that there has been pathetic progress in the project allocated to you.
- c. Email dated 08.11.2019 which was preferred by the Respondent to Applicant wherein the Corporate Debtor informed that there is a miserable failure in the progress of the work at the site due to which the work has been deployed to another service partner.
- d. Email dated 20.11.2019 which was preferred by Respondent to Applicant wherein the Corporate Debtor stated that deployment of resources for completion of the pending task at the site is very much pathetic condition. Moreover, no response to our calls and messages. Management has reviewed the performance very closely and decided to deploy the work to another service partner.
- e. Email dated 23.11.2019 which was preferred by Respondent to Applicant wherein the Corporate Debtor apprise the fact that they are



- deploying another service partner to complete all the tasks at the site since there is no progress towards the work.
- f. Email dated 25.01.2020 which was preferred by the Respondent to Applicant wherein the Corporate Debtor yet again mentioned that there is no progress of pending work at the site. Further also mentions that all the timelines have been crossed and no responsible person is available on the work site.
- g. Email dated 19.06.2020 which was preferred by Respondent to Applicant wherein the Corporate Debtor submits that productivity on the site as well as resource deployment is nil.
- h. Email dated 23.06.2020 which was preferred by Respondent to Applicant wherein the Corporate Debtor succumbs that no work has been started at some of the sites hence the Corporate Debtor deploys their own team for completion of the work.
- i. Email dated 02.11.2020 which was preferred by Respondent to Applicant wherein the Corporate Debtor informed that the duct is being damaged and which is not acceptable and images of defective work is attached to the email.
- j. And in an Email dated 15.04.2021 the Respondent substantially mentioned the following:

*“Dear Service Partner,*

*Hope you & your Family members are doing good!!!*



*We have given you enough of reminders regarding completion of work in Tanakhala OLT. But you have not shown any interest in completion of your scope of work in last 18 months.*

*Because of your negligence till date we are unable to complete Tanakhala OLT, as per present scenario today we are in deep penalty condition, as whatever work is being done by you is not as per RFP norms. We are facing lot of problem in getting ITP's signed by TPA (Third Party Audit) team.*

*Any how we are trying to complete pending activities of Tanakhala OLT so that AT can be completed.*

*As T&D is not done at proper depth so at multiple location in Tanakhala Ducts & Fiber is damaged while road expansion at a depth of 500mm. You are very well aware that depth should be 1.65mts in Normal section & 1.2 mts in hard rock section.*

*You have wasted a lot of materials (Duct & Fiber) because of your negligence on ground. Also because of multiple cuts material wastage is increasing day by day.*

*We are getting lot of calls & threat from your peti vendors that you have not paid them. They are threatening that they might damage GFGNL network laid in Tanakhala OLT. So requesting you to please clear his dues if any on priority.*

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*Invoice created by you is null & void as you have submitted bills without certification of ground. Until & unless ITP's are certified by TPA/GFGNL you are not liable for any payment.*

*Also be ready for paying back paid amount because of huge penalty which is going to be imposed on you as per agreed terms & Conditions in agreement.”*

Copy of the Emails are annexed as Annexure R/2, R/3, R/4 & R/5 of the Reply.

16. It is abundantly clear from the above-mentioned Email correspondences that there exists a pre-existing dispute between the parties. In the present matter at hand, the conditions laid down under Section 9 of the Code are not fulfilled in the present application. In light of the judgment of the Hon'ble Supreme Court in *M/s S. S. Engineers vs. Hindustan Petroleum Corporation Ltd. & Ors.(supra)*, this Adjudicating Authority is not inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC.
17. It is also pertinent to mention that the Ministry of Corporate Affairs *vide* Notification dated 24.03.2020 specified Rupees One (1) Crore as the minimum amount of default for the purposes of Section 4 of the Code. Hence, as per the Code, the minimum amount of default against which applications under Part II of the Code can be moved, in lieu of the notification dated 24.03.2020, is revised to Rs. 1,00,00,000/- (Rupees One Crore Only).
18. Therefore, all the applications that are filed after the notification dated 24.03.2020 came into existence, have to fall within the amended threshold



limit of Rs. 1,00,00,000/- (Rupees One Crores Only) even if the debt existed or default occurred before 24.03.2020. The Hon'ble NCLAT has further clarified in the judgment of *Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd., Company Appeal (AT) (Ins.) No. 813 of 2021* that the threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.03.2020 even if debt is of a date earlier than 24.03.2020.

19. It is necessary to examine whether the present insolvency application is maintainable in terms of Section 4 of the Code as the Applicant in Part IV of the Application has claimed an amount of Rs. 99,82,304/- (Rupees Ninety-Nine Lakh Eighty-Two Thousand Three Hundred Four Only) from the Corporate Debtor. The Applicant filed the present application before this Adjudicating Authority on 28.07.2021. The individual claims of the Applicant i.e. Principal along with Interest amount to a total of Rs. 1,05,47,380/- (Rupees One Crore Five Lakh Forty-Seven Thousand Three Hundred Eighty Only)

20. In the judgment of the Hon'ble NCLAT in *Mr. Prashant Agarwal Vs. Vikash Parasrampur & Ors., (Supra)* it is held that:

*“Since, interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for “right to payment” (Section 3(6) IBC) and therefore will form part of “debt” (Section 3(11) IBC).”*

As the copies of the invoices, which are annexed with the Petition do not contain the said term that interest is to be paid @ 12% per annum neither



there is any agreement or contract for the payment of interest, therefore, relied on this Judgement for determining the threshold limit.

21. In view of the foregoing, we are not inclined to allow the present application for CIRP of the Corporate Debtor as there is a clear pre-existence of a dispute and the claim of the Operational Creditor is below the threshold limit in the view of Section 4 of the IBC. This order shall not act as a bar to the Applicant in pursuing any other remedies available to it, under the prescribed provisions of law.
22. Accordingly, CP No. (IB)39/9/JPR/2021 is dismissed.

DEEP  
CHANDRA  
JOSHI

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DEEP CHANDRA  
JOSHI  
Date: 2023.01.13  
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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

PRASANTA  
KUMAR  
MOHANTY

Digitally signed by  
PRASANTA KUMAR  
MOHANTY  
Date: 2023.01.13  
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**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**