

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI COURT-III

IA-2252/2022

AND

IB – 170/ND/2021

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. ULTRATECH CEMENT LTD. (UNIT: BIRLA WHITE)

Having Its Registered Office at:

“B” Wing, Ground Floor, Ahura Centre,
Mahakali Caves Road, Andheri (East),
Mumbai-400093

..... Applicant/Operational Creditor

VERSUS

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

Having Its Registered Office at:

1012/1013, Devika Tower 6,
10th Floor, Nehru Place,
New Delhi-110019

Also at:

S-190, Second Floor,
Greater Kailash Part-2,
South Delhi, Defence Colony,
New Delhi-110048

..... Respondent/Corporate Debtor

IA-2252/2022

AND

IB – 170/ND/2021

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant : Mr. Puneet Bajaj, Advocate

For the Respondent : Mr. Tarun Agrawal, Mr. Shrey Patnaik, Mr.
Bhaskar Agarwal, Mr. Ritwik Batra, Advocates

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by M/s. Ultratech Cement Ltd. (Unit: Birla White), the Applicant/Operational Creditor on 10.02.2021, 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 Respondents/Corporate Debtor on the ground that the Corporate Debtor defaulted/failed to clear the outstanding amount of Rs. 1,54,50,568/- (Rupees One Crore Fifty-Four Lakh Fifty Thousand Five Hundred Sixty-Eight Only) along with interest @ 15% p.a. on the account of delay as on 20.01.2021.

2. Submissions of the Operational Creditor:

- i. That M/s. Ultratech Cement Limited (Unit:Birla White) is a company registered under the Provisions of Companies Act, 1956

CIN:L26940MH2000PLC128420 having its registered office at “B” Wing, Ground Floor, Ahura Centre, Mahakali Caves Road, Andheri (East), Mumai-400093 and one of its office at D-7, Shastri Nagar, Jodhpur-342003.

- ii.** That a Contract was signed between Operational Creditor and the Corporate Debtor on 16.09.2019. Contract was for organising the Birla White Club Premier Tour to Gold Coast, Australia for 4 nights and 5 days from 18/19 November, 2019 to 22/23 November, 2019 for trip of the company officials and its stockist at Gold Coast and Brisbane. The signed contract was for minimum 225 persons. The detailed tour itinerary and event were mentioned in the contract.

- iii.** That Company officials, Stockist and their family members reached Gold Coast Australia, where they found that the payment to the local travel partner namely Travel Maestro Inbound Pty Ltd., Australia for all the arrangements of the trip was not completely done. Due to this reason, the Gold Coast Marriott Hotel in Australia did not receive payment of 85 persons on time and for this reason they did not release the hotel room keys. These 85 guests were not allowed to check-in on the day of their arrival i.e. 20th November and were made to wait in the Hotel Lobby for hours.

- iv.** That considering the situation when there was no option left with Operational Creditor, they approached to one of their other business associate Swiss Singapore Overseas for taking their help in such an adverse condition (they have an account in Australia). Operational Creditor accordingly arranged to make payment of AUD 90,000/- (in words Ninety Thousand Australian Dollar) Approx. Rs.44,10,000/- Rupees Forty-Four Lakhs Ten Thousand Only in Indian Rupees to Marriott Hotel at Gold Coast, Australia, through them immediately as the hotel was not allowing the group to check-in.

- v.** That the Operational Creditor had to make an extra payment in spite of advance payment of Rs.2,66,48,338/- which was made to the Corporate Debtor by the Operational Creditor for getting services according to agreed terms. The Corporate Debtor did not provide the agreed services as per contract, Hence, there was clear breach of contract.
- vi.** That later on, after this check-in episode, the Hotel expressed their inability to conduct the Felicitation function which was scheduled on 21st November and also expressed their inability towards planned site seeing places on 21st, 22nd & 23rd November 2019 due to non-receipt of payment from Corporate Debtor. Thus, the Operational Creditor had to again make the payment of AUD 1,20,000/- (One Lac Twenty Thousand Australian Dollar) equivalent to approximately Rs.58,80,000/- (Rupees Fifty-Eight Lakhs Eighty Thousand Only) to Travel Maestro Inbound Pty Ltd, Australia with the help of Swiss Singapore Overseas for the Marriott hotel, Gold Coast, Australia.
- vii.** That as per the terms and conditions as mentioned in the contract, Corporate Debtor had not booked the international Flight tickets and also some of the domestic flight tickets (approx. for 30 persons) while the same was the part of the contract referred herein above. Operational Creditor had to make an alternate arrangement immediately and got those ticket booked through Kapoor Enterprises, 3374, Bazar Delhi Gate, Daryaganj, New Delhi-110002 and for this Operational Creditor had to pay Approx. Rs.3,74,000/- (Rupees Three Lakhs Seventy-Four Thousand Only) as extra amount for the flight tickets. In view of the above, the Corporate Debtor did not provide the agreed services as per contract, and hence there is clear breach of contract.
- viii.** One of Senior Officer of Operational Creditor paid Rs.55000/- to Corporate Debtor towards the flight tickets to Sydney and return Back to Hyderabad. Amount was paid by cheque No. 001366 dated 16/11/2019 through

HDFC Bank. Representative Ms. Vandana Rajput of Corporate Debtor assured that the tickets will be provided but in spite of receiving the amount Corporate Debtor did not provide the tickets to him. Hence there is clear breach of contract.

- ix.** Operational Creditor had sent a notice of demand dated 20.12.2020 to Corporate Debtor claiming an amount of Rs.1,24,59,002/- (Rupees one crore twenty-four lakhs fifty-nine thousand two only).

- x.** The Operational Creditor/ Petitioner Company also made a balance payment of AUD 47027 (Forty-Seven Thousand Twenty-seven Australian Dollar) (approx. Rs. 24,50,986/- Twenty-Four Lacs Fifty Thousand Nine Hundred and Eighty-Six only) to Travel Maestro Inbound Pty Ltd, Australia with the help of Swiss Singapore Overseas for the Marriott hotel, Gold Coast, Australia, which Corporate Debtor failed to pay. Therefore, the operational creditor had made a total payment of AUD 2,57,027 (Two Lakhs fifty-seven thousand and Twenty-Seven Australia Dollar) (Approx. Rs. 1,31,16,542/- Rupees One Crore Thirty-One Lac Sixteen Thousand Five Hundred and Forty-Two only) in Indian Currency.

- xi.** Despite the written Contract, Corporate Debtor has breached the terms and conditions under the Agreement and has failed to provide the services which were agreed under the Contract dated 16.09.2019.

- xii.** Operational Creditor sent a notice of demand dated 20.01.2021 to Respondent/ Corporate Debtor under Rule-5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, claiming an amount of Rs. 1,31,16,542/- (Rupees One Crore Thirty-one Lac Sixteen Thousand Five Hundred and Forty-Two only) in Indian Currency along with interest @15% p.a. totalling to Rs. 23,34,026/- (Rupees Twenty-Three Lacs Thirty-Four Thousand and Twenty-Six only) thereby calling upon the Corporate Debtor/Respondent Company to pay a sum of Rs.

1,54,50,568/- (Rupees One Crore Fifty-Four Lacs Fifty Thousand Five Hundred and Sixty-eight only) due as on 20.01.2021. That the statutory notice has been duly served upon the Corporate Debtor/Respondent Company on 23.01.2021, however despite being served with the notice and passing of more than ten days, Corporate Debtor has failed to pay the amount.

- xiii.** The Operational Creditor submits that, even after issuance of demand notice, it has not received any notice of dispute or repayment from the Respondent till date. Thus, there exist undisputed debt which is due against the Respondent. That there is a debt payable and there is operational debt and the corporate debtor has not repaid the same. Since the Corporate Debtor did not make any payment the present application has been filed.

3. Submissions of the Corporate Debtor:

- i.** M/s. Universal Journeys (India) Pvt. Ltd. is a Private Company incorporated on 23.12.2011 under Companies Act, 1956 CIN: U63040DL2011PTC229221 having its registered office at 1012/1013, Devika Tower 6, 10th Floor, Nehru Place, New Delhi-110019. Through its authorised representative, Ms. Geetanjali Alamshah, who is a Director of the Corporate Debtor and has been duly authorised to verify, sign and file inter alia the Reply on behalf of the Corporate Debtor vide a Board Resolution dated 12.02.2021.
- ii.** The Corporate Debtor is engaged in the business of providing travel and hospitality related services to corporates, including but not limited to facilitating bookings and cancellations of air tickets, handling reservations, confirmation of hotels /apartments /guest house bookings, car rentals, helping with visa applications, foreign exchange related services, travel insurance, organising conferences, conducting package tours, incentive tours, events etc. in India and abroad. The Operational Creditor/ UltraTech

Cement Limited is the flagship cement company of the Aditya Birla Group (“ABG”) and is a commonly known large corporate house having pan India presence dealing in the business of cement manufacturing and sale.

- iii.** The Operational Creditor had approached the Corporate Debtor (a tours and travel company) for providing travel services by facilitating a tour of Gold Coast, Australia for the Operational Creditor’s dealers/ distributors/ employees to take place in November 2019. On 11.10.2019, the Corporate Debtor raised an invoice for the payment of INR 3,03,22,031.25/- that was payable immediately.
- iv.** Before the departure of the tour group on 19.11.2019, out of the payable amount of INR 3,03,22,031.25/-, the Operational Creditor had only made a payment of INR 2,02,14,688/-. Because of this, the Corporate Debtor was unable to provide complete services as per the parties’ agreement and only provided flights, hotel bookings, and other arrangements for the Operational Creditor’s Guests proportionate to the payment of INR 2,02,14,688/-.
- v.** Operational Creditor’s Guests reached Australia, the Corporate Debtor requested the Operational Creditor on 21.11.2019 to immediately transfer a sum of at least INR 79,66,463/- so that the Corporate Debtor could pay the hotel and its local travel partner. This would ensure that the Corporate Debtor could provide the pending services to the Operational Creditor as per their agreement.
- vi.** Instead of making the aforesaid payment of INR 79,66,463/- to the Corporate Debtor, the Operational Creditor went behind the Corporate Debtor’s back (in contravention of the parties’ agreement) and directly made payments to the hotels and Corporate Debtor local travel partner for the remaining services (and other extras not a part of the parties’ agreement).
- vii.** The Applicant has already filed an Application bearing number IB-1027(ND)/2020 dated 18.09.2020 (“First Section 9 Application”) under

Section 9 of the Code praying for initiation of corporate insolvency resolution process of the Respondent on account of an alleged default in the payment of unpaid operational debt amounting to Rs 4,13,42,909.95/- (Indian Rupees Four Crores Thirteen Lacs Forty-Two Thousand Nine Hundred and Nine only). This is despite the fact that the Applicant's claims in the present Application pertain to events that took place in November and December 2019, much before the filing of the First Section 9 Application. Clearly, the Applicant is initiating multiple proceedings under the Code to harass, coerce, and arm-twist the Respondent into not making its legitimate claims against the Applicant.

viii. The Operational Creditor had served two demand notices i.e. 20.12.2020 and 20.01.2021

ix. There is a pre-existing dispute between the Operational Creditor and Corporate Debtor. The dispute first arose in November 2019 when Corporate Debtor refused to sign the backdated contract dated 16 September 2019 as they disagreed with the terms contained therein. On 20 November 2019, Corporate Debtor sent an email asking Operational Creditor to clear the entire invoice so they could offer services in a hassle-free manner as Marriott Hotel was not offering credit because of the Cox and Kings issue and Corporate Debtor needed to make the complete payment to them. Operational Creditor did not clear the invoice and make the payment. On 21 November 2019, when Corporate Debtor learnt that Operational Creditor had colluded with Marriott Hotel and indulged in direct dealing with Corporate Debtor local vendors, Corporate Debtor asked Operational Creditor to clear the balance amount of Rs 80 lacs (approximately). Operational Creditor did not clear the invoice and make the payment. The dispute arose again when in December 2019, ABG terminated Universal's empanelment and Respondent wrote an email dated 20 December 2019 highlighting multiple issues, including delayed payments and the fact that Century still had not cleared invoices. This dispute was acknowledged by Operational Creditor

when they themselves sent a legal notice claiming deficiency of services on 28 December 2019.

- x.** The Operational Creditor had issued multiple Demand Notices and that too after sending a legal notice alleging deficiency of services. The Operational Creditor served a Legal Notice dated 28.12.2019 upon the Corporate Debtor claiming damages to the tune of INR 3,07,19,000/- (Indian Rupees Three Crore Seven Lakhs Nineteen Thousand Only) on account of alleged deficient services and unfair trade practices. The Operational Creditor after the lapse of more than a year of issuance of the said Legal Notice, served a statutory Demand Notice dated 20.01.2021 under Section 8 of the Code, thereby claiming an amount of INR 1,31,16,542/- as an 'operational debt'

4. Analysis and Findings

- i.** We have heard the Ld. Counsel 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 find that the Operational Creditor failed to pay full amount to the Corporate Debtor. Out of total amount of INR 3,03,22,031.25/- only INR 2,02,14,688/- was paid to the Corporate Debtor. Therefore, Corporate Debtor had provided services only for the amount which was received. Operational Creditor had approached third parties for the remaining arrangements and the expenses incurred from the third parties cannot be claimed from the Corporate Debtor

without valid authorisations. No pecuniary loss was caused to the Operational Creditor.

- iv.** 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 communication dated 20.11.2019 which is extracted below:

“Dear mr Bhutra.

Please note that it is not possible for us to put up the money as already one TT of ours has got lost n not reached the agent...

Due to the C&k issue no one is able to give credit at all! We would need the balance Po payment today itself to route the balances to agent n hotel to ensure smooth operations ...

Sorry we are unable to extend any credit. We would need to remit through Singapore which is rs 4 more expensive per aud ..

We need this money in our account today to ensure it can be done through Singapore tomorrow morning...

Both agent and hotel are also marked on this mail ...

Sorry cannot help others as already 90 lakhs of ours are stuck in

lost TT ...

Geetanjali”

- v.** 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.
- vi.** 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-170/ND/2021** 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.

6. IA-2252/2022

- i.** The present Application has been filed by M/s. Universal Journals India Pvt. Ltd. Corporate Debtor seeking permission to place Additional documents on record under Section 60(5)(A) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.
- ii.** In view of the order passed in (IB)-170(ND)/2021, we deem it appropriate to entertain this application. Accordingly, the IA-2252/2022 is **taken on record** and is **disposed of** accordingly.

Sd/-

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

Sd/-

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