

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1398 of 2023

(Arising out of the Impugned Order dated 10.08.2023 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench in Company Appeal (IB) No. 4278(MB)/2019]

IN THE MATTER OF:

**Mukund Rajhans
(Suspended Director
Topaki Media Private Limited)
5, Behind Akshay Dental Hospital
Peer Bazaar Dargah Road, Pratap Nagar,
Aurangabad – 431005**

...Appellant No.1

Versus

- 1. Rajasthan Patrika Private Limited
Kesargarh, J.L.N. Marg,
Jaipur – 302004**
- 2. Shyamsundar Purushottamlal Dhanuke
R.P. of Topaki Media Private Limited
A-301, Krishna Tower,
Atmaram Sawant Marg
Kandivali East, Mumbai – 400101**

Respondent No.1

...Respondent No.2

Present:

**For Appellant : Mr. Vipul Wadhwa, Ms. Kashika Gera and
Mr. Vishal Binod, Advocates**

**For Respondent : Mr. Anand Shankar Jha, Mr. Abhishek Tiwari and
Mr. Sachin Mintri, Advocates**

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an appeal filed by Mr. Mukund Rajhans, Suspended Director Topaki Media Private Limited ("TMPL") under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code") against the Order dated 10.08.2023 passed by the National Company Law Tribunal, Mumbai Bench (hereinafter referred

to “The Adjudicating Authority”) in Company Appeal (IB) No. 4278(MB)/2019, whereby the Adjudicating Authority has admitted the Application under Section 9 of the Code and CIRP proceeding have been initiated against the Appellant.

Submissions of the Appellant/ Sh Mukund Rajhans - Suspended Director of Topaki Media Private Limited-TMPL - Corporate Debtor

Appellant submits that:

- Despite, the Debt/liability being a disputed one the Adjudicating Authority (NCLT, Mumbai Bench) has admitted the petition for initiating Corporate Insolvency Resolution Professional (“CIRP”).
- TMPL did not owe any operational debt to the Respondent because it was merely acting as an agent of Videocon Industries Limited (“VIL”) while dealing with the Respondent. Therefore, in terms of Section 230 of Indian Contract Act, 1872 (“Act”), TMPL could not have been made liable to repay the dues owed by VIL.
- The Respondent did not serve / failed to prove the service of the demand notice issued under Section 8 of the Insolvency & Bankruptcy Code, 2016.
- Raised the issue of improper board resolution for the authorised signatory of the Respondent.

2. TMPL used to provide services for various clients including VIL, whereby it acted as an agent of the client and would assist its clients in advertising their projects. VIL availed the above indicated services of TMPL and used to place advertisements through TMPL. TMPL in turn used to

approach various companies, such as the Respondent for publication of the advertisements in its newspapers. TMPL would get monetary incentive for acting as an agent or middleman in such a transaction from the client i.e. VIL in this case. Specifically speaking, TMPL acting upon the instructions of VIL placed various purchase orders / release orders in the name of VIL on the Respondent. The Respondent in turn placed advertisements in its newspaper namely Rajasthan Patrika and raised invoices in the name of VIL by delivering the same to TMPL. The Appellant claims that all invoices mention the name of VIL as the client.

3. In around October, 2015 VIL delayed making payments towards some of the invoices to settle the outstanding amounts TMPL. Acting as the agent of VIL, Appellant was coordinating for the payments on behalf of VIL. It was agreed between the Respondent and VIL that the amounts due shall be paid directly to the Respondent by VIL by barter. These payments were to be made, by providing to the Respondent some appliances and products such as washing machines, refrigerators, LED TVs, coolers, etc, that were manufactured by VIL and its group companies. After such an agreement, the Respondent started dealing directly with VIL. Till that point, no demands were being made by the Respondent from TMPL. Only after 06.06.2018, when the Adjudicating Authority admitted insolvency proceedings against VIL, the Respondent, for the first time raised demands against TMPL, by issuing demand notice dated 31.07.2018.

4. The Applicant claims that, a petition under Section 9 of the IBC filed without delivery of a demand notice under Section 8 of the IBC is liable to be rejected at the outset. Further, Rule 5 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 requires that the demand notice under Section 8 of the IBC, is served at the registered address of the Corporate Debtor. Further, Form 3 also specifies that the demand notice should be delivered to the registered address of the Corporate Debtor.

5. The Applicant claims that the Respondent has falsely claimed that the demand notice dated 31.07.2018 was duly served upon TMPL. It further claims that it has failed to specify the exact date on which the said demand notice was served upon TMPL. The documents placed on record, like the tracking receipt or delivery acknowledgement are not sufficient to proof the delivery. The Applicant further claims that there is a discrepancy in the address / addresses mentioned on the documents brought on record by the Respondent, with respect to the pin code. Therefore, the Respondent has not complied with the mandatory requirement of serving the demand notice under Section 8 of the IBC upon the registered upon the TMPL.

6. Appellant further claims that TMPL had only been acting as an agent of VIL. In terms of Section 230 of the Indian Contract Act, 1872. TMPL could not have been made liable to repay the dues of VIL, even though, the Purchase Orders (POs) were issued by TMPL to the Respondent and the Respondent delivered the invoices to TMPL. As per Section 230 of the Act, TMPL / an agent is bound by a contract entered into by it on behalf of its Principal / VIL, even though, there did not exist any contract binding TMPL's in such manner.

7. TMPL did not owe any operational debt to the Respondent in terms of Section 5(21) of the IBC because the beneficiary of the Respondent's advertising services was VIL and not TMPL.

8. The Applicant further submits that the Respondent have been directly dealing with the VIL for settlement of its dues, after taking TMPL out of the existing commercial arrangement. Therefore, TMPL could not have been made responsible for the outstanding dues of VIL, as the barter arrangement which was agreed between the Respondent and the VIL had ceased due to enforcement of the GST regime in India. By the stoppage of the barter arrangement, it did not force TMPL to get substituted in the shoes of the VIL in respect of the liability existing towards the Respondent. The Respondent could not have been allowed to pick and choose as per its own whims and fancies by pursuing VIL for settlement of dues at one point of time and thereafter pursuing TMPL in respect of the same dues, once the CIRP of VIL commenced on 06.07.2018. It prays for quashing and setting aside the impugned order.

Submissions of the Respondent / Rajasthan Patrika Private Limited – RPL- Operational Creditor

9. The Respondent submits that the impugned order dated 10.08.2023 is decided on merits and is well-reasoned. There is no error either on factual or legal basis. There is a clear existence of debt and default and the impugned order satisfies all the elements under Section 9 of the Code as well as the judgment of the Hon'ble Apex Court in the matter of ***Innoventive Industries Limited Vs. ICICI Bank (2018) 1 SCC 407.***

10. On the issue of duly serving the demand notice, it submits that the demand notice dated 31.07.2018 was sent by registered post on 01.08.2018 to the registered address of the Corporate Debtor, which is evident from the postal receipt, which is annexed at page 143 in the Appeal Paper Book. The Corporate Debtor chose to stay mum and not respond to the notice. The

Appellant has not even once throughout the litigation, disputed the unpaid and uncleared invoices. The Corporate Debtor has clearly admitted the existence of a debt and the fact that it is unpaid. The Appellant is trying to wriggle out of its liabilities on a mere technicality that the delivery report of the demand notice was not produced. To support the delivery of the demand notice, the Respondent had also given an affidavit before the Adjudicating Authority, it has also requested the Post Master GPO, Jaipur for issuing a delivery report. Since the data pertained to six years old delivery, the Post Master inquired the same from the Senior Superintendent of post offices, Mumbai vide letter dated 01.03.2023.

11. The Respondent submits that the Corporate Debtor never disputed the address on which the demand notice was issued to the Corporate Debtor.

12. The Respondent relies upon the judgment of Hon'ble Apex Court in **Greater Mohali Area Development Authority and Ors. Vs. Manju Jain and Ors. (2010) 9 SCC 157** wherein the Hon'ble Apex Court held as under:

“...
18.

In C.C. Alavi Haji v. Palapetty Muhammed [(2007) 6 SCC 555: (2007) 3 SCC (Cri) 236] this Court reiterated a similar view that Section 27 of the General Clauses Act, 1897 and Section 114 Illustration (f) of the Evidence Act, give rise to a presumption that the service of a notice has been effected when it is sent to the correct address by registered post. This Court held as under: (SCC p. 564, para 14)

“14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. ... Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.”

19. This Court has reiterated a similar view in Gujarat Electricity Board v. Atmaram Sungomal Poshani [(1989) 2 SCC 602 : 1989 SCC (L&S) 393 : (1989) 10

ATC 396 : AIR 1989 SC 1433] , CIT v. V.K. Gururaj [(1996) 7 SCC 275 : 1996 SCC (L&S) 579 : (1996) 33 ATC 269] , Poonam Verma v. DDA [(2007) 13 SCC 154], Sarav Investment & Financial Consultancy (P) Ltd. v. Llyods Register of Shipping Indian Office Staff Provident Fund [(2007) 14 SCC 753 : (2009) 1 SCC (Cri) 935], Union of India v. S.P. Singh [(2008) 5 SCC 438 : (2008) 2 SCC (L&S) 1] , Municipal Corpn., Ludhiana v. Inderjit Singh [(2008) 13 SCC 506] and V.N. Bharat v. DDA [(2008) 17 SCC 321 : AIR 2009 SC 1233]”

[Emphasis Supplied]

13. In the instant case, there is a clear admission with respect to the unpaid invoices / outstanding dues by the Corporate Debtor, with no dispute or denial of any kind. The Respondent claims that Corporate Debtor has admitted that the VIL was its client and they had an arrangement between them, whereby VIL used to place orders for advertisements through the Corporate Debtor – Operational Creditor’s newspapers. The Corporate Debtor used to issue release/purchaser order, under its own letter head, i.e., TMPL. All the invoices were raised by the Operational Creditor i.e. Rajasthan Patrika Private Limited in the name and address of the Corporate Debtor and this was never objected by the Corporate Debtor. Therefore, Corporate Debtor i.e. TMPL is liable to the outstanding debt. Further, Respondents submit that arrangement of making payments through appliances and products such as washing machines, refrigerators, LED TVs, coolers, etc. that were manufactured by VIL was arranged by the Corporate Debtor itself. It denies that the Appellant i.e. TMPL was out of the picture with respect to the outstanding amounts due from VIL. The Corporate Debtor itself was regularly coordinating and facilitating the payments to the Operational Creditor i.e. Rajasthan Patrika Private Limited. The Corporate Debtor in its email dated 18.09.2017 to the Operational Creditor expressed its inability to supply the

equipment against barter due to GST implication, which demonstrate that the Corporate Debtor was active throughout. It further submits that Operational Creditor was not directly dealing with the Videocon Group for its outstanding dues and was not making any demands for outstanding dues from the Respondents. It further submits that insolvency proceeding against VIL are a separate case and has no bearing on this Appeal. Had the Operational Creditor being dealing directly with VIL, it would have duly raised its claim before the Resolution Professional for VIL.

Appraisal

14. Heard the Learned Counsel for both the parties and perused all the documents on record.

15. The issue before us is whether the Appellant is liable to pay the outstanding dues to the Operational Creditor in the instant facts of the case and whether admission of insolvency proceedings against it under Section 9 of the Code are tenable or not.

16. During the course of the business, the Appellant used to place Purchase Orders/ Release Orders from time to time with the Operational Creditor namely Rajasthan Patrika Private Limited. The Rajasthan Patrika Private Limited, the Respondent in this case, used to publish the advertisements in its newspapers and raised the invoices from time to time, which were duly sent to the Corporate Debtor. All the unpaid invoices aggregated to Rs.1,36,81,274/-. The fact of the publishing of the advertisements is duly acknowledged by the Appellant. The Respondent had been issuing reminders/emails to the Appellant to make payments to the Respondent towards the unpaid bills. The Demand notice was finally issued

on 31.07.2018 under Section 8 of the Code, claiming an amount of Rs.1,87,52,874/-, which included both the Principal and the interest. From the records, it appears that the Appellant had failed to reply to the demand notice.

17. It is clearly brought out from the records that Release Orders were raised by TMPL for providing services of issue of advertisements of the VIL products and this was done on the letter heads of the TMPL. Perusal of the Release Orders and invoices clearly bring out that TMPL remains the Corporate Debtor who is liable to pay the outstanding dues. One such release order is placed here.

Topaki Media Pvt Ltd
1st Flr, Shiv Ashish Complex, Behind Lathia Rubber
Factory, Andheri-Kurla Road, Saki Naka, Andheri(E)
MUMBAI-72, T/F:022-40238208, topaki.media@gmail.com
CIN : U70109MH1994PTC187857

MR. Jainwar

RELEASE ORDER

The Advertisement Manager RAJASTHAN PATRIKA (MAIN) Lang : Hindi Dynasty Business Park, Unit# A 309, A Wing 3 Flr, Andheri Kurla Rd, Andheri(E), Mum-59				R.O. No : VIL/925/16-17/CON Dated : 08.04.2018 Ag Code :																					
Client : Videocon Industries Limited Product : Videocon AC Please release insertion as mentioned below : Rajasthan Patrika (main)																									
<table border="0"> <tr> <td>Banswara</td> <td>Chhindwara</td> <td>Gwalior</td> <td>Indore</td> <td>Ajmer</td> <td>Alwar</td> <td>Bhopal</td> <td>Bikaner</td> <td>Bilaspur</td> <td>Bhilwara</td> </tr> <tr> <td>Mandsaur</td> <td>Pali</td> <td>Rajpur</td> <td>Ratlam</td> <td>Sriganganagar</td> <td>Sikar</td> <td>Satna</td> <td>Ujjain</td> <td>Udaipur</td> <td>Kota</td> </tr> </table>						Banswara	Chhindwara	Gwalior	Indore	Ajmer	Alwar	Bhopal	Bikaner	Bilaspur	Bhilwara	Mandsaur	Pali	Rajpur	Ratlam	Sriganganagar	Sikar	Satna	Ujjain	Udaipur	Kota
Banswara	Chhindwara	Gwalior	Indore	Ajmer	Alwar	Bhopal	Bikaner	Bilaspur	Bhilwara																
Mandsaur	Pali	Rajpur	Ratlam	Sriganganagar	Sikar	Satna	Ujjain	Udaipur	Kota																
EDITIONS & DATE	SIZE	CAPTION KEY NUMBER FILE NAME	RATE	POSITION & PREMIUM/ DISCOUNT	MATERIAL STATUS																				
09.04.2018 Ajmer Alwar Bhopal Bikaner Bilaspur Bhilwara Banswara Chhindwara Gwalior Indore Jabalpur Jagdalpur Jaipur Jodhpur Kota Mandsaur Pali Rajpur Ratlam Sriganganagar Sikar Satna Ujjain Udaipur	Page No.2 Four Colour	Videocon AC	850000.00 10,50,000/-	Page 2 Only	Via Email Follows																				

For Topaki Media Pvt Ltd

Media Manager

Important: Inform us immediately if material found unsuitable for good reproduction, to enable timely replacement. (1) Forward voucher copies immediately after publishing ad, to the client and to us. (2) Check above rate and notify us immediately if incorrect. (3) In case unable to comply with above instructions or if release cannot be made, notify immediately. (4) No two products of the same client should appear together in the same issue unless specified. (5) Request: Competitive ads be spaced apart. (6) For Display Panel Font Size should not be more than 7 point.

Estimate Number : VIL/66/15-16/VIL Est. Dt. 29.03.2016 (Campaign : Print ads)

1436
9/4/16

Rest G.R.O.
Published
BQ

18. Since the dues were pending for quite some time, an arrangement of barter was agreed to by the Respondent (Rajasthan Patrika Private Limited) and (VIL) for accepting the 10-11 repayment of outstanding dues in way of the appliances and products such as washing machines, refrigerators, LED TVs, coolers, etc. that were manufactured by VIL and this arrangement was mediated by the Applicant i.e. TMPL. From the correspondence on record, it is quite evident that the Applicant i.e. TMPL was not excluded from the above arrangement of payment. Also Appellant offered to settle the accounts through barter mode instead of upfront payment. The Corporate Debtor itself was regularly coordinating and facilitating the payments to the Operational Creditor i.e. Rajasthan Patrika Private Limited. And later on, it could not be continued due to issues relating to the new regime of Goods and Service Tax (GST). When the arrangement could not proceed further, the responsibility for repayment lies solely on the Applicant i.e. TMPL.

19. The Applicant has issued Release Orders for issue of advertisements from the Operational Creditor i.e. Rajasthan Patrika Private Limited. It is worth noting that the bills are also raised against the Corporate Debtor and one such bill is attached herewith in next paragraph. This makes Appellant liable to pay the Operational Creditor. By trying to shift the liability on VIL, the Appellant cannot escape its liability.

BILL Duplicate Branch : JAIPUR Tel: 0141-39404142 E-S, JHALANA INST. AREA, JHALANA DUNGARI, JAIPUR Fax : 0141-2566011 PAN No : AAACR7056G CEN No : U22121RJ1974PTC001600		राजस्थान पत्रिका rajasthan patrika pvt. ltd. Regd. Office : Keshavnagar, J.L.N Marg, Jaipur Internet edition : www.patrika.com e-mail : info@rajasthanpatrika.com		To TOPAKI MEDIA PVT.LTD. 1ST FLOOR, SHIV ASHTISH COMPLEX, BEHIND LATHIYA RUBBER FACTORY, NEAR VIJAY PRINT BUS STOP, SAKI NAKA, MUMBAI- 400072 City Name : MUMBAI							
Bill Number: JAG-1510/51309 Bill Date: 13/10/2015 Booking ID: JAG201500040315/1 Scheme Type: Ad Category: BASIC RATE		Client Name: VIDEOCON INDUSTRIES LTD NO & Date: 402-12/10/2015 Caption: RANGE AD Key No. 1 Through:									
Package	Date of Insertion	Edition	Size Height Width	Area	Page Prem.	Position Prem.	Color/BW	Card Rate	Extra Rate	Agreed Rate	Amount
ALL RAJ+NP+CG	13/10/2015	AM ALW BAN BHU BEN JAI JOD KOT PAL SDK SRI UDA	32 33	1716			COL	10300			850000.00
13/10/2015-AM ALW BAN BHU BEN JAI JOD KOT PAL SDK SRI UDA 15/10/2015-BHU BIL CHH GWA IND JAB JAG MAN RAI RAT SAT UJJ											
Bill Remarks:								Gross Amount		850000.00	
								Add: Budget Charges			
								Less: Special Discount			
								Add: Special Charges			
								Less: Trade Discount		15% 127500.00	
								Add: Series Discount			
								Add: Box Charges			
								Add: Trans Charges			
Amount (in words): Seven Lakh Twenty Two Thousand Five Hundred Only								NET PAYABLE		722500	
Terms & Conditions: 1. payments should be made in the name of RAJASTHAN PATRIKA PVT. LTD. 2. please make payment on or before due date 3. payment should be accompanied with B4 detail & TDS deduction if applicable. 4. objections if any should be lodged within 15 days from the receipt of bill. 5. for any dispute the jurisdiction of the competent court shall be JAIPUR 6. interest @ 18% p.a will be charged on delayed payment. 7. terms sheet is enclosed at above.											
THANK YOU FOR ADVERTISING WITH US											

Invoice raised by Respondent No. 1

20. The attempt to settle the dues using barter system, which was being worked out by the Applicant i.e. TMPL, could not be continued due to the problems arising out new regime of GST.

21. Furthermore, it is on record that after the issue of the admission orders of insolvency against VIL, the Applicant i.e. TMPL has filed a claim of Rs.23,35,98,606/- as an Operational Creditor before the IRP of VIL and the same has been fully admitted by the RP of VIL. Under these circumstances, TMPL cannot now shift its liability on VIL.

22. In his defence the Appellant relies upon Section 230 of the Indian Contract Act, 1872, which is reproduced herein:-

“...

230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.—

In the absence of any contact to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Presumption of contract to contrary.—Such a contract shall be presumed to exist in the following cases:—

(1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;

(2) Where the agent does not disclose the name of his principal;

*(3) Where the principal, though disclosed, cannot be sued.
.....”*

23. There is no tripartite agreement on record which could have guided the mode and responsibilities of payment. Without any agreement in place, in the facts of the instant case, the responsibility to repay the outstanding dues remains on the Appellant. As the IBC proceedings are self-contained which govern the course of action in such situations, the Appellant cannot take refuge of Section 230 Indian Contract Act, 1872 that the “*agent cannot personally enforce, nor be bound by, contracts on behalf of principal*” and pass on its liability to VIL.

24. The Appellant has tried to challenge the impugned order based on the ground of failure to the service of the statutory demand notice issued under Section 8 of the Code.

25. For better appreciation of the requirements of this section, it is reproduced here:

“...

Section 8 - Insolvency resolution by operational creditor

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor--

(a) 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 invoice in relation to such dispute;

(b) the [payment] of unpaid operational debt--

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.-- For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding [payment] of the operational debt in respect of which the default has occurred.]...."

26. Appellant has also questioned that Rule 5 of the INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016 has not been followed. For better appreciation this is also quoted here:

"Rule 5 - Demand notice by operational creditor

(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely.-

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,

(a) at the registered office by hand, registered post or speed post with acknowledgement due; or

(b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.

(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any"

27. Now we examine the validity or otherwise of the service of Demand notice in the facts of the case. Demand notice dated 31.07.2018 was sent by

registered post on 01.08.2018 to the registered address of the Corporate Debtor, which was not replied to by the Corporate Debtor. Some documentary evidence is available on record, which includes the details of the India Post and the postal receipt, which indicate that the demand notice has been issued, even though the addresses are not fully legible and correct in the receipt and acknowledgement. This will not make any material difference as both parties have been dealing in business for long and were continuously exchanging lot of emails. Many emails are on record to indicate the outstanding amounts and which are being reminded by the Respondent. And also Appellant was very much present in the proceedings before the Adjudicating Authority and duly represented and defended his case, though unsuccessfully.

28. Furthermore, the Applicant never disputed the address on which the demand notice was issued to the Corporate Debtor. But it has merely questioned the failure of proof of the service of the statutory demand notice, which appears to be spurious granted and unsustainable.

29. In this regard, the Respondent has relied on the judgment of the Hon'ble Apex Court in ***Greater Mohali Area Development Authority and Ors. (supra)***. Basis Section 27 of General Clauses Act, 1897 and Section 114 Illustration (f) of the Evidence Act, the service of the notice gets affected when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. Under these conditions the arguments of the Applicant cannot be accepted that service of demand notice was not affected.

30. The Applicant has never brought out any dispute with respect to the unpaid invoices neither in its reply to the demand notice (Reply to the demand notice was not issued at all) nor during the CIRP proceedings also. On the basis of the record, it is evident that the Applicant has clearly admitted the existence of the debt.

31. The Adjudicating Authority has clearly brought out that as per records, the date of default is 12.12.2015. The TMPL acknowledged the debt and paid certain invoices and also facilitated in barter arrangement in the year 2017. Later on, there is an admission of liability by way of emails dated 21.07.2017 and again on 18.09.2017, which amounts to the admission of liability. Since there is an admission of liability on 18.09.2017, there cannot be any question of claims to be time barred as the period of limitation starts afresh from the date of admission of 18.09.2017. There is a clear admission with respect to the unpaid invoices / outstanding dues by the Corporate Debtor, with no dispute or denial of any kind. This case is very well covered under Section 9 of the Code read along with the judgment of Hon'ble Apex Court in the matter of ***Innoventive Industries Limited Vs. ICICI Bank (2018) 1 SCC 407***.

Conclusion:

32. It is clearly brought out that there is a debt in terms of Section 5(21) of the Code and that there is also a default in terms of Section 3(12) of the Code and also the debt is within the period of limitation and there is no dispute raised at any point of time. Therefore, the Adjudicating Authority has rightly come to the conclusion that it satisfies the requirement for admission under Section 9 for Corporate Insolvency Resolution Process.

33. We do not find any error in the orders of the Adjudicating Authority.
The Appeal is therefore dismissed. No order as to cost.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

4th April, 2024

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