

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT- III**

**IB-65/ND/2020**

U/S. 9 of the IBC, 2016 Rule 6 of the Insolvency  
and Bankruptcy (Application to Adjudicating  
Authority), Rule, 2016

**IN THE MATTER OF**

**Ashutosh Gupta**

**Registered office at:**

**9/283, Sector - 3, Rajinder Nagar Sahibabad,  
Ghaziabad Uttar Pradesh - 201005**

...Operational Creditor

**Versus**

**Prathvi Coal Private Limited**

**Registered. Office:**

**102, 1<sup>st</sup> Floor, Ajnara Tower  
LSC, Savita Vihar  
Delhi - 110092**

...Corporate Debtor

*Delivered on: 04.11.22*

**Coram:**

**Shri Bachu Venkat Balaram Das**  
Hon'ble Member (Judicial)

**Shri Binod Kumar Sinha**  
Hon'ble Member (Technical)



**Appearances:**

Operational Creditor : Adv. Abhishek Agarwal

Corporate Debtor : None

**ORDER**

**Per: Bachu Venkat Balaram Das, Member (Judicial)**

1. This instant application bearing IB-65/ND/2020 is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. by Mr. Ashutosh Gupta, the operational creditor, seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., Prathvi Coal Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with Roc Delhi & Haryana and is therefore within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

- a. It is the case of the Operational Creditors that, Prathvi Coal Private Limited under Companies Act, 1956, had approached Operational Creditor i.e., Ashutosh Gupta (Advocate) for providing professional legal services to the Corporate Debtor as when required.



- b. It is submitted that on the basis of the Oral agreement between the Corporate Debtor and the Operational Creditor, the Operational Creditor always ensured professional services to the corporate debtor as and when required. Invoices were raised by the operational creditor for such legal services to the Corporate Debtor.
- c. It is further submitted that, Operational creditor has provided legal services/assistance to the Corporate debtor. Corporate debtor is delaying the payment of invoices raised by Operational creditor amounting Rs. 5,37,500/- (Indian Rupee Five Lakhs Thirty Seven Thousand and Five Hundred) inclusive of invoice demanding payment INR 5,00,000 (Indian Rupee Five Lakhs) and interest of amount INR 37,500(Indian Rupee Thirty Seven Thousand and Five Hundred) @ 18% p.a. calculated till 13th November 2019 which is due and payable on the Corporate Debtor Company and even admitted by the Corporate Debtor.
- d. It is further averred that thereafter, on 13.11.2019 Operational creditor has issued the demand notice under section-8 to the Corporate debtor but it failed to give reply within 10 days however, the Corporate debtor has issued two cheques dated 10.12.2019 in favour of the Financial creditor bearing cheque no. 684418 and 684420 amounting to Rs. 1,00,000/- and Rs. 4,00,000/- respectively out of which one cheque bearing no. 684418 got cleared



and the other cheque bearing no. 684420 returned unpaid due to insufficient balance. The reply was filed by Corporate debtor on 18.02.2021.

- e. It is pertinent to note Corporate Debtor has failed to pay the current outstanding remaining balance amount of Rs. 4,45,000/- (Indian Rupee Four Lakhs Forty five Thousand) inclusive interest of Rs.45,000 (Indian Rupee Forty five Thousand) @ 18% p.a. calculated till 30th November 2019, to the Operational Creditor which is due from Corporate Debtor against legal services provided by the Operational Creditor.

3. Notice was issued to the Corporate Debtor on 09.01.2020. Service was duly effected. The matter was listed on various dates i.e. 22.02.2021, 19.03.2021 and 06.07.2021. However there was no appearance on behalf of the Corporate Debtor in this matter. On 09.11.2021, the matter was proceeded as **ex parte**.

4. We have heard the arguments advanced by Ld. Counsel for the Operational Creditor and also perused the record.

5. The Operational Creditor's claim is based on the fact that, the Corporate debtor had approached Operational Creditor for providing professional legal services. The same legal services were effectively provided to Corporate debtor & Corporate debtor has failed to pay the disputed balance amount.

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6. We do not have the benefit of assistance from the Corporate Debtor. However, in this matter, before deciding the issue of admission of the Corporate Debtor into CIRP on the basis of the instant Application filed u/s 9 of the Code, we are required to decide the following question:

“Whether failure on the part of the Corporate Debtor to pay for legal services provided by operational creditor shall give rise to an operational debt; as per the definition of Operational Debt as stipulated u/s 5(21) of the Code and whether the present applicant can maintain this application as an Operational Creditor to the Corporate Debtor?”

7. The following facts are noted :

A) The applicant states that the Applicant entered into an Oral agreement with the Corporate debtor on 10.12.2019.

B) According to the applicant, in terms of the agreement the applicant used to provide advisory and consultancy services to the Corporate debtor. All the valid services were provided to Corporate debtor, who after availing the above mentioned services, had failed to clear the payment of invoices raised by the applicant.

C) It is also noted that Corporate debtor was fully aware of the services provided by Operational creditor as two cheques for Rs. 1,00,000/- and for Rs. 4,00,000/-

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were issued out of which one cheque bearing No. 684418 was paid by the bank, but the other cheque bounced due to insufficient funds.

8. It is pertinent at this stage to refer to the definition of 'operational debt' stipulated u/s 5(21) of IBC. As a matter of fact, Corporate debtor had approached the operational creditor for advisory and consultancy "services". As the definition of operational debt includes the words "*services including employment*", we are of the view that legal services which are provided by the operational creditor to Corporate debtor falls under the ambit of the definition of operational debt and the applicant will qualify as an Operational Creditor in terms of section 5(20) of the Code. In this respect, it is pertinent to refer the Judgement passed by Hon'ble NCLT, New Delhi Bench - IV in ***M/S INDIACORP LAW V. PAADM INTERNATIONAL HOTELS PRIVATE LIMITED (IB-684(ND)/2019.***

In the said case, the Applicant who was an advocate running a proprietary firm M/s IndiaCorp Law. The applicant provided Legal Professional services to Corporate Debtor and raised invoices for an amount of Rs. 2,25,000/- out of which only 50,000/- was paid by the Corporate Debtor and balance amount of Rs. 1,75,000/- was not paid. In a petition filed u/s 9 of IBC, The bench IV of this Tribunal held that:



*“In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. The present application is admitted, in terms of section 9 (5) of IBC, 2016”.*

10. In the light of the decision referred to **supra**, by a coordinate bench. When we consider the submissions of the Operational Creditor for the claims towards the legal professional services provided to Corporate debtor, it appears to us that the same shall also fall within the ambit of the definition of operational debt and the applicant will qualify as an Operational Creditor in terms of section 5(20) of the Code.

11. Since the Corporate Debtor has chosen not to avail the due and sufficient opportunity of being heard as granted on various dates, the averments of the applicant stating that there is a ‘debt’ which the corporate debtor was liable to pay but failed to do so, remain unrebutted. Therefore, this Adjudicating Authority has no other option but to admit the Corporate Debtor into CIRP under the provisions of the Code.

12. The Operational Creditor has proposed the name of the IRP. Accordingly, this Adjudicating Authority appoints Mr. Ranjan Chakraborty having Regn. No.- IBBI/IPA-002/IP-N00541/2017-18/11618 as IRP from IBBI list. Consent and valid AoA of the IRP must be filed within three days of passing this order. The



said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

13. We also declare moratorium in terms of Sec 14 of the code which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all the following, namely:

- a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor's assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

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e. The explanation below section - 14 (1) also stipulates “that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State, Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

14. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

15. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

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16. The Operational Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

17. The Operational Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further operational creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

18. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

19. The order is pronounced by this Adjudicating Authority in Virtual Hearing.



**(Bachu Venkat Balaram Das)**

Member (Judicial)



**(Binod Kumar Sinha)**

Member (Technical)