



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-556(ND)2020

IN THE MATTER OF:

M/s. Computer Junction Private Limited.

C-129, Phase-1,

Naraina Industrial

Area, New Delhi-110028

... Applicant

VERSUS

Nysa Communications Private Limited

1st Floor, F-18, Preet Vihar,

Vikas Marg, New Delh-110092

... Respondent

Section: 9 of the IBC, 2016

Order Delivered on: 18.09.2023

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SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Tushar Thareja

For the Respondent : Adv. Milan Negi and Adv. Shadab Alam



ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

M/s Computer Junction Private Limited (for brevity, the '**Applicant**') has filed the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Nysa Communications Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s Nysa Communications Private Limited is a Company incorporated on 16.04.2008 with CIN U72900DL2008PTC 176819 under the provisions of the Companies Act, 1956 having its registered office on 1st Floor, F-18, Preet Vihar, Vikas Marg, New Delh-110092, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs.5,00,000/- and the Paid-up Share Capital is Rs.5,00,000/- as per Master Data annexed.

3. The brief background of the case is that vide order dated 13.10.2021, this Adjudicating Authority initiated the CIR process against the Respondent under the captioned petition. The said order was challenged by one Mr. Puneet Kumar before the Hon'ble NCLAT, which vide its Judgement dated 09.05.2022 in Company Appeal (AT) (Insolvency) No. 1035 of 2021, set aside the order dated 13.10.2021 for hearing the matter afresh. The Hon'ble NCLAT, however,



clarified it has not given any opinion on the pre-existing dispute between the parties. The operative part of the abovementioned Judgement reads thus:

“22. In view of the detailed discussion as above, we hold the view that it would serve the ends of the justice if the Corporate Debtor is provided an opportunity to submit his reply in Section 9 Application. We, therefore, allow the appeal and accordingly set aside the impugned order dated 13.10.2021. We further direct that the Corporate Debtor shall be free from rigours of Corporate Insolvency Resolution Process and other provisions of IBC. The case is remanded to the Adjudicating Authority for giving a notice to the Corporate Debtor and affording him opportunity to submit a reply and thereafter pass appropriate orders after due consideration in the Section 9 application filed by the Operational Creditor. We also make it clear that we are not giving any opinion regarding pre-existing dispute between the parties in the matter.”

In view of the Judgement (ibid) of Hon’ble NCLAT, the Respondent was afforded an opportunity to file its reply in the matter and was heard de novo.

4. It is stated in the application that the Applicant and Respondent entered into an ‘Agreement’ dated 30.05.2018, whereby the Applicant agreed to provide services for end-to-end infrastructural support, Laptop Services, etc. to the Respondent for a period of three years. It is further stated by the Applicant that even after duly receiving the services as against the duly raised Purchase Orders w.e.f. 10.08.2018, the Respondent failed to make payments.

5. The detailed particulars of the Operational Debt claimed by the Applicant including the total amount of default and the date of default are mentioned in Part IV of the application, which is reproduced overleaf -



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	<p>i) Principal amount of ₹.2,65,77,028/- (Rupees Two Crores Sixty Five Lacs Seventy Seven Thousand and Twenty Eight) /-, i.e in default as reflected in the invoices and Purchase Orders. An accrued interest payable from August 10th 2018 to December 31st 2019 @2% per month, mutually agreed by the parties in the accepted unpaid Invoices which amounts to ₹88,77,455.49 (Rupees Eighty Eight Lacs Seventy Seven Thousand Four Hundred Fifty Five and Forty Nine Paise). The principal including interest amounting to ₹3,54,54,483.49 (Rupees Three Crores Fifty Four Lacs Fifty Four Thousand Four Hundred</p>
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		<p>Eighty Three and Forty Nine Paise).</p> <p>ii) In view of default in repayment of the above amount/ operational debt, the Operational Creditor issued a demand notice dated 23.12.2019 in Form 4, as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('I&B Rules') R/w Section 8 of the Insolvency and Bankruptcy Code, 2016 ('IBC') thereby demanding an operational debt of Rs. ₹3,54,54,483.49 (Rupees Three Crores Fifty Four Lacs Fifty Four Thousand Four Hundred Eighty Three and Forty Nine Paise). from the Corporate Debtor. Copy of the demand notice (Form-4) dated 23.12.2019 issued by the Operational Creditor to the Corporate Debtor is</p>
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		<p>annexed herewith and marked as <u>ANNEXURE A-5</u>.</p> <p>iii) The above mentioned Demand Notice was served by the Applicant upon the Corporate Debtor through Speed Post and the Corporate Debtor replied to the said notice vide Reply dated 15.01.2020, which was received by the Operational Creditor through Speed post on 17.01.2020. A copy of the said Reply is annexed hereto as <u>ANNEXURE A-6</u></p>
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	<p>i) Unpaid Principal amount of ₹.2,65,77,028/- (Rupees Two Crores Sixty Five Lacs Seventy Seven Thousand and Twenty Eight) /-. An accrued interest payable from August 10th 2018 to December 31st 2019 @2% per month, which amounts to ₹88,77,455.49 (Rupees Eighty Eight Lacs Seventy Seven Thousand Four Hundred Fifty</p>
		<p>Five and Forty Nine Paise) . The principal including interest amounting to ₹3,54,54,483.49 (Rupees Three Crores Fifty Four Lacs Fifty Four Thousand Four Hundred Eighty Three and Forty Nine Paise).</p> <p>ii) Date of default: 10.08.2018, which is continuing till date.</p>



6. As per Part IV of the Application (ibid), the Applicant has claimed an outstanding debt of Rs.3,54,54,483.49 and relied on 10.08.2018 as the date of default.

7. It is averred by the Applicant that it sent a Demand Notice dated 23.12.2019 under Section 8 of IBC 2016 through Speed Post at the registered office of the Respondent. In response, the Respondent filed a notice of dispute dated 15.01.2020, as averred by the Applicant in its affidavit filed under section 9(3)(b) of IBC 2016.

8. On issuance of the notice, the Respondent filed its reply and written submissions stating that –

8.1 The Respondent had obtained a contract from the Indian Council of Agricultural Research (‘ICAR’) for conducting the All-India Entrance Online Examinations (hereinafter, “Exams.”) for admission to UG, PG, and Ph.D. Courses in Agricultural Universities. In order to execute those assignments, the Respondent and the Applicant entered into a facilities agreement dated 30.05.2021, whereby the Applicant agreed to provide laptop servers 1 primary, and 1 backup to be provided on average ratio of 160 candidates that is to 1000 +1000 for 1.60 lacs candidates (with a provision for proportionate increase for increase in candidate count) rental server laptops configuration: (HP, Dell Lenovo) core i5 or equivalent, 8 GB Ram, 250 GB or above HDD and laptop among other obligations as envisaged under the said agreement. The Applicant also agreed to arrange the DVR facility for recording, while the



Respondent was to take a backup from such DVR after completion of the examinations.

8.2 Under the said Agreement, the Applicant was to make all arrangements along with one of its associate/partners namely, Testpan India Pvt. Ltd.

8.3 Under the said arrangement, one exam. was conducted on 22.06.2022 (for ICAR), wherein Applicant along with its partner Testpan India Pvt. Ltd was to undertake all activities as envisaged under the said agreement. Issues of mass cheating were reported in the said exam., which were first raised by ICAR on 26.06.2019. This issue was raised by the Respondent with the Applicant and footage of the exam centers was sought on the same day. However, the Applicant failed to provide the same, in fact, the CCTV footage was deleted, and this was admitted fault on the part of the Applicant.

8.4 As the Respondent could not provide the CCTV footage, the ICAR terminated the contract of the Respondent on 30.07.2018. The Applicant acknowledged this issue of deficiency in its services and accordingly after discussions, the amount of invoice no. DLT1-1819-01149 was reduced from Rs.3,75,83,000/- to Rs.1,13,30,756/- and payment was accordingly made.

8.5 Despite the above series of events, admitted deficiency of services on the part of the Applicant and payment of an actual agreed amount by the Respondent, the Applicant issued a demand notice upon Respondent under section 8 of IBC 2016 on 23.12.2019. In response, a notice of dispute was raised by the Respondent on 15.01.2020, wherein all the issues and disputes in the case were duly raised.



8.6 The following is the series of events, wherein the Applicant failed to execute its obligation as per the Agreement -

2. **Series of events wherein OC failed to execute its obligation as per the agreement:**

Date	Particulars
22.06.2018	Exam was conducted at the respective exam centers
26.06.2018 (pg. 35 of reply)	ICAR wrote to the CD to provide backup of CCTV footage among other things.
26.06.2018 (01:06 PM) (pg. 36 of reply)	CD, pursuant to telephonic discussion, wrote to OC and its partner, Testpan, that CD shall collect the CCTV footage/ surveillance data from the examination centers in storage devices (of the corporate debtor).
On 26.06.2018 (07:20 PM) (pg. 37 of reply)	Testpan (partner of OC) wrote to CD and OC that CD shall be rest assured that CCTV footage shall not be deleted from any centre/ venue unless any instruction is received from the CD. Also, Testpan writes that all the
	centers/ venues shall provide CCTV footage to the CD's manpower in HDD/ pen drives.
29.06.2018 (18:16 PM) (pg. 98 of reply)	Formal Complaint received from ICAR on for cheating during exams, ICAR sought for information / clarification.
29.06.2018 (04:08 PM) (Pg. 101 of reply)	CD again wrote to OC for CCTV footage of the exam centers.
30.06.2018 (Pg. 103 of reply)	CD learnt that the CCTV footage were deleted.
03.07.2018 (Pg. 45 of reply)	ICAR again wrote to CD to provide CCTV footage. It was informed that a committee, appointed by ICAR, was looking into the said issue.
05.07.2018 (Pg. 104 of reply)	CD repeated its concern on deletion of CCTV footage and failure on part of OC to provide the same, but OC did not respond.
09.07.2018 (Pg. 105 of reply)	CD issued a detailed email to OC / CD, warned the OC " <u>we are equally responsible for this failure so now wait for client decision</u> ", but no support was extended by the OC.
11.07.2018 (Pgs. 46-51 of reply)	The students body AISA, appointed by ICAR, submitted its complied report to ICAR, thereby reporting that certain centers even did not have CCTV cameras. This was clear deficiency on part of the OC.
11.07.2018 (Pg. 40 of reply)	Stellar India was appointed for recovering the deleted data from HDR.
16.07.2018 (Pg. 39 of reply)	Stellar sought 2-3 days' time to complete the process of data recovery.
17.07.2018 (Pg. 38 of reply)	Stellar informed that data recovery was not possible, as the data was " <u>over written</u> ".
18.07.2018 (Pg. 44 of reply)	CD informs OC and its partner, Testpan, that Stellar was not able to recover the data.
19.07.2018 (Pg. 43 of reply)	Testpan writes to CD to send the DVR to its state partner for possible recovery. Despite attempts by Testpan and OC, data could not be recovered.
30.07.2018 (Pg. 52, typed @ pg. 53 of reply)	ICAR terminated the CD's contract due to the inaction and negligence in conducting the exams. ICAR could not have given the written reason of "mass copying" for termination of CD's contract, therefore, the termination letter does not specifically state mass copying as a reason.



8.7 The following are the details of the obligations of parties in respect of CCTV footage/DVR and data backup -

Obligation	Relevant clause / pages
OC was to provide CCTV and DVR facility for recording the exam proceedings at each exam centre.	clause 2(v) at pg. 22 & clause 3(vi) @ pg. 24 of reply.
CD was to take back up from the locations in server or any other medium. These back-ups were to be taken from the DVR/ recording done by OC.	clause 2(v) at pg. 22 of reply.

Further, the two terms “DVR Facility for recording” and “backup” are completely different. DVR Facility for recording pertains to a setup for CCTV recordings, while the backup is merely a copy of such recording done under the DVR Facility. Backup could have been taken only when the recording in DVR was done by the Applicant.

8.8 Clause 2 of the facility agreement dated 30.05.2018 clearly provides the scope of work of the Applicant and reads as under:

“Clause 2. Scope of work (Activities including booking and facilities of examination center through over partner (TESTPAN INDIA PVT. LTD.)”

8.9 Also, clause 3(iii)(c) of the Facility Agreement, provides for a penalty on the applicant (CJPL)/Testpan, in case they fail to comply with the terms of the Agreement, which clearly depicts that OC and Testpan were acting as partners for the said assignment. Further, clause F of the said Agreement provided as under:

“Limitations of liability: - The server provider CJPL along with its partner shall be liable for providing services as per the



scope of work (“clause 2 of agreement”), in case of any discrepancy, **CJPL and its partners** would ensure providing infrastructure equivalent to fail infrastructure due to deficiency of services by **CJPL** or its partner on days of assessment tests notified by NYSA.

A bare perusal of the aforesaid clauses clearly depicts that the Applicant /CJPL and Testpan were jointly providing services to the Respondent under the said facility agreement.

8.10 Also, the Hon’ble NCLAT in para 2 of its judgement dated 09.05.2022 in Comp. App. AT (INS) No. 1035 of 2021 has recorded the following fact:

*“2. According to this agreement NCPL obtained end to end infrastructural support and laptop servers for the work relating to booking and facilities at examination centres from **CJPL with their partner Testpan India Pvt. Ltd.** This agreement was entered into by the partners in connection with a contract obtained by NCPL from the Indian Council of Agriculture Research (in short “ICAR”). **The scope of work of CJPL/ Operational Creditor** covered activities which included **providing DVR facility for recording the examination proceedings at each centre along with CCTV cameras**, with Nysa designated manpower responsible for taking backup of recordings from these locations in server or any other medium provided by Nysa. The Facility Agreement also provided that **“in case CJPL/ Testpan** does not provide any of the facilities mentioned in the documents at the centre(s), penalty will be imposed on the basis of feedback received from the concerned government body/university representatives deployed at centre.*

9. The Applicant has also filed its written submission stating the following:

9.1 The Respondent was taking Computers, Laptops on rent, and other IT-related peripherals from the Applicant, which is clearly reflected in the Ledger Account, which depicts an admitted outstanding amount of Rs.3,05,164/-.



9.2 The Respondent approached the Applicant to provide end-to-end infrastructural support and laptop services etc. for the work as defined in the scope of services in the Agreement dated May 30th, 2018 w.e.f. May 05th, 2018 for conducting the examinations for the ICAR. The Agreement dated May 30th, 2018 entered between the Respondent and the Applicant was not a contingent contract.

9.3 The Applicant provided the services to the Respondent as per the said Agreement. The Respondent even after duly receiving the services and acknowledging the same, failed to make payments as against the duly raised Purchase Orders, w.e.f. August 10th, 2018, though the Respondent admitted the other Invoices as mentioned in the Ledger Account.

9.4 In view of the unpaid principal amount of Rs.2,65,77,028/- including the admitted outstanding amount of Rs.3,05,164/- and interest of Rs.88,77,455.49/- totaling to Rs.3,54,54,483.49/-, the Applicant sent a Demand Notice under Section 8 of the Code, which was delivered to the Respondent on 27.12.2019.

9.5 The Respondent replied to the said Notice, which was received by the Applicant on 17.01.2020, raising a false and fictitious dispute. It is pertinent to mention that the Invoices were duly acknowledged under the seal and signature of the employee of the Respondent. The Respondent always assured the Applicant that the due amount shall be paid at the earliest and raised no dispute prior to the receipt of the Notice under Section 8 sent by the Applicant.



9.6 The Respondent raised false and frivolous dispute only in respect to one Invoice dated August 10th, 2018 by alleging that the said examination was not conducted properly whereas the Respondent admitted the other invoices. Respondent in its own letters dated 19.11.2018 and 08.12.2018 to the Ministry of Agriculture admitted that the said examination was conducted successfully as per the scope of ICAR. Thus, the Respondent cannot be allowed to blow hot and cold in the same breath that on one hand it says that the examination was conducted successfully, whereas on the other it says it was not conducted successfully.

9.7 It has been alleged that the Applicant failed to provide CCTV footage to the Respondent. On the bare perusal of the Agreement, it is clear that the responsibility to provide the DVR facility for recording the examination proceedings in each lab along with cameras was of the Applicant's, whereas the manpower of the Respondent was responsible to take the backup of these locations in server or any other medium provided by the Respondent. It is further pertinent to mention here that as per Clause 3 (vi) of the Agreement, the CCTV Surveillance recording was to be arranged solely by the Respondent. The partner of the Respondent vide email dated 25.06.2018 categorically asked the Respondent to provide a Hard Disk and Pen Drive and further stated that if the same is not provided, it shall not be their responsibility.

9.8 The Respondent also raised another fictitious dispute that the amount of Invoice No. 1149 was reduced to Rs.1,13,30,735/- from Rs.3,75,83,000/- The Respondent has tried to justify the same by making unilateral marking on Invoice No. 1152. It is stated that Invoice No. 1149 for an amount of



Rs.3,75,83,000/- relates to the examination conducted by the Applicant as per the Facilities Agreement dated 30.05.2018. The Invoice No. 1149 under the Applicant's possession bears the Respondent's seal and signature and no reduction of the amount is mentioned. The question of reducing the amount of Invoice No. 1149 to Rs.1,13,30,756/- from Rs.3,75,83,000/- owing to rate difference and quality does not arise as the said Invoice was raised after conducting the examination and the Respondent admitted for the successful conduct of the examination.

9.9 The Hon'ble NCLAT in "Rajendra Bhai Panchal vs. Jay Manak Steels", (2020 SCC Online NCLAT 730) held that:

"An 'Adjudicating Authority' is not to decide how much due is. Further, an 'Adjudicating Authority' is required to examine before admitting or rejecting an application u/s 9 of the Code as to whether the 'dispute' raised by the 'Corporate Debtor' qualify as a 'dispute' as defined under sub-section (6) of Section 5 and whether notice of 'dispute' given by the 'Corporate Debtor' satisfies the conditions prescribed in sub-section (2) of Section 8 of the Code. Further, the existence of an 'undisputed sum' is a condition precedent for initiating 'Corporate Insolvency Resolution Process'.

10. We heard the submissions of both parties and perused the pleadings placed on the record. The main objection raised by the Respondent is that there was a pre-existing dispute between the parties, prior to the issuance of the Demand Notice dated 23.12.2019.

11. The Respondent has stated that the Applicant did not provide the CCTV footage for the examinations conducted. To buttress the plea, the Respondent relies upon the e-mail dated 26.06.2018, whereby the Applicant was asked to



provide CCTV surveillance data. The contents of the e-mail dated 26.06.2018 reads thus:

From: Avanindra Tripathi [mailto:avanindra@eonasia.net]
Sent: 26 June 2018 01:06 PM
To: Rajesh Setia; Subir Bajaj
Cc: ankur goyal; info@testpanindia.com; Hemant Setia; Testpan India Pvt Ltd; director rari; anurag@mapple.ac.in; shalini@mapple.ac.in; Ruchir Taliwal; sonu@nysaasia.com; Vivek Gupta
Subject: ICAR Exam_Surveillance Data movement

Dear Sir,

As discussed, CCTV Surveillance data will be collected from the Centers to the server laptops.
After receiving of laptops at Delhi location, Surveillance data will be copied to the Storage devices(HDD) centrally.
Kindly check and ensure the data collection to the server laptops from Center.

Once you confirm, we will provide HDD for data transfer from the server laptops to the Storage devices(HDD).

Thanks
Avanindra

12. It is noticed from the record that the partner of Applicant, namely, Testpan India Pvt. Ltd. replied to the aforesaid e-mail on 26.06.2018 and assured the Respondent that no CCTV footage would be deleted and stated that the manpower (of the Respondent) should collect the same in servers taken to conduct the examination. The said e-mail reply reads thus:

----- Forwarded message -----
From: Rajesh Setia <rajesh.setia@testpanindia.com>
Date: Tue, Jun 26, 2018, 7:20 PM
Subject: RE: ICAR Exam_Surveillance Data movement
To: Avanindra Tripathi <avanindra@eonasia.net>, Subir Bajaj <sbajaj@cjpl.in>
Cc: ankur goyal <ankur_qq5781@yahoo.co.in>, <info@testpanindia.com>, Hemant Setia <hemant.setia@testpanindia.com>, Testpan India Pvt Ltd <testpanindia@gmail.com>, director rari <director_rari@sknau.ac.in>, <anurag@mapple.ac.in>, <shalini@mapple.ac.in>, Ruchir Taliwal <ruchir@nysaasia.com>, <sonu@nysaasia.com>, Vivek Gupta <vivek.gupta@digijuniv.com>

Dear Sir

We have assured that no venue will delete the CC TV footage unless and until the clearance of receiving the same is done from your end.

We had categorically mentioned that the manpower should collect the same in servers that they had taken to conduct the exam. This message was not cleared to all the manpower wherever you have hired the manpower from.

Now most of the venues have confirmed that they have given(still the status has to be provided by you), now please arrange the pen drives or HDD so that venues can give the footage in those depending on size and accordingly logistic to be arranged.

Please take necessary action, our venue will support you for same.

--
Regards,
for TESTPAN India Pvt Ltd,

**Rajesh Setia
Director**



13. Subsequently, what transpires from the record is that on receiving complaints from the Indian Council for Agricultural Research (“ICAR”) regarding cheating in the examinations, an e-mail was sent by the Respondent to the Applicant on 29.06.2018 seeking CCTV footage, which reads thus:

M Gmail

milan negi <negimilan04@gmail.com>

Fwd: URGENT_ICAR Exam(22nd June 2018/ PG-PHD Exam) CCTV date 29 june 2018 Recording required

shadab alam <shadabalam37@gmail.com>
To: milan negi <negimilan04@gmail.com>

Thu, Nov 25, 2021 at 2:16 AM

----- Forwarded message -----

From: Anupam Bansal <anupam@nysaasia.com>
Date: Wed, 24 Nov 2021, 9:34 pm
Subject: Fwd: URGENT_ICAR Exam(22nd June 2018/ PG-PHD Exam) CCTV Recording required
To: <shadabalam37@gmail.com>

----- Forwarded message -----

From: Sonu Kumar <sonu@nysaasia.com>
Date: Wed, Jan 8, 2020 at 7:02 AM
Subject: Fwd: URGENT_ICAR Exam(22nd June 2018/ PG-PHD Exam) CCTV Recording required
To: Anupam Bansal <anupam@nysaasia.com>

----- Forwarded message -----

From: Avanindra Tripathi <avanindra@eonasia.net>
Date: Fri, Jun 29, 2018, 4:08 PM
Subject: URGENT_ICAR Exam(22nd June 2018/ PG-PHD Exam) CCTV Recording required
To: Rajesh Setia <rajesh.setia@testpanindia.com>, Subir Bajaj <sbajaj@cjpl.in>
Cc: Niladri Das <das@nysaasia.com>, Ruchir Talwal <ruchir@nysaasia.com>, Sonu Kumar <sonu@nysaasia.com>

Dear Rajesh & Subir Sir,

Kindly treat this mail as urgent.

We need the CCTV recording of below college of 22nd June 2018 Exam(PG & PHD Exam) on urgent basis .

Sr. No.	Zone	State	City	TC Code	Test Centre Name
1	North 2	Delhi	Delhi	1434	Flair Education
2	South 2	Kerala	Kozhikode	2513	M Dasan Institute Of Technology
3	North 1	Rajasthan	Udaipur	1956	Career Shifters - Zone One
4	South 2	Tamil Nadu	Nagercoil	2823	Noorul Islam University
5	South 1	Telangana	Hyderabad	2917	Assert Tech Solutions
6	North 2	Uttar Pradesh	Bareilly	2025	Future Group of Institutions
7	East 2	West Bengal	Siliguri	1220	Star Institute of management

We need the CCTV recording of these centers by today itself. We have received the complaint from the client against these centers.
So we need to submit these recordings to client by tomorrow first half.

In case of any concern, pl revert.

Thanks
Avanindra
9250050401



14. We further notice that the Respondent vide its email dated 30.06.2018 informed the partner of the Applicant namely, Testpan India Private Limited that HD online Work Station Delhi center code 1427 has informed that CCTV footage has been deleted. The said e-mail reads thus:



milan negi <negimilan04@gmail.com>

Fwd: Regarding Hd Online Workstation(Center Code-1427) CCTV Footage date 30 june 2018

shadab alam <shadabalam37@gmail.com>
To: milan negi <negimilan04@gmail.com>

Thu, Nov 25, 2021 at 12:01 PM

----- Forwarded message -----

From: Anupam Bansal <anupam@nysaasia.com>
Date: Thu, 25 Nov 2021, 11:57 am
Subject: Fwd: Regarding Hd Online Workstation(Center Code-1427) CCTV Footage
To: <shadabalam37@gmail.com>

complaint mail from nysa

----- Forwarded message -----

From: Sonu Kumar <sonu@nysaasia.com>
Date: Wed, 8 Jan 2020, 07:01
Subject: Fwd: Regarding Hd Online Workstation(Center Code-1427) CCTV Footage
To: Anupam Bansal <anupam@nysaasia.com>

----- Forwarded message -----

From: krishna yadav <krishna@eonasia.net>
Date: Sat, Jun 30, 2018, 12:25 PM
Subject: Regarding Hd Online Workstation(Center Code-1427) CCTV Footage
To: Rajesh Setia <rajesh.setia@testpanindia.com>
Cc: Sonu Kumar <sonu@nysaasia.com>, Ruchir Taliwal <ruchir@nysaasia.com>, Avanindra Tripathi <avanindra@eonasia.net>

Dear Sir,

This is inform you that HD online Workstation Delhi center code 1427 told us that CCTV footage has been deleted.

Please look into this issue and check the availability of CCTV footage.

Thanks & Regards

Krishna Kumar

NYSA COMMUNICATIONS (P) LTD.

A-100, Sector 65, Noida, UP - 201301

Mob : +91 8527671471

Mail : krishna@eonasia.net

Website: <http://www.nysaasia.com>



15. Per contra, the Applicant has contended that in terms of Clause 2 sub-clause (v) of the Facilities Agreement dated 30.05.2018, the Respondent was responsible for taking backup of the DVR from these locations. The relevant extracts of the Facilities Agreement are reproduced below, for immediate reference -

FACILITIES AGREEMENT

THIS FACILITIES AGREEMENT ("This Agreement") is made effective as of the Effective date (Specified in Given below Schedule),

Service Provider Name	Registered Office address	Authorized Signatory Details
Computer Junction Private Limited	C-129, Phase-1, Naraina Industrial Area, New Delhi-110028	Mr. Subir Bajaj Director

Contract Term	Effective Date
3(Three) years from Eff. Date	25 th May 2018

By and between NYSA Communications Pvt Ltd, a company incorporated under the company Act 1956, with its corporate off located at A-100, Sector 65, Noida-201301, herein after referred as 'NYSA' and Party Specified in mentioned above to t agreement herein after referred as 'Service Provider' for end to end infrastructural support and Laptop Servers for work defined in the scope of Services below. In this Agreement, NYSA and Service Provider (CJPL) are collectively referred as "Parti" and individually as "Party"

XXXX XXXX XXXX XXXX XXXX

Clause 2. Scope of work (Activities including booking and facilities of examination center through over partner (TESTPAN INDIA PVT LTD))

- i. Waiting Area with 5-6 Desks for Offline Registration Desk Setup, preferably a large classroom on each floor or a Large Waiting Hall.
- ii. Partitions will be placed between two computers with 2 feet distance between both computers. The Exam Centre will have 10% buffer seats on the Exam Count.
- iii. Buffer centers may be kept on standby on non commitment with tentative availability basis.
- iv. Security Guards required (Male & Female)@ ratio of 1:100 for the Frisking of Candidates); Labs with Partitions available (Canopy), Partitions can be either the glass or Wooden dividers or the Cardboard ones.
- v. DVR Facility for recording the exam proceedings at each lab along with cameras and Nysa designated manpower will be responsible to take backup of these location, in server or any other medium provided by Nysa.
- vi. Exam Centre Required for Physical Audit, Readiness Check (Connectivity/Software Check-up), Mock/ Dry Run Activity and actual Exam as per given below dates:-



16. The Applicant has further contended that as per Clause 3 (Other conditions) sub-clause vi of the Facilities Agreement dated 30.05.2018 (as placed on page 24 of the reply), the storage device of CCTV Surveillance recording was to be arranged by the Respondent. The relevant clause in this regard reads thus:

“vi. The storage device of CCTV Surveillance recording to be arrange by you ONLY.”

17. To buttress its plea, the Applicant has also relied upon the email dated 25.06.2018, which reads thus -

From: Manjeet Kumar [mailto:manjeet.kumar@startupinfo.co.in]
Sent: Monday, June 25, 2018 6:03 PM
To: Sonu Kumar; Vivek Gupta; Krishna; Rajesh Setia
Cc: Govind Upadhyay; Manish; Pratap Nitesh; Shailendra K; Pradeep B; Brijesh Y; Gaurav Y; Vipin T; 'Hemant Setia'
Subject: || Recording To CCTV Backup Inform To Nysa Commutation Pvt Ltd & Testpan India Pvt Ltd ||

Dear Sir,

I am inform according to CCTV Backup not responsibly startup Team, because reason Nysa Commutation Pvt Ltd & Testpan India Pvt Ltd not provide storage Device.

Note:- please you are provide tomorrow Hard Drive & Pen Drive other wise is not my responsibly.

Thanks & Regards


Startup Infotech Services
A step toward future

MANJEET KUMAR
Manager
Flat No-24, AB Block, 3rd Floor
Dilippur Tower, 6 Sapru Marg
Lucknow-225001
Mobile No:- +018060006000
+919795727299



18. Moreover, during the course of the hearing, the Applicant had contended that the Respondent itself vide its letter dated 19.11.2018 addressed to the Hon'ble Minister of Agriculture, Government of India has specifically stated in para 10 (page 38 of the rejoinder) *"That the aforesaid online examination was so conducted successfully to the satisfaction of the observers so appointed by ICAR at the aforesaid centers and to the satisfaction of the candidates."*

19. From the conjoint reading of the documents (ibid) relied upon by the Applicant, it is observed that in terms of the Facility Agreement dated 30.05.2018, the Respondent was responsible for taking the backup of the CCTV Footage through its manpower. Further, we find that as per its own statement made by the Respondent in its letter dated 19.11.2018 addressed to the Hon'ble Minister of Agriculture, the examination was conducted successfully. In view of the abovementioned, we see no plausible contention raised by the Respondent which requires any further investigation with respect to the deletion of CCTV Footage.

20. Furthermore, during the course of the hearing, the Applicant argued that the "Ledger Account of the Applicant maintained in the books of the Corporate Debtor" itself contains an admitted balance of Rs.4,04,260/- payable to the Applicant. The Applicant added that the said Ledger Account has been annexed by the Respondent at Annexure A-12 on page 109 of its own Reply, which reads thus:



NYSA COMMUNICATIONS PVT LTD

TRANSACTION REPORT

April 2018 - March 2019

DATE	TRANSACTION TYPE	NO.	NAME	ACCOUNT	SPLIT	DEBIT	CREDIT	BALANCE
Beginning Balance								99,096.00
26/05/2018	Bill	UPTI-18-19-00218	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹4,872.00	103,968.00
26/05/2018	Bill	UPTI-18-19-2017	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹12,180.00	116,148.00
26/05/2018	Bill	UPTI-18-19-00216	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹24,360.00	140,508.00
01/06/2018	Bill Payment (Cheque)	005145	Computer Junction Pvt. Ltd.	Sundry Creditors	3749 HDFC Rohtak	₹980,000.00		-839,492.00
01/06/2018	Bill	00238	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹7,308.00	-832,184.00
06/06/2018	Bill Payment (Cheque)	005124	Computer Junction Pvt. Ltd.	Sundry Creditors	3749 HDFC Rohtak	₹980,000.00		-1,812,184.00
13/06/2018	Bill Payment (Cheque)	005143	Computer Junction Pvt. Ltd.	Sundry Creditors	3749 HDFC Rohtak	₹1,752,044.00		-3,564,228.00
20/06/2018	Bill Payment (Cheque)	001429	Computer Junction Pvt. Ltd.	Sundry Creditors	3313 HDFC 18	₹2,800,000.00		-6,364,228.00
20/06/2018	Bill Payment (Cheque)	005226	Computer Junction Pvt. Ltd.	Sundry Creditors	3749 HDFC Rohtak	₹1,500,000.00		-7,864,228.00
21/06/2018	Bill Payment (Cheque)	005225	Computer Junction Pvt. Ltd.	Sundry Creditors	3749 HDFC Rohtak	₹4,200,000.00		-12,064,228.00
22/06/2018	Bill Payment (Cheque)	005227	Computer Junction Pvt. Ltd.	Sundry Creditors	3749 HDFC Rohtak	₹780,100.00		-12,844,328.00
03/07/2018	Bill	DLTI-18-19-00784	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹53,526.00	-12,790,802.00
18/07/2018	Bill	UPTI-18-19-0399	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹9,860.00	-12,780,942.00
18/07/2018	Bill	UPTI-18-19-00398	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹2,900.00	-12,778,042.00
18/07/2018	Bill	UPTI-18-19-000402	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹14,616.00	-12,763,426.00
10/08/2018	Bill	DLTI-1819-01155	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹8,120.00	-12,755,306.00
10/08/2018	Bill	DLTI-1819-01156	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹686,488.00	-12,068,818.00
10/08/2018	Bill	DLTI-1819-01157	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹628,836.00	-11,439,982.00
10/08/2018	Bill	DLTI-1819-01153	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹66,468.00	-11,373,514.00
10/08/2018	Bill	DLTI-1819-01151	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹255,200.00	-11,118,314.00
10/08/2018	Bill	DLTI-1819-01149	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹11,330,756.00	212,442.00
10/08/2018	Bill	DLTI-1819-01152	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹34,800.00	247,242.00
10/08/2018	Bill	DLTI-1819-001154	Computer Junction Pvt. Ltd.	Sundry Creditors	-Split-		₹157,018.00	404,260.00
TOTAL						₹12,992,144.00	₹13,297,308.00	

21. Thus, we find that when the Ledger Account of the Applicant maintained by the Respondent itself contains an admitted balance of Rs.4,04,260/- payable to the Applicant. The present Application was filed on 11.02.2020, therefore the minimum threshold limit of Rs,1,00,000/- is applicable to the present case. Since, there is an unpaid amount of more than Rs.1,00,000/- admitted in its Ledger account in respect of the Applicant, for which no pre-existing dispute exists, in the given facts and circumstances, the Operational Creditor has succeeded in establishing the default on the part



of the Corporate Debtor in payment of the said operational debt. The present petition filed under Section 9 is complete and fulfills all the requirements of the law. **Therefore, the Application is admitted in terms of Section 9(5) of the IBC 2016. Accordingly, the CIRP is initiated and a moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

- “(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 any of its 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.”

22. Since there is no IRP proposed by the Operational Creditor, therefore, this Bench appoints Mr. Rajesh Kumar Parakh (Mob. No. 9811350848) having IBBI Registration No. IBBI/IPA-001/IP-P00272/2017-2018/10516 and Email ID: parakh.rajesh@gmail.com from the panel of IPs recommended by IBBI to this Adjudicating Authority subject to the condition that there is no



disciplinary proceeding pending against the said IRP. The Adjudicating Authority further orders that:

“Mr. Rajesh Kumar Parakh, IRP (Email ID: parakh.rajesh@gmail.com) having registration no IBBI/IPA-001/IP-P00272/2017-2018/10516 is directed to take charge of the CIRP of the Respondent with immediate effect. Further, the IRP is directed to take steps under Sections 15, 17, 18, 20, and 21 of the IBC, 2016.”

23. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

24. A copy of this Order shall immediately be communicated to the Operational Creditor, the Respondent, and the IRP mentioned above, by the Court/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to IBBI for their records.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)