

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

IB-112/ND/2020

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

IN THE MATTER OF

M/s Chipson Aviation Private Limited

Through its Directors

Office at: - 234, Vasant Enclave, Vasant Vihar,

New Delhi-110057

...Operational Creditor

Versus

M/s Punj Llyod Aviation Limited

Through its Director,

Punj Llyod House,

17-18, Nehru Place,

New Delhi-110019

...Corporate Debtor

Delivered on 06.01.2022

Coram:

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

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

Appearances:

Operational Creditor : Adv. Nidhi Vardhan

Corporate Debtor: Adv. Karan Luthra and Adv. Aarushi Tiku



ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. Under consideration is IB-112/ND/2020 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. The Operational Creditor, M/s Chipson Aviation Private Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Punj Llyod Aviation Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

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

- a. It is the case of the Operational Creditor that an amount of Rs. 60,00,000/- was transferred to the corporate debtor, the amount was transferred to corporate debtor's account on assurance/advise of direct dealing with the corporate debtor. It is stated that there are several e-mails exchanged with respect to the same.
- b. It is submitted that in the balance sheet as at 31st March, 2016 of the corporate debtor, the said amount of Rs. 60,00,000/- was shown as advance from customer under Note-8 "current liabilities". It is further stated that the Operational Creditor asked for the refund of Rs. 60,00,000/- by email on 08.11.2017. It is also stated that operational creditor as per the demand of the corporate debtor transferred Rs. 60,00,000/- on 28.03.2016 but the corporate debtor did not provide any service at all and the corporate debtor did not pay/refund anything till date towards the advance given for services.
- c. It is averred that Demand Notice delivered to the corporate debtor at its office on 21.09.2019. However, no payment was received



pursuant to said demand notice, and hence, the captioned petition has been filed by the Operational Creditor for initiating the CIR Process of Corporate Debtor.

3. The Corporate Debtor has also filed reply to the captioned petition and submitted that present petition is not maintainable u/s 9 of IBC, 2016, since there is no "Operational Debt" in existence within the meaning of Section 5(21) of the IBC, 2016 and alleged debt is not a claim in respect of provision of goods or services. It is further submitted that it is the admitted position that the operational creditor was not providing any services and/or supplying any goods to corporate debtor, there is no "operational debt" in existence and Chipson Aviation private limited is not an "Operational Creditor" under the IBC. The Corporate Debtor has also raised the objection regarding limitation. It is also averred that no amount due and payable by the corporate debtor as the said amount stands adjusted towards the charges due from the operational creditor for the use of the corporate debtor's Aircraft Gulfstream G200 bearing registration No. VT PLA Serial No.77 and use of the said aircraft is also admitted by the Operational Creditor in several emails exchanged between the parties. It is further submitted that services like aircraft for hire is provided by corporate debtor through brokers only and not directly. One of the brokers namely, Builarch Aviation with which the agreement was entered into for hire and use of aircraft of corporate debtor and the broker agreed to deposit a sum of Rs. 60,00,000/- with the corporate debtor as per clause 5 of the agreement and the said amount was received by the corporate debtor pursuant to clause 5 of the agreement only. In view of the above, the Corporate Debtor has prayed that the petition may be dismissed.

4. The Operational Creditor also filed the rejoinder and denied all the contentions and averments raised by the corporate debtor and further



submitted that the debt falls within the ambit of Operational Debt defined u/s 5(21) of IBC, 2016 and definition is reproduced below:


“Operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”

In Section 5(21) of the Code the phrase "provision of goods and services" is preceded by the phrase "in respect of", which may result in two possible interpretations. Firstly, the phrase "in respect of" may be interpreted narrowly to mean a monetary claim of the provider of goods or services to the Corporate Debtor ("narrow interpretation"). Secondly, the phrase "in respect of" may be interpreted widely to include any claim arising out of or in relation to the contract for the provision of goods and services i.e., even the claim of the person in receipt of the goods or services ("wide interpretation").

5. The Petitioner has also filed the written submission and reiterated all the facts already discussed and relied on the Hon'ble NCLAT judgment in the matter of Joseph Jayananda Versus Navalmar (UK) Ltd. And Anr, 2021 SCC Online NCLAT 116. The relevant extract of the above judgment is as follows:

“In the instant case, the monies advanced by the R-1 to the corporate debtor were advance payment for work to be done in the future. Admittedly, the work was to be done in terms of the General Agency Agreement between the parties. The corporate debtor referred to these amounts as advance payment in its audited accounts and the objection filed by it before the NCLT. It even claimed that the said amount was adjusted towards various cost and expenses incurred by the respondent company in the course of business, without raising any doubt about the nature of debt. Hence, the amounts referred to as above cannot be treated as anything but operational debt under the code”.

6. The above case law relied upon by the Operational Creditor is not relevant to the facts and circumstances of the present case. In the



above case before the Hon'ble NCLAT, the Operational Creditor and Corporate Debtor were having Principal-Agent relationship in terms of General Agency Agreement executed between them and the Corporate Debtor was an agent and service provider of the Operational Creditor. However, in the instant case no such relationship has been claimed by either party.

7. The Corporate Debtor also filed its Written Submission reiterated all the contentions already raised in the reply. In short, the corporate debtor raised objection regarding status of Operational Creditor as Operational Creditor and debt as operational debt, there is no privity of contract between the Operational Creditor and Corporate Debtor, Petition is barred by limitation, no debt is payable by the corporate debtor to the Operational Creditor. The Corporate debtor relied on Hon'ble NCLAT judgment in Roma Infrastructures India Pvt. Ltd. Vs A.S. Iron Steel (I) Pvt. Ltd. (Company Appeal (AT)(Ins) No. 223 of 2019. The relevant extract is as follows:

"4. Admittedly, Appellant- Roma Infrastructures India Pvt. Ltd. Has not supplied the goods nor provided any services to respondent-A.S. Iron Steel (I) Pvt. Ltd. It advanced payment of Rs. 74,32,326/- to respondent for supply of goods. In view of the aforesaid fact, the payment cannot be treated to be an 'operational debt' and the application under section 9 filed by the appellant was not maintainable. Accordingly, no relief can be granted."

8. We have perused the Pleadings and argument advanced by the Operational Creditor and Corporate Debtor. We have also perused the case laws relied upon by Corporate Debtor in its written submissions. The Corporate Debtor has raised the objection regarding status of Operational Creditor and alleged Operational Debt. Therefore, it is important to go through the definitions of Operational creditor and



Operational debt as defined u/s 5(20) and 5(21) of IBC, which are as follows:

"5. Definitions. -

(20) "Operational Creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "Operational Debt" means a claim in respect of the provision of goods and services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the central government, any state government or any local authority;"

It is an admitted position that in the instant case, it is the corporate debtor who is the service provider and not operational creditor and operational creditor has only filed the present petition on the basis of an advance payment paid by the Operational Creditor and not refunded by the Corporate Debtor. The said advance does not fall within the four corners of Operational Debt. Therefore, we are of the opinion that the alleged debt is not an "Operational Debt" as defined u/s 5(21) of IBC, 2016. Hence, the Present Petition is dismissed without any cost.

9. The order is pronounced by this Adjudicating Authority in virtual Hearing.



(Bachu Venkat Balaram Das)
Member (Judicial)



(Narender Kumar Bhola)
Member (Technical)