

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

SPECIAL BENCH (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI RATAKONDA MURALI—MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI—MEMBER TECHNICAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 20.08.2020 AT 10.30 AM

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TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 389/9/HDB/2019
NAME OF THE COMPANY	Zaggle Prepaid Solutions Pvt Ltd
NAME OF THE PETITIONER(S)	Freebie Solutions Pvt Ltd
NAME OF THE RESPONDENT(S)	Zaggle Prepaid Solutions Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

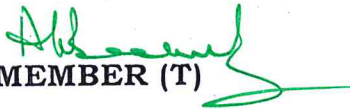
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Counsel for Operational Creditor is connected through audio.

Counsel for Corporate Debtor is connected through video.

Orders pronounced vide separate orders.


MEMBER (T)


MEMBER(J)

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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.389/9/ HDB/ 2019

U/s 9 of IBC, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016

In the matter of:

Freebie Solutions Private Ltd
Having its registered office at
375, 3rd Floor
Aggarwal Millennium Tower 2
Netaji Subhash Place, Pitampura
Delhi North – 110034
Delhi, India.

.. **Applicant
(Operational Creditor)**

VERSUS

Zagle Prepaid Ocean Services Private Limited
Having its registered office at
301, III Floor, CSR Estate
Plot No.8, Sector 1
HUDA Techno Enclave
Madhapur Main Road
Hyderabad Rangareddi – 500081
Telangana, India.

.. **Respondent/
(Corporate Debtor)**

Date of order: 20.08.2020

Coram:

**HON'BLE SHRI RATAKONDA MURALI,
MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI,
MEMBER (TECHNICAL).**

Parties / counsels present:

For the Petitioner : Shri Lalit Besoya
For the respondent : Shri S. Ravi, Senior Advocate.

Heard on: 04.02.2020, 11.03.2020, 17.03.2020, 21.07.2020,
03.08.2020 and 12.08.2020.

Per: HON'BLE SHRI RATAKONDA MURALI, MEMBER (JUDICIAL)

ORDER

The present petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process for an amount of **Rs. 10,28,69,811/-**. The claim has been slashed to **Rs. 6,11,10,000/-** by way of **Affidavit dated 17.10.2019 for amendment**, as dealt with during the course of the order.

2. The petitioner/operational creditor is incorporated with Corporate Identification No. U72900DL2017PTC322215. The petitioner is engaged in managing loyalty and digital programmes from corporates against the Corporate Debtor, namely, Zaggle Prepaid Ocean Services Private Limited. The Corporate Debtor is, inter alia, engaged in marketing of gift cards, managing digital programmes for corporates, etc.

3. The respondent- corporate debtor is a private limited company incorporated under the provisions of the Companies Act, 1956 and has its registered office mentioned in the cause title. It is engaged in the business of marketing gift cards, managing digital programmes for corporate entities.

4. AVERMENTS MADE IN THE PETITION:

4.1 The Corporate Debtor has approached the petitioner to market their product "Zaggle Kuber Cards" and insisted 100% advance payment on the cards and offered a huge discount of 3 – 5 % on the value of the cards to be sold to customers at large. On 15.09.2017 an agreement was entered into between the parties, by which the respondent confirmed appointment of the petitioner as seller of "Zaggle Kuber Cards".

4.2 The petitioner made several purchases by making 100% advance payment through Bank and the respondent has issued Invoices. On receipt of payments the respondent would deliver and activate the cards with their respective values. The petitioner would then sell the cards to customers.

4.3 The petitioner paid the following amounts and in return the petitioner got cards worth the amount mentioned against each:





Date of payment	Amount paid ₹	Cards received by petitioner worth ₹	Corporate Debtor failed to activate cards worth ₹
04.10.2018	6,11,10,000	--	6,11,10,000
On a subsequent date.	6,02,59,811	1,85,00,000	4,17,59,811

4.4 The petitioner issued legal notices dated 09.10.2018 and on 15.10.2018 for the above two defaults respectively. However, the Corporate Debtor denied its liability. The petitioner filed a complaint dated 16.11.2018 with the Economic Offences Wing of Delhi Police. On 29.03.2019 the petitioner issued Demand Notice calling upon the respondent to repay Rs.10,28,69,811/- with interest.

4.5 The respondent filed FIR dated 30.03.2019 with Madhapur Police Station, Cyberabad against the petitioner only to frustrate the claims of the petitioner and entangle the petitioner in legal proceedings. The petitioner received notice dated 02.04.2019 under section 41A of the Code of Criminal Procedure from PSO, Madhapur. The petitioner submitted its reply dated 14.04.2019 to the SHO, Madhapur.

5. AFFIDAVIT DATED 17.10.2019 FOR AMENDMENT FILED BY THE PETITIONER/ OPERATIONAL CREDITOR.

5.1 The petitioner/operational creditor has filed this Affidavit for Amendment in view of some developments taken place after filing of the present application before the Tribunal.

5.2 It is averred that Legal Notice dated 15.10.2018 was issued to Corporate Debtor with regard to Zaggie Kuber Cards issued to the petitioner were blocked by the Corporate Debtor in connivance with RBL Bank. Subsequently, the petitioner could get cards worth Rs. 1,85,00,000/-. However, cards worth Rs. 4,17,59,811/- remained blocked. Hence the said amount was claimed before the Tribunal.

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5.3 Subsequent to said Legal Notice dated 15.10.2018, Banking Ombudsman has sent e-mail dated 26.08.2019 to apprise him with pending issues associated with RBL Bank. The Operational Creditor has accordingly filed a detailed reply with full disclosure of facts.

5.4 It is averred that as per the discussion with the Banking Ombudsman the matter was concluded between the parties and an amount of Rs. 4,69,00,000/- was released to the Operational Creditor on 09.10.2019. The RBI has acknowledged vide letter dated 07.10.2019 (ANNEXURE 'A' to this affidavit) to the Operational Creditor that they have released the above amount against blocked cards issued by Corporate Debtor.

5.5 It is averred that the above amount was released qua blocked cards and it has no bearing to the amount claimed by the Operational Creditor worth Rs. 6,11,10,000/- for purchase of 6300 cards with RBL Bank.

5.6 In view of the above subsequent developments, the petitioner craves leave of the Tribunal to **grant permission to restrict its claim to an amount of Rs. 6,11,10,000/-** along with interest at the rate of 18% per annum on the basis of settlement arrived at between the parties.

6. COUNTER DATED 23.08.2019 FILED BY THE RESPONDENT/ CORPORATE DEBTOR.

6.1 It is averred in para 5.7 of the Counter that the petitioner was incorporated on 16.08.2017 who decided to engaged with the respondent in active business. Accordingly respondent has appointed the petitioner vide Agreement dated 15.09.2017 (**ANNEXURE A-2** to the Counter) as Channel Partner for marketing Gift Cards.

6.2 It is averred in para 5.8 of the Counter that the respondent provided a discount of 1 - 2 % to its channel partners including the petitioner, to sell Gift Cards, as purchased from respondent, to corporates. Copies of Invoices raised on the Operational Creditor for the period from October 2017 to March 2018 are at **ANNEXURE 'A-3'** to the Counter.

6.3 It is alleged in paras 5.11 and 5.12 of the Counter that the officers of the petitioner, named in this para, in connivance with the former employees of the respondent, raised false and fabricated Invoices (**ANNEXURE 'A-4'**), to claim huge margin, resulting into heavy monetary losses to the respondent and as a result thereof the petitioner owes an amount of Rs.30 crores approximately.

6.4 It is averred in paras 5.14 and 5.15 of the Counter the petitioner claimed Rs. 6,11,10,000/- which amount has been adjusted against the outstanding amount owed by the petitioner. The respondent had intimated to the petitioner about such adjustment and demanded to pay the balance amounts through e-mail dated 07.10.2018 (**ANNEXURE 'A-5'**).

6.5 It is averred in paras 5.16, 5.17 and 5.18 of the Counter that instead of paying the outstanding amounts the petitioner, vide Legal Notice dated 9.10.2018 (**ANNEXURE 'A-6'** to the Counter) demanded a sum of ₹ 6,11,10,000/- from the respondent based on false and forged Invoices. The respondent denied any such liability vide its Legal Notice dated 23.10.2018 (**ANNEXURE 'A-7'**) and reiterated its claim of Rs. 30 crores approximately from the petitioner.

6.6 It is averred in paras 5.19 and 5.20 of the Counter on 16.11.2018, the petitioner has filed a complaint before the Economic Offences Wing (EOW) of Delhi against the respondent. The EOW, Delhi found no merit therein. The respondent too preferred a complaint before EOW, Delhi against the petitioner, which has been transferred to EOW, Hyderabad for adjudication. The matter is sub-judice. A copy of order transferring the case from EOW, Delhi to EOW, Hyderabad is at **ANNEXURE 'A-8'** to the Counter.

6.7 It is averred in para 5.21 of the Counter that in the complaint filed by the respondent against the petitioner before the SHO, Madhapur, Hyderabad, the officers of the petitioner have obtained bail by submitting bail bonds of ₹ 2 lacs before the learned Metropolitan Magistrate, Kukatpally, Hyderabad. The matter is sub-judice. Copy of FIR is annexed at **ANNEXURE 'A-9'** to the Counter.

6.8 It is averred in paras 5.22, 5.23 and 5.24 of the Counter that the petitioner has issued Demand Notice dated 29.03.2019 (**ANNEXURE 'A-10'** to the Counter) under section 8 of I&B Code. The petitioner had also issued Legal Notices dated 09.10.2018 (for ₹ 6,11,10,000/-) and dated 29.03.2019 (for ₹ 10,28,69,811/-). The respondent issued reply notice dated 01.04.2019 (**ANNEXURE 'A-11'** to the Counter). The respondent issued reply dated 23.10.2018 to the petitioner's notice dated 09.10.2018.

6.9 It is averred in paras 5.26, 5.27 and 5.28 of the Counter that assuming that the claim of the petitioner for ₹ 4,17,59,811/- and for ₹ 6,11,10,000/- is true, even then the petitioner did not raise the issue in its first Notice dated 09.10.2018. The petitioner had merely stated about the claim of ₹ 6,11,10,000/- in its notice dated 09.10.2018.

6.10 It is averred in para 5.33 of the Counter that at the behest of the petitioner, one of its dealer/ customer filed a fraudulent FIR before SHO, Karnal and the officer registering such FIR has been suspended on the next day on charges of corruption.

6.11 In paras 6.1.1, 6.1.2 and 6.1.3 of the Counter the respondent has furnished detail of communications/complaints/proceedings between the petitioner and the respondent in chronological order commencing from 08.10.2018 to 30.03.2019, and laid emphasis that the Demand Notice dated **01.04.2019** and the proceedings being prior to the date of Demand Notice there exists **pre-existing dispute**. In this regard the respondent relied on decision of the Hon'ble Supreme Court in the case of **MOBILOX INNOVATIOINS PRIVATE LTD Vs. KIRUSA SOFTWARE PRIVATE LTD.**, (2018) 1 SCC 353. Relevant para relied on by the respondent is reproduced hereunder:

"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal

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*argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. **So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.**" (emphasis supplied)*

6.12 It is averred in paras 6.2.1, 6.2.2 and 6.2.3 of the Counter that the invoices have been fabricated to claim discount at the rate of 3 – 5%. Whereas the invoices raised by the respondent always show discounts at the rate of 1.25% to 1.50%.

6.13 It is averred in para 6.2.4 of the Counter that by way of fabricated and forged documents the petitioner claimed an amount of Rs.6,11,10,000/- from the respondent.

6.14 In para 6.3.2 of the Counter the respondent relied on section 65 of the I&B Code and contended that the petitioner has no intention to resolve the alleged insolvency of the respondent and hence the petition deserves dismissal.

6.15 In para 6.3.4 of the Counter the respondent relied on decision of the Hon'ble NCLAT in PRADEEP KUMAR MUDNRA Vs. CIL SECURITIES LIMITED, rendered in Company Appeal (AT) (Insolvency) No.89 of 2019, and contended that the petition is based on false information and thus the petitioner is liable to be penalized and the petition be dismissed.

6.16 It is averred in paras 6.4.1 and 6.4.2 of the Counter that the respondent has sent E-mail dated 08.10.2018 to the petitioner about adjustment of ₹ 6,11,10,000/- by the petitioner against the amount of ₹ 36 crores payable by the petitioner to the respondent, by which the respondent has established pre-existing dispute. However, the petitioner suppressed the vital facts.

6.17 In para 6.4.3 of the Counter, on the point of suppressions of facts, the respondent relied on decision of the Hon'ble Supreme Court in OSWAL FATS AND OILS LTD Vs. ADDITIONAL COMMISSIONER (ADMINISTRATION), BAREILLY DIVISION, BARILLY AND OTHERS, (2010) 4 SCC 728.

6.18 In para 6.4.4 of the Counter, on question of tainted hands, the respondent relied on decision of the Hon'ble Supreme Court in RAMJAS FOUNDATION Vs. UNION OF INDIA, (2010) 14 SCC 38.

6.19 In para 6.4.5 of the Counter, on the question of 'unclean hands' the respondent relied on decision of the NCLT, Delhi Principal Bench in UNIGREEN GLOBAL PRIVATE LIMITED, rendered in CP No. IB-39 (PB)/2017.

6.20 In para 6.5.2 of the Counter the respondent wondered about the conduct of the petitioner as the petitioner raised Demand Notice dated 09.10.2018 for an amount of Rs. 6,11,10,000/-, whereas vide Demand Notice dated 29.03.2019 the claim was increased to Rs.10,28,69,811/-. Thereafter the petitioner slashed down the claim to Rs.50,00,000/-.

7. REJOINDER DATED 11.09.2019 FILED BY THE PETITIONER/ OPERATIONAL CREDITOR.

7.1 By way of Preliminary Objections it is averred in para 9 of the Rejoinder that the standard practice was not followed by the Corporate Debtor and discounts offered to the Operational Creditor varied from 1.4% to 4% which can be appreciated from the evidence placed on record by the operational creditor. The Corporate Debtor has misled the Tribunal by placing forged and fabricated documents on record. It is averred that agreement dated 15.09.2017 was entered into between the parties by which the applicant was appointed as seller of "Zaggle Kuber Cards". The Corporate Debtor relies on handful of invoices in counter to bulk invoices supported with the application by the Operational Creditor and furthermore the handful invoices are disputed, false and fabricated. The Operational Creditor craves leave to prove veracity of the same at final hearing.

7.2 In para 5.6 of the Rejoinder it is averred that the Chairman and Managing Director of the respondent has approached and induced the Operational Creditor to market their product "Zaggle Kuber Cards", which purported to have unique selling proposition in the market. Based





on such false assurances made by Corporate Debtor agreement dated 15.09.2017 was entered into.

7.3 In para 5.7 of the Rejoinder it is averred that there was no separate agreement for other terms and conditions of business. Said terms and conditions were formally exchanged by way of e-mail messages and chats which can be construed as an agreement. Standard practice was not followed. Discounts offered to Operational Creditor varied from 1.40% to 4.00% as per evidence available with the operational creditor. The attempts of the Corporate Debtor to mislead the Tribunal by placing forged and fabricated documents will be countered by the Operational Creditor by leading vital evidence annexed with the rejoinder. The Corporate Debtor insisted 100% advance payment on cards and offered a huge discount of 3 – 5% on the value of cards to be sold to corporates at large. Said agreement dated 15.09.2017 was entered into to the said effect. The Operational Creditor reiterates the submissions made in the Preliminary Objections about handful of invoices, which are false and fabricated and craves leave to prove veracity of the same at final hearing.

7.4 In para 5.8 and 5.9 of the Rejoinder the Operational Creditor concedes that 100% advance payments have been made from the beginning and the same continued during the course of business. It is however, averred such payments were made on an assurance of providing heavy discounts. The Corporate Debtor having received 100% payments from Operational Creditor failed to activate the cards and had blocked the cards.

7.5 In para 5.10 of the Rejoinder the averments made in the preceding paras were reiterated to emphasize about 100% advance payments were made to Corporate Debtor against the offer of 3 – 5% discount on the value of cards to be sold to corporates at large; about concealment, about disputed and fabricated invoices. The Operational Creditor enclosed the true and correct invoices along with supporting e-mail messages and certified bank statements at **ANNEXURE-A** to this rejoinder.

7.6 In para 5.11 of the Rejoinder it is averred that the claim of Corporate Debtor for Rs. 30 crores is completely baseless, bogus and fraudulent as is evident from the documents. It is further averred that the claim of Rs. 25 crores raised by the Corporate Debtor has no legal

sanctity as earlier e-mail dated 04.10.2018 raised by the Operational Creditor talks about activation of cards against which 100% advance payment of Rs.6,11,10,000/- was made by the Operational Creditor and the Corporate Debtor has failed to honour his commitment.

7.7 In para 5.12 of the Rejoinder it is averred that the Corporate Debtor having received 100% payment from the Operational Creditor failed to activate cards and deliberately blocked the cards. Said fact can be acknowledged from the call recordings placed before this Tribunal and from the fact that cards were unblocked to the tune of Rs. 1,85,00,000/- by Corporate Debtor which shows liability existed and is still continuing. Call recording in the form of Corporate Debtor along with transcript and supporting certificate is annexed as **ANNEXURE 'B'** to this rejoinder.

7.8 In paras 5.14 and 5.15 of the Rejoinder it is averred that payment of Rs. 6,11,10,000/- has rightfully been claimed from Corporate Debtor, who despite assurances failed to honour the terms and conditions of the contract and failed to activate the cards. For such legitimate demand Legal Notice dated 09.10.2018 was issued calling upon the Corporate Debtor to pay a sum of Rs. 6,11,10,000/- with interest at 18% followed by another Legal Notice dated 15.10.2018 for block of cards worth Rs. 6,02,59,811/-. The Corporate Debtor gave reply dated 23.10.2018. The applicant filed complaint dated 16.11.2018 with Economic Offences Wing of Delhi Police, which has been transferred to EOW, Hyderabad. Relevant order is at **ANNEXURE 'C'** to this rejoinder.

7.9 In para 5.16 of the Rejoinder it is conceded that an FIR was registered and anticipatory bail was obtained by representatives of Operational Creditor on merits. Said FIR filed against the applicant is false and frivolous. It is alleged that the Corporate Debtor is trying to entangle the applicant in legal proceedings. Said FIR has been challenged before the Hon'ble High Court of Telangana. The Hon'ble High Court has dispensed with presence of representatives of Operational Creditor vide order dated 29.08.2019 (**ANNEXURE 'D'**).

7.10 In para 5.18 of the Rejoinder it is alleged that Corporate Debtor has suppressed issuance of Legal Notice dated 15.10.2019 by the

Operational Creditor calling upon Corporate Debtor to unblock the cards.

7.11 In para 5.21 of the Rejoinder it is alleged that the Corporate Debtor has deliberately concealed about Legal Notice dated 15.10.2019 issued to Corporate Debtor by Operational Creditor claiming a sum of Rs.6,02,59,811/-. Admitting their liability the Corporate Debtor had unblocked cards worth Rs.1,85,00,000/- leaving behind cards worth Rs.4,17,59,811/-.

7.12 In para 6.1.1 of the Rejoinder it is averred that not commenting on Legal Notice dated 15.10.2018 issued by Operational Creditor it amounts to admission of their liability towards operational creditor. In sub-clause (2) of this para it is averred that Legal Notice dated 09.10.2018 issued by Operational Creditor is admitted. Separate Legal Notice dated 15.10.2018 has been issued to Corporate Debtor relating to a different transaction, which has not been replied by the Corporate Debtor.

7.13 In para 6.1.3 it is averred that the judgment relied on by the Corporate Debtor in the case of MOBILOX INNOVATIONS PRIVATE LTD Vs. KIRUSA SOFTWARE PRIVATE LTD., (2018) 1 SCC 353 is not applicable to the facts of the present case.

7.14 In para 6.1.4 it is averred that the Directors are on bail and personal presence of the representatives of Operational Creditor is dispensed with by the Hon'ble High Court.

7.15 In para 6.3.4 it is averred that the decision of the Hon'ble NCLAT in PRADEEP KUMAR MUDNRA Vs. CIL SECURITIES LIMITED, rendered in Company Appeal (AT) (Insolvency) No.89 of 2019, relied on by the Corporate Debtor is not applicable to the facts of the present case.

7.16 It is averred in para 6.4.1 that as per e-mail a false claim of Rs.25 crores was raised, which has no legal sanctity as earlier e-mail dated 04.10.2018 raised by Operational Creditor rightfully talks about activation of cards against 100% advance payment and Corporate Debtor failing in discharging its liability.

7.17 It is averred in para 6.5.2 that the Corporate Debtor has deliberately not mentioned about Legal Notice dated 15.10.2019 in its reply by which the Corporate Debtor was called upon to unblock the cards which were blocked illegitimately. It is further averred that as regards Legal Notice dated 15.10.2018 sent to the Bank and the Corporate Debtor, the RBI has sought details of the same from the Operational Creditor and the Operational Creditor has furnished details to RBI.


7.18 In para 9 it is averred that previously proceedings under the I&B Code have been initiated against the Corporate Debtor being CP(IB) No.365/9/HDB/ 2019 in the matter of **LUMINOUS POWER TECHNOLOGIES PRIVATE LIMITED VS. ZAGGLE PREPAID OCEASN SERVICES PRIVATE LIMITED.**

7.19 It is submitted by the Operational Creditor that in view of the above submissions the averments made by the Corporate Debtor are not tenable and the application filed by the Operational Creditor is just, bona fide and legitimate and therefore, it is maintainable.

8. ADDITIONAL COUNTER AFFIDAVIT DATED 08.11.2019 ALONG WITH ADDITIONAL EVIDENCE FILED ON BEHALF OF THE RESPONDENT/ CORPORATE DEBTOR.

8.1 In paras 8.1, 8.2 and 8.3 of the Additional Counter it is averred that vide reply dated 23.10.2018 the respondent denied the allegations leveled in its Legal Notices. The amounts claimed by the Operational Creditor including sum of Rs. 4,17,59,811/- as claimed vide Legal Notice dated 15.10.2018 by the Operational Creditor are illusory. On the contrary, the petitioner is liable to pay a sum of Rs. 29,99,27,454/- to the respondent. The respondent has consistently been contending ever since initiation of dispute between the petitioner and the respondent, viz. September 2018, viz. six months prior to issuance of Demand Notice dated 29.03.2019 by the petitioner that sum of Rs.29,99,27,454/- is due and payable by the petitioner to the respondent after due deduction of a sum of Rs.6,11,10,000/-.





8.2 It is averred in para 8.5 of the Additional Counter that an amount of Rs. 4,17,59,811/- towards blocking of cards is due and payable by the respondent. It is averred that for want of KYC details of the petitioner and its customers said cards were blocked by banker. The respondent had nothing to do with such blockage.

8.3 It is averred in paras 8.7, 8.8 and 8.9 of the Additional Counter that the allegation of suppression of Notice dated 15.10.2018 by the respondent is untenable as the petitioner itself has filed the said document along with the petition. On the contrary it was the petitioner who suppressed the essential e-mail communication dated 07.10.2018 exchanged between the petitioner and the respondent. However, the respondent has not produced the said document before the Tribunal. By way of rejoinder the respondent acknowledged receipt of the said communication and pleaded inadvertence. It is contended that the said amounts to suppression of fact.

8.4 In paras 8.10 and 8.11 of the Additional Counter the respondent relied on decision of the Hon'ble Supreme Court in the case of **S.P. CHENGALVARAYA NAIDU Vs. JAGANNATH, 1994 (1) SCC 1, more particularly the following observations:**

“A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.”

8.5 The respondent further relied on the following observations:

“Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court.”

Therefore, by suppressing the vital document the respondent had played fraud on the Tribunal.

8.6 In para 8.13 of the Additional Counter it is averred that as counterblast to the above e-mail dated 07.10.2018 the petitioner issued Legal Notice dated 09.10.2018 to the respondent with intent to extort money and thereafter proceeded to file a false complaint before EOW, Delhi.

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8.7 In para 8.14 of the Additional Counter it is averred that the petitioner has issued notice after notice and each subsequent notice its claim gets increased by virtue of false and fabricated invoices.

8.8 In para 8.15 of the Additional Counter it is averred that the respondent vide e-mail dated 07.10.2018 while demanding payment of Rs. 25 crores had also recorded meeting held between the parties in this regard. The said e-mail had also recorded that the petitioner had admitted the claims of the respondent. However, there is no reply to the said e-mail by the petitioner.

8.9 In para 8.16 of the Additional Counter it is averred that the respondent has not admitted the debit, either part or full.

8.10 In paras 9.1 to 9.27 of the Additional Counter the respondent rebuts the statements made by the petitioner in its rejoinder. It is averred in para 9.1 that the respondent commenced its business operations from 2011 and has gradually developed its business, whereas the petitioner incorporated its company only in August 2017. Around the same time business agreement was entered into by the petitioner with the respondent.

8.11 In paras 9.2 and 9.3 of the Additional Counter it is averred that the respondent has always provided discounts from 1% to 2% to all its channel partners. However, the petitioner claimed higher discounts based on forged and fabricated invoices, ranging from 3% to 5%. In fact, **Annexure-3** filed with the petition by the petitioner shows discounts ranging between 1% to 2%.

8.12 In para 9.4 of the Additional Counter it is averred that if the respondent offered huge discounts at 3 to 5%, as claimed by the petitioner, then why did the petitioner not claim discounts at the same higher rates from October 2017, and why claimed only from April 2018. It is averred that the petitioner wants to enrich itself by fabricated invoices.

8.13 In paras 9.5 and 9.6 of the Additional Counter it is averred that on one hand the petitioner raises fabricated invoices and on the other it

relies on whatsapp chats and voice recordings. Since the invoices (Anneuxre-3) are false the petitioner relies on WhatsApp chats. It shows that the invoices and WhatsApp chats/ voice records are all fabricated. Thus, it is contended that there are pre-existing disputes between the parties. Hence CIRP cannot be admitted as held by the Hon'ble Apex Court in various decisions.

8.14 In para 9.7 of the Additional Counter it is averred that 100% advance payment is made by the petitioner is false. Though invoices raised by the respondent show 100% advances there are under-payments towards such invoices amounting to Rs.29,99,27,454/-.

8.15 In para 9.9 of the Additional Counter it is averred that the petitioner is not certain as to the amounts claimed since such claims are on the basis of fabricated documents. Hence the petition is to be dismissed.

8.16 In para 9.12 of the Additional Counter it is averred that the representatives of the petitioner along with ex-employees of the respondent together have approached the Metropolitan Magistrate and obtained anticipatory bail by submitting Rs.2 lacs each with two sureties, and have obtained exemption from personal presence. It is contended that it is the 'exemption' from personal presence obtained by the petitioner, it is not 'presence of representatives of the petitioner being stayed' as claimed by the petitioner.

8.17 In para 9.13 of the Additional Counter it is reiterated that there are pre-existing disputes between the parties inasmuch as the respondent has raised demand for more than Rs. 25 crores vide its e-mail dated 07.10.2018. Hence the petition be dismissed.

8.18 In paras 9.14 and 9.15 of the Additional Counter it is averred that as a standard policy the respondent does not offer discount beyond 2%. The petitioner has always kept enjoying higher volume of gift cards by paying lesser amounts to the respondent and thereby caused a dent Rs.29,99,27,454/- to the respondent. By way of retaining such a hefty amount of Rs. 29,99,27,454/- the petitioner enriched itself.



8.19 In para 9.17 of the Additional Counter it is averred that the petitioner has admitted the following facts:

- Dispute arose in .. Oct 2018
- Petitioner issued Demand Notice .. 29.03.19
under section 8 of IBC on
- Complaint against respondent was .. 16.11.18
filed before EOW by the petitioner on

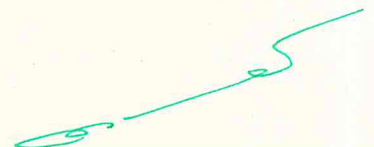
8.20 In para 9.18 of the Additional Counter it is averred that both the petitioner as well as respondent admit the complaints/proceedings mentioned in clauses (a) to (e) in this para.

8.21 In para 9.21 of the Additional Counter it is averred that legal notices issued by the petitioner on various dates, proceedings initiated before various forums as mentioned in clauses (a) to (i) in this para are not at all required but for illusory, spurious and imaginary disputes conceived by the petitioner.

8.22 In para 9.24 of the Additional Counter it is averred that if there is no meaning of respondent's response dated 23.10.2018 to the petitioner's legal notices dated 09.10.2018 and 15.10.2018 as contended by the petitioner, then there ought to be no meaning to the legal notices issued by the petitioner as well.

8.23 In para 9.25 of the Additional Counter it is averred in response to the petitioner's contention that the claims of the respondent are time-barred, that the respondent started demanding payments and adjusted Rs.6,11,10,000/- received from the petitioner on 04.10.2018 and turned around the false claims.

8.24 In para 9.26 of the Additional Counter it is averred that the respondent in good faith has loaded Gift Cards for more than the amount paid by the petitioner. Consequently, an amount of Rs.29,99,27,454/- has become due and payable by petitioner. The respondent by e-mail dated 07.10.2018 demanded payment of outstanding dues. Thus, the respondent's claim is within limitation.



8.25 In paras 10.1 and 10.2 of the Additional Counter it is averred that the respondent learnt about transfer of complaint filed by petitioner before EOW, Delhi to EOW, Hyderabad through rejoinder only. However, the respondent will cooperate with the process.

8.26 In para 10.4 of the Additional Counter it is admitted that a petition for initiating CIRP was filed by Luminous Power Technologies Private Limited against the respondent under section 9 of IBC and the matter was settled.

8.27 In para 11.1 of the Additional Counter the respondent has summarized the business transactions taken place between the petitioner and the respondent, discount offered, amount payable, amount paid and the amount outstanding. The amount outstanding is shown as Rs. 29,99,27,454/-. In support of the said statistics the respondent has enclosed copies of invoices issued by the respondent to the petitioner at **ANNEXURE 'A-13'** to this Additional Counter. Documents showing dispatch of invoices through courier are annexed at **ANNEXURE 'A-14'** to this Additional Counter.

8.28 In para 11.6 of the Additional Counter it is averred that invoices provided by the petitioner in the petition amounting to Rs. 1332 crores (approx.), whereas the total business concluded was Rs.16,41,24,74,866/-. The petitioner ought to prove the remaining amounts. Comparative Table showing original invoices raised by the respondent against the fabricated ones are enclosed at **ANNEXURE 'A-15'** to this Additional Counter.

8.29 In para 11.7 of the Additional Counter it is averred that the invoices produced by petitioner at Annexure-3 are false documents. Simple invoices issued by the petitioner to its agents for sale of gift cards are at **ANNEXURE 'A-16'**.

8.30 In para 11.8 of the Additional Counter it is averred that the respondent, as standard business practice, offer discounts to all its channel partners, for concerned gift cards, in the same range. Copies of sample invoices issued by respondent are at **ANNEXURE 'A-17'** to this Additional Counter.

8.31 In para 11.10 of the Additional Counter the respondent encloses ledger statement of the respondent pertaining to the transactions conducted between the petitioner and the respondent from October 2017 to October 2018 showing amounts received by petitioner is annexed at **ANNEXURE 'A-18'**. The respondent encloses copies of anticipatory bail application and quashing petition filed by the petitioner at **ANNEXURE 'A-19'** to this Additional Counter. The respondent also encloses copy of Agreement executed by Operational Creditor with RBL Bank in relation to its claim against the Corporate Debtor at **ANNEXURE 'A-20'** to the Additional Counter.

**9. COUNTER DATED 19.11.2019 FILED BY THE RESPONDENT/
CORPORATE DEBTOR.**

9.1 It is averred on page 2 of the Counter that the Corporate Debtor has filed IA No.851 of 2019 seeking original invoices from the petitioner alleged to have been issued by the Corporate Debtor. The Tribunal allowed the said IA directing the petitioner to submit such original invoices. The petitioner instead of complying with the directions of the Tribunal had preferred to file Affidavit for Amendment for reduction of the claim. This Counter essentially rebuts the averments made in the said Affidavit for Amendment.

9.2 In para 2 of the Counter it is averred that the respondent had no role to play in alleged blocking of 11,803 Zaggie Kuber Cards to the tune of Rs. 6,02,59,811/- once they are sold by the respondent.

9.3 In para 3 of the Counter it is averred that as stated earlier blocking of cards was due to non-compliance of KYC norms by the petitioner and its customers. The respondent has nothing to do with it. It is denied that the respondent in connivance with RBL Bank had blocked the cards and subsequently unblocked few of the cards. It is further averred when KYC norms are complied with the cards were unblocked. As such the respondent has no say in the matter.

9.4 In para 5 of the Counter it is averred that the petitioner contended in the petition, rejoinder and Affidavit for Amendment that 11,803 cards were blocked, few of them were later unblocked. Thus, cards worth Rs.

4,17,59,811/- remained blocked. Whereas Annexure 'A' to the Affidavit shows 14,547 cards worth Rs. 4,69,41,145/- are unblocked by RBL Bank. The petitioner to explain if the petitioner's claim is for Rs. 4,17,59,811/- why excess amount of Rs. 52 lacs was released to the petitioner. The petitioner also to explain why the petitioner reduced the claim to Rs. 4,17,59,811/- from Rs. 4,69,41,145/-.

9.5 In para 8 of the Counter it is averred that the proceedings before Banking Ombudsman were between the petitioner and RBL Bank. Even Annexure-A is not marked to the respondent. Only on request RBL Bank provided a copy thereof.

9.6 In para 9 of the Counter it is averred that the document Annexure 'A' shows an amount of Rs. 4,69,41,145/-. It is not known why the petitioner slashed its claim to Rs. 4,17,59,811/-.

9.7 In para 10 of the Counter it is averred that the claims for Rs. 6,11,10,000/- and for Rs. 4,17,59,811/- for alleged blocking of Gift Cards and for alleged issuance of Gift Cards are untenable inasmuch as it is admitted in the petition as well as in the rejoinder that disputes existed much prior to service of statutory Demand Notice dated 29.03.2019.

9.8 In para 11 of the Counter it is averred that the amendment filed by the petitioner though a simple affidavit without obtaining prior permission to amend the pleadings from the Tribunal is not sustainable.

9.9 In para 13 of the Counter the respondent refutes restricting the claim by the petitioner without devolving upon the terms of settlement. The respondent contends that at no point of time the respondent had agreed to settle any amounts or paid any amounts to the petitioner towards alleged settlement. On the contrary, it is the petitioner who is liable to pay an amount of Rs.29.99 crores to the respondent. Instead of paying the said amount the petitioner is raising false claims.

9.10 In para 14 of the Counter it is averred that the respondent has admitted debt of Rs.4,17,59.811/- as alleged by the petitioner in the petition and the rejoinder. Whereas, Annexure-A and proceedings before the Banking Ombudsman between RBL Bank and the petitioner

establish that the issue was between RBL Bank and the petitioner and respondent had nothing to do with the alleged amount. It is thus, alleged that the petitioner makes multiple averments to harass the respondent.

10. We have heard the learned counsel for the operational creditor and the learned counsel for the corporate debtor. This application is filed under section 9 of the I&B Code alleging that the corporate debtor committed default of an amount of Rs. 10,28,69,811/- along with interest at the rate of 18% per annum. The said amount became due on 06.10.2018. The learned counsel for operational creditor would contend that the operational creditor paid Rs. 6,11,10,000/- to the corporate debtor for purchase of Zaggle Kuber Cards of the value of Rs. 10,000/- per card. The learned counsel contended that payment was made on 04.10.2018 to the corporate debtor, who was supplying pre-paid cards, namely, Zaggle Kuber Cards to be given to corporates as gift cards. The learned counsel contended that the corporate debtor admitted having received money from the OC, but contended that the same was adjusted against the alleged outstanding amount payable by the operational creditor. The learned counsel contended that there was no outstanding balance due by the operational creditor to the corporate debtor. To avoid issuance of gift cards the corporate debtor is falsely contending that the operational creditor was liable to pay an amount of Rs.31 crores. The learned counsel contended that the alleged dispute raised is not a true or genuine dispute. It is nothing but spurious one and is not supported by any document.

11. The learned counsel contended that the operational creditor has paid a sum of Rs. 6,02,59,811/- to the corporate debtor for uploading Zaggle Kuber Cards numbering 11,803. The corporate debtor blocked the cards. However, on persuasion, cards worth Rs. 1,85,00,000/- were unblocked. However, there was blockade of cards worth Rs.4,17,59,811/-. The learned counsel contended that Legal Notice dated 09.10.2018 was issued to the corporate debtor for supplying cards worth Rs.6,11,10,000/-. Another Legal Notice dated 15.10.2018 was issued for unblocking the cards worth Rs.6,02,59,811/-. The learned counsel contended that the corporate debtor gave reply dated 23.10.2018 levelling false allegations. A complaint was also lodged with Economic Offences Wing (EOW). Demand Notice was issued on 29.03.2019. The corporate debtor gave reply on 01.04.2019. The learned

counsel contended that the corporate debtor gave complaint dated 30.03.2019 in Madhapur Police Station, Hyderabad against the operational creditor only with a view to harass the operational creditor.


12. The learned counsel contended that the operational creditor is restricting its claim to an amount of Rs.6,11,10,000/-, which represents the money given for supply of 11,803 Zaggle Kuber Cards. The contention of the learned counsel is that there was an understanding between the operational creditor and the partner-bank of the corporate debtor, namely, RBL Bank and there was unblocking of cards by RBL Bank. Thus, the cards were subsequently unblocked. Therefore, the claim was restricted as far as the failure to supply gift cards worth Rs.6,11,10,000/-. Thus, the operational creditor is restricting the claim to the above amount. In this connection the operational creditor filed an affidavit. The learned counsel contended that unblocking of cards by RBL Bank was done only at the instance of the corporate debtor after filing of the present case. The learned counsel contended that there was no pre-existing dispute and the alleged dispute is spurious, imaginary and there is no document to substantiate the same.

13. **E-MAIL WRITTEN ARGUMENTS DATED 01.06.2020 FILED BY THE OPERATIONAL CREDITOR.**

The learned counsel for the operational creditor submitted Written Arguments on 01.06.2020. The points urged in the Written Arguments will be dealt with in the course of the order. The learned counsel for the operational creditor would contend that an amount of Rs. 6,02,59,811/- was given to the corporate debtor towards Gift Cards and the corporate debtor subsequently blocked the cards in connivance with the RBL Bank. Legal Notice dated 15.10.2018 was sent to the corporate debtor, who had not given any reply. Thereafter, the Gift Cards worth Rs.1,85,00,000/- were activated and the Gift Cards worth Rs.4,17,59,811/- were not unblocked and hence the said amount was claimed as operational debt due by the corporate debtor. Subsequently, the matter was taken up by the Banking Ombudsman and the cards were unblocked. Hence the said claim was given up.

14. The learned counsel contended that an amount of Rs. 6,11,10,000/- was given for uploading 6300 cards of the value of Rs. 10,000/- each. The learned counsel contended that the corporate debtor

neither issued invoice nor activated the cards. The learned counsel contended that the corporate debtor raised a false plea as if the operational creditor owed amount to the corporate debtor. There is variation with regard to the alleged amount due by the operational creditor to the corporate debtor. The learned counsel contended that the corporate debtor is contradicting the alleged claim said to be due from the operational creditor ranging from Rs. 25 crores to Rs.31 crores, and then to Rs. 30 crores, and then to Rs. 36 crores and finally at Rs. 29 crores. This itself shows the falsity in the contention of the corporate debtor. The learned counsel contended that there is clear admission by the corporate debtor in the Additional Counter at paragraph 9.26 that amounts received during the period from October 2017 to 04.10.2018 were in relation to the activation of cards and not for any other transaction. Therefore, payment of Rs. 6,11,10,000/- was for loading or activation of cards and not for adjustment of any alleged balance. The learned counsel pointed out various discrepancies even in the invoices filed by the corporate debtor. The contention of the learned counsel is that these variations in the invoices clearly go to show that the corporate debtor fabricated them. Further the learned counsel contended that absolutely there is no basis to say that there was outstanding balance and that there was pre-existing dispute. Even the amount given to the corporate debtor does not come within the meaning of 'advance'. The learned counsel has relied on decision of the Hon'ble NCLAT dated 21.12.2018 in the matter of **OVERSEAS INFRASTRUCTURE ALLIANCE (INDIA) PVT LTD Vs. KAY BOUVET ENGINEERING LTD. COMPANY**, rendered in Company Appeal (AT) (Insolvency) No.582 of 2018 and contended that the amount advanced is in respect of the provision of goods and services and falling within the ambit of operational debt. The learned counsel also relied on the decision of the Hon'ble Mumbai Bench dated 23.02.2018 in the matter of **AUSPICE TRADING PRIVATE LIMITED Vs. GLOBAL PROSERV LIMITED**, rendered in CP No.1584/IBC/ NCLT/ MB/ MAH/ 2017 and contended that advance given is operational debt in a given circumstance of the case. Thus, the learned counsel contended that the defence taken by the corporate debtor as if there was pre-existing dispute is not supported by any material and as such the petition is liable to be admitted.



15. On the other hand the learned counsel for the corporate debtor vehemently contended that there was a pre-existing dispute. The learned counsel contended that the operational creditor had played fraud and obtained cards and an amount of Rs.31 crores fell due. The learned counsel contended that the operational creditor filed fabricated invoices obtained in collusion with the erstwhile staff members of the corporate debtor. The learned counsel contended that all the invoices relied on by the operational creditor are fabricated and created in the sense that the invoices for the period from April 2018 to October 2018 would establish that the discount allowed was at 4% which was never the practice adopted by the corporate debtor. The discount offered in the real invoices filed by the corporate debtor would go to show that at no point of time the discount was above 1.50%, whereas in the fake and forged invoices the discount claimed is at 4%. The learned counsel contended that the corporate debtor has given discount ranging from 1% to 2% to all its channel partners including the operational creditor. Thus, the forged invoices cannot be relied on. The learned counsel contended that a complaint was filed with Madhapur Police Station against the operational creditor for forgery and fabrication of invoices. The learned counsel contended that prior to Demand Notice, the operational creditor issued Legal Notice dated 09.10.2018. The corporate debtor gave reply dated 23.10.2018 raising a dispute and alleging that in collusion with one Amit Pachuri, an ex-employee of the corporate debtor the fraud was played. The learned counsel contended that it was brought to the notice of the operational creditor that it was liable to pay money to the corporate debtor. Thus, a dispute is raised by the corporate debtor with regard to the alleged operational debt. The learned counsel contended in the Legal Notice dated 09.10.2018 the operational creditor claimed that the corporate debtor committed default in not supplying gift cards worth Rs. 6,11,10,000/- and the money was already received by the corporate debtor. The learned counsel contended that in the Demand Notice the operational creditor has raised the amount said to have been committed default worth Rs. 10,28,69,811/-. Thus, the operational creditor is not sure of itself of the amount alleged to have been committed default by the corporate debtor. The learned counsel contended that RBL Bank has blocked the cards, but not at the instance of the corporate debtor. The learned counsel contended that the Bank had blocked the cards for non-availability of Know Your Client (KYC) information. Finally the cards were unblocked. Further, the operational creditor has thrown blame on the

corporate debtor as if the corporate debtor blocked the cards. The learned counsel contended that it is the OC, who was liable to pay to the corporate debtor. On verification it is found that the operational creditor had taken excess cards from the corporate debtor and thus, an amount of Rs. 31 crores fell due. On great persuasion the operational creditor has paid a sum of Rs. 6,11,10,000/- and the same was adjusted against the outstanding balance. Thus, there is no default of the alleged operational debt and that the petition is liable to be rejected.

16. The learned counsel for the corporate debtor relied on the following decisions:

- (i) Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353.
- (ii) Transmission Corporation of Andhra Pradesh Limited Vs. Equipment Conductors & Cables Ltd., 2018 SCC OnLine SC 2113- Supreme Court.
- (iii) Anjani Gases Vs. BP Projects Private Limited, MANU/ NC/ 0034/ 2019- NCLT, Kolkata.
- (iv) A.D. Electro Steel Company Private Limited Vs. Anil Steels, MANU/ NL/ 0146/ 2017- NCLAT, New Delhi.
- (v) SP Changalvaraya Naidu Vs. Jagannath & ors., 1994 (1) SCC.
- (vi) Vision Millennium Exports Private limited Vs. Edelweiss Rural & Corporate Services Private Limited, CP (IB) No.387/9/ HDB/ 2019- NCLT, Hyderabad.
- (vii) Nikhil Mehta & Son (HUF) & ors. Vs. M/s AMR Infrastructures Ltd., 2017 SCC OnLine NCLT 219 – NCLT Principal Bench.
- (viii) Vinod Awasthy Vs. AMR Infrastructures Ltd., MANU/ NC/ 0443/ 2017 – NCLT, Principal Bench.
- (ix) Sanjive Kanwar Vs. AMR Infrastructure, MANU/ NC/ 0104/ 2017- NCLT, Principal Bench.
- (x) Anvar P.V. Vs. P.K. Basheer & ors., (2014) 10 SCC 473.

17. At the first instance, the operational creditor filed the petition claiming default of Rs. 10,28,69,811/-. During the pendency of the petition, the operational creditor filed an affidavit reducing the claim to Rs. 6,11,10,000/-. The case of the operational creditor is that it had paid to the corporate debtor an amount of Rs. 6,11,10,000/- for supply of 6300 gift cards. It was also the case of the operational creditor that it had paid an amount of Rs. 6,02,59,811/-for supply of 11,803 cards. However, the cards were blocked by the corporate debtor. The cards worth Rs. 1,85,00,000/- were subsequently unblocked. The OC, however, stated in the course of hearing that the partner bank, viz. RBL Bank had unblocked the remaining cards worth Rs. 4,17,59,811/-So the

issue relating to blocking of cards was subsequently settled and all the cards were unblocked.

18. The next issue is that the corporate debtor failed to supply gift cards worth Rs. 6,11,10,000/-. The value of each card was Rs. 10,000/-. The specific case of the operational creditor is that this amount was given for supply of 6300 gift cards. On the other hand the contention of the corporate debtor is that this amount was given for adjustment against the outstanding balance. This money was never intended for supply of gift cards. It is also the case of the corporate debtor that the operational creditor has fabricated certain invoices claiming higher discount starting from 3.25% to 4%. These invoices are faked ones.

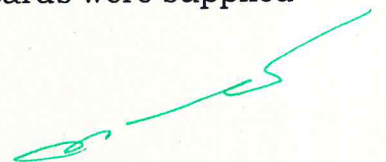
19. The corporate debtor has filed IA No. 851 of 2019 seeking directions to the operational creditor to produce the original invoices. IA No. 851 of 2019 was allowed and a direction was given to the operational creditor to produce the original invoices. The corporate debtor filed a list of errors and interpolations identified during the inspection of the original invoices. There are about 9 invoices filed by the operational creditor which are not originals. Details are given in the Memo dated 17.03.2020. It is also stated that some new invoices are also filed by the operational creditor which were not there in the invoices filed with the petition. Certain invoices are also noticed in which there are discrepancies. It is also contended that multiple invoices are signed with the same pen creating doubt over its veracity. There are variations in the discount in certain invoices issued on the same day. Thus, the corporate debtor has noticed so many errors in the original invoices filed. One important discrepancy noticed in majority of invoices is that they were all signed with the same pen. When invoices are all of different dates, then how the same pen is used in all these invoices. It is an unexplained suspicion hovering around these invoices.

20. Lot of variations with regard to the discount appearing in the invoices. It is the specific case of the corporate debtor that the discount was allowed from 1% to 2% and not more than that. Whereas, in the invoices said to have been issued by the corporate debtor, which are filed

by the OC, the discount allowed is between 3.25% and 4%. The invoices where discount is allowed between 3.5% to 4% are all signed by different persons. The corporate debtor filed certain invoices where authorised signatory signed in the column provided in the invoice. Thus, the operational creditor filed certain invoices where authorised person signed in the column meant for signature on behalf of the corporate debtor. There are two inner rounds in the round seal in the invoices filed by the corporate debtor, whereas only one round is appearing in the round seal in the disputed invoices. It is the case of the corporate debtor that these invoices are fake and they are not genuine invoices issued by the corporate debtor.

21. Prior to the Demand Notice the operational creditor filed a complaint with the Economic Offences Wing, New Delhi against the corporate debtor. Similarly, the corporate debtor also filed a complaint before the Economic Offences Wing, New Delhi. The complaint of the corporate debtor was sent to the Economic Offences Wing, Hyderabad by the Economic Offences Wing, New Delhi. The corporate debtor also filed a criminal complaint against the persons connected to the operational creditor in Madhapur Police Station. Of course, this complaint was given subsequent to the Demand Notice. But the fact remains is that both the parties lodged complaint with the Economic Offences Wing, New Delhi.

22. It is the case of the corporate debtor that it never owed debt to the operational creditor. It is the case of the corporate debtor that the operational creditor was liable to pay a sum of Rs.31 crores. It is also the case of the corporate debtor that it was demanding operational creditor to clear the outstanding Balance. Whereas the case of the operational creditor is that it had given a sum of Rs.6,11,10,000/- to the corporate debtor on 04.10.2018 for supply of 6300 Zaggle Kuber Cards. It is also the case of the operational creditor that it never owed money to the corporate debtor. The case of the operational creditor is that in order to avoid the debt the corporate debtor is falsely alleging that it had taken excess cards and that payment is due from it. The contention of the operational creditor is that the practice was that gift cards were supplied



against 100% advance payment, then where is the question of balance due from the operational creditor to the corporate debtor.

23. It is not in dispute that the corporate debtor received a sum of Rs.6,11,10,000/- on 04.10.2018. The case of the operational creditor that this amount was given for supply of 6300 gift cards at Rs.10,000/- per card. Whereas the case of the corporate debtor is that there was a balance to the tune of Rs. 31 crores to be paid by the operational creditor and that this money was given by the operational creditor towards part-payment for the outstanding balance and the same was also informed to the operational creditor by the corporate debtor through e-mail dated 07.10.2018.

24. A dispute was existing between the operational creditor and the corporate debtor which was much prior to the Demand Notice. This dispute was not raised after the Demand Notice. Whether this dispute is spurious, hypothetical or illusory? If the dispute falls in any of three categories, then such a dispute cannot be taken note of, because the corporate debtor has categorically admitted having received Rs. 6,11,10,000/-.

25. It is also not in dispute that Legal Notice was issued on 09.10.2018 on behalf of the operational creditor to the corporate debtor in respect of an amount of Rs.6,11,10,000/-. A reply was given to this Legal Notice on behalf of the corporate debtor dated 23.10.2018. Both the sides filed legal notice and reply. In the reply the corporate debtor was contending that the operational creditor was liable to pay Rs.31 crores in connection with the business transaction and the amount of Rs.6,11,10,000/- was adjusted against the balance outstanding. Thereafter, Demand Notice was issued on 29.03.2019. Again reply was also given to the Demand Notice on 01.04.2019. Prior to Demand Notice, the operational creditor also lodged a complaint with EOW, New Delhi on 16.11.2018. Thus, after receiving the reply to the Legal Notice the operational creditor filed complaint with EOW. Thus, there was a dispute regarding payment received from the operational creditor. It is the case of the operational creditor that no amount was due to the corporate

debtor. On the other hand the corporate debtor was contending that an amount of Rs. 31 crores was due from the operational creditor. When there was a prior dispute between the parties, a petition under section 9 of the I&B Code cannot be admitted. Business transactions worth several hundreds of crores of rupees took place between the operational creditor and the corporate debtor. Therefore, the dispute raised by the corporate debtor cannot be said to be spurious, hypothetical or illusory. The next contention of the corporate debtor, in the alternative, is that the amount given as advance does not fall under the definition of operational debt. The case of the operational creditor is that money was given as an advance for supply of gift cards. The advance does not come within the definition of operational debt. In this connection the learned counsel for the corporate debtor relied on the decisions cited above. It is true that advance, if any, given, does not come under the definition of operational debt. The case of the corporate debtor is that money was given for supply of gift cards after uploading the cards at Rs. 10,000/- per card. The money is given for uploading gift cards. Therefore, it cannot be said in the strict sense that it was an advance. We are unable to understand that money to be treated as advance of money. Money is intended for uploading cards and only after uploading cards delivery is to be effected. So in the strict sense, money given is not an advance in the nature of transaction carried between the operational creditor and the corporate debtor. However, there was prior dispute and as such the petition cannot be admitted.

26. In the result the petition is dismissed.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


RATAKONDA MURALI
MEMBER (JUDICIAL)

Karim