



SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 23.11.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.252/9/HDB/2020
NAME OF THE COMPANY	AGS Management Services Pvt Ltd
NAME OF THE PETITIONER(S)	Akaal Enterprises Pvt Ltd
NAME OF THE RESPONDENT(S)	AGS Management Services Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Petition is admitted.

SD/-

MEMBER (T)

SD/-

MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

CP(IB) No.252/09/HDB/2020
U/s. 9 of IB Code, 2016

In the matter of:

M/s. Akaal Enterprises Private Limited,
Plot No.1, First Floor,
Madhyabharat Bhawan, Alaknanda Complex,
Zone-I, M.P. Nagar,
Bhopal – 462 011.

....the Petitioner/
Operational Creditor

Vs

M/s. AGS Management Services Pvt. Ltd.,
H.No.1-36-98, Plot No.27, Phase 2,
Paigah Colony, S.P. Road,
Secunderabad – 500 003.

....the Respondent/
Corporate Debtor

Date of Order : 23.11.2023

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : Mr. Vimal Varma Vasireddy, Advocate

For the Respondent : Ms. A. Sandhya Rani, Advocate

Heard on : 11.10.2023



Per : Sanjay Puri

ORDER

1. This application is filed by M/s. Akaal Enterprises Private Limited, **(the Petitioner)** seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. AGS Management Services Private Limited, **(the Respondent)**, for the alleged default in discharging the debt that is due to the Petitioner.

The facts of the case briefly, are as follows:

2. There is a Service Agreement dated 28.03.2017¹ entered into between the Petitioner and the Respondent for providing the services of ATM Caretaking to the Respondent.
3. The Respondent failed to pay the total claim amount of Rs 65,09,813 arising out of the services provided as per the Service agreement during 17.07.2017 to 31.03.2018 plus Interest @10% for the period starting from the due date till the date of full payment of invoices. Interest @10% till the date of this Petition is computed as Rs 10,93,439.² In spite of acknowledgment of liability towards payment in email conversation and despite several follow up on telephone, personal visits, The Respondent had not adhered to their commitment and was not able to make any payment towards the dues payable to the Petitioner.³
4. Petitioner had withdrawn its Petition previously filed u/s 9 of IBC on the ground of settlement by both parties. By virtue of Settlement Memo filed before this Bench in CP (IB) No.579/9/HDB/2018, the Respondent had agreed to pay the due amount in next six (6) months from the date of signing the Memo. The details of proposed payments were as follows:

¹ Pg 16-19 of the Application (Annexure-2)

² Pg 20-27 of the Application (Annexure-3)

³ Pg 57-60 of the Application (Annexure-8)



1st Installment of Rs. 10,85,000	on 20th November 2019
2nd Installment of Rs 10,85,000	on 20th December 2019
3rd Installment of Rs 10,85,000	on 20th January 2020
4th Installment of Rs 10,85,000	on 20th February 2020
5 th Installment of Rs 10,85,000	on 20th March 2020
6th Installment of Rs 10,85,000	on 20th April 2020

This Adjudicating Authority had permitted withdrawal of CP (IB) No. 579/9/HDB/2018, with the liberty given to the Petitioner to approach the Tribunal by filing fresh Petition in case of default of the terms of settlement⁴. The Respondent failed to make payments as per the terms of settlement, and hence this Petition.

The Counter:

5. The Respondent filed Counter wherein it submitted that, the present Application filed by the Petitioner is not maintainable either under law or on facts. It was further submitted that the Petitioner Company doesn't come under the definition of the "Operational Creditor" of the Corporate Debtor as envisaged under Industrial Dispute Act and also under the definition of the "Operational Creditor". Therefore, the present Application under Section 9 of the Insolvency and Bankruptcy Code is not maintainable under law.
6. The Petitioner had initially filed the Petition and numbered as C.P.No.579/2018 and the matter had been settled between the parties. The Adjudicating Authority on 19.11.2019 had granted permission to the Petitioner to withdraw the Petition with liberty to approach the Tribunal by filing fresh Petition in case of default of any of the terms of settlement.
7. The Respondent had issued postdated cheques to the Petitioner on the very same date of withdrawal of the earlier petition in CP(IB) No. 579/9/HYD/2020 by the Petitioner. Details of these cheques are as below:

⁴ Pg 61-63 of the Application



S.No.	Cheque No.	Date	Amount (Rs.)	Drawn on
1	000081	20.11.2019	10,85,000	HDFC Bank
2	000082	20.12.2019	10,85,000	HDFC Bank
3	000083	20.01.2020	10,85,000	HDFC Bank
4	000084	20.02.2020	10,85,000	HDFC Bank
5	000085	20.03.2020	10,85,000	HDFC Bank
6	000086	20.04.2020	10,85,000	HDFC Bank

8. On the due date of 1st cheque i.e. 20.11.2019, the Petitioner had called the Respondent before deposit of cheque into its Bank Account for clearance, but the Respondent requested not to deposit the cheque for time being and the same was agreed by the Petitioner. On the 2nd cheque due date i.e. on 20.12.2019, again the Respondent had requested not to deposit both the cheques into bank account for clearance and the same was also agreed by the Petitioner. It is contended that thereafter, as per the instructions of the Petitioner, the Respondent had paid the entire amount in cash.

9. The Respondent contends that it had paid the due amount to the Director of the Petitioner Company Mr. Harjeet Singh Sethi in the Respondent's office as per the following details:

On 04.01.2020	Rs.21,70,000/- paid in cash & taken back the Cheques Bearing No.000081 & 000082.
On 07.02.2020	Rs.21,70,000/- paid in cash & taken back the Cheques Bearing No.000083 & 000084.
On 10.03.2020	Rs.21,70,000/- paid in cash & taken back the Cheques Bearing No.000085 & 000086.

10. There are no pending dues according to the Respondent and the entire amount in cash was paid to the Petitioner. It is claimed that the Petitioner had filed the present Application by suppressing the facts. It is further claimed that, the Petitioner had not submitted the original MoU filed which contains the entire details and terms and condition that were agreed by both the parties and the original MoU is in custody of the Petitioner.



11. Another contention of the Respondent is that the Petitioner had not issued any Demand Notice to the Respondent and the Demand Notice submitted along with the Petition is pertaining to C.P.No.579/2018, and the documents annexed with the present Petition were also filed in that C.P.
12. Moreover it is argued that, the Board Resolution dated 01.07.2019 where Mr. Harjeet Singh Sethi had authorized himself, is not maintainable under any law. It is further pointed out that, in C.P.No.579/2018, the Demand Notice was issued on 25.03.2019 by Mr. Harjeet Singh Sethi in the capacity of Director, the Board Resolution was dated 01.07.2019, whereas the withdrawal order was dated 19.11.2019.
13. According to the Respondent, issuance of Form-3 or Demand Notice under Rule-5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was mandatory, whereas the Petitioner had not issued the Form-3 or Demand Notice to the Respondent in the present matter. It is stated that the Board Resolution, Bank Statement, Demand Notice and proof of service submitted pertain to the previous case, and the same have been enclosed with the present Petition just to suppress the facts and mislead the Tribunal. Hence, this Petition is liable to be dismissed.

The Decision:

14. We have heard the submissions made by both the Learned Counsel and perused the record. Both parties were allowed to file written submissions after the hearing. Only the Petitioner has filed written submissions.
15. It is undeniable that a debt of Rs 65,09,813 (plus interest) was outstanding, and the Respondent had defaulted on the payment as of



the date when the previous Petition⁵ was filed under Section 9 of IBC. This fact is clearly established by the settlement that the Respondent agreed to for paying Rs 65,10,000 in six monthly instalments, during the pendency of that Petition, which was ultimately withdrawn.

16. The Respondent position that the debt no longer exists as the settlement amount of Rs 65,10,000 was paid in cash to the Petitioner, in lieu of postdated cheques, is not supported by any evidence. The Petitioner has denied receiving any cash pursuant to the settlement of 19.11.2019. Consequently, in absence of any evidence to the contrary, the debt remains valid, and the default persists.
17. So far as the technical objections to the Petition are concerned, it is contended by the Respondent, that the Petitioner had not filed any fresh Form-3 Demand Notice in the instant Petition, that the documents annexed with the present Petition were already filed in C.P.No.579/2018; and that the Board Resolution dated 01.07.2019 where Mr. Harjeet Singh Sethi had authorized himself, was not maintainable under any law.
18. These objections lack merit and cannot be entertained. The Respondent was duly served with a Section 8 Notice in Form-3 on 25.03.2019. When the response received was inadequate, the Petitioner previously filed a Petition (No.579/9/HYD/2020) under Section 9, which was later withdrawn as the Respondent had agreed to a settlement. However, since the Respondent subsequently defaulted on the terms of the settlement, the present Petition has been filed, following the liberty given by this Tribunal.
19. Regarding the documents submitted with this Petition, there are no issues to note. Given that the debt that was the subject of the previous Petition remains unpaid, the documents related to that debt

⁵ CP(IB) No. 579/9/HYD/2020



are naturally the same as before. As far as the authorization for filing the Petition under the Insolvency and Bankruptcy Code (IBC), there is no irregularity. The authorization is in the form of an extract from the minutes of the Board of Directors' meeting of the Petitioner company, in which Mr. Harjeet Singh Sethi is a Director. His signing of the minutes of the Board of Directors' meeting is a standard and legal procedure.

20. The contentions raised by the Respondent are nothing but “*patently feeble legal argument or an assertion of fact unsupported by evidence*” as mentioned by the Apex Court in **Mobilox**⁶ case. It is therefore important for us “*to separate the grain from the chaff and to reject a spurious defence which is mere bluster*” presented by the Respondent in this case. We reject these feeble contentions raised by the Respondent Corporate Debtor, for the reasons given in preceding paras.
21. In view of the admitted debt and continuing default, this Application is allowed with the following directions:

ORDER

- A. The Application is admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.
- B. The Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one from the Insolvency Resolution Professionals as IRP. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as

⁶ Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd– Supreme Court in CIVIL APPEAL NO. 9405 OF 2017 order dated 21.09.2017



Insolvency Resolution Professional for the period from July 1, 2023 to December 31, 2023 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints **Mr. Narender Reddy Banala, having Registration No. IBBI/IPA-003/ICAI-N-00376/2021-2022/13910, e-mail: bnreddy.acs@gmail.com, Mobile No. 9177366615 as Interim Resolution Professional.** As per the IBBI website, his AFA is valid upto 02.02.2024. He is directed to file Authorization for Assignment within three days from the date of this order.

- C. The IRP is directed to take charge of the Respondent/Corporate Debtor's Management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
- D. We direct the Operational Creditor/Petitioner to pay a sum of **Rs.2,00,000/-** towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.
- E. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in Section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-
- i. 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 or law, tribunal arbitration panel or other authority;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;
 - iii. 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 Operational Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
 - v. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.
- F. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements. or other arrangement as may be notified by the Central Government in consultation with any operational sector regulator or any other authority.
- G. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to



extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging the functions under Section 20 of the I&B Code, 2016.

- H. The Petitioner/Operational Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
- I. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.
- J. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.

Accordingly, this Petition is admitted.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

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