



SL. No.1

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

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI- HON'BLE MEMBER (J)
CORAM: SHRI. CHARANSINGH - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 18.07.2023, At 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/92/2022
NAME OF THE COMPANY	Karvy Next Ltd
NAME OF THE PETITIONER(S)	Novho Careers Pvt Ltd
NAME OF THE RESPONDENT(S)	Karvy Next Ltd
UNDER SECTION	9 of IBC

ORDER

This application is dismissed, vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

CP(IB) No.92/09/HDB/2022
U/s. 9 of IB Code, 2016

In the matter of:

M/s. Novho Careers Private Limited,
101, 1st Floor, Tanishka Building,
Akruli Road, Kandivli (East),
Mumbai – 400 101.

....Operational Creditor

Vs

M/s. Karvy Next Limited,
Plot No.46, 8-2-609/K, Karvy House,
Avenue-4, Street No.1,
Banjara Hills,
Hyderabad – 500 034

And also at:

Karvy Gateway, Plot Nos.38 & 39,
Nanakramguda, Financial District,
Gachibowli,
Hyderabad – 500 032.

....Corporate Debtor

Date of order: 18.07.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

Counsels present:

For the Operational Creditor : Mr. Amir Bavani, Advocate

For the Corporate Debtor : Mr. Avinash Desai, Senior Advocate

: Mr. Mallu Nethan Reddy, Advocate

Heard on : 13.07.2023



**[PER: BENCH]
ORDER**

1. This application is filed by the Petitioner M/s. Novho Careers Private Limited, Operational Creditor (OC) against the Respondent M/s. Karvy Next Limited, Corporate Debtor (CD), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor for the default committed by the Corporate Debtor in discharging the debt that is due to the Operational Creditor.

2. The facts mentioned in the application are briefly, as follows:
 - a. The CD, through its Master Service Agreement dated 01.06.2019 desired to avail the logistics services from the OC on a principal-to-principal basis for delivery and transportation of the consignments as may be assigned to them by the CD through bikers and closed container transport vehicles along with the drivers.

 - b. As per the terms of the agreement, the OC had raised invoices on various dates as and when they were providing services to the CD. As the CD was not paying the outstanding dues, the OC on various occasions sent reminders through emails on various dates, calling upon the CD to clear the outstanding payments. In



response to some of the emails, the CD admitted the debt and said that they will clear the dues of the OC.

- c. The OC had also, through its legal representative, sent a first legal notice dated 14.12.2020 in order to recall the entire outstanding dues from the CD. The CD accepted its liability of the above mentioned invoices vide reply dated 28.12.2020, wherein it was specifically mentioned that, it would pay of the dues to the OC by 28.02.2021. After not receiving any outstanding dues from the CD, the OC again sent a legal notice dated 14.01.2021, in order to recall the entire outstanding dues from the CD, to which there was a call from one of the Executives of the CD by name Mr. Samir Gandhi, wherein they sought some more time to clear the outstanding dues of the OC. Finally, the third and the last notice dated 16.02.2021 was sent by the OC. Even after sending three legal notices, the CD gave only false assurances to the OC and he is not clearing the balance amount for the services provided by the OC. Finally, a Demand Notice was sent on 13.07.2021, but the CD did not reply for the same. Hence, this application, seeking for the above mentioned relief. The total due according to the OC is Rs.1,84,74,762/- which includes interest of Rs.28,18,184/-



3. The CD filed Counter denying the contents of the Petition and existence of the alleged debt. It is further contended that the petition is liable to be dismissed, as it is barred under Section 10A of the IB Code, 2016, as the date of default of the alleged debt took place during the period between 24.03.2020 to 24.04.2021, wherein the proceedings under IBC, 2016 were suspended.

4. Apart from the above, it is contended that there is no proper authorisation for the signatory who signed on the application to file this application. The Board Resolution dated 08.07.2021 only indicates that the persons mentioned therein were empowered to act as Advocates and not as authorised signatories to sign the Company Petition. The initiation of the Petition under the IBC, 2016 would have serious consequences and would result in the corporate death of the CD. Hence, it must be exercised only after sufficient due diligence is conducted.

5. The invoices under which the debt is claimed to be due, are false. The purported default pertaining to the invoices dated 07.03.2020, 16.03.2020, 23.03.2020 and 31.03.2020 are hit by Section 10A of the IBC, 2016, as the default took place during the period wherein, the proceedings under IBC, 2016 were suspended. If the above invoices are excluded, the debt falls below the



threshold limit. No interest is payable by the CD, since there is no agreement and it is not mentioned in the invoices. On the above grounds, the CD seeks to dismiss the application.

6. A rejoinder is filed by the OC along with the authorization and further contending that the OC raised the running bills for the services which it had already provided to the CD in the past and it had accordingly raised various bills which are forming part of the main Company Petition. Therefore, Section 10A of the Insolvency & Bankruptcy Code, 2016 would not be applicable to this case, as the default occurred on 02.03.2020 and the provision came into force w.e.f. 25.03.2020.

7. The CD acknowledged the debt and assured to repay the same which proves the debt beyond doubt. The CD was making continuous default in making payments. The OC has to raise invoices by 5th of the month succeeding the month during which, the OC had provided the services. The various invoices issued by the OC which were in relation to the services provided in the previous months i.e. January 2020 & February 2020. Hence, the CD is liable for the amount under the said invoices. The amount due is beyond the threshold limit even if the disputed invoice is excluded. The OC had clearly mentioned in the Notice dated



14.12.2020 that the interest @18% per annum has to be paid for which, the CD accepted by saying that it would clear the outstanding payment which would amount to accepting the interest. Hence, the petition is liable to be admitted.

8. Heard both the Counsel and perused the written submissions filed by either side.
9. There is no dispute with regard to the agreements entered into between the parties. There is also no dispute that the invoice has to be raised on monthly basis by 5th of the month succeeding the month during which the services have been provided and the company shall pay the same within 30 days of receipt of correct and undisputed invoice, which would be the date of default in respect of each invoice.
10. No dispute as such with regard to the invoices and the liability under the invoices raised by the Respondent. The dates of the invoices which are mentioned in the application become due one month thereafter according to the agreement. Section 10A of IBC, 2016 lays a bar in respect of the default that occurred from 24.03.2020 to 24.04.2021. The invoices dated 25.02.2020, 07.03.2020, 16.03.2020, 23.03.2020 and 31.03.2020 are hit by Section 10A of IBC, 2016. Though, the Respondent's Counsel in



the written argument mentioned only four invoices, excluding the invoice dated 25.02.2020, the second one also falls within the prohibited period, since the due date for payment of the amount comes to be 25.03.2020 which is subsequent to 24.03.2020. However, even if the amount under the four invoices is taken, it comes to Rs.96,16,861/-. Then, the principal amount due comes to 88,57,901/-. The threshold limit for filing the petition under Section 7, 9 and 10 is raised to Rs.1 Crore w.e.f. 24.03.2020.

11. The judgement of the *Hon'ble NCLAT, New Delhi in Vishal Agarwal Vs. ICICI Prudential Real Estate AIF-I & Anr. (Company Appeal (AT) (Insolvency) No.1016 of 2022)* has clarified that;

“The benefit under Section 10A can be claimed by the applicant, only when there is clear default during the prohibited period.”

12. Hence, the above invoices pertaining to the dates during the said period, are clearly hit by Section 10A.

13. The Respondent relied on the judgement of *Hon'ble NCLAT, New Delhi*, wherein it is observed that;

“The Notification dated 24.03.2020 makes it unambiguously clear that the threshold limit to be considered for Section 9 application will be Rs.1 Crore and the threshold limit will be applicable for application filed u/s 7 or 9 or after 24.03.2020 even if debt is of a date earlier than 24.03.2020.”



14. Hence, the above judgement would make it clear that the threshold limit as on the date of filing the application, has to be beyond rupees one crore.

15. The next contention with regard to the interest can also be dealt with, to see whether by including the interest, the threshold limit can be brought to above one crore. There is no denial of the fact that there is no stipulation of interest in the invoices. The claim for interest is based only on the alleged acknowledgement by the Respondent in the reply notice issued for the legal notice issued by the OC.

16. The legal notice sent by the OC on 14.01.2020 informs that, if the payment is not received on time, they will charge interest @9% on non-payment of GST and also they will charge 5% on 30.06.2020. It does not mention that interest @18% was agreed between them. A similar notice was sent on 14.12.2020 also by the OC in which, it was specified that 18% interest would have to be paid. In the reply notice to the notice dated 14.12.2020, the Respondent admitted the liability and requested the Petitioner to wait till 28.02.2021 for settling the dues in full as per the entitlement. This part of the notice is construed as an admission to pay



interest by the CD, which we are unable to accept. As per entitlement, would only indicate that, the principal and the interest if any would be paid only, if the OC is entitled as per the agreement and the invoices. Hence, it is clear that there is no agreement to pay interest.

17. The Counsel for the Respondent relies on the judgement of the *Hon'ble NCLAT in Pavan Enterprises Vs. Gammon India Private Limited in Company Appeal (AT) (Insolvency) No.148 of 2018* wherein, it is said that;

“If in terms of any agreement interest is payable to the Operational or Financial Creditor, then debt will include interest, otherwise, the principal amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.”

18. The other judgement relied upon by the Respondent is rendered by the *Hon'ble NCLAT in Prashanth Agarwal vs. Vikas & Anr. In Company Appeal (AT) (Insolvency) No.690 of 2022* wherein, it was held that;

“It is clear from the facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself.”



19. The Counsel contends that the above finding of the Hon'ble NCLAT would imply that, if there is no stipulations, no interest can be charged.

20. Hence, considering that the threshold limit is less than rupees one crore, when the invoices falling within the period specified under Section 10A of IBC, 2016 are excluded, we dismiss this application. The Petitioner is however, at liberty to seek his remedies available under Law before the appropriate forum.

Sd/-

**(CHARAN SINGH)
MEMBER (TECHNICAL)**

Sd/-

**(JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)**

VL