



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-IV

COMPANY PETITION IB (IBC)/169(ND)2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016

IN THE MATTER OF:

DELHIVERY LIMITED

.... Operational Creditor/Applicant

Versus

FUTURETIMES TECHNOLOGY

INDIA PRIVATE LIMITED

.... Corporate Debtor/Respondent

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 22.07.2025

PRESENT:

For the Applicant : Adv. Rahul, Adv. Vardaan Jain

For the Respondent : Adv. Charu Ambwan, Adv. Shreya Garg
for R-1, Adv. Subhojit Dutta for R-5, Adv.
Videh Vaish, Adv. Lalit Mohan for R-4



ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This instant application was filed by **Delhivery Limited** (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of **Futuretimes Technology India Private Limited** (hereinafter referred as 'Respondent' or 'Corporate Debtor') for defaulting the payment of total amounting to Rs. 1,88,72,046/- (Rupees One Crore Eighty-Eight Lakhs Seventy-Two Thousand and Forty-Six Only) to be paid by the Corporate Debtor.
2. The Respondent Company **Futuretimes Technology India Private Limited** having CIN: U74999DL2018FTC338848, incorporated on 22.06.2011 under the provisions of the Companies Act, 1956, is having its registered office situated at A-16, First Floor, Vasant Kunj Marg, Aruna Asaf Ali Marg, Qutab Institutional Area, New Delhi - 110067. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. **Briefly stated the facts of the present case as averred by the Applicant/ Operational Creditor are: -**



- a) The Applicant submitted that the Corporate Debtor had been availing courier and logistical services from the Operational Creditor since the Financial Year 2018–19. In furtherance of such commercial dealings, the Corporate Debtor entered into a Service Agreement dated 08.10.2018 (hereinafter referred to as the "Principal Agreement") with the Operational Creditor for the provision of delivery and related services. Owing to the Operational Creditor's efficient and timely performance, and in light of the increasing business requirements of the Corporate Debtor, the parties subsequently executed two supplementary agreements dated 29.08.2019 ("Addendum 1") and 23.01.2020 ("Addendum 2") respectively, thereby expanding the scope of services under the Principal Agreement.
- b) That on 12.11.2019, the Corporate Debtor, previously known as Globemax Technology India Private Limited, underwent a change of name and was thereafter known as Futuretimes Technology India Private Limited. The said change of name was duly recorded and reflected in the records maintained by the office of the Registrar of Companies.
- c) Subsequent to the aforesaid change, the Corporate Debtor and the Operational Creditor entered into an Addendum dated 23.01.2020 ("Addendum 2") to the Principal Agreement, thereby incorporating 'Express Service' as an additional scope of service to be rendered by the Operational Creditor.



- d) That the Corporate Debtor had been irregular and inconsistent in making payments towards the services rendered. Notwithstanding the aforesaid, and in view of the long-standing business relationship between the parties, the Operational Creditor continued to provide services to the Corporate Debtor in good faith. In the ordinary course of business, the Operational Creditor raised multiple invoices from time to time, against which the Corporate Debtor made part-payments on certain occasions.
- e) The last invoice was raised by the Operational Creditor on 06.04.2022. However, despite repeated follow-ups, no further payment was made by the Corporate Debtor thereafter. Consequently, the total outstanding liability came to Rs. 43,34,03,943/-. Out of the said amount, a sum of Rs. 1,88,72,046/- remains due and payable by the Corporate Debtor. The said Outstanding Amount has been computed in strict compliance with the provisions of Section 10A of the Insolvency and Bankruptcy Code, 2016.
- f) The Applicant has submitted that all communications addressed to the Corporate Debtor, including demand notices dated 16.12.2022 and 28.12.2022 issued under Section 8 of the Insolvency and Bankruptcy Code, 2016, have remained unanswered. The executives of the Corporate Debtor have given vague/evasive replies on email in response to the



Demand Notices constraining the Operational Creditor to move the present Application under Section 9 of the Code.

ANALYSIS AND FINDINGS

4. The matter was first heard by this Adjudicating Authority on 22.03.2022.

It was recorded that the Learned Counsel for the Operational Creditor submitted that the Corporate Debtor is represented by two directors who are foreign nationals. The notice issued was returned unserved with the endorsement “addressee left without instructions.” Considering the peculiar facts and circumstances of the case, the Operational Creditor was directed to consider impleading the Registrar of Companies (RoC) as a party to the proceedings, to facilitate the Tribunal in effectively adjudicating the matter with necessary assistance from the RoC.

5. Further, on 03.07.2023, the Bench recorded the appearance of the representative from the Registrar of Companies (RoC). The RoC was directed to verify and place on record the relevant factual information from its official records, including a specific clarification as to whether any notice for striking off the name of the Corporate Debtor has been issued, considering that the latest financial statements available pertaining to the financial year 2019. The RoC was also directed to clarify whether a company having only foreign nationals as directors is entitled to any special privilege or exemption under applicable law, and to furnish any other information deemed relevant for the effective adjudication of the matter.

6. The ROC in its reply affidavit dated 22.08.2023 submitted the following



- i) As per record, this office has not issued any striking off notice to the respondent company.
- ii) The Signatory details of the respondent company is attached at Annexure 'A'.
- iii) No privilege or concessions are as such given to companies where all the directors are foreign nationals under Companies Act, 2013.

7. In the present case, the issue for consideration is whether the demand notice issued under section 8 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) can be treated as valid service when the postal article containing the first demand notice dated 16 .12.2022 was returned with the endorsement “Addressee has left without instruction” and second demand notice dated 28.12.2022 was returned with the endorsement “Addressee has left without Instruction” and further notice thorough email bounced.

8. At this juncture, it is appropriate to analyze the Rule 5 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules,2016 as under:

1) An operational creditor shall deliver to the corporate debtor, the following documents, namely:

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,

(a) at the registered office by hand, registered post or speed post with acknowledgement due; or

(b) by electronic mail service to a whole-time director or designated partner or key managerial personnel, if any, of the corporate debtor.



9. It is well settled that issuance and service of demand notice under Section 8(1) of the IBC is a mandatory pre-condition for initiating insolvency proceedings under Section 9. The Hon'ble Supreme Court in ***Macquarie Bank Limited v. Shilpi Cable Technologies Ltd. [(2018) 2 SCC 674]*** has clarified that actual delivery of the notice is essential and non-service of the demand notice would render the application under Section 9 non-maintainable.
10. Further, the Hon'ble National Company Law Tribunal (NCLAT) in ***Shubham Jain v. Gagan Ferrotech Ltd. [Company Appeal (AT) (Insolvency) No. 145 of 2020]***, decided on 3 February 2020] held that where the demand notice was returned with the postal remark "addressee has left" and the operational creditor failed to take further steps to serve the notice through email or any other alternative mode, the requirement under section 8 was not complied with, and therefore, the application under Section 9 was rightly rejected.
11. In a similar vein, the Hon'ble NCLAT in ***Alloysmin Industries v. Raman Castings Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 274 of 2021]***, decided on 29 July 2021] reiterated that mere dispatch of the notice is not sufficient; there must be satisfactory evidence of delivery or reasonable steps taken to effect service through other means when postal delivery fails.
12. In view of the foregoing, it is evident that where a demand notice is returned unserved with the remark "addressee has left without instruction" and no subsequent service is effected via email or other electronic means, the service cannot be deemed valid. The operational



creditor is obligated to ensure actual or constructive service of the demand notice before initiating insolvency proceedings. Failure to do so renders the Section 9 application liable to be dismissed as not maintainable.

13. It is further noted that the Demand Notice dated 16.12.2022 was also sent via email to legal@globemaxtechnology.in; however, the said email communication was returned undelivered. Subsequently, another Demand Notice dated 28.12.2022 was sent via email to the following addresses obtained from the GST portal: taterway.sandeep@gmail.com, sandeep@taterwaysconsulting.com, and jialunli@clubfactory.com. In response, Mr. Sandeep Taterway stated that he is no longer associated with the Corporate Debtor and marked Ms. Mindy Zhang, purportedly the Head of Operations of Club Factory India, on the email thread. However, no response has been received to date from either Ms. Mindy Zhang or Mr. Jialun Li, who are stated to be one of the directors of the Corporate Debtor.

14. In the present case, the demand notice was issued via registered post but returned unserved with the endorsement “addressee has left without instructions” No subsequent successful attempt was made as per under Rule 5(1) of the I&B (Adjudicating Authority) Rules, 2016 to effect service by alternate permitted modes, including email which bounced back. Accordingly, any **Section 9 application filed in such circumstances is liable to be rejected as not maintainable** for failure to fulfill the mandatory pre-condition of serving a valid demand notice.



15. Furthermore, it is observed that the demand notice has not been duly served upon the Corporate Debtor, and no evidence has been placed on record to indicate successful service through any of the prescribed modes. It is also noted that the Corporate Debtor is not traceable, and its current whereabouts are unknown. In such circumstances, where the existence or operational status of the Corporate Debtor cannot be ascertained and the mandatory requirement of service under Section 8 of the Code remains unfulfilled, the application under Section 9 cannot be entertained and is liable to be rejected as not maintainable.

16. In the light of the above observations and judicial pronouncements, the instant application bearing **COMPANY PETITION IB (IBC)/169(ND)2023** filed by, **Delhivery Limited**, (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Futuretimes Technology India Private Limited** (Corporate Debtor) is liable to be dismissed and is, accordingly **dismissed**.

17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)