



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 84/9/JPR/2019

(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:

AMROP INDIA PRIVATE LIMITED

Global Business Park, 7th Floor,
Tower-B Mehrauli, Gurgaon Road
Gurgaon- 122002

...Operational Creditor

VERSUS

THE HI-TECH GEARS LIMITED

A-589, Industrial Complex,
Bhiwadi, Alwar, Rajasthan-
301019

...Corporate Debtor

FOR PETITIONER (S) : Angad Verma, Adv.

FOR RESPONDENT (S) : Amol Vyas, Adv.

Order Pronounced On:16.06.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application has been filed by the *M/s Amrop India Pvt. Ltd.* ('Operational Creditor'/'Applicant') to initiate Corporate Insolvency Resolution Process ('CIRP') against *M/s Hi-Tech Gears Limited*



(‘Corporate Debtor’), under Section 9 of the Insolvency and Bankruptcy Code (‘IBC’/‘Code’), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 alleging a default of Rs. 29,65,732.94/- (Rupees Twenty-Nine Lacs Sixty-Five Thousand Seven Hundred Thirty-Two and Ninety-Four Paise). The Applicant has preferred the Application through its authorised representative Preety Kumar, duly authorised vide Board Resolution dated 20.04.2018.

2. The details of the transactions leading to the filing of this application averred by the Applicant against the Corporate Debtor are as follows:

2.1 The Corporate Debtor, involved in the business of automobile ancillaries, approached *Amrop India Consultants Private Limited* (‘AICPL’) the erstwhile operational creditor, for filling up two vacancies in their company. Two separate contracts dated 12.02.2018 and 08.03.2018 were entered into between the Corporate Debtor and AICPL for the same. Pursuant to this, AICPL rendered services to the Corporate Debtor and raised 4 invoices in accordance with the clause of professional fees and payment terms. The details of the said invoices have been explained below in part IV below.

2.2 The Operational Creditor/Applicant herein entered into a Slump Sale Agreement with AICPL on 20.04.2018 wherein it purchased the business of AICPL as a going concern. By virtue of this all



properties, assets, liabilities, rights, benefits, and interests of AICPL stood transferred to the Operational Creditor w.e.f. 23.04.2018. The same was informed to the Corporate Debtor with a letter dated 17.05.2018.

2.3 The Operational Creditor via letter dated 28.06.2018 demanded the payment of Rs. 29,65,732.94/- (Rupees Twenty-Nine Lacs Sixty-Five Thousand Seven Hundred Thirty-Two and Ninety-Four Paise) from the Corporate Debtor. The Corporate Debtor replied to the aforesaid claim and also raised an independent claim of Rs. 137.53 Lakhs for deficiency in services via letter dated 13.07.2018.

2.4 The Operational Creditor preferred the demand notice under section 8 of the Code on 30.07.2018. Reply to the said demand notice was preferred dated 09.08.2018 wherein the Corporate Debtor raised several objections. The aforementioned details as reflected in Part IV of the Application are as follows:

PART IV
PARTICULARS OF OPERATIONAL DEBT

1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	Four invoices bearing invoice no: a. SER-0164 dated 26.02.2018 for an amount of Rs. 11,80,000/-; b. EXP-0062 dated 26.02.2018 for an amount of Rs. 3,54,000/-; c. SER-0173 dated 19.03.2018 for an amount of Rs. 11,01,332.94/-; d. EXP-0062 dated 19.03.2018 for an amount of Rs. 3,30,400/-;
----	---	--



2.	Amount claimed to be in default and the date on which the default occurred.	Total outstanding dues payable by the Corporate Debtor to the Operational Creditor is Rs.29,65,732.94/-
----	---	---

- 2.5 The Operational Creditor vide Diary No. 143/2019 dated 24.01.2019 placed the Agreement for Sale of business of AICPL as a going concern to the Operational Creditor herein dated 20.04.2018 on record. Along with the same, the Operational Creditor annexed the extract of the Board Resolution of AICPL dated 20.04.2018 approving the Sale of business undertaking in favour of the Applicant.
3. Consequent to the notice issued, the Corporate Debtor preferred preliminary objections to the maintainability of this Application stating that the Agreements dated 12.02.2018 and 08.03.2018 have not been accepted/signed by it except on two pages; the said pages are not indicative of any fees payable to the Operational Creditor. Also, the Corporate Debtor did not consent for novation of contract and AICPL continues to remain in existence, hence the Applicant is not an Operational Creditor of the Corporate Debtor.
4. The Applicant filed rejoinder vide Diary No. 825/2019 dated 09.05.2019 wherein it has been contended that the Corporate Debtor has filed a Civil Suit against AICPL before Saket District Court, New Delhi while relying upon the same agreements dated 12.05.2018 and 08.03.2018. The Applicant further quoted clauses of the Slump Sale Agreement to assert



that the assignment of a trade receivable/debt does not require any previous approval or consent from the Debtor under law. Moreover, since the Corporate Debtor recognised the slump sale after receipt of the letter dated 17.05.2018, any subsequent argument justifying the letter to Operational Creditor in place of AICPL is an afterthought. Therefore, by virtue of the Slump Sale, the Debt/trade receivables of the Corporate Debtor were legally assigned to the Operational Creditor.

5. The Applicant submitted the original copy of the Slump Sale Agreement in sealed cover for the perusal of this Authority. The sealed cover was unsealed in open court and the Applicant was directed to supply extracts of certain pages to the Corporate Debtor. The Corporate Debtor was directed not to use this particular material for any other purpose in any other case except to prosecute this particular matter in defence. The original was returned to the counsel for the Applicant in open court. The aforesaid was recorded in Order dated 21.08.2019. The Applicant preferred an Additional Affidavit conforming that the Original Slump Sale Agreement had been filed before this Authority. Subsequently, the Corporate Debtor filed counter affidavit dated 09.10.2019, followed by rejoinder of the Applicant dated 28.11.2019. The matter was due to be heard on the points of maintainability of the main Application filed under Section 9. Meanwhile, it was submitted that settlement talks were underway. Later on, the Corporate Debtor moved an Application



challenging the maintainability of the Application against which the Corporate Debtor was granted the liberty to take the said grounds in its reply to the Application.

6. Hence, the Corporate Debtor preferred its reply vide Diary No. 956/2022 dated 29.03.2022 on the following grounds:

6.1. The alleged agreement dated 12.02.2018 and 08.03.2018 would show that the Corporate Debtor has nowhere consented to the said agreements except on the page no. 26 & 29 of the Application. Therefore, the Corporate Debtor has mentioned that it is not liable to make any payments in lieu of the above agreements.

6.2. The Corporate Debtor never consented for novation of contract between the Operational Creditor and AICPL. Moreover, in the letter dated 28.06.2018 preferred by the Applicant, the Corporate Debtor was given an impression that the name of AICPL has been changed to that of the Operational Creditor. Hence the reply letter dated 13.07.2018, preferred by the Corporate Debtor, was addressed to the Operational Creditor as a result of changed name of the company. Also in the said reply itself the Corporate Debtor has not accepted the novation of contract between the said two companies.

6.3. It has also been pointed out that AICPL even after the alleged agreement of sale continues to remain in existence which can be verified from the records of the Master Data maintained by the



Ministry of Corporate Affairs. Hence the two companies i.e. AICPL and Operational Creditor are separate legal entities and the invoices raised by AICPL cannot be held to be due against the Operational Creditor. Accordingly, the Operational Creditor has no locus standi to file this application as the Applicant herein is not an Operational Creditor.

6.4. While relying on the Slump Agreement Sale dated 20.04.2018, the Corporate Debtor states that the agreement is a conveyance deed under Section 2(10) of Indian Stamp Act, however the parties to the agreement have executed the same on payment of stamp duty of Rs. 1000/- assuming the said document as an Agreement to Sale. On this agreement to sale, as per Article 23 of Schedule 1 of the Indian Stamp Act, 1899, Stamp Duty of 3% on immovable property and 6% of immovable property is chargeable. Hence, Stamp duty of Rs. 52,91,055/- has not been paid on consideration of Rs. 17,63,68,500/- for transfer of entire property of the company. Therefore, the Slump Sale Agreement is defective and not a legal document.

6.5. It has also been stated that Clause 2.5(d) of the Slump Sale Agreement provides for seeking consent from the other party. In the instant case, the Corporate Debtor is the other party and no consent has been sought. Moreover, the dispute had already commenced at



that time between the parties as the representatives of the Applicant Company had admitted error in sending the list of candidates which did not qualify the specifications. Copy of the email dated 24.04.2018 has also been annexed. In response to the above, the Corporate Debtor with the email dated 29.04.2018 specifically stated that the CFO interviews are not going well and the Company was to present a revised evaluation criteria along with the expression of disappointment for quality of CFO candidates presented by AICPL.

7. The Applicant filed the rejoinder to the abovesaid reply vide Diary No. 1554/2022 dated 20.05.2022 stating the following:

7.1. The Applicant relied on Section 5(20) of the Code while stating that in terms of Schedule A of the Slump Sale Agreement, there is a specific reference to the trade receivables from the Corporate Debtor which has been legally assigned to the Operational Creditor. Also, no previous approval or consent is required under the Slump Sale Agreement for the assignment of trade receivables / debt from the Debtor. Therefore, the Corporate Debtor is estopped from claiming any objections to the said agreement.

7.2. The Applicant submitted that the deficiency of Stamp Duty is a curable defect and cannot be considered on a bar to admit an application under Section 9 of the Code. The Applicant relied on



the judgment of NCLT, Kolkata in *Religare Finvest Ltd. Vs. Bharat Road Network Ltd.*, CP (IB) No. 540/KB/2018.

- 7.3. Moreover, the technical contention such as deficit stamp duty are to be raised before the appropriate authority which has jurisdiction to deal with such contentions. For the same reference has been made to the order dated 10.02.2022 passed by NCLT Mumbai in matter of *Sara Properties (India) Ltd. Vs. Vista ITCL India Ltd.* (MA 180/2020 in C.P. 1632/2019).
8. The Corporate Debtor has filed written submissions vide Diary No. 1191/2023 dated 10.05.2023 reiterating the grounds earlier taken in the preliminary objections and the reply filed.
9. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder, written submissions and the documents enclosed with the application.
10. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited (2018) 1 SCC 353*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as follows: -

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:
(i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)
(ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and



(iii) *Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

11. Therefore, to initiate CIRP filed under Section 9 of the Code, the abovesaid ingredients have to be satisfied. At this juncture it is also important to quote the judgment of the Hon’ble Supreme Court in *M/s S.S. Engineers & Ors. vs. Hindustan Petroleum Corporation Limited*, (2022) 234 COMP CAS 95, which reads as follows:

“32. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”

12. In view of provisions specified under the Code read with the judicial pronouncements laying down the essential ingredients of Section 9, the questions posed before us in the present matter are categorised as follows:

- I. Whether there exists an Operational Debt between the parties to the case which has become due and payable?



- II. Whether there exists a dispute between the parties prior to issuance of demand notice?
13. First, we see whether there exists an Operational Debt which has duly become payable. To determine the same, we refer to the Contract which was entered into between the Corporate Debtor with AICPL on 12.02.2018 and 08.03.2018 wherein the Corporate Debtor sought appointment of a CFO and Business Head. It is seen that the contract has been signed by the respective parties acknowledging the terms enumerated therein. In view of the services rendered, AICPL issued 4 invoices dated 26.02.2018, 26.02.2018, 19.03.2018 and 19.03.2018 amounting to Rs. 11,80,000/- (Rupees Eleven Lakh Eighty Thousand Only), Rs.3,54,000/- (Rupees Three Lakh Fifty-Four Thousand Only), Rs. 11,01,332.94/- (Rupees Eleven Lakh One Thousand Three Hundred and Thirty-Two and Ninety-Four Paise Only) and Rs. 3,30,400/- (Rupees Three Lakh Thirty Thousand Four Hundred Only).
14. Meanwhile, vide letter dated 17.05.2018, AICPL informed the Corporate Debtor that its business was transferred as a going concern to the Applicant herein and all future payments due to AICPL shall be transferred to the Applicant. The Corporate Debtor has on multiple occasions raised objections with regard to the maintainability of the Slump Sale Agreement executed between AICPL and the Applicant. Whereas there appears to be no letter or document available on record



addressed to either the Applicant or AICPL by which the Corporate Debtor has voiced such concern. The contention of the Applicant that it had perceived the aforementioned as name change of the Company is not tenable as the letter dated 17.05.2018 distinctly mentions that the business of AICPL has been transferred to the Applicant.

15. Earlier, the Applicant had preferred an Additional Affidavit annexing the relevant extracts of the Slump Sale Agreement dated 20.04.2018 and the extracts of the Board Resolution dated 20.04.2018 passed by AICPL approving the aforesaid sale. The Applicant was directed to file the Original Complete copy of the Slump Sale Agreement in a sealed cover on 14.06.2019. The same was complied with and the original complete copy of the Slump Sale Agreement filed in sealed cover was opened, perused and subsequently returned to the Applicant.
16. The Corporate Debtor has objected to the Slump Sale Agreement asserting that the Corporate Debtor never consented to the novation of contract with the Applicant. It is evident that the Corporate Debtor is opposing the Slump Sale Agreement as an afterthought to escape from making the payment towards the debt which is now due against the Applicant. The Corporate Debtor never replied/objected to the letter dated 17.05.2018. Therefore, it is perceptible that there exists an Operational Debt which has become due and payable by the Corporate Debtor. Hence, it is clear that the invoices which were raised by AICPL are now, in view of the Slump



Sale Agreement, payable by the Corporate Debtor to the Applicant, thereby making the Applicant an Operational Creditor. Hence, the first question is answered in positive light.

17. The second question which lies before us is regarding the determination of pre-existing dispute, if any, between the parties. The correspondence undertaken between the parties via letters is as below:

- I. Letter dated 28.06.2018 preferred by the Applicant to the Corporate Debtor requesting payment of outstanding amounts against invoices raised.
- II. Letter dated 13.07.2018 preferred by the Corporate Debtor to the Applicant demanding a sum of Rs. 137.53 Lakh against the deficiency in services.
- III. Demand Notice issued under Section 8 of the Code by the Applicant to the Corporate Debtor dated 30.07.2018.
- IV. Reply to the demand notice dated 09.08.2017 preferred by the Corporate Debtor to the Applicant.

18. The Corporate Debtor has pointed out that the services provided by the Applicant were not upto the mark through its letter dated 13.07.2018 and 09.08.2017 and claimed a sum of Rs. 137.53 Lacs for the damages caused due to deficiency in services. The Corporate Debtor has annexed correspondence undertaken via e-mails between the parties which are



taken into consideration for determination of the alleged dispute and produced as below:

I. E-mail dated 24.04.2018 preferred by the Applicant to the Corporate Debtor stating that the Applicant had worked on CFO project for almost 2 months and the invoices due within 15 days from issuance were not paid.

II. E-mail dated 29.04.2018 preferred by the Applicant to the Corporate Debtor stating as below:

*“As discussed in my recent conversation with Pranav, please do send in out payments of our invoices which are raised, sent and due for both the projects.
Post that, we would also like to understand incase you wish to continue these projects.”*

III. E-mail dated 29.04.2018 preferred by the Corporate Debtor to the Applicant which reads as below:

*“Dear Preety,
I am a bit surprised to receive your email today– in the trailing email.
As you know we had CFO interviews that did not go well at all. After that there was a detailed reflection with the Board after which we have been waiting for the revised Evaluation criteria and project approach plan from Amrop. After that I had several telecons with you where I invited you to come over share the aforesaid revised evaluation with the Board and take the payment. However, for some reason you have chosen not to do so. In your discussions with Mr. Pranav, he also asked you several times to come the very next day, explain the next steps and take the payment. As we did not see any action, this matter was escalated to the Board level and Mr. Kumar had a discussion with Mr Bharat on the same matter.
It appears as if you don't have the intent to go thru with these projects!*



As you are aware, the entire Board of the company has invested an immense amount of time in explaining the context and specs of the CFO role to you and the Amrop team. I have personally spent many hours on the same. I was personally extremely disappointed by the quality of the CFO candidates presented by Amrop on 3rd & 4th April. As the process owner of the search and also being the person who suggested Amrop's name to the Board, my disappointment was double. It was further compounded by what I could term as callous/lackadaisical project management of the candidates not showing up.

Out of the 7 candidates to be met, 2 were no show, 1 was not keen on the role, 1 was not at all qualified and the two that came and were worth interviewing were very far from the specs of Promoter experience etc. All in all, this ended up wasting a huge amount of very precious time of the board members and has pushed out the hiring of very critical positions.

Based on the quality of candidates, It was clear to me and to the Board members that either Amrop had not understood the search or was unable to deliver the same or worse, both.

.....

It is clear that there is a huge gap in the performance. We have entered into the search contract with you on a good-faith basis. Bu we see a clear gap in following the spirit of the contract.

We have made several requests to you to come and present the specs and the new plan, but you have not done so. In this process we have not only lost a huge amount of invaluable Board members time but have also been critically delayed in recruiting these two business critical positions for the Company.

To take this forward, I would invite you for an in person meeting with me at our Sainik Farms office on Monday 30th April (around 3 PM) so that you can clarity on the revised criteria of the CFO Role to the Board and your new approach to execute the search and once this is done, also kindly take the payment that is to be made.

.....”

IV. E-mail dated 29.04.2018 from the Applicant to the Corporate

Debtor reiterated as below:

“... Unfortunately we are going round on this conversation. Its actually quite simple. Hi Tech has to pay our invoices which have been due for months. As a client you had to make these payments as per agreement and you have not paid despite reminders and a patient approached by us.



You really cannot be saying all that you say without keeping your side of the commitments. So Please respond to us clearly when will our payments be released. Post receiving our payments is when there can be any real dialogue.”

- V. E-mail dated 30.04.2018 preferred by the Corporate Debtor to the Applicant which states as below:

“..... In my view the issue is not as simple as you have stated in your email.

4. I would like to bring forth the following facts and their implications in the context of these two searches:

- a. The original specs of the searches have clearly not been understood by the Amrop team despite many meetings by the Board members on the same. And this was after your verbal assurances that the Amrop team had fully understood them. We are still at Square One.*
- b. There has been significant performance failure on Amrop’s part in both the searches.*
- c. As a company we have ended up wasting more than a 100 hours of our Board members, including that of our Chairman and out international Board Members*
- d. Due to poor performance on both the searches, the Board’s time has been waster. Apart from this, the delay in recruitment for both these positions is causing a huge cost to our company. This must be taken into consideration.*

We have had another discussion on this matter with the Board committee today. The Board committee has been extremely disappointed with Amrop.

In view of the above points, I see Two options.

The preferred option being – As per your promise to the Board, please come over, share the revised plan & take the process, including payments, forward

Or If you choose to push us into a corner by moving this search as a “deemed termination” through your actions; we would have to regretfully, yet honourably terminate the search.”

- VI. E-mail dated 11.05.2018 by the Corporate Debtor to the Applicant reiterating the suggestion to hold a meeting for discussing the



matter and coming to a solution to the impasse that the parties find themselves in.

VII. E-mail dated 12.05.2018 by the Applicant to the Corporate Debtor wherein it has been specified that the meeting has no linkage with the payment of invoices as they have been due and outstanding since the dates mentioned.

19. It is apparent that the Corporate Debtor has employed the services of the Applicant for engaging candidates for the post of CFO and Business Head. As per the trail of e-mails, it appears that the candidates provided were not as per the specifications laid down by the Corporate Debtor. The same has been pointed out by the Corporate Debtor in its e-mails as well as letters preferred to the Applicant.
20. The Corporate Debtor, in such circumstances, time and again through e-mails sought a meeting with the Applicant to amicably settle the dispute which has arisen. Also, the Corporate Debtor has vide e-mails and letters repeatedly stated that the Board of the Corporate Debtor has incurred significantly cost due to not hiring for the 2 business critical roles. Moreover, it is noted that all the e-mails and letters are dated prior to the issuance of the Demand Notice under section 8 of the Code i.e. 30.07.2018 and the Corporate Debtor in the reply to the demand notice on 09.08.2017 has again raised the aspects which were earlier contended in the emails and letters. Owing to the circumstances mentioned in the e-mails, it is



- clear that the Corporate Debtor is rightly alleging a pre-existing dispute on the basis of deficiency in services.
21. The Adjudicating Authority while examining an application under Section 9 of the Code has to ensure that there exists no dispute between the parties from the documents placed before it. Dispute does not necessarily mean a suit or arbitration proceedings pending before receipt of a Section 8 notice but can also be inferred from correspondence between the parties to the case regarding the existence of the amount of Debt, the quality of goods or services or the breach of representation or warranty. Correspondence between the parties is general proof of dispute in matters pertaining to Section 9 of the Code. From the documents put before us, we can safely conclude that there exists a genuine dispute between the parties to the Case.
22. In the present matter, there exists a pre-existing dispute between the parties to the case. The conditions laid down under Section 9 of the Code are not fulfilled. Therefore, we are not inclined to initiate CIRP of the Corporate Debtor as envisaged under the provisions of IBC. This order shall not act as a bar to the Applicant in pursuing any other remedies available to it, under the prescribed provisions of law.
23. Accordingly, *CP No. (IB) 84/9/JPR/2019* is dismissed as rejected. In view of the foregoing, pending IAs, if any, are disposed off accordingly.



24. The Registry is directed to serve the copy of this Order to the parties.

-Sd-
DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

-Sd-
ATUL CHATURVEDI,
TECHNICAL MEMBER