

9

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 04.03.2021

THROUGH VIDEO CONFERENCING
CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 177/BB/2020	For admission	Sec 9 of I&B code 2016	Allegis Service (India) Pvt Ltd	Ritika Ravikumar for Indus Law	M/s Cryptgraph Techno- logies Pvt Ltd	

ADVOCATE FOR PETITIONER/s:

Lomesh Kiran Nidumuri
Rithika Ravikumar

[Signature]

ADVOCATE FOR RESPONDENT/s:

Nil.

ORDER

Heard Mr. Lomesh K. Nidumuri, along with Ms. Rithika Ravi Kumar, learned Counsel for the Petitioner none appeared for the Respondent.

CP(IB)No.177/BB/2020 is admitted by separate order.

[Signature]
MEMBER (T)

Amar

[Signature]
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.177/BB/2020
U/s.9 of the IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

Between:

M/s. Allegis Services (India) Pvt. Ltd.,
R/Off: Commerce @ Mantri, Level 3,
No.12/1 and 12/2 (N.S. Palya),
Bannerghatta Road,
Bengaluru – 560 076.

- Petitioner/Operational Creditor

And

M/s. Cryptograph Technologies Pvt. Ltd.
R/Off: 87, 3rd Floor, Sector 1,
27th Main, HSR Layout
Bangalore –560 102.

- Respondent/Corporate Debtor

Date of Order: 4th March, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present

For the Petitioner : Mr. Lomesh K. Nidumuri, Adv.
For the Respondent : None

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P.(IB)No.177/BB/2020 is filed by M/s. Allegis Services (India) Private Limited ('the Petitioner/Operational Creditor') U/s.9 of the IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency



Resolution Process (CIRP) in respect of M/s. Cryptograph Technologies Private Limited ('the Respondent/Corporate Debtor') on the ground that it has committed default for amount of Rs.43,12,975/- (Rupees Forty Three Lakh Twelve Thousand Nine Hundred and Seventy Five only) including interest @ 18%.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

- 1) M/s. Allegis Services (India) Pvt. Ltd. ('the Petitioner/Operational Creditor') is a company incorporated under the provisions of the Companies Act, 1956 vide CIN:U74140KA2005PTC035624. Its registered office is situated at Commerce @ Mantri, Level 3, No.12/1 and 12/2 (N.S. Palya) Bannerghatta Road, Bangalore – 560076. It is engaged in the business of offering qualified and competent personnel for services to other companies.
- 2) M/s. Cryptograph Technologies Pvt. Ltd. ('the Respondent/Corporate Debtor') is a company incorporated under the provisions of Companies Act, 1956 on 11.03.2010 vide CIN:U7220KA2010PTC052828. Its registered office is situated at No.87, 3rd Floor, Sector 1, 27th Main, HSR Layout, Karnataka 560102.
- 3) The Operational Creditor on 01.12.2014 entered into an agreement ('the First Agreement') with the Corporate Debtor for certain services. The First Agreement dated 01.12.2014 was in force till 30.11.2015. On account of the satisfactory services provided by the Operational Creditor, the Corporate Debtor entered into another agreement dated 14.03.2016 ('the Second Agreement') for the same services and this agreement was in force until 13.03.2018. Despite there being several due and pending invoices, the Operational Creditor agreed to enter into the Second Agreement to maintain continuity in services based on their assurances for repayment and to maintain an amicable business relationship.
- 4) Further, the Operational Creditor continued providing services to the Corporate Debtor and duly raised invoices for the same. The invoices were raised in terms of the Purchase Orders/Work Orders made between the parties for each resource. However, the Corporate Debtor failed to make

full payments towards the invoices raised. The official of Operational Creditor relentlessly followed up with the Corporate Debtor, its directors and officers for payments. After much pressure, the Corporate Debtor made two bank transfers to the tune of Rs.12,74,840/- towards partial discharge of the total outstanding that was due and payable.

- 5) The Corporate Debtor acknowledged its debt and sought for time to arrange funds to pay the dues owed by it to Operational Creditor. In the interest of maintaining a good business relationship with the Corporate Debtor, the Operational Creditor decided to grant the Corporate Debtor with additional time to clear its dues and continued to provide the Corporate Debtor with the services as requested by them. Despite several requests both oral and written were made to the Corporate Debtor to clear its dues however, no payments have been forthcoming from the Corporate Debtor. There were several discussions in which the Corporate Debtor agreed to pay the balance amounts, however none of the deadlines set by the Corporate Debtor were adhered to and no further payments were released.
- 6) The Corporate Debtor shared with the Operational Creditor its ledger of account indicating the past dues up to 10.03.2017 vide an email communication dated 10.03.2017 unequivocally acknowledging that the Corporate Debtor owed a sum of Rs.21,69,962/- to the Operational Creditor as on 10.03.2017. Furthermore, the Corporate Debtor acknowledged that a debt was due and payable and that the payment had been put on hold vide communication dated 27.03.2017. The Corporate Debtor remitted a total amount of Rs.12,74,840/- towards partial discharge of the acknowledged debt but failed to meet the entire liability due and payable to the Operational Creditor.
- 7) Further, the Operational Creditor in good faith continued to render services as agreed upon however it is pertinent to note that no further payments have been made to the Operational Creditor for the services thus rendered and therefore the outstanding dues payable by the Corporate Debtor to the



Operational Creditor towards the services provided amounts to Rs.43,12,975/-. The interest component is calculated at 18% and total amount due and payable to the Operational Creditor is a total of Rs.71,22,642.76/-.

- 8) Despite numerous reminders from the Operational Creditor to pay the debt, no payments were forthcoming from the Corporate Debtor. Rather, the Corporate Debtor repeatedly made false and illusory promises that the payments would be made shortly. It has become evident that the Corporate Debtor has absolutely no defence to the debt owed by it to the Operational Creditor. The debt is an admitted debt and is due and payable to the Operational Creditor.
 - 9) The Operational Creditor was hence constrained to issue a Demand Notice in Form-3 dated 19.09.2019 to the Corporate Debtor by post, by hand and by email. The Corporate Debtor received the same by hand and by email and has responded to the notice by email making untenable excuses to evade its responsibility to repay the Operational Creditor while requesting for additional documents which were immediately shared with it. Despite receipt of the notice, the Corporate Debtor has made no efforts to clear its liability by repaying the Operational Creditors of its admitted dues.
3. The Petitioner has filed an Affidavit dated 03.03.2021 by inter alia stating as follows:
- 1) This Tribunal issued notice to the Corporate Debtor on 19.06.2020 and thereafter re-issued notice on 14.08.2020, however there was no representation from the Corporate Debtor. The Counsel for the Operational Creditor also took steps to physically hand delivery the copies of the Petition and documents on the Corporate Debtor and the same was sent to the registered email address of the representative of the Corporate Debtor and the same was placed before this Tribunal vide Memo dated 27.08.2020.



- 2) Service on the Corporate Debtor as above amounts to adequate and good service in accordance with Rule 38 of the NCLT Rules, 2016. In the interest of bringing the Corporate Debtor on record for complete and effective adjudication of the Operational Creditor's claim, the Operational Creditor filed I.A No.28 of 2021 to carry out substituted service of notice on the Corporate Debtor through Paper Publication of the notice in the 'Hindu' and 'Udayavani' Newspapers.
- 3) Further, the paper publication was carried out on 16.02.2021 in the said newspapers. The said publication called on the Corporate Debtor to appear before the Tribunal on 04.03.2021, through its duly authorised representative, to defend the said petition. The above said matter was also listed on 18.02.2021 out of turn. The Counsel for the Operational Creditor appeared and clarified that the paper publication has been carried out on 16.02.2021 and as per the paper publication the next date of hearing was indicated as 04.03.2021 for Admission.
- 4) It is stated that the enquiries were made by the Operational Creditor and it is found that the Corporate Debtor is operating. It is seen from the correspondences from the Corporate Debtor as late as 2019 that has been annexed with the Petition. The Financial Statements of the Corporate Debtor have also been uploaded with the MCA.
4. Heard Mr. Lomesh K. Nidumuri, learned Counsel for the Petitioner and none appeared for the Respondent. We have carefully perused the pleadings of the Party and the extant provisions of the Code and Rules made thereunder.
5. Mr. Lomesh K. Nidumuri, learned Counsel for the Petitioner, has inter alia submitted that Debt and Default in question admittedly is not in dispute as Corporate Debtor has failed to oppose the said claim. The instant Petition is filed in accordance with law and also suggested a qualified Resolution Professional namely Mr. Surender Devasani, with Registration No.IBBI/IPA-001/IP-P00775/2017-2018/11348, who has also filed his Written Communication in Form-2 dated 24th June, 2020 and necessary declaration. Therefore, he has



urged the Adjudicating Authority to admit the case by initiating CIRP in respect of Corporate Debtor appointing IRP, imposing moratorium etc.

6. The case was listed for admission on various dates viz., 19.06.2020, 06.07.2020, 14.08.2020, 02.09.2020, 25.09.2021, 18.01.2021, 28.01.2021, 03.02.2021 and on 04.03.2021. Accordingly, the Adjudicating Authority ordered notice on 19.06.2020 and re-issued notice on 14.08.2020. Further, the Petitioner has served the notice on the Respondent and filed the proof of service. Even then none appeared for the Respondent and no reply has been filed. Further, I.A No.28 of 2021 was filed to carry out substituted service of notice on the Corporate Debtor through Paper Publication of the notice in the 'Hindu' and 'Udayavani' newspapers. This IA was disposed of by observing that the service on the Respondent is deemed to have been validly effected, and no further notice is required to be given. The Registry was directed to post the CP for admission. However, on that date also none appeared nor any objections were filed to oppose the claim of the Petitioner.
7. In view of the foregoing we are constrained to come to a conclusion that the Respondent Corporate Debtor is deliberately not entering appearance and has no defense to offer on the case made out by the Petitioner in the instant Petition. The debt and default as mentioned in the Petition remain undisputed. On the other hand the Operational Creditor has substantiated its claim by submitting sufficient evidence in support of the claim of Rs.43,12,975/-, plus interest @ 18%. The instant Petition is filed in accordance with the extant provisions of the Code and the Rules made thereunder. The Petitioner has also suggested a qualified Resolution Professional namely Mr. Surender Devasani, with Registration No. IBBI/IPA-001/IP-P00775/2017-2018/11348, who has also filed Written Communication in Form-2 dated 24th June, 2020 and necessary declaration. The said IRP is eligible to be appointed as IRP in this case.
8. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, U/s 9(5)(i) and other extant provisions



of the IBC, 2016, we hereby admit C.P.(IB)No.177/BB/2020 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Respondent / Corporate Debtor with the following consequential directions:

- 1) **Mr. Surender Devasani**, bearing **Registration No.IBBI/IPA-001/IP-P00775/2017-2018/11348**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor namely M/s.Cryptograph Technologies Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
 - e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;



- f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
- 4) The Board of Directors and all the staff of Respondent/Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) Post the case for report of IRP on 15.04.2021.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

Amar