

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI

C.P.No.IB-1602/(ND)/2019

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

**In the matter of:**

**Mr. Arun K. Khanna**

Having its office at:-  
25, Shakuntala Farms  
M.G.Road, Sultanpur,  
Delhi-110030

...Applicant

**Versus**

**Q Innovations Private Limited**

Having its Registered office at:-  
41-A, 3<sup>RD</sup> Floor,  
Street No.1, Krishna Nagar,  
Safdarjung Enclave  
New Delhi-110029

Also at:

Hero Ally Group Limited  
P.O. Box 957, Offshore Incorporations Centre  
Road Town, Tortola, British Virgin Islands

...Respondent

C.P. IB-1602/ND/2019

Arun Kumar Khanna vs. Q Innovations Private Limited



**Coram:**

**SHRI ABNI RANJAN KUMAR SINHA**  
Hon'ble Member (Judicial)

**DR. V.K. SUBBURAJ**  
Hon'ble Member (Technical)

Counsel for Applicant: Mr. Vijay Kaundal, Advocate  
Counsel for Respondent: SRGR Law Offices

A handwritten signature in black ink, appearing to be 'Arun Kumar Khanna', located at the bottom right of the page.

## ORDER

Date:20.11.2019

1. This is an application filed by the Applicant Shri Arun K. Khanna seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") against the Respondent M/s Q Innovation Pvt. Ltd. for the alleged default on the part of the Respondent in settling an amount of Rs. 7,60,62,690/- towards the services rendered by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant along with Olive Telecommunication Pvt. Ltd., Hero Ally Group Limited and Respondent entered into an MOU dated 13.06.2018, according to which the Applicant was entitled to the commission. In terms of the said MOU, it was agreed between the parties that any receivables received by the Respondent on account of the said assignments, will be first utilized to make payment to the Applicant.
- ii. In pursuance of the said MOU, a Commissioning Agreement dated 27.07.2018 was also executed between the Respondent, Hero Ally and the Applicant. That as per clause 2.1 of the Commission Agreement, the Respondent and Hero Ally agreed



- on paying the Applicant USD 1 per unit/phone. subject to maximum of USD 2,00,000/- to be paid out of the receivables to be received by the Respondent from.
- iii. Further, as per clause 2.2 of the Commissioning Agreement, the amounts payable by Respondent to the Applicant would be exclusive of any applicable taxes.
  - iv. As per clause 1.4 of the Commissioning Agreement, Hero Ally also undertook to provide all details of shipping of units within 03 (three) working days of such shipping and payment within 02 (two) weeks from the date of shipping of the units/phones.
  - v. Simultaneously, the Applicant, the Respondent and Hero Ally along with Olive Telecommunication Pvt. Ltd., Harsh Khanna and Ritu Khanna, executed Share Purchase Agreement dated 27.07.2018, whereby Hero Ally purchased entire shareholding in the Respondent resulting in 100% shareholding ownership of Respondent by Hero Ally.
  - vi. Thereafter, the Respondent and Hero Ally failed to ever provide the shipment details to Applicant or make payment of the due commission as per the Commissioning Agreement. The Applicant wrote various emails to the Respondent and Hero Ally to provide details of shipment to the Applicant including



emails dated 25.07.2018, 13.09.2018, 18.09.2018, 19.09.2018, 21.09.2018 and 20.10.2018.

- vii.* Ultimately, the Applicant had to resort to issuing a legal notice dated 26.10.2018 to the Respondent and Hero Ally to provide details of shipments of the Applicant. In response thereto, the Respondent, vide email dated 30.10.2018, not only admitted payment of due amounts to the Applicant by the Respondent, but also admitted the factum of delivery of around 1,50,000 units/phones.
- viii.* The Respondent vide another e-mail dated 21.11.2018 acknowledged that payment is due to the Applicant and promised payment before end of January, 2019.
- ix.* Accounting for the inaction on the part of Respondent regarding making of due payment, the Applicant was forced to issue legal notice dated 10.12.2018 informing the Respondent about the updated shipment amount of 5,00,000 units/phones and demanding payment of USD 5,00,000/-. This legal notice dated 10.12.2018 was again sent to the Respondent vide email dated 10.12.2018.
- x.* The Respondent admitted the claim in its reply dated 10.12.2018 and promised payment of the claimed amount before end of January, 2019 whereas as per the Commissioning

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Agreement the same was payable within 02(Two) weeks from the date of shipment.

- xi.* Thereafter, the Applicant was constrained to issue statutory demand notice dated 26.02.2019 in terms of Section 8 of the Code demanding USD 5.90.000/- inclusive of GST.
- xii.* Pursuant to the issue of the aforementioned demand notice, the Respondent contacted the Applicant on 22.03.2019 regarding the dues. Thereafter, the Respondent and the Applicant executed a Settlement Agreement ("Closing Agreement") dated 17.04.2019 whereby the Respondent agreed to pay USD 8,25,000/- by 06.05.2019 and additional 18% GST on the said amount by 15.05.2019 and also agreed to pay 18% GST on payment of USD 6,00,000/- already made by the Respondent to the Applicant by 06.05.2019.
- xiii.* The aforesaid payments were agreed to be made subject to the Applicant raising invoices for USD 6,00,000/- and USD 8,25,000/- along with applicable 18% GST and recalling the earlier notices issued by the Applicant to the Respondent.
- xiv.* The Applicant issued invoice dated 22.04.2019 for Rs. 5,10,11,440/- (equivalent of USD 6,00,000/- plus 18% GST) and Rs. 6,82,81,290/- (equivalent of USD 8,25,000/- plus 18% GST) and sent it to the Respondent vide email dated

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03.05.2019. The Applicant also recalled all its earlier notices vide email dated 26.04.2019.

- xv. Despite the aforesaid, the Respondent failed to clear the dues of the Applicant which are Rs. 7,60,62,690/- (which includes USD 825,000 plus 18% GST and 18% GST of already made payment of USD 600,000) out of which Rs. 6,56,46,900/- were to be paid by the Respondent by 06.05.2019 and Rs. 1,04,15,790/- were to be paid by the Respondent by 15.05.2019.
- xvi. Thereafter, upon non-receipt of payment from Respondent, the Applicant wrote various emails to the Applicant to repay its dues qua which the Respondent kept on seeking extension. The last extension was sought by the Respondent till 10.06.2019 for making the payment of the entire due amount. The Respondent has failed to clear its acknowledged and admitted outstanding dues of Rs. 7,60,62,690/-.
- xvii. The Respondent further sent an email dated 10.06.2019, wherein, it was stated by the Respondent that the payment is ready to be transferred further admitting their liability to pay.
- xviii. After numerous extensions and aggrieved by the constant defaults committed by the Respondent, the Applicant issued another statutory demand notice under Section 8 of the Code

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on 12.06.2019. The said notice was replied to by the Respondent on 22.06.2019 wherein fictitious disputes pertaining to the invoices were raised for the first time.

2. Consequent to the issue of notice by the Applicant and the Tribunal, the Respondent's counsel Mr. Nitin Kumar Gupta appeared on 02.09.2019 and offered to file vakalatnama as well as reply in the matter within 3 weeks. However, despite opportunities given, the Respondent failed to appear and file the reply. Hence, the Respondent was proceeded ex-parte on 14.11.2019 and the Applicant's arguments were heard.
3. We have gone through the documents filed by the Applicant and heard the arguments. A perusal of the correspondence between the parties indicate that the Respondent not only admitted payment of due amounts to the Applicant but also admitted the factum of delivery of around 150,000 units of phones vide email dated 30.10.2018. Further, vide email dated 21.11.2018 the Respondent acknowledged the payment of demanded due amounts to the Applicant before end of January 2019 by the Respondent. Consequent to the issue of legal notice dated 10.12.2018 by the Applicant, the Respondent admitted

and replied to the email dated 10.12.2018 and promised payment of the claimed due amount before the end of January, 2019.

4. Consequent to the issue of the first statutory demand notice dated 26.02.2019, the parties entered into a settlement agreement dated 17.04.2019 whereby the Respondent agreed to settle the amount. However, since the Respondent failed to comply with the terms of agreement the Applicant proceeded with issuing another notice under Section 8 of the Code on 12.06.2019. In its reply to the Section 8 notice, the Respondent raised certain issues for the first time and they appear to be frivolous in nature. Even on 10.06.2019 the Respondent has written an email wherein it has been categorically and specifically stated by the Respondent that the payment is ready to be transferred.
5. In light of the above circumstances the Applicant has clearly established the existence of debt and default on the part of the Respondent. Hence this Tribunal initiates CIRP on the Respondent with immediate effect.
6. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”
7. The interim resolution professional (“IRP”), named in the list provided by the IBBI, is Mr. Anurag Sharma, email id: Anurag.s.irp@gmail.com, phone number:9811581119 and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.
8. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

  
**(Dr. V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**

  
**(ABNI RANJAN KUMAR SINHA)**  
**MEMBER (JUDICIAL)**

Deepak