

2013
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BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (LB) No. 594/9/NCLT/AHM/2018

Coram: Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 26.04.2019

Name of the Company: Oman Inc. (HUF)
V/s.
DIGJAM Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	ISHAN SHAH	Adv.	Respondent	<i>Ishan</i>
2.	NATASHA DHRUMAN SHAH	Adv.	APPLICANT	<i>Natasha.</i>

ORDER

The parties are represented through their respective learned counsels.

The Order is pronounced in the open court, vide separate sheet.



Dated this the 26th day of April, 2019

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MANORAMA KUMARI
MEMBER JUDICIAL

Certified to be True Copy of the Original

Manorama
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 594/9/NCLT/AHM/2018

In the matter of:

M/s. Oman Inc. (HUF)
12/1 Magnet Corporate Park
Behind Intas Pharmaceuticals,
Next to Zydus Hospital
Thaltej Hebatpur Road
Off. S.G. Highway
Ahmedabad 380 054 ...

Petitioner
[Operational Creditor]

Versus

M/s. Digjam Limited
Aerodrome Road
JAMNAGAR 361 006
Gujarat State ...

Respondent
[Corporate Debtor]

Order delivered on 26th April, 2019.

Coram: Hon'ble Ms. Manorama Kumari, Member (J).

Appearance:

Advocate Mr. Ishan Shah for the respondent
Advocate Ms. Natasha Dhruvan Shah for applicant

ORDER

1. That, the instant application is filed through authorised signatory by applicant/operational creditor M/s. Oman Inc. (HUF), under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"].
2. That, the applicant/operational creditor M/s. Oman Inc. (HUF) is a Hindu Undivided Family registered under the provisions of the Finance Act, 1994, having its registered office at 12/1 Magnet Corporate Park, Behind Intas



Signature

Pharmaceuticals, Thaltej Hebatpur Road, Ahmedabad 380 054 (Gujarat) is engaged in the business activity to provide services in Creative Media.

3. That, the respondent/corporate debtor M/s. Digjam Limited is a company incorporated under the Companies Act, 1956 on 17th June, 2015 and having its registered office at Aerodrome Road, Jamnagar 361 006, Gujarat State having identification No. L17123GJ2015PLC083569. That, authorised share capital of the corporate debtor is Rs. 1,25,05,00,000.00 and paid up share capital is Rs. 92,64,16,210.00.
4. It is submitted by the applicant that the respondent company approached the applicant for providing services as integrated communication solution provider for DIGJAM brand. That, copy of the annual retainership contracts for working as an integrated communication solution provider for DIGJAM brand dated 25.06.2016, 25.06.2015, 25.06.2014 and 25.06.2013 along with annual retainership contract for creating and updating facebook and twitter page of DIGJAM dated 01.08.2016, 01.08.2015, 01.08.2014 and 01.08.2013 executed between the applicant and the respondent. That, since 2013 the applicant has been supplying services to the respondent and at no point of time there has been any grievance reported by the respondent or any other consumers of services.



Attorney

5. It is further submitted by the applicant that upon completion of its obligations under the retainership contract, applicant raised invoices towards the services duly delivered and consumed by the respondent. However, the respondent did not make payments towards services consumed. That, despite several reminders and personal visits the outstanding has not been cleared by the respondent. It is submitted by the applicant that a total debt is amounting to **Rs. 21,74,626/- (Rupees twenty-one lacs seventy-four thousand six hundred twenty-six only)** has fallen due on 30.06.2018. Ultimately, the applicant was compelled to issue notice under Section 8 dated 23.08.2018 under IB Code along with copy of invoices and ledger demanding the outstanding payment and the said notice came to be dispatched through courier on 23.08.2018 and duly served upon the respondent on 24.08.2018. It is further submitted by the applicant that despite due service of demand notice dated 23.08.2018, no payment of outstanding debt is received neither any notice of dispute is communicated to the applicant. That the debt has fallen due w.e.f. 08.08.2014.

6. The applicant submitted copy of the following documents in support of his claim: -

Sr. No.	Particulars	Page Nos.
01	Letter dated 05.09.2018 giving authorisation to initiate legal action against corporate debtor.	21-22
02	Form - 2 written communication by proposed interim resolution professional	23-24



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03	Declaration of registration of Hindu Undivided family registered under the provisions of the Finance Act, 1994	25
04	Details of DIGJAM obtained from the web portal of MCA	26-27
05	Annual retainership contracts for working as integrated communication solution provider for DIGJAM brand dated 25.06.2016, 25.06.2015, 25.06.2014 and 25.06.2013 along with annual retainership contract for creating and updating facebook and twitter page of DIGJAM dated 01.08.2016, 01.08.2015, 01.08.2014 and 01.08.2013 executed between the applicant and respondent	28-47
06	Invoices raised by applicant on the respondent	48-86
07	Demand notice dated 23.08.2018 along with proof of dispatch and tracking report obtained from the web portal of DTDC courier	87-93
08	Working computation of default in tabular form	94
09	Statement of bank account maintained with HDFC Bank for the period between 01.04.2014 and 25.09.2018	95-173
10	Ledger account of respondent obtained from the books of accounts of applicant from 01.04.2014 to 25.09.2018	174-185
11	Affidavit in support of the application that no response/reply or notice of dispute has been given by the respondent relating to dispute of the unpaid amount	18-20

7. Heard the arguments of the learned counsel appearing for the applicant.

Findings:

8. On perusal of the material available on record it is found that service of notice is complete. That, despite issuance of notice by the petitioner the respondent has not made payment of outstanding amount nor raised any dispute. That, no dispute has been raised by the respondent. Learned advocate appearing on behalf of the respondent filed an affidavit in reply wherein it is categorically stated ***that the corporate debtor has been severely affected due to working capital constraints and lack of financial liquidity which has also resulted in substantial losses in recent years.*** That, the corporate debtor by way of affidavit also



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admitted the liabilities exceeding current asset by Rs. 94.38 crores as on 31.12.2018.

9. On perusal of the record it is found that the applicant has annexed to the application invoices for the period from 01.08.2014 to 01.03.2017 for the services rendered to the respondent. On perusal of the bank statement it is found that respondent has never made any payment towards the services rendered by the applicant. It is also found that the bills raised from 01.08.2014 to 01.08.2015 are time barred in as much as there is no acknowledgement of debt which can revive the period of limitation. However, the invoices raised 12.11.15 onwards are within limitation. At this juncture it is desirable to refer to the decision taken by the Hon'ble Supreme Court in the case of **B.K. Educational Services Private Limited vs. Parag Gupta and Associates** in Civil Appeal Nos. 23988 of 2017, 439, 436, 3137, 4979, 5819 and 7286 of 2018 which is reproduced here below: -

"27. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. The right to sue, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

28. In view of our finding that the Limitation Act has in fact been applied from the inception of the Code, it is necessary for us to go into the arguments based on the doctrine of laches. The appeals are therefore remanded to the NCLAT to decide the appeals afresh in the light of this judgement."



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10. That, the records available shows that the amount due to the Applicant from the Respondent is in respect of Service provided to the respondent. The application is admitted to the extent of bills raised from 12.11.2015 to 01.03.2017. The amount claimed by the Applicant from the Respondent is "operational debt" within the meaning of Section 5, sub-section (21) of the Code. The operational debt is due to the Applicant. Therefore, Applicant is an "Operational Creditor" within the meaning of sub-section (5) of Section 20 of the Code. From the aforesaid material on record, it is established that there exists debt as well as there is occurrence of default.
11. That, the Application filed by the Applicant is complete in all respects. That, record show that the notice issued by the applicant is received by the respondent. From the above stated discussion and on the basis of material available on record it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code. The applicant has proposed the name of Shri Parag Sheth, 404, Sachet II, Opp. GLS University, Maradia Plaza Lane, C.G. Road, Ahmedabad 380 006 having registration No. IBBI/IPA-002/IP-N00142/2017-18/10381 (pksheth@hotmail.com) to act as an interim resolution professional. Form 2 of the proposed interim resolution professional has been annexed and placed at page No.23 & 24 of the application where declaration is made that no



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disciplinary proceeding is pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

12. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority directs the Insolvency Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and calls for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

13. The petition is therefore admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -

- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;



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- (iii) 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 (54 of 2002);
 - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
14. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
15. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
16. This Petition stands disposed of accordingly with no order as to costs.



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17. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.

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**Ms. Manorama Kumari
ADJUDICATING AUTHORITY
MEMBER JUDICIAL**

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