



**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 271/9/HDB/2020

U/S 9 of IBC, 2016, r/w Rule 6 of I & B(AAA) Rules, 2016

Between

M/s. Crayon Software Experts India Private Limited
902/903, Lodha Supremus,
Kanjur Village Road, Nehru Nagar,
Kanjurmarg East, Mumbai- 400 042.

FREE OF COST COPY

...Operational Creditor

Versus

M/s.Bodhtree Consulting Limited
Block "A", Wing 2, Level 6,
Cyber Gateway, Hitech City,
Madhapur, Hyderabad- 500 081.

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

...Corporate Debtor

Date of order: 20.02.2023

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Sh. Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: Mr.P.Mohit Reddy, Counsel
For the Respondent: Mr. Nitish Bandari, Counsel

PER: BENCH

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code (hereinafter to be referred as "Code"), read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking admission of the application for initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent defaulted in the payment of alleged debt of Rs. 9,24,37,791/-(Rupees Nine Crores Twenty Four Lakhs Thirty Seven Thousand Seven Hundred Ninety one only).

2. **The averments in brief of the Application are that;**

2.1 The Operational Creditor supplies software products obtained from the third party and provides consulting services to their global customers.

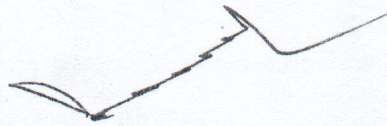
2.2 The Corporate Debtor is a limited Company which enables enterprises to transform their business using the power of cloud analytics and digital solutions.

2.3 It is averred that "Madhya Pradesh Poorv Kshetra Vidyut Vitaran Limited" issued tender in favour of corporate debtor for providing required services. Thus corporate debtor approached the operational creditor and requested for Microsoft Cloud and Software Licensing services to their customer i.e "Madhya



Pradesh Poorv Kshetra Vidyut Vitaran Limited". Thus both parties (operational creditor and corporate debtor) entered into an agreement dated 29.04.2017.

- 2.4 It is averred that the term of the agreement was further renewed by the corporate debtor for a period of 12 months i.e from 01.01.2018 to 31.12.2018 by entering into an amendment to the contract document vide Enrolment No.5109617 and issued purchase order. In accordance with the purchase order dated 26.06.2018, operational creditor raised an invoice for an amount of Rs.6,39,44,753/- vide dated 29.06.2018. It is further submitted that as per the invoice dated 29.06.2018, the payment was due on or before 55 days.
- 2.5 It is averred that corporate debtor has given a cheque for an amount of Rs.6,39,44,753/-, which was returned unpaid on 30.08.2018 with a remark " PAYMENT STOPPED BY DRAWER". Thus operational creditor submitted that to keep cordial relation with corporate debtor, informed the corporate debtor about the dishonour of cheque and had not taken any legal action.
- 2.6 It is averred that corporate debtor has failed to make payments beyond the due dates of Invoices dated 29.06.2018, inspite of repeated requests for payments through emails and calls. Since the corporate debtor failed to make the timely payment, Operational creditor issued a letter of recovery of payment



dated 26.11.2018, demanding the payment of Rs.6,39,44,753/- and interest of Rs.41,08,165/-.

- 2.7 It is averred that with respect to the letter dated 26.11.2018, corporate debtor sent a letter to operational creditor dated 10.12.2018 seeking certain documents with regard to the time period of the services rendered to corporate debtor. It is averred that the same has been given, but no proceedings has been initiated by the corporate debtor against such claims.
- 2.8 The chronology of the events of the purchase order is mentioned below:

	Purchase Order 1	Purchase Order 2
Period	01.07.2016 to 31.12.2017	01.01.2018 to 31.12.2018
Purchase order executed on	28.04.2017	26.06.2018
Period of Software Assurance Services	01.07.2016 to 31.12.2017(18 months)	01.01.2018 to 31.12.2018(12 months)
Period of Cloud Subscription Services	01.05.2017 to 31.12.2017 (8 months)	01.01.2018 to 31.12.2018 (12 months)

- 2.9 It is further averred by operational creditor that though clarifications as required has been provided, corporate debtor failed in making payment. Thus, sent legal notice dated 21.08.2019 for recovery of operational debt. Whereas, the



corporate debtor replied to the legal notice alleging that operational creditor failed in complying the terms of agreement.

2.10 Thus operational creditor issued demand notice under Rule 5 of I&B Rules, 2016 dated 19.03.2020 which was returned with an endorsement "Item Returned : Addressee Left without Instructions" on 22.05.2020. Further, operational creditor served demand notice through email for which corporate debtor had replied on 06.06.2020, in which corporate debtor had not denied the services rendered by the operational creditor. Thus operational creditor prayed this Tribunal to initiate CIRP against the corporate debtor.

3. Counter filed by corporate debtor.

3.1 Corporate debtor denied the averments made by the operational creditor stating that the Company Petition is devoid of merits as the operational creditor has failed to make out any case for initiation of CIRP.

3.2 It is averred that there is pre-existing dispute before issuance of demand notice dated 07.05.2020 with regard to the services provided by the operational creditor.

3.3 It is averred that operational creditor did not complete the obligations under Purchase Order-1, thus corporate debtor on 23.08.2018 sought clarification with respect to the supply of purchase order-1. It is averred that corporate debtor had given cheque to the operational creditor for an amount of Rs.6.39



crores, corporate debtor had intimated the operational creditor vide emails dated 27.08.2018 and 28.08.2018 that the amount of Rs.6.39 crores shall not be deposited until all the disputes are resolved. But the operational creditor even after instructions from the corporate debtor deposited the cheque in the bank.

- 3.4 It is averred that there are several disputes pending, meanwhile operational creditor addressed a letter dated 26.11.2018 for recovery of amount of Rs.6,84,66,079/- for alleged services under Purchase Order-1.
- 3.5 It is averred that the operational creditor had not provided complete services as per the purchase order-1. Thus the additional amount which were paid towards purchase order-1 was adjusted towards, Purchaser order-2, the same has been informed by the corporate debtor to the operational creditor.
- 3.6 Thus the corporate debtor submitted that there is pre-existing dispute before issuance of demand notice dated 07.05.2020 and thus the present company petition is not maintainable and the Hon'ble Tribunal may dismiss the petition with exemplary costs.

4. **Rejoinder filed by the operational creditor**

- 4.1 It is averred that the contentions raised by the corporate debtor, Are illegal and contrary to law.
- 4.2 It is averred that pursuant to the request of the corporate debtor for the software services, operational creditor approached the



Microsoft and requested for quotations. The Microsoft, team intimated the terms and conditions to the corporate debtor vide email dated 09.01.2017. Thereafter, corporate debtor accepted and agreed to the proposal and the terms and conditions therein and proceeded with signing Z the program signature form on 26.04.2017.

- 4.3 Thereafter, corporate debtor issued Purchase order-1 on 28.04.2017. In terms of the programme signature form corporate debtor needs to enter into an "amendment contract document" effective from 29.04.2017. As per the document, operational creditor rendered his services to corporate debtor. Pursuant thereto, corporate debtor requested for extension and accordingly an extension was made between the parties and thus operational creditor raised invoice.
- 4.4 The corporate debtor then raised contentions that it had erroneously raised invoice for 18 months while the term of contract was only 8 months. Regarding this frivolous claims Microsoft representatives vide email dated 18.09.2018 had clearly stated that the document executed by corporate debtor are abundantly clear and the same must be relied upon for the explanations sought by the corporate debtor. Further the term of the contract mentions that the agreement shall be valid and subsisting for a period of 8 months from thereon wherein the operational creditor shall continue to render its services. As per



the above mentioned document the operational creditor has rendered his services to the corporate debtor.

- 4.5 It is averred that as per the above facts the corporate debtor is liable to make payments to the operational creditor for the services rendered to them.
- 4.6 Thus the present application is filed seeking initiation of CIRP against the corporate debtor.
5. Written submissions filed by the operational creditor by reiterated the facts mentioned in the Petition and the rejoinder along with case laws.
6. Written submissions filed by the corporate debtor by reiterating the facts in the reply/counter and with case laws.
7. In the above backdrop the point that emerges for consideration by this Tribunal is:
“Whether an operational debt as claimed by the Applicant is due and payable by the corporate debtor to the applicant, If so, whether the Corporate Debtor defaulted in payment of the same”?
8. We have heard learned counsel for operational creditor Shri P.Mohit Reddy, and Learned Counsel for corporate debtor Shri Nitish Bandari, perused the record.



9. As per the submissions made in the Application, the corporate debtor had placed two purchase orders with the operational creditor. First purchase order is dated 28.04.2017 and later one is dated 29.06.2018. While is it the case of the operational creditor that in the first purchase order the products/services required to be supplied and rendered were completed as per the terms and conditions of the purchase order and the invoices dated 05.05.2017 for sum of Rs.10,70,14,697/- has been raised on the corporate debtor and corporate debtor in acceptance of fulfilment of terms of the purchase order dated 28.04.2017 paid the amount in full. Thus fully honoured the invoices dated 05.05.2017. However, the corporate debtor later, contends that in respect of the first purchase order an excess payment has been made which plea have been refuted strongly by the operational creditor.
10. In so far as the 2nd purchase order dated 26.08.2018 which also relates to providing services/products, which has been availed immediately upon expiry of the services mentioned under first purchase order, the operational creditor claiming that it had rendered the services as per the terms and conditions of the 2nd purchase order and raised invoices dated 29.06.2018 for sum of Rs.6,39,44,753/-.
11. According to the Applicant, corporate debtor had accepted the said invoice and issued cheque bearing number 001151 dated 25.08.2018 for the sum of Rs.6,39,44,753. However, the said cheque when



presented before bank on 29.08.2018 has been returned un-paid stating that corporate debtor had issued stop payment instructions to its banker. Being aggrieved by the said instructions in respect of the cheque dated 25.08.2018, the operational creditor had issued demand notice dated 07.05.2020 demanding in all a sum of Rs.9,24,37,791/- which comprises principle of Rs.6,39,44,753/- and interest @24 p.a totalling to 2,84,93,038/-. The corporate debtor sent reply dated 06.06.2020 raising a plea of pre-existing dispute.

12. According to the corporate debtor, the contract between the operational creditor and corporate debtor for software assurance services and cloud subscription services is for period of 30 months from July 2016 to December 2018 and out of the period of 30 months the operational creditor provides services for 20 months for which corporate debtor paid an amount of 10,70,14,697/- to operational creditor and for the remaining 10 months i.e., from July 2016 to April 2017 the operational creditor did not provide services nor provided any documents stating that they have provided services for said period. However, as the operational creditor has claimed amounts for said 10 months the corporate debtor denied to pay the amounts and also issued reply letters dated 10.12.2018, 03.09.2019 and 06.06.2020. According to the Learned Counsel these are disputed questions of facts, hence, adjudication of same is impermissible under IBC, 2016. It is further submitted that the corporate debtor issued purchase orders to operational creditor for software assurance services and cloud subscription services for 30 months but the



operational creditor did not provide legally licensed services for said period. Therefore there is no claim for services not provided by operational creditor and the present company petition is not maintainable as there is no debt much less an operational debt for operational creditor to file the present company petition.

13. However, Learned Counsel for the operational creditor contended that the corporate debtor having accepted the invoices dated 05.05.2017 for sum of Rs.10,70,14,697/- being the amount for products/services rendered for the corporate debtor and paid the entire amount in full without demur and thereafter issued yet another purchase order and a cheque for Rs. 6, 39, 44, 753/- towards the amount due and payable under the said contract is contending that it raised a dispute as to the services rendered.
14. In the light of the rival contentions, and we have carefully perused the first purchase order dated 28.04.2017, and the invoice dated 05.05.2017 besides the counter filed by the Corporate Debtor, where in para-7 of counter, the Corporate Debtor categorically admitted the payment regarding the first purchase order, without any demur. So much so corporate debtor having made payment in respect of the invoice dated 05.05.2017 raised, exclusively for the products/services rendered for the corporate debtor without demur or protest, is estopped under law, from claiming that for the services rendered or products supplied, excess payment, has been made. Moreover, it is pertinent to note that upon completion of the work



obligations under the first purchase order issued and honouring the invoice raised by the Corporate Debtor, the Corporate Debtor issued the 2nd purchase order. It is also on record that before issuing the cheque for Rs. 6, 39, 44, 753/- in respect of the 2nd Purchase order, no dispute has been raised by the Corporate Debtor.

15. Needless to say that if it was true that dispute regarding products/services rendered under any of the above purchase orders if really exists, the normal conduct of any prudent business person would be to raise complaint regarding product supplied and services rendered before honouring the invoices raised in respect of the said work. Admittedly no such protest has been made by the corporate debtor in the case on hand. On the other hand payment under the first invoice has been made toto by the corporate debtor and in respect of the 2nd purchase order the Corporate Debtor issued cheque without demur, and subsequently issued stop payment instructions to the Banker. Hence, we hold that an operational debt of sum exceeding rupees one crore is due and payable by the corporate debtor has been established by the Operational Creditor. Therefore, in this backdrop the plea of pre-existing dispute is nothing but an after-thought, and a moonshine defence.
16. In so far as default in payment of the aforementioned operational debt by the corporate debtor is concerned it is defence of the corporate debtor that as it had paid excess amount under first purchase order, as such nothing is payable to the applicant.



17. In this regard, it may be stated that the plea that under the first purchase order corporate debtor had paid excess amount is unconvincing and unacceptable in as much as the entire amount due under first invoice dated 05.05.2017 has been paid without any demur by the Corporate Debtor. Nextly, even if there was any excess payment made being in the nature of counter claim, this Tribunal, in an enquiry under Section 7 or 9 of IBC is not entitled for probing the same. In this regard reliance has been placed in the matter of "*Vishal Doshi Vs Bank of India & Anr*" in *Company Appeal(AT) (Insolvency) No.723/2019* which is held as follows:

17 "with regard to Counter claim is concerned, the Adjudicating Authority cannot decide while admitting the Application. As such all the essential requirements have been fulfilled and Application under Section 7 was rightly admitted by the Adjudicating Authority". The Hon'ble Supreme Court in "Swiss Ribbon Private Limited & Ors. Vs. Company Appeal(AT)(Insolvency) No. 723 of 2019 Page 13 of 13 Union of India & Ors." [Writ Petition (Civil) No. 99 of 2018] reported in (2019) 4 SCC 17 at paragraphs 35 and 36 held as under:]

"35. Insofar as set-off and counterclaim is concerned, a set-off of amounts due from financial creditors is a rarity. Usually, financial debts point only in one way – amounts lent have to be repaid. However, it is not as if a legitimate set-off is not to be considered at all. Such set-off may be considered at the stage of filing of proof of claims during the resolution process by the resolution professional....."



36. Equally, counterclaims, by their very definition, are independent rights which are not taken away by the Code but are preserved for the stage of admission of claims during the resolution plan.....”

18. The Counter Claim and the set off as claimed by the Appellant herein cannot be decided either by the Adjudicating Authority or by this Appellate Tribunal, we refrain from interfering with such issues.”

Therefore, the theory of excess payment and set off shall fail invariably. When once theory of counter claim held to be not sustainable before Tribunal, the default of sum over rupees one crore stares at corporate debtor and same is not discharged, so default stands established.

18. Therefore, in the light of our above discussions and taking into consideration the submissions made by both sides, we are satisfied that the applicant has established the existence of operational debt of a sum over rupees one crore, due and payable by the Corporate Debtor and the Corporate Debtor besides defaulted in payment. Further, we hold that there is no acceptable piece of evidence of existence of a pre-existing dispute prior to the issuance of demand notice and the defense is nothing but a moon shine, hence we hold that it is a fit case to put Corporate Debtor into CIRP.

19. The Operational Creditor has not suggested the name of Interim Resolution Professional and requested the Tribunal to appoint from the panel of Insolvency Professionals issued by IBBI.



20. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

(A) Corporate Debtor, M/s Bodhtree Consulting Ltd is admitted in Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016,

(B) The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(F) That the order of moratorium shall have effect from the date 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, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as



prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

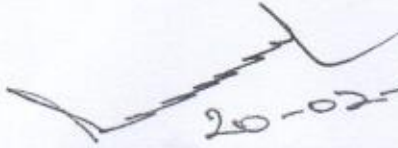
(H) Accordingly, this Tribunal appoints Smt. Azra Banu having Registration No. IBBI/IPA-001/IP-P00955/2017-2018/11576, email:- caazra27@gmail.com in as IRP. The aforesaid IRP has no disciplinary proceedings pending against her. The appointed IRP is directed to file written consent within one week from the date of order. The Authorisation for Assignment is valid upto 17.11.2023. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(I) The petitioner is directed to pay a sum of Rs.1,00,000/- (Rupees one lac only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

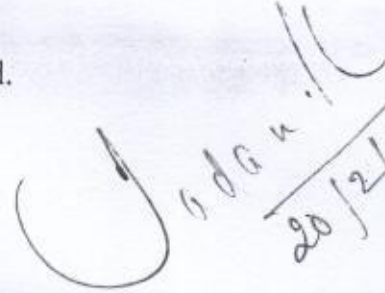


(J) The Petitioner is directed to communicate this order to the appointed IRP.

17. Accordingly, this Petition is admitted.


20-02-2023

Charan Singh
Member Technical



20/2/23

Dr. Venkata Ramakrishna Badarinath Nandula

Member Judicial

Pavani




27/2/2023

Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
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केस संख्या
CASE NUMBER... (P/IR) No. 271/19/HNB/HO/2023
निर्णय का तारीख
DATE OF JUDGEMENT... 20/2/23
प्रति तैयार किया गया तारीख
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