

NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

32

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON

05/10/2018

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER :
PETITION NUMBER : CP/575/ (IB)/2018
NAME OF THE PETITIONER(S) : DRIVE VISUAL DATA ANALYTICS PVT LTD
NAME OF THE RESPONDENT(S) : NANOYOTTA TECHNOLOGIES PVT LTD
UNDER SECTION : 9 RULE 6

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	

(1) Ashish Jain Lunia
Chenna Aswathy Abraham
(for M/s Surana & Surana)

Counsel for Petitioner

Ashish

(2) CIBI VISHNU

COUNSEL FOR
~~RECORD~~ DEBTOR

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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SIGNLE BENCH, CHENNAI**

CP/575/(IB)/CB/2018

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

In the matter of

M/s. Drive Visual Data Analytics

... Operational Creditor

Vs.

M/s. Nanoyotta Technologies Private Limited

... Corporate Debtor

Order delivered on 5th of October, 2018

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

*For Operational Creditor(s) :Mr. Aashish Jain Lunia &
Mr. G.Kalyan Jhabakh,
for M/s.Surana & Surana, Counsels*

For Corporate Debtor (s) : Mr. Cibi Vishnu, Counsel



ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J):

1. Under Adjudication is CP/575/(IB)/CB/2018 that has been filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard the Counsel for the Operational Creditor and the Counsel for the Corporate Debtor and perused the record.



3. The Operational Creditor has claimed an outstanding debt to the tune of Rs.36,27,990/- as on 31.05.2017.

4. The Counsel for the Operational Creditor has referred to the Termination Agreement dated 31.05.2017 wherein under Para 2 (a), it has been agreed that in the event of termination, Rs.40 Lakhs will be paid by the Corporate Debtor. The Counsel for the Operational Creditor has also referred to the communications placed at pages 72 to 75 of the typed set filed with the Application. The document placed at page 72 is an e-mail communication dated 27.01.2018 which has been sent by the Corporate Debtor to the Operational Creditor in response to the demand notice dated 16.01.2018 wherein a request has been made to hold on for 20 days and the Corporate Debtor will pay the outstanding amount in 20 days. Again, a

communication dated 28.01.2018, which is placed at page 73 of the typed set filed with the Application, was sent by the Corporate Debtor to the Operational Creditor and a request was made to give a few weeks' time for making payment stating that their intention is to collect funds and pay off in few weeks. The document placed at page 74 is a reminder sent by the Operational Creditor to the Corporate Debtor on 30.01.2018 to which a reply has been given by the Corporate Debtor on the same date stating that all their dues will get cleared. Again, there is a communication dated 01.03.2018 placed at page 75 of the typed set filed with the Application which has been made by the Corporate Debtor to the Operational Creditor stating that on Monday the money will be credited to the Operational Creditor's account to



which a reply was given by the Operational Creditor on the same date that despite assurance of the Corporate Debtor, the Operational Creditor is yet to receive the payments. These communications go to show that the Corporate Debtor has been seeking time from the Operational Creditor for making payments of the outstanding debt.

5. It is also on record that after filing of the present Application by the Operational Creditor, the Corporate Debtor has paid Rs.34.78 Lakhs to the Operational Creditor, but as per the submission of the Counsel for the Operational Creditor, the remaining amount is yet to be paid by the Corporate Debtor.

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6. The Counsel for the Corporate Debtor has submitted the preliminary counter wherein under Para 4, the detail of payments has been given and in particular, on 09.04.2018 a sum of Rs.5,21,739/- has been paid as service tax to the Service Tax Department. The Counsel for the Operational Creditor has given reply to the preliminary counter stating therein under Para 4 that the Operational Creditor is entitled to receive a sum of Rs.5,21,739/- from the Corporate Debtor. However, the Counsel for the Corporate Debtor has submitted that a mail was sent on 06.04.2018 to the Operational Creditor wherein it has been stated that on Rs.40 Lakhs, the service tax @ 15% amounting to Rs.5,21,739.13p will be paid by the Corporate Debtor to the Service Tax Department. On 09.04.2018, a mail has been

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sent by the Corporate Debtor to the Operational Creditor wherein it has been made clear that service tax amounting to Rs.5,21,739.13p, has been remitted to the Service Tax Department. On 16.04.2018 a communication has been made by the Operational Creditor to the Corporate Debtor by which it has acknowledged that the Corporate Debtor is paying the service tax to the Service Tax Department directly. The Counsel for the Corporate Debtor has also referred to the communication dated 07.05.2018 which goes to show that the service tax amounting to Rs.5,21,739.13p has been paid to the Service Tax Department.

7. The Corporate Debtor has also referred to e-receipt placed at page 30 of the typed set

evidencing the payment of the service tax. It is on record that the money under dispute has been paid by the Corporate Debtor to the Service Tax Department and it has gone to the coffers of the Central Government. It has also been claimed by the Operational Creditor that it has paid the Service Tax pertaining to the amount received from the Corporate Debtor. Therefore, the Operational Creditor and the Corporate Debtor may make efforts to claim the refund of the excess service tax paid to the Service Tax Department, it is for the said Department to decide as to whom the refund is to be paid in accordance with law. In case refund is given by the Service Tax Department to the Corporate Debtor, then, the Corporate Debtor shall pay the same to the Operational Creditor and in case the Operational

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Creditor is getting the refund, then the Operational Creditor shall not claim the said amount from the Corporate Debtor. Accordingly, the Application stands **disposed of**.

8. Order is dictated and pronounced in open court in the presence of Counsels for the Operational Creditor and Corporate Debtor.

P.ATHISTAMANI


[CH.MOHD SHARIEF TARIQ]
MEMBER (Judicial)