

IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH
AT HYDERABAD

C.P.No.117/9/HDB/2017

U/s 9 of IBC, 2016 and
Rule 6 of I & B
(Application to Adjudicating Authority) Rules, 2016

In the matter of

Sanghvi Movers Limited
Sy.No.92, Tathawade,
Pune – 411 033.

.... Petitioner/Operational Creditor

Versus

IVRCL Limited
M-22/3RT, Vijayanagar Colony,
Hyderabad – 500 057.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

.... Respondent/Corporate Debtor

Date of Order : 27.09.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For Petitioner : Mr. Avinash Desai, Advocate

For Respondents : Mr. M. Jagadish Kumar, Advocate

Per: **Ravikumar Duraisamy, Member (Technical)**

ORDER

The Bench passes the following order as per Sub-Section (5)(ii) of Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC):

1. Shri Avinash Desai, Learned Counsel for the Operational Creditor i.e., Sanghvi Movers Limited, made submissions and prayed for admission of the petition/application u/s 9 of IBC, 2016 against IVRCL Limited (Corporate Debtor). Upon perusal of the documents/judgments, written submissions filed by the Operational Creditor and the Corporate Debtor, the Corporate Debtor has submitted that the demand notice dated 17.04.2017 was addressed by an

Advocate without complying with the provisions of Section 8 of the IBC, 2016. The Corporate Debtor also pointed that there is no mention about authorisation issued to the said advocate by the Board of Directors of the petitioner/operational creditor, therefore, the application filed under Section 9 is not maintainable. In this connection, the respondents have relied upon the judgement of the Hon'ble National Company Law Appellate Tribunal in the matter of *Uttam Galva Steels Limited Vs. DF Deutsche Forfait AG & another* and judgment dated 17.07.2017 in the matter of *Macquarie Bank Limited Vs. Uttam Galva Metallics Limited*.

2. We have also carefully perused the written arguments filed on behalf of operational creditor dated 31.08.2017, wherein they have refuted the submissions of the corporate debtor and they have also submitted the judgments relied upon by them.
3. The Petitioner has submitted that the demand notice was issued by the advocate in his capacity as a "retainer counsel" and as an authorised person to issue the demand notice, in specific, the notice under Section 8 of the IBC on behalf of operational creditor. Mr. Abhijit Shripad Ashtoorkar, legal officer was authorised to act, appear represent the Company and follow up with the statutory/non-statutory authorities, courts and tribunal etc., Subsequently, by letter dated 10.04.2017, Executive Director and Chief Financial Officer of Sanghvi Movers Limited vide his letter of authority, by virtue of powers vested on him vide board resolution dated 25.05.2016 authorised Mr. Abhijit Shripad Ashtoorkar as the authorised representative/attorney to do the following acts and things in connection with initiation of corporate insolvency resolution process under Insolvency and Bankruptcy Code against IVRCL Limited before the NCLT, Hyderabad Bench.
4. Upon perusal of the demand notice dated 17.04.2017, the same was issued by Mr. Avinash Desai, in the capacity as Advocate and the last page of the demand notice, wherein the position with or in relation to the operational creditor is also stated as "Advocate".



5. Therefore, the aforesaid demand notice was issued in the capacity of Advocate and not as a retainer counsel as claimed.
6. Further, upon careful perusal of the extract of the minutes, authorisation letter dated 10.04.2017 etc., it is noted that the board minutes was dated 25.05.2016, whereas, the IBC Code 2016 itself came into effect from 01.12.2016 as per the Gazettee Notification No. SO No.3594(E), dated 30.11.2016. Therefore, the Bench is of the considered view that the demand notice issued by Shri Avinash Desai, Advocate the application is incomplete as per Section 9(1) & (2) of IBC, 2016.



7. In view of the above defect, the Bench is of the opinion that the application submitted under Section 9 of IBC is incomplete. Therefore, an opportunity is provided to the operational creditor before rejecting the application to rectify the defect within 7 days from the date of receipt of copy of the order.

Sd/-
RAVIKUMAR DURASAMY
MEMBER (T)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (J)

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OF THE ORIGINAL**

[Signature]
Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
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केस संख्या
CASE NUMBER *C.P.A.B. 117/9/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *27-9-2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *27-9-2017*