

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-III
NEW DELHI**

C.P.No.IB-330/ND/2017

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

In the matter of:

**ANTZ Age Technologies Pvt. Ltd.
31, Community Centre,
Mezzanine 1 st Floor,
Basant Lok,
Vasant Vihar,
New Delhi-110 057.**

... Operational Creditor/Applicant

**Durha Infracon Private Ltd.
Second Floor, Satveer Complex,
Khasra No.337, Village Sultanpur,
New Delhi -110 030**

..... Corporate Debtor



Coram:

**R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)**

**Counsel for the Petitioners: Shri Ashok Kumar Juneja, Advocate
Shri Mithlesh Kumar Singh, Advocate
Ms. Ritika Shaw, Advocate**

Counsel for the Respondents : None

Order delivered On: 17.10.2017

ORDER

ANTZ Age Technologies Private Limited has filed the above application under the provisions of Insolvency and Bankruptcy Code, 2016. The application has been filed in Form-5 as prescribed for an Operational Creditor under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for brevity (AAA Rules), which discloses that the applicant has got the identification No.U72900DL2012PTC246747 as assigned by the Registrar of Companies and that it has its registered



office at No.31, Community Centre, Mezzanine Floor, Basant Lok, Vasant Vihar, New Delhi-110057. The applicant it is averred is engaged in the business of providing human resource services and in furtherance of its business, M/s Durha Infracon Pvt. Ltd. the Corporate Debtor had executed an offer letter dated 25.9.2015 whereby the Operational Creditor was assigned to provide human resource services to the Corporate Debtor. From the application as filed by the applicant/Operational Creditor, it is discerned that the Corporate Debtor is having identification No.U70101DL2011PTC223163 and that the company has been incorporated on 3rd August, 2011. It is also seen that the Corporate Debtor is having a paid up share capital of Rs.1.50 crores and as per the master data annexed as Annexure-1 to the application, it is seen that the registered office of the Corporate Debtor is situated at 2nd Floor, Satveer Complex, Khasra No. 377, Village Sultanpur, New Delhi-110030 and the Directors of the Corporate Debtor as per the list given are one Mr. Anchal Saxena and Mr. Farooq Adam Mukadam. The particulars of the Operational Debt based on which the claim has been filed before



this Tribunal has been stated by the Operational Creditor in Part-4 of the application and a perusal of which discloses that arising out of the offer letter dated 29.9.2015, as referred to above, the Operational Creditor had provided services from time to time as required by the Corporate Debtor and in relation to the same invoices had been raised between the period from October, 2015 to May, 2016 aggregating in all to Rs.12,84,827/- out of which it is stated that Rs.6,03,813 has been paid by the Corporate Debtor which also includes a sum of Rs.99,525/- deducted towards TDS and deposited with the Revenue Authorities and the balance sum of Rs.6,81,014/- is still due and payable which is also claimed to be the amount in default. In relation to the said amount, it is further stated that a demand notice dated 30.6.2017 was issued in Form-3, as prescribed under the AAA Rules and the said demand notice was sent to the registered office address of the Corporate Debtor as well as to Mr. Anchal Saxena, whole time Director of the Corporate Debtor and that the said demand notice was served on the whole time Director of the Corporate Debtor namely Mr. Anchal Saxena. However, it stood undelivered in



relation to the Corporate Debtor as evidenced according to the averment of the applicant from the Tracking Report produced as Annexure 17 and 18 to the application. It is further averred that an email dated 2.7.2017 of the demand notice was also despatched to Mr.Anchal Saxena, whole time Director of the Corporate Debtor, as is evidenced by Annexure A-19.

2. In view of the amount in default not paid and notice of dispute not being received to which effect an affidavit has been filed as required under Section 9(3)(b) of IBC,2016, the applicant/Operational Creditor is constrained to file the present application for invoking the provisions of IBC,2016 for the initiation of Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

3. The matter was listed before this Tribunal on 5.9.2017 on which date the applicant was directed to file an affidavit of service in relation to service of advance copy as stated to have been



given to the Corporate Debtor. Further, the Petitioner was also directed to comply with the provisions of Section 9(3) (c) relating to production of certificate from the financial institution/banker in relation to the unpaid amount claimed as the amount in default from the Corporate Debtor and for the above purpose and for other compliances as well, if any, a week's time was granted to the applicant. The matter was listed again on 14.9.2017. An affidavit it is seen has been filed by the applicant dated 12.9.2017 wherein a certificate dated 31.8.2017 from M/s Axis Bank has been filed which discloses that no amount seems to have been credited by M/s Durha Infracon Pvt. Ltd. the Corporate Debtor to the account of the Operational Creditor for the period commencing from 8.5.2016 till 31.8.2017. It is also further stated in the affidavit that notice sent under the directions of this Tribunal was not able to be served at the registered office of the Corporate Debtor as despite efforts of Mr.Mohit Kumar, Advocate for the Petitioner who had personally visited the registered office of the Corporate Debtor, it is stated that the office was found to be locked and according to



information it had remained locked as such for a long time. An advance copy of the application was sent on 21.8.2017 to the registered office address of the Corporate Debtor which also remained unclaimed as evidenced from the returned envelop the back of which has the endorsement "left" and the speed post tracking report as annexed as Annexure-2 (Colly) of the affidavit shows "returned unclaimed". In relation to the notice of demand also sent on 02.7.2017 in Form-3 it is seen has been returned with the reason "left" and the tracking report shows the reason "door locked". However, the notice of demand as well as copy of the application along with Annexures, it is stated has been served on the whole time Director of the Corporate Debtor namely Mr. Anchal Saxena which according to the Petitioner has been served as is evidenced from the tracking report.

5. It is required to be stated by this Tribunal that on the part of the Respondent no appearance has been put up. However, taking into consideration the efforts made by the Petitioners in



serving the Respondent Company as well as on its whole time Director Mr.Anchal Saxena whose name is reflected in the master data annexed as Annexure-I to the application and whose tenure seems to be continuing as the beginning date has been specified as 3.8.2011 without any end date, can it be said that service is complete. We are afraid it cannot be ,as held by this Tribunal in Company Petition (IB)-235(ND)/2017 in the matter of Nityanand Singh & Co. vs. M/s Ferros Infrastructure (P) Ltd. following the decision of Hon'ble NCLAT in Innovative Industries Ltd. vs. ICICI Bank and another in Company Appeal (A) (Insolvency) No.1 and 2 of 2017. Paragraph 5 of the order in Nityanand's case being apposite to the facts and circumstances of instant case on hand the same is reproduced for ready reference:

However, taking into consideration the provisions of Rule 5 & 6 of the AAA Rule, 2016 wherein even though notice of demand as mandated under Section 8 of IBC, 2016 can be served as per any of the two modes prescribed under Rule 5 (2) (a) & (b) of IBC,2016 in relation to the notice of application which has been filed before this Tribunal it is required to be served by the Operational Creditor at the registered office of the Corporate Debtor by registered post or 'Speed Post'. Thus, taking into consideration the



decision rendered by Hon'ble NCLAT in 'Innoventive Industries Ltd. vs. ICICI Bank and Another, Company Appeal (A) (Insolvency) No.1 and 2 of 2017, we find that the said Rule has not been complied with and in the circumstances, due to non-service of notice of the application, we are constrained to dismiss this petition seeking to invoke the CIRP as against the Corporate Debtor without costs. However, the above dismissal of the application will not prejudice the applicant in any way from prosecuting his claim against the Corporate Debtor in any other Forum of his choice as this Tribunal has not gone into the merits of the application."

6. In the circumstances, this application is dismissed but without costs.

Sd—
(R.VARADHARAJAN)
MEMBER(JUDICIAL)
17/10/17

U.D.Mehta
17.10.2017