

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
NEW DELHI**

No.IB-208/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:

**M/s Lease Plan India (P) Ltd.
Ground Floor, C4C/332,
Janakpuri,
Delghi-110 058.**

... Operational Creditor/Applicant

**M/s ACPL HR Services (P) Ltd.
206,1191/6, 2nd Floor,
Naivala, Karol Bagh,
New Delhi -110 005**

..... Corporate Debtor



Coram:

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

Counsel for the Petitioners:

**Shri Somesh Chandra Jha, Advocate
Shri Sanchit Guru, Advocate
Shri Janmesh Kumar, Advocate
Shri Sajad Sultan, Advocate,**

Counsel for the Respondents : .

Order delivered On:

ORDER

Lease Plan India Private Ltd. represents itself to be a company registered under the provisions of Companies Act, 1956 and having its registered office at Ground Floor, C-4-C/332, Janakpuri, New Delhi-110058. It is also further represented that the above said company is engaged in providing vehicles on lease and also it provides fleet management and administration service to its clients in relation to vehicles. In furtherance of its business, it is averred by the above said company, hereafter referred to as the Applicant Company / Operational Creditor, entered into a transaction arrangement of lease agreement bearing No.ND 10686 dated 1.4.2011 with the Corporate Debtor and that two vehicles bearing registration No.DL3CBE4174 and DL7CF9339 which were originally given to one of the group companies of the Corporate Debtor was leased out to the Corporate Debtor by virtue of the execution of lease



agreement dated 1.4.2011. It is also averred that the vehicles as above were taken on lease on the basis of months/distance whichever is covered earlier and the rental lease for the aforesaid vehicles was required to be paid as applicable in the supplement of the agreement. It is averred by the Applicant that invoices from time to time in respect of the leased vehicles were raised against the Corporate Debtor and since June, 2012 the Corporate Debtor was not regular in payment of the rental lease. Despite repeated demands as well as assurances from and on the part of the Corporate Debtor to make the lease rental payments nothing came out of it and in the circumstances legal notice demanding payment of Rs.10,59,209/- was issued under the hand of the Counsel for the Applicant as well as for the return of the two vehicles. Since nothing came about despite the issue of the said demand notice, the vehicle came to be repossessed on 23.3.2015 and 3.3.2015. Since balance sum remained due, the Applicant was forced to issue a statutory notice under Section 433 (e) of the Companies Act, 1956 dated 15.2.2016 and subsequently due to lack of response on the part of the Corporate Debtor was forced to approach the Hon'ble High Court of Delhi vide CP No.419/2016 where in a claim of Rs.15.00 lakhs was put forth.

2. The above CP it is averred and as evident from the records available with this Tribunal came to be transferred from the file of the Hon'ble High Court of Delhi to this Tribunal vide order dated 15.12.2016 and subsequent to transfer this Tribunal has proceeded with the consideration of the application/Petition. The order sheet file discloses that vide order dated 14.2.2017, liberty was granted to the Operational Creditor namely the Applicant herein to initiate action under as per the provisions of



Insolvency and Bankruptcy Code, 2016 (IBC,2016) as against the Corporate Debtor in compliance of the same.

3. Pursuant to the said order dated 31.5.2017 it is averred by the Applicant that notice of demand under Section 8 of IBC,2016 was issued to the Corporate Debtor under the hand of its legal counsel dated 31.5.2017 demanding a sum of Rs.17,26,667/- as the amount due and in default. It is represented that in relation to the said notice, no reply has been received from the Corporate Debtor nor any payment made towards the amount claimed and in default, from the Corporate Debtor and in the circumstances the Applicant it is stated is forced to approach this Tribunal under the provisions of IBC,2016.

4. From the records, it is evident that the above Company Petition came to be filed on 11.7.2017 and on 20.7.2017 the Applicant was directed to file the tracking report in relation to the notice of application served on the respondent company. In relation to the filing of the said compliance as well as to comply with all the other formalities, as mandated under the provisions of IBC,2016, a week's time was granted. On 28.7.2017 when the matter was reposted it was represented by the Ld. Counsel for the Petitioner that Petitioner has complied with the directions given on 20.7.2017. From the records, it is seen that no appearance has been put in by the Corporate Debtor to defend the Petition and on 28.8.2017 the matter was heard and order reserved.

5. Be that as it may, perusal of the records as filed by the Applicant along with the typed set of documents shows that a demand notice / invoice demanding payment as



annexed between page.Nos.124 to 145 as Annexure-2 discloses prima facie that it has been issued by an Advocate and the notice is dated 31.5.2017. It is also evident from the records namely the tracking report dated 7.7.2017 as available with India Post website that on 1.6.2017 the item was attempted to be delivered but due to insufficient address not delivered. At p.159 of the typed set as filed by the Applicant herein, it is seen that the endorsement "left' is found as on 1.6.2017. It is also further seen that the tracking report of the consignment is issued by India Post which discloses against the date of 1.6.2017 as follows:

"Item delivery attempted. Unclaimed."

6. In relation to certificate of bankers, it is seen that as against the certificate only statement of accounts as maintained with the HSBC Bank in three volumes have been filed under Dy.No.497 dated 27.7.2017 even though it has been wrongly represented before this Tribunal on 28.7.2017 that banker's certificate has been filed vide Dy.No.241 dated 11.7.2017. Perusal of the record shows that Dy.No.241 relates to filing of the Petition and not banker's certificate as records clearly discloses that no banker's certificate is available and only banker's statement as maintained with the HSBC Bank, as stated above, has been filed in three volumes.

7. By now it is a trite law that notice under Section 8 of IBC,2016 is required to be given by the Operational Creditor or by persons who are expressly authorized to issue such a notice on behalf of the Applicant Company. Perusal of the record discloses that no such authorization has been issued to the Advocate who had issued the notice on behalf of the Applicant Company. Hon'ble NCLAT in its recent judgement rendered on




6.10.2017 in Shyam Industries Ltd. Vs. RL Steel Energy Limited in Company Appeal No.(AT) and in Uttam Galwa Steels Ltd. vs. DF Deutshe Forfait AG Industries in Company Appeal No. (AT)(Insolvency)39/2017 has held that the Hon'ble Appellate Tribunal is left with no other option other wise than to set aside the impugned order of the lower Tribunal in view of issue of notice of demand or invoice demanding payment, not in accordance with IBC,2016 and as prescribed under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules 2016. Taking into consideration the above two decisions, this Tribunal is also left with no other option and per force to dismiss this Petition/application. In addition, it is also seen that the notice of demand despite efforts taken by the Applicant has not been served. Further no evidence has also been adduced about the service of the application upon the 'Corporate Debtor' all of which precludes the 'Corporate Debtor' to reply or appear before this Tribunal and under such circumstances it has been held by the Hon'ble Appellate Tribunal to be not in consonance with the principles of natural justice. In addition to the above, non-compliance of the provisions of Section 9(3)(c) on the part of the Applicant is also fatal to the maintainability of the application under IBC,2016 by an Operational Creditor as held by the Hon'ble NCLAT in the case of Smart Timing Steel Ltd. vs. National Steel Agro Industries Ltd. in Company Appeal (AT) (Insolvency) No.28/2017.

8. Taking into consideration the facts and circumstances and the decisions of the Hon'ble NCLAT in the judgments quoted above, this Tribunal is constrained to dismiss this Petition without costs. However, the order passed herein will not preclude the Petitioner from seeking other remedies as may be available to it in relation to the claims



as the application has been dismissed due to non-compliance with the mandatory provisions of IBC,2016 and which are peculiar to it.


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

U.D.Mehta