

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

No.IB-298/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:**

UT Worldwide (India) Pvt. Ltd.  
2<sup>nd</sup> Floor, Building No.8, Tower C,  
DLF Cyber City, Phase-II,  
Gurugram, Haryana- 122002

**... Operational Creditor/Applicant**

Integrated Caps Private Limited,  
42, Anand Lok,  
New Delhi -110 049

**..... Corporate Debtor**



**Coram:**

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

**Counsel for the Petitioners: Mr.Abhay Raj Verma, Advocate  
Ms.Priyanka Ghosh, Advocate  
Mr.Aman Dixit, Advocate**

**Counsel for the Respondents : .**

**Order delivered On: 17.10.2017**

**ORDER**

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016) read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 hereinafter for brevity called 'AAA' Rules,2016 for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of Integrated Caps Private Ltd. (named as 'Corporate Debtor') by UT Worldwide (India) Private Limited (being 'Operational Creditor'), has been filed. Perusal of the relevant application discloses the following facts:



2. That the Operational Creditor is having its registered office at 2<sup>nd</sup> Floor, Building No.8, Tower C, DLF Cyber City, Phase-II, Gurugram, Haryana. The application further discloses that the Corporate Debtor has been incorporated on 1.2.1998 and that it is having a paid up share capital of Rs.9,00,00,000/- and that the registered office of the Corporate Debtor is situated at 42, Anand Lok, New Delhi-110049. From the application it is also noticed that the name, address and authority of the person submitting the application on behalf of the 'Operational Creditor' is one Mr. Abhishek Adlakha, Deputy Manager, Legal, Compliance & Secretariat, who has been authorized vide authority letter and the board resolution dated 20.09.2016 authorizing the said person to file this Company Application. Further, the Application also discloses the name and address of the person resident in India authorized to accept the service & process on behalf of the 'Corporate Debtor' as its Managing Director having the same address as stated in relation to the registered office address of the 'Corporate Debtor' and the name of Managing Director is given as one Shri Biren Sabharwal as well as named Ms. Bubbles Sabharwal she being Director of the 'Corporate Debtor'. In relation to the proposed Interim Resolution Professional in case the Application is admitted has been left to the discretion of this Tribunal.

3. Proceeding onwards to the facts of the case the Operational Creditor represents itself to be engaged in the business of freight and forwarding, customs house clearance as well as providing multi-model transportation



service through air, sea and surface. In furtherance of its business, it is represented that it was engaged by the 'Corporate Debtor' for freight forwarding service for transport handling and forwarding its goods consignment from Delhi, India to Lagos, Nigeria and in relation to this engagement, the 'Corporate Debtor' it is averred has signed Customer Profile Form and Credit Application annexed as Annexure II-4 to the typed set of documents filed along with the application. Further as referred to above the 'Corporate Debtor' had placed request to move the consignment from Delhi to Lagos which it is claimed is evidenced by the 'Operational Creditor' raising invoices, the details of which have been given in the application. The 'Operational Creditor' avers that the value of service provided by the 'Operational Creditor' upon the request of the 'Corporate Debtor' is to the extent of Rs.1,34,41,475/- and that as per the terms and conditions, the payment of invoices was to be made within the due date as specifically provided in each of the invoices failing which interest was also chargeable @ 18% per annum. The 'Operational Creditor' also avers that out of sums due of Rs.1,34,41,475/-, the 'Corporate Debtor' has paid a sum of Rs.38,47,415/- of course with some delay and a balance sum remains to the tune of Rs.95,94,060/- in relation to invoices commencing from 24.11.2015 as well as subsequently dated 27.11.2015, 2.12.2015, 3.12.2015, 7.12.2015, 8.12.2015, 23.12,2015 and on 4.1.2016. The said amounts is also reflected it is averred by virtue of the statement of accounts



annexed as Annexure II-6 to the typed set of documents filed along with the application. In acceptance of the liability, it is stated by the 'Operational Creditor' that the 'Corporate Debtor' had issued 6 cheques commencing from 25.1.2016 and ending on 26.02.2016 and the amount of cheques aggregating in all to Rs.76,87,659/-. However, when these cheques were presented in the month of April,2016 all the aforesaid 6 cheques had been dishonored and were returned with the remarks " funds insufficient" and in view of the dishonor of cheques, a criminal complaint has also been initiated before the appropriate Magistrate Court. In the above circumstances, it is averred by the Operational Creditor that a notice demanding payment under Sections 8 and 9 of IBC,2016 read with Rule 9 of 'AAA' Rules, 2016 was issued on 11.4.2017 and that the said notice has been received by the Corporate Debtor on 12.4.2017. As per the notice, a sum of Rs.1,16,52,275/- has been demanded which also includes a claim of interest of Rs.20,58,215/- apart from the amount outstanding towards invoices in a sum of Rs.95,94,060/-.

4. Despite receipt of the notice of demand dated 11.4.2017, the 'Operational Creditor' avers in the application that the 'Corporate Debtor' has failed to pay the amount demanded nor any dispute has been raised whatsoever in relation to the demand made and in the circumstances has filed this application seeking to unfold the process of CIRP. From the records of the Tribunal, it is seen that on 4.9.2017 the Petitioners had been directed



to file an affidavit of service in relation to the service of notice of the application on the 'Corporate Debtor' along with the tracking report. In compliance with the said direction, an affidavit has been filed by the 'Operational Creditor' vide Dy.No.985 dated 11.9.2017 perusal of which discloses that in compliance with the order dated 4.9.2017, a copy of the application to the 'Corporate Debtor' via speed post was taken to its registered office and the same was received by the 'Corporate Debtor' on 5.9.2017, as evidenced from the tracking report of India Post filed along with the above stated affidavit. However, despite the service of the notice of the application none appeared for the 'Corporate Debtor'.

5. Be that as it may, perusal of the typed set of documents enclosed prima facie discloses that the notice of demand considered to be the basis for filing of this application has been issued by one M/s Prima Carta Law Offices, having its office at D-114 (FF), Defence Colony, New Delhi-110024 on 11.04.2017 and the said notice of demand has been signed by one Mr. Abhay Raj Verma, Advocate claiming to have been authorized on behalf of the Corporate Debtor. However, perusal of the typed set of documents filed by the 'Operational Creditor' from pages No.1 to 102 does not contain any authorization stated to have been given by the 'Operational Creditor' prior to the issue of notice of demand. Taking the same into consideration since authorization is a must for the person who has issued notice of demand dated 11.4.2017 on behalf of the 'Operational Creditor' and the notice of



demand which is considered to be the trigger for initiating the insolvency process and upon failure to pay the amount demanded or to raise a dispute on the part of the 'Corporate Debtor' which gives the cause of action to the 'Operational Creditor' seems to be prima facie not valid as held by the Hon'ble NCLAT in the Judgement rendered by it in Smart City (Kochi) Infrastructure Pvt. Ltd. vs. Synergy Property Development Services Pvt. & Ords in Company Appeal (AT) No.80/2017 following the decision rendered by it in Uttam Galva Steels Limited v. DF Deutsche Fortait AG & Anr. in Company Appeal (AT) (Insolvency) No.39 of 2017. Further, it is also seen that the 'Operational Creditor' has not filed banker's certificate in compliance with the provisions of Section 9(3) ( c ) of IBC,2016 even though a certificate from the banker has been produced claiming to be in terms of Section 9 (3)( c ) of IBC,2016. From a perusal of same, it is seen only the amount which has been remitted/received in the said account has been specified as Rs.37,70,000/- whereas under the provisions of Section 9(3)( c ), a certificate is required to be issued in relation to unpaid amount and even on this ground the Petition is liable to be rejected in view of the Judgement rendered by Hon'ble NCLAT in the matter of Smart Timing Steel Ltd. vs. National Steel Agro Industries Ltd. in Company Appeal (AT)(Insolvency) No.28/2017. The statement of accounts as filed by the 'Operational Creditor' at page No.30 as well as page No.66 is also not complete in order to ascertain what are the amounts which were actually



remitted by the 'Corporate Debtor' over a period time even though it is admitted that some payments were received shown by the Banker's Certificate as received from the 'Corporate Debtor' and the same does not match as no payment is shown to have been received in the statement of accounts. It is necessary to bear in mind that this Tribunal under IBC is exercising only a summary jurisdiction and cannot be made to conduct the proceedings under IBC,2016 by way of a detailed trial as is done by the Civil Courts in order to ascertain the amount of debt claimed is as claimed or not as is done by the Civil Court taking a detailed examination of documents supported by oral examination of witnesses when a plaintiff approaches it by way of suit. In this, the Tribunal being the Adjudicating Authority cannot lose track of the avowed objects for which IBC,2016 has been brought into force and more pertinently in relation to CIRP.

6. Taking the above facts and circumstances of the case and as well as the precedents laid down by the Hon'ble NCLAT in relation to the issue of demand notice and furnishing of certificate from the banker, this Tribunal is not inclined to admit this Petition and in the circumstances the Petition is dismissed but without costs.

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

U.D.Mehta  
17.10.2017