
The Law Point Vs Avon Infracon Pvt. Ltd.

(IB) No. 1311/(ND) Of 2019

Court: National Company Law Tribunal New Delhi Bench

Date of Decision: Jan. 14, 2020

Acts Referred:

Companies (Incorporation) Rules, 2014 " Rule 35#General Clauses Act, 1897 " Section 27#Evidence Act, 1872 " Section 114#Indian Partnership Act, 1932 " Section 69#Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 " Rule 5#Insolvency And Bankruptcy Code, 2016 " Section 2(23), 3(12), 3(23), 8, 8(1), 9, 14, 15, 17, 18#Companies Act, 2013 " Section 12, 20

Hon'ble Judges: Dr. P.S.N. Prasad, J; Dr. V.K. Subburaj, Member (Technical)

Bench: Division Bench

Advocate: Abhishek Puri, Yasharth Misra, V. Siddharth, Surbhi Gupta, Abhishek Nag, Saurabh Batra

Judgement

Dr. P.S.N. Prasad, J

1. This is an application filed by the Applicant 'The Law Point', seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of

the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent 'Avon Infracon Private Limited', for the alleged default on the part of the

Respondent in clearing the debt of Rs. 9,14,859/- towards the services rendered by the Applicant. The details of transactions leading to the filing of

this application as averred by the Applicant are as follows:

i. That the Applicant and the Respondent had executed an Engagement Letter dated 28.03.2014, for availing the Legal services with respect to the

litigation between the Respondent and Silver Oak Solutions Pvt. Ltd. and the matters arising therefrom as per the agreed fee schedule appended to the

said engagement letter.

ii. The Respondent pursuant to the approval of the said Engagement Letter had deposited a sum of Rs. 2,00,000/- as an advance in order to enable the

Applicant to cover the expenditure for initiation of litigation.

iii. The Engagement Letter contained the terms that the Respondent was to clear the applicant's bills as raised upon them, within a period of 60 days

from the date of presentation of bill and in the event of default, the Respondent is liable to pay an interest @18% per annum on the outstanding bills.

iv. The Respondent from time to time engaged the Applicant to provide Legal Services with respect to the litigation between the Respondent and

Silver Oak Solution Pvt. Ltd. and the matters arising thereof.

v. The Applicant in terms of the Engagement Letter raised invoices from time to time upon the Respondent. The following invoices were raised upon

the Respondent:

a. Invoice No. LP/0800/17-18 Dated 19.09.2017 for an amount of Rs. 45,000/-.

b. Invoice No. LP/1609/17-18 Dated 14.02.2018 for an amount of Rs. 1,95,000/-.

c. Invoice No. LP/1855/17-18 Dated 22.03.2018 for an amount of Rs. 40,000/-.

d. Invoice No. LP/1856/17-18 Dated 22.03.2018 for an amount of Rs. 40,000/-.

e. Invoice No. LP/0192/18-19 Dated 27.04.2018 for an amount of Rs. 70,000/-.

f. Invoice No. LP/0210/18-19 Dated 04.05.2018 for an amount of Rs. 70,000/-.

vi. The applicant, vide email dated 07.07.2014 from the Respondent had engaged the services of a senior counsel to represent the Respondent before

the Hon'ble High Court. The said senior counsel had raised an invoice dated 20.09.2017 upon the applicant for an amount of Rs. 3,00,000/- which was

sent to the Respondent vide email dated 03.11.2017 for clearing the same.

vii. The Applicant claims that the Respondent has become liable to pay an amount of Rs. 7,60,000/- alongwith interest @18% from the above-

mentioned due dates till 15.04.2019 to the applicant which totals to Rs. 9,14,859/-.

viii. Despite invoices being raised from time to time in terms of the 'EL', the Respondent failed to make payment of the outstanding debt. The

Applicant sent several emails as reminders for the payment of the outstanding invoices from 02.01.2018 to 10.04.2018 but has not received such

amount till date.

ix. The Applicant issued Demand Notice in the form of Form-3 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 dated 15.02.2019 calling upon the Respondent to clear the amount of default i.e. Rs. 9,14,859/-

within a period of ten days of receipt of the demand notice. The demand notice sent via post was returned unserved by the postal authority with

remarks ""Not Delivered UNCLAIMED"". The demand notice sent via email was delivered to the email id sonam.gupta@saregroup.com which can be

found mentioned in the Respondent Company's master data. The Respondent upon receipt of the Demand Notice dated 15.02.2019 did not issue any

reply.

x. Despite the service of the demand notice upon the registered address and registered email address of the Respondent, the Respondent failed to

reply to the said demand notice. Thus, the applicant has filed the present application under the Insolvency and Bankruptcy Code, 2016 claiming an

amount of Rs. 9,14,859/- including interest as on the date of filing of the application.

2. The applicant on 28.06.2019 filed additional documents containing invoices issued by the applicant to the Respondent and copy of email dated

20.02.2019 sent on behalf of the applicant to Mr. O.P. Ahuja and Mr. Vineet Relia along with the printout of the Demand Notice.

3. Pursuant to the Hon'ble bench order dated 05.11.2019 the applicant placed on record documents pertaining to its legal status i.e. the certificate of

Registration under the Indian Partnership act, 1932 and the partnership deed and further submitted that the applicant is a Registered Partnership firm

under the India Partnership Act, 1932.

4. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:

i. That the application under reply is not maintainable and is liable to be dismissed with costs in favor of the Respondent. The Respondent claims that

the applicant has failed to demonstrate that a debt was due and that there has been a default in the payment of such debt, both of which are pre-

requisites for the maintainability of an application under section 9 of the IBC. The Respondent further claims that the applicant has failed to

demonstrate from the records or otherwise, that an operational debt was payable either in law or fact, and that a default of such payment on terms of

section 3(12) of the IBC has been committed by the corporate debtor.

ii. The Respondent claims that he has neither received from the applicant, at its registered address a notice demanding the payment of any unpaid

operational debt, nor has any copy of any invoice demanding payment of any amount involved in any default been received at the said address, in the

form and manner as prescribed under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, as the same

would be evident from a perusal of the Tracking Report of the Postal authority.

iii. That non service of a notice demanding unpaid operational debt upon the corporate debtor, amounts to taking away its rights to bring to the notice

of the Respondent, the existence of a dispute concerning such debt.

iv. That the Registered office address of the Respondent is 7, 383 C, Bank Street, Munirka, New Delhi-110067.

v. That the Respondent denies that for the services provided by the applicant to the Respondent, a sum of Rs. 9,14,859/- fell due on Respondent as

alleged by the applicant, by reason of the letter of Engagement dated 28.03.2014 bearing Reference Number TLP/BNM/AI/10187/2014 or that the

applicant is entitled to claim an amount of Rs. 9,14,859/- from the Respondent as alleged by the petitioner, or that a default with respect to such sum

due has been committed by the Respondent.

vi. It is admitted that the Engagement Letter stipulates payment of bills within 60 days, however, it is stated and submitted that they are payable

subject to objections with respect to the quantum of the sums raised in the invoices or the quality of services rendered, which have a bearing on the

sums to be raised in the invoices. It is denied that bills were to be cleared within a period of 60 days from the date of presentation, despite the

Respondent having objections thereto. Such was always an implied term of the engagement letter.

vii. The Respondent denied that a bill raised on the Respondent can be the subject matter of default of 'operational debt' by the applicant, especially

when no evidence of payment in terms of the said bill, has been furnished along with the application under reply by the applicant. The Respondent

further claims that no document of any authorization from such counsel, from which it could be shown that such counsel has authorized the applicant

to claim on its behalf, such sum. The services rendered by the senior counsel to the Respondent cannot form the subject of a debt owed to the

applicant as the applicant has not provided the service, but merely 'engaged' such counsel, to provide such service.

viii. The Respondent denied that the applicant has served by way of speed post and e-mail, a demand notice in as much as, the Respondent has not

received any such notice in its registered address.

ix. The Respondent denied that the list of documents produced can be said to constitute proof of operational debt owed by the Respondent.

5. The Applicant has filed written submissions in which he has reiterated the certain points raised by him in the petition and they are as follows:

i. That pursuant to the acceptance of engagement letter, applicant provided from time to time legal services to the Respondent. The invoices were

raised and the same were initially duly paid by the Respondent. From 2017, the Respondent stopped clearing the invoices that were raised by the

applicant.

ii. On the argument raised by the Respondent in relation to the service of demand notice the applicant claims that the Demand Notice in form 3 was

sent to the corporate debtor on 15.02.2019 via speed post on its correct Registered office address as mentioned in the master data of the website of

Ministry of Corporate Affairs i.e. C-65, Basement, Malviya Nagar, New Delhi-110017. The applicant submitted that the Registered office of a

company is defined under section 12 of the Companies Act, 2013, as an office capable of receiving and acknowledging all communications and

notices. As also stated in the Tracking Report, the demand notice sent to the Registered office address was returned with remark ""Not Delivered

UNCLAIMED"". The applicant further submitted that as per section 27 of the General Clauses Act, 1898 and section 114 of the Indian Evidence Act,

1872 read with following judgements:

- a. The Hon'ble apex court judgement in K. Bhaskaran v. Sankaran Vaidhya Balan, (1999) 7 SCC 510.
- b. The Hon'ble apex court judgement in D. Vinod Shivappa v. Nanda Belliappa, (2006) 6 SCC 456.
- c. The Hon'ble apex court judgement in Ajeet Seeds Ltd. v. K. Gopala Krishnaiah, (2014) 12 SCC 685.
- d. The Hon'ble apex court judgement in P.T. Thomas v. Thomas Job 2005 (6) SCC 478.
- e. Hon'ble NCLAT'S judgement in Alloysmin Industries v. Raman Casting Private Limited Company Appeal (AT) (Insolvency) No. 684 of 2018.

iii. On the argument raised by the Respondent in relation to the service of Demand Notice served through e-mail the applicant claims that an e-mail

sent on the registered email address is a valid service in view of the provisions of Companies Act, 2013 and the rules framed thereunder. Section 20 of

the Companies Act, 2013 states that service of documents on a company may be made by sending it to the company at its registered office by

registered post by speed post or by courier service or by means of such electronic or other mode as may be prescribed.

iv. Furthermore, Rule 35 of the Companies (Incorporation) Rules 2014, further provides in detail that a document may be served on a company

through electronic transmission delivered by an electronic mail on the electronic mail address which the company has provided from time to time.

v. The applicant further claim that the Demand notice was also served upon Mr. O.P. Ahuja and Vineet Relia as during the time, the applicant was

providing the services to the Respondent all the communications and instructions were communicated through the e-mail id of Mr. O.P. Ahuja and Mr.

Vineet Relia.

vi. The applicant further submitted that no objections were ever raised by the Respondent with respect to the invoices raised by the applicant. The

Applicant points out that even after the issuance of reminder e-mails the Respondent never raised any objection regarding the invoices.

vii. The applicant submitted that no dispute exists between the applicant and the Respondent and that the objections raised by the Respondent after

filing of the application u/s 9 IBC is a feeble argument unsupported by evidence. Reliance to be placed on the apex court judgement in Mobilox

Innovations (p) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353 and judgement of Hon'ble NCLAT in Ahluwalia Contracts (India) Limited v.

Raheja Developers Limited. Company Appeal No. 703 of 2018.

6. The Respondent had filed Memorandum of Arguments in which he has reiterated the certain points raised by him in the reply and they are as

follows:

i. That the petition is not maintainable as there has been no service of any notice demanding unpaid operational debt on the Respondent as per section

8(1) of the IBC read with rule 5 of Insolvency and Bankruptcy (Application to adjudicating authority) rules, 2016.

ii. The Respondent claimed that it is settled law that return of a postal consignment with an endorsement ""Unclaimed"" cannot be equated with the

endorsement ""refused"", as has been held by the Hon'ble High Court of Gujarat in Bai Bachiben Velabhai Patel v. State of Gujarat and Another,

(1995)1 GLR 761 and cited another recent judgement of High Court of Judicature at Bombay in Jayashri Gajendra Mahajan and Another v. Gajendra

Pandit Mahajan first appeal No. 2815 of 2017.

iii. The Respondent further submitted that Smt. Sonam Gupta is neither a ""Key Managerial Personnel"" nor a ""Whole-time Director"" of the Respondent

company. Therefore, addressing of demand notice by way of electronic mail on such person is of no consequence. The Respondent cited the order of

National Company Appellate Tribunal in Rajesh Malhotra V. M.Y. Agro {Company Appeal (AT) (Insolvency) No. 182 of 2017}.

iv. The Respondent argued that the petition is not maintainable as the Applicant is not a ""Person"" as defined under section 3(23) of the IBC and hence,

cannot be regarded as an operational creditor. The Respondent claims that no documentary evidence has been filed along with the petition as proof of

Registration of such partnership. As such ""The Law Point"" without any proof of registration on record cannot be regarded as a ""Person"" as defined

under section 2(23) of the IBC. The Respondent cited the Judgements of Hon'ble Supreme Court in Dulichand v. Commissioner of Income Tax { AIR

1956 SC 354} and Addanki Narayanappa & Another v. Bhaskara Krishtappa and others { AIR 1966 SC 1300} along with that cited the judgement of

Tribunal in the matter of R.G. Steels v. Berry's Auto Ancillaries (P) Ltd {IB-722(ND)/2019}.

v. The Respondent further argued that the petition is not maintainable by virtue of section 69 of the Partnership Act, 1932 and cited the judgements of

Hon'ble Supreme Court in the matter of Jagdish Chander Gupta v. Kajaria Traders (India) Ltd. {1964 SCR (8) 50} and of Hon'ble High Court at

Calcutta in Deb Paints Pvt. Ltd. v. Universal Lime Industries, { (2002) 110 comp cas 429 cal.

7. Pursuant to the Hon'ble bench order dated 08.11.2019 the Respondent filed a Counter Affidavit with para-wise replying and objecting to the

statements made in the affidavit of the applicant filed on date 05.11.2019 stating that statements made therein cannot constitute evidence that the

entity ""The Law Point"" is a registered partnership firm.

8. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The parties have entered into an

agreement vide Engagement Letter dated 28.03.2014 and according to the conditions stipulated in the agreement the Applicant has raised the invoices

from time to time. Through the Applicant has raised invoices for an amount of Rs. 9,14,859/-the Respondent has paid Rs. 2,00,000/-as an advance for

initiation of litigation and defaulted on an amount of Rs. 9,14,859/- in respect of invoices dated 19.09.2017, 14.02.2018, 22.03.2018, 22.03.2018,

27.04.2018, 04.05.2018, and 20.09.2017. This clearly amounts to part payment made by the Respondent.

9. The Standard Terms and Conditions appended to the 'Engagement Letter' dated 28.03.2014 clearly binds the Applicant and the Respondent. The

Respondent's plea of non-service of Demand Notice cannot be upheld as the applicant has completed the service through post to the Registered office

address and email id of the Respondent as provided on the company's master data. The Respondent cannot shirk off its own liability by claiming that

the service of notice was incomplete.

10. The Respondent's another plea that the applicant cannot be regarded as a 'registered firm' under the Indian Partnership Act, 1932 as amended by

the state of Maharashtra due to the fact that the the applicant entity was originally constituted with three partners, whereas the names of Mr. Prakash

Jha and Mr. Abhishek Puri does not appear in partnership deed which was filed by the applicant and change in constitution of a registered firm was

not brought to the notice of Registrar of Companies within 90 days from the date of such change cannot be upheld as a change in the constitution of a

registered firm and it does not take away its right to file a suit. The Hon'ble Supreme Court of India in V. Subramaniam v. Rajesh Raghuvendra Rao,

civil appeal No. 7438 of 2000 delivered on 20th March 2009, held that the partnership firm whether registered or unregistered is not a distinct legal

entity, hence its right to file suit cannot be taken away.

11. The Applicant has clearly established the existence of debt and default on the part of the Respondent. In the above circumstances this Tribunal

initiates CIRP of the Respondent company.

12. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order

in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during

moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any

financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

13. The interim resolution professional ("IRP"), named in the list provided by the IBBI, is Mr. Sandeep Goel, email id: cmasandeepgoel@gmail.com

phone number: 9810741090 being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more

specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

14. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP

and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.