

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 205 of 2020

(Arising out of Impugned Order dated 23rd January, 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Delhi Bench, in Company Petition No (IB) No.295 (ND)/2019)

IN THE MATTER OF:

**Kodeboyina Srinivas Krishna
CGB 284, DLF Capital Greens, Shivaji Marg,
New Delhi 110015**

... Appellant

Versus

**1. PVM Innvensys Pvt. Ltd.
Plot No. C-5, Road No. 2, Vikrampuri Colony
Kakaguda, Secunderabad
Hyderabad 500001**

...Respondent No. 1

**2. C-Tel Infosystems Pvt. Ltd.
DSM 361-362, DLF Towers, Shivaji Marg
New Delhi 110015
Through Shyam Arora
Insolvency Resolution Professional
Registration no. IBBI/IPA-002/IP-N00546/2017-18/11073**

... Respondent No. 2

Present:

**For Appellant: Mr. Rakesh Kumar, Ms. Preeti Kashyap
and Mr. Yogesh Gupta, Advocates.**

**For Respondents: Mr. Nagaraj Kumar, Ms. Aishwarya
Mohan Gahrana and Ms. Anuradha,
Advocates for R-1.
Mr. Vinod Chaurasia and Mr. Shyam
Arora, Advocates for R-2.**

JUDGMENT
(Through Virtual Mode)
(Dated 25.09.2020)

[Per: Dr.Alok Srivastava, Member (Technical)]

1. This appeal has been filed by Appellant under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC) against the Impugned Order dated 23.01.2020 of the Appellate Authority, National Company Law Authority, Delhi Bench V.

2. The Ld. Adjudicating Authority has, through judgment dated 23.1.2020, admitted the application under Section 9 of the IBC filed by the Respondent no. 1. Consequently, CIRP of the Appellant (Corporate Debtor) has been initiated.

3. The Impugned Order was delivered on 23.1.2020 and the appeal has been filed on 5.2.2020. Therefore, the appeal has been filed within limitation.

4. The brief facts of the case are as hereunder:

(1) The Operational Creditor M/s. PVM Innvensys Private Limited (Respondent no. 1 in this appeal) is a supplier of Global Positioning System (GPS) equipment, who also manages and provides professional services to the

Corporate Debtor M/s. C-Tel Infosystems Private Limited with respect to Hedonic Path Finder System (HPFS) projects in the State of Andhra Pradesh and Telangana pursuant to Master Service Agreement dated 02.05.2014 and Managed Services Agreement dated 01.09.2014.

(2) The Appellant Company is a company working in HPFS Project for the Excise Department of the Government of Telangana. As part of the project, the Appellant works with several vendors for the supply and installation of GPS trackers among other things. Respondent No.1 is one such vendor, who used to work with the Appellant (Corporate Debtor) in accordance with the Master Service Agreement.

(3) As a result of work assigned to the Respondent No. 1 Operational Creditor, various transactions took place between the Appellant Corporate Debtor and the Operational Creditor. These transactions related to payment for supply and installation of GPS vehicle trackers. The transactions in question are as follows:

(1) One such transaction in this case relates to supply and installation of 804 vehicle trackers and managing their services for which an amount of Rs.50,32,028/- was payable to the Operational Creditor by the Corporate Debtor as claimed by the Operational Creditor. This

transaction is confirmed by Corporate Debtor vide e-mail dated 15.10.2015 which has statement of account attached mentioning payment due for 804 vehicle trackers.

(2) Another transaction in question relates to 30 nos. Hippo GPS vehicle trackers (without SIM) including installation, configuration and setup for which purchase order vide Corporate Debtor's e-mail dated 11.12.2015, later amended by Corporate Debtor 's e-mail dated 12.12.2015, was sent to the Operational Creditor. A payment of Rs.3,67,200/- for this transaction is claimed to be due by the Operational Creditor.

(3) The Operational Creditor sent a Demand Notice in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 on 20.11.2018 to the Corporate Debtor. The total amount due/un-paid debt was shown as Rs.50,32,028/- (Rupees Fifty Lakh, Thirty Two Thousand and Twenty Eight only) plus interest calculated @ 18% per annum therein. This amount has been shown in Column 1 and Column 2 of the particulars of the operational debt in the demand notice. Through this demand notice, the Operational Creditor requested re-payment of the

unpaid operational debt within 10 days from the date of receipt of the notice.

(4) In response, the Corporate Debtor sent a reply dated 3.12.2018, wherein it raised dispute about supplying 804 vehicle trackers. He also admitted to have placed purchase order for only 30 nos. of GPS vehicle trackers and having received the same in terms of his purchase order dated 11.12.2015. He categorically mentioned in his reply that apart from the 30 nos. GPS vehicle trackers, the Operational Creditor has not supplied anything more to Corporate Debtor which are mentioned in the Demand Notice. He also mentioned that any invoice for 804 number of GPS vehicle trackers is not enclosed with the demand notice and he has not acknowledged any debt to the Operational Creditor. He clarified that e-mail dated 15.10.2015, which was enclosed by the Operational Creditor with the Demand Notice was only a statement of account for review and not an acknowledgment of debt or proof for supply of equipment.

(5) On receipt of the reply from Corporate Debtor, the Operational Creditor filed an application under Section 9 of the IBC 2016 and has raised the issue of non-

payment of operational debt of Rs.50,32,028/- for supply and installation of 804 vehicle trackers and Rs.3,67,200/- for supply and installation of Hippo 30 GPS vehicle trackers. He has mentioned in the application that as on 12/12/2015, an amount of Rs. 53,99,228/- (Rupees Fifty Three Lakh, Ninety Nine Thousand, Two Hundred and Twenty Eight only) is outstanding payable by the Corporate Debtor to the Operational Creditor against these supplies. The Operational Creditor has also given details of certain TDS deductions for Assessment Year 2015-16 of an amount of Rs.4,89,073/- and a copy of Form 26AS of the Operational Creditor for the Assessment Year 2016-17 confirming TDS deduction of an amount of Rs,1,01,455/-.

5. The case was heard by the Adjudicating Authority (NCLT, New Delhi, Bench V) which delivered its judgment on 23.1.2020. In brief, the Adjudicating Authority has inferred that an amount of Rs.3,67,200/- in respect of payment for supply and installation of 30 nos. of vehicle trackers has not been paid by the Corporate Debtor, which is evident from the certificate issued by Axis Bank. The Adjudicating Authority has also found that the application under Section 9(2) of IBC 2016 is complete and at least a default of

Rs.3,67,200/- is admitted by the Corporate Debtor that has not been paid which is in limitation. On this basis, the Appellate Authority has admitted the application of the Operational Creditor and directed for initiation of CIRP of the Corporate Debtor and the Interim Resolution Professional has also been appointed vide the same judgment.

6. We have heard the detailed arguments of the Appellant and the Respondents. We have also considered the averments of both the parties in the appeal memo, reply of Respondent No.1 and status report filed by Interim Resolution Professional as well as written submissions filed by Appellant and Respondent No.1.

7. The Appellant has claimed in the appeal memo about raising a dispute in the light of Section 9(5)(ii)(d) of the IBC 2016. He has also stated that the application filed by the Operational Creditor was not maintainable since the amount claimed as operational debt due in the demand notice issued by it under Section 8(1) of the IBC 2016 and the amount eventually claimed by it in its application dated 9.1.2018 are different and the Appellate Authority did not appreciate this difference while accepting the application.

8. The Learned Counsel for Appellant has submitted that the Operational Creditor has a two-fold claim against the Corporate Debtor. One claim was related to supply and installation of 804

GPS vehicle trackers for an amount of Rs.50,32,028/-. The second claim related to purchase, supply and installation of 30 GPS vehicle trackers for an amount of Rs.3, 67,200/-. Thus the total amount in two claims was stated by the Operational Creditor to be Rs.53,99,228/-. He has submitted that the Operational Creditor had stated in the Demand Notice that there was a default of non-payment of an amount of Rs.50,32,028/- relating to supply and installation of 804 GPS vehicle trackers whereas the Learned Adjudicating Authority has admitted the petition with respect to the default of Rs.3,67,200/- relating to 30 GPS vehicle trackers vide the Impugned Order. The relevant para 37 of the Impugned Order dated 23.1.2020 is reproduced hereunder for ready reference:-

“37. Therefore, in the light of the aforesaid decisions, when I shall consider the case in hand, then I find that the application under section 9(2) of the Code is complete, at least default of Rs. 3,67,200/- is admitted by the Corporate Debtor and that has not been paid. It is established by the certificate issued by the Axis Bank which is at page number 280 Annexure 19. Hence, there is no payment of unpaid operational debt, the demand notice has been delivered by the Operational Creditor, notice of dispute has been raised and the amount is more than 1 Lakh. Since these contentions are fulfilled then the

Adjudicating Authority has no option but to admit the application of the Operational Creditor.”

He has also contended that an amount of Rs.3,67,200/- has already been paid by the Corporate Debtor to the Operational Creditor after the order dated 03.02.2020 of Hon'ble NCLAT and insofar as the claim of Rs. 50,32,028/- is concerned it is barred by limitation. It is claimed by the Learned Counsel for Appellant that the application under Section 9 of IBC was filed on 12.12.2018, whereas purportedly the claimed debt amount in default is based on e-mail dated 15.10.2015. Therefore, the petition is also barred by limitation with respect to the default amount claimed in the demand notice.

9. The Ld. Counsel of Appellant has argued that while the demand notice relates to the default in respect of Rs.50,32,028/- with respect to the supply of 804 GPS Vehicle Trackers, there is no whisper of default of Rs.3,67,200/- with respect to the supply of 30 Hippo GPS Vehicle Trackers in the demand notice. He has also controverted the claim of the Operational Creditor that both the claims were part of the continuous business dealing between the Operational Creditor and Corporate Debtor, though the demand notice sent by Operational Creditor does not refer to the said fact. He has adverted to the judgment in the matter of **Neeraj Jain Vs.**

Cloudwalker Streaming & Anr. In Company Appeal (AT) (Insolvency) No.1354 of 2019, wherein it has been held that the demand notice would be defective if the invoices are not enclosed. The relevant portion of the said judgment has been referred by the Learned Counsel for the Appellant which is reproduced hereunder: -

“44. The use of the phrase, ‘deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved’ in Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice in Form 3 or Form 4 as per its convenience. Rather, it depends directly on the nature of the operational debt and applicability of Form 3 or Form 4 as per the nature of the transaction.

45. It is important to mention that legislative provisions are made with a larger perspective to deal with all the eventualities that may arise in the implementation of the said provisions, Therefore, the use of the word “OR” in Section 8 cannot be interpreted as such, that the Insolvency and Bankruptcy Code provided a choice or a discretion to an Operational Creditor, to provide an escape route from submission of the invoice, which can

be treated as the most relevant document to prove the debt and amount in default.”

10. The Ld. Counsel for appellant has argued that in the light of the judgment above and since the invoices were not attached with the demand notice, the demand notices are defective resulting in improper and inappropriate application under Section 9 of IBC 2016. He has also claimed in the appeal memo that the arguments were heard by the Division Bench on 07.11.2019 and after hearing part arguments the Division Bench fixed the case for further arguments on 06.12.2019. It is his claim that on 06.12.2019 a Bench comprising of single member heard the case. Since the senior counsel for appellant was busy in another case he requested for a passover which was not granted and the arguments were heard by a single judge who pronounced the order. This, he has claimed, is against the principle of natural justice and the Impugned Order should be set aside on this account too.

11. The Ld. Counsel for Respondent no. 1 has argued that the transactions between the Appellant and the Respondent no. 1 have been maintained as a running account wherein the Respondent no. 1 has supplied a total of 834 GPS vehicle trackers pursuant to the MOU dated 21.05.2013 for the HPFS project. He has contended that the last supply was of 30 vehicle trackers vide purchase order dated

12.12.2015. The Appellant Corporate Debtor has admitted the supply of 30 vehicle trackers and also the receipt of invoice for the same vide his reply to the Demand Notice. Regarding the existence of a dispute in connection with supply of 804 vehicle trackers the Ld. Counsel for Respondent No. 1 has claimed that the Corporate Debtor has raised a dispute for the first time after receipt of demand notice dated 20.11.2018 and has not produced any evidence before the Adjudicating Authority regarding pre-existence of this dispute. It is the claim of the Learned Counsel for Appellant that the application under Section 9 of IBC was filed on 12.12.2018, whereas the claimed amount of debt in default is based on e-mail dated 15.10.2015. Therefore, the petition is barred by limitation with respect to the default amount claimed in the demand notice. He has placed reliance on the judgment of Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. vs Kirusa Software Pvt. Ltd 2018 (1) SCC 353** to emphasize that the dispute must be pre-existing and not merely mentioned in the counterclaim and in the absence of any evidence in support of the same, the application cannot be rejected. He has also cited judgment in **Ahluwalia (Contracts) India Limited vs Raheja Developers Limited Company Appeal no. 703 of 2018 dated 23.07.2019** in support of his contention.

12. With regard to the limitation issue, the Ld. Counsel for Respondent no. 1 has stated that the Respondent no. 1 has been

supplying GPS vehicle trackers to the Appellant pursuant to an MOU dated 02.05.2013 which was valid for a period of 5 years and a running account of payments is maintained for the supply and payments thereof. He has alluded to a number of emails exchanged between the Corporate Debtor and the Operational Creditor to show the existence of a business relationship between the two parties and the purchase and supply of GPS vehicle trackers. He has further contended that among many supplies of GPS vehicle trackers the last one was of 30 nos. GPS vehicle trackers made vide purchase order dated 12.12.2015 which is acknowledged by the Corporate Debtor. He has further submitted that the statement sent by the Corporate Debtor vide email dated 15.10.2015 acknowledges the supply of 804 trackers. He has also mentioned in his arguments that the supply of vehicle trackers is corroborated by Tax Invoices bearing No. 1016 dated 16.03.2015, No. 1017 dated 16.03.2015 and No. 1122 dated 14.12.2015 for 30 nos. vehicle trackers. He has claimed that the acknowledgement of 804 GPS vehicle trackers by the Corporate Debtor implies that the Respondent no. 1 (Operational Creditor) was aware that the total amount claim raised by the Respondent no. 1 was for an amount of Rs. 53,99,228/- and not Rs. 50,32,028/-. Further he has claimed that the attached statement of account sent by the Corporate Debtor in email dated 15.10.2015 for review by the Operational Creditor acknowledges purchase and

supply of 804 vehicle trackers. Therefore, the claim of the Appellant of the existence of different amounts of operational debt in the demand notice and the application under section 9 of IBC, 2016 is devoid of any merit. He has denied being in any discussion of settlement with the Corporate Debtor and has not accepted Rs.3,67,200/- as settlement amount from the Corporate Debtor.

13. We have perused the status report regarding the progress of the Corporate Insolvency Resolution Process (hereinafter called CIRP) submitted by the Interim Resolution Professional. The main points to be noted from the report are that the constitution of the Committee of Creditors (COC) has been put on hold in compliance of the order dated 03.02.2020 of the Hon'ble NCLAT in the present appeal and of the submission of claim amounting to Rs. 95,37,288/- by the Operational Creditor which includes supply of 804 vehicle trackers even though no documents such as purchase or delivery order for these vehicle trackers has been submitted by the Operational Creditor in support of its claim and another claim filed by a financial creditor State Bank of India, Hyderabad of Rs. 12,66,000/-. These claims are yet to be considered by the Interim Resolution Professional and the Committee of Creditors.

14. In addition to the appeal memo, the reply of the Respondent No. 1 and the Written Submissions of the Appellant and Respondent No.

1 and the Status Report of the progress of CIRP filed by the IRP, we have also heard the parties at length in support of their contentions and perused the Impugned Order.

15. In our view, two issues are relevant to this case as regards the application of the Operational Creditor under Section 8 of the IBC, 2016 filed before the Ld. Adjudicating Authority. These issues are:

(i) Whether the debt mentioned in the Demand Notice is an operational debt and whether there is default in its payment?

(ii) Whether the application filed under Section 8 of the IBC, 2016 for the relevant operational debt is within limitation?

16. We will first consider the issue stated in Para 15(i) of this judgment. The Operational Creditor has referred to Master Service Agreement dated 02.05.2014 and Managed Services Agreement dated 011.09.2014 which are with respect to the HPFS projects. In accordance with these two agreements, the Operational Creditor used to supply, install and provide professional services for GPS vehicle Trackers for vehicles of various distilleries in Andhra Pradesh and Telangana on behalf of the Corporate Debtor. M/s PVM Innvensys Pvt. Ltd. supplied GPS Vehicle Trackers and other related services to the M/s C-Tel Infosystems Pvt. Ltd. through the two agreements mentioned earlier in this paragraph. Therefore there exists Corporate Debtor-Operational Creditor relationship between

them in which M/s PVM Innvensys Pvt. Ltd. is the Operational Creditor and M/s C-Tel Infosystems Pvt. Ltd. is the Corporate Debtor. Hence the amounts said to be due to the Operational Creditor are “Operational Debt” as per the definition of “Operational Debt” as per the in Section 5(21) of IBC 2016, which is reproduced below:-

“5. Definitions:-

(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.”

17. The various columns of Form 3 (prescribed under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) in which the Operational Creditor has to serve notice to the Corporate Debtor require mention of the amount of debt, date of default and documents to be attached to the application to prove the existence of operational debt and the amount of default. In this light a perusal of the Demand Notice dated 20.11.2018 sent by the Operational Creditor (Respondent No. 1) as required under Section 8 of the IBC, 2016 shows the total amount of debt as Rs. 50,32,028/- in Column 1 of the notice which

is payable to the Operational Creditor by the Corporate Debtor for supply and installation of 804 vehicle trackers. In the same column 1 this amount is shown as due on the basis of an email dated 15.10.2015 of the Corporate Debtor addressed to the Operational Creditor for supply and installation of 804 vehicle trackers and payment of commission and managed and professional services. The entries in column 1 of the demand notice also mention issuing of purchase order dated 11.12.2015 (revised on 12.12.2015) for 30 nos. Hippo GPS vehicle trackers without sim including installation, configuration and setup of an amount of Rs. 12,000/- each. Therefore, there are two amounts mentioned in Form 3. One pertains to supply of 804 vehicle trackers and the other to supply of 30 vehicle trackers.

18. It is now to be seen whether both or any of the two purported supplies of 804 vehicle trackers and 30 vehicle trackers are 'operational debt/s' which are in default of repayment. It would be instructive to peruse Sections 8 and 9 of the IBC which are reproduced below to examine this issue.

Section 8. Insolvency resolution by operational creditor.

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor

(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the ² [payment] of unpaid operational debt

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation--For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding ²[payment] of the operational debt in respect of which the default has occurred.

Section 9. Application for initiation of corporate insolvency resolution process by operational creditor

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish--

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the

corporate debtor; if available;

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

19. It is clear from a reading of Section 8(1) that the demand notice or copy of invoice has to be sent by the operational creditor in the prescribed format for unpaid operational debt on occurrence of default in repayment or copy of an invoice demanding payment of the amount involved in the default. The Explanation with Section 8 explains Demand Notice to mean a notice demanding payment of the operational debt in respect of which the default has occurred. Thus it is clear that the demand notice and later the application under Section 9 of IBC should pertain to the operational debt that is in default alongwith the date of default and documents in proof of the purchase and supply of the items for which the operational debt is said to exist. This is necessary to enable the Ld. Adjudicating Authority establish and adjudicate on the existence of operational debt which is in default and the date of default. The Demand Notice in Form 3 also requires the date of default to be explicitly mentioned in the notice so that on the basis of documents the debt amount and the date of default could be ascertained.

20. A perusal of the Demand Notice dated 20.11.2018 shows the amount of one debt as mentioned in the column 1 of the Demand Notice to be Rs.50,32,028/-. This amount pertains ostensibly to the cost of supply and installation of 804 nos. vehicle trackers even though no invoice has been attached with the demand notice to unambiguously ascertain this amount. There is neither any purchase order nor delivery challans produced by the Operational Creditor in support of his contention regarding supply and installation of the 804 vehicle trackers which are signed by the Corporate Debtor and Operational Creditor. The delivery challans that are produced much later (not in the Demand Notice) by the Operational Creditor do not contain the signature of the receiving party i.e. the Corporate Debtor and, therefore, cannot be taken as unmitigated proof of delivery of 804 vehicle trackers. The only document in support of this amount of debt, i.e. Rs.50,32,028/- is an e-mail dated 15.10.2015 sent by the Corporate Debtor to the Operational Creditor which is basically an account statement for review. A conjoint reading of Sections 8 and 9 of the IBC makes it incumbent on the operational creditor to show the amount of debt in default and the date of default clearly and should also provide credible proof about the purchase and supply of goods and services as claimed. Hence the operational creditor's claim of debt of Rs.50,32,028/- and default in payment of the cost relating to supply and installation and

managed professional services is not established as required in Sections 8 and 9 of the IBC.

21. The Operational Creditor has also mentioned supply of 30 nos. GPS vehicle trackers vide purchase order dated 12.12.2015 issued by the Corporate Debtor. He has mentioned this as a second debt of supply and installation of 30 nos. GPS vehicle trackers. He has produced the purchase order, supply and installation of 30 nos. Hippo GPS vehicle trackers as part of ongoing business transactions between the Corporate Debtor and the Operational Creditor. The Corporate Debtor, in his reply dated 03.12.2018 to the Demand Notice, has accepted placing purchase order of 30 nos. GPS vehicle trackers and receiving the supply. Since the Corporate Debtor has accepted the supply pending payment relating to these 30 vehicle trackers; hence it is an admitted Operational Debt.

22. Now turning to the issue of limitation as mentioned in Para 15(ii) of this judgment (supra). The application filed by the operational creditor under Section 9 of the IBC claims an operational debt of Rs. 53,99,228/- which comprises of two orders viz. for 804 vehicle trackers for Rs. 50,32,028/- and for 30 vehicle trackers for Rs. 3,67,200 (total amount Rs. 53,99,228/-). The claim of the Operational Creditor (Respondent No. 1) that there were continuous business dealings between the Corporate Debtor (Appellant) and Operational Creditor

(Respondent No. 1) and therefore the payments are also a continuous process and hence the date of default should be taken as 12.12.2015 appears credible as the Corporate Debtor and Operational Creditor were working in HPFS projects in accordance with valid Master Service Agreement and Managed Services Agreement which was current at the time of the said transactions. The unpaid amount relating to supply and installation of 30 vehicle trackers which is an operational debt relates to purchase of 30 nos. Hippo GPS vehicle trackers vide email dated 12.12.2015. The application under Section 9 of IBC was filed by the Operational Creditor on 08.12.2018 which is within three years of the issue of purchase order on 12.12.2015. Hence the application under Section 9 of IBC has been filed within three years of the purchase of 30 vehicle trackers and is, therefore, within limitation.

23. It is also noted that during the pendency of this appeal, the Hon'ble NCLAT vide its order dated 03.02.2020, had accorded liberty to the Corporate Debtor and Operational Creditor to settle the amount of operational debt between them. The status report dated 15.07.2020 filed by the Resolution Professional also mentions that, in response to the Information Memorandum, only two claims have been filed for consideration. These relate to PVM Innvensys (P) Ltd. which has claimed Rs.95,37,288/- as Operational Creditor and State Bank of India, Hi-Tech City Branch, Hyderabad which has claimed

Rs.12,66,000/- as a Financial Creditor. Out of this amount, the Corporate Debtor has apparently paid Rs. 3,67,200/- to the Operational Creditor though the Operational Creditor has protested against this payment. It is for the Resolution Professional and the Committee of Creditors to consider all these claims received in the process of CIRP. We also hope that the stakeholders as well as the IRP and COC shall keep in mind that the IBC is a beneficial legislation which is not meant to put going concerns/entities in resolution for small acts of commission or omission which can be rectified.

24. The Corporate Debtor has raised the issue of not been accorded an opportunity to advance oral arguments by the Ld. Adjudicating Authority on the date of final hearing i.e. 06.12.2019. It is seen by us that the Ld. Adjudicating Authority has, in the interest of adhering to timelines given in IBC, considered the oral arguments made by the Ld. Counsel of the Corporate Debtor made on the previous date of hearing. He has decided to close the arguments on 06.12.2019 and pass the final judgment in the case after taking into account all the submissions, which include written and oral submissions, and hence it cannot be said that the Corporate Debtor was denied reasonable opportunity to be heard.

25. In the result, and on the basis of detailed discussion in the aforementioned paragraphs, we find no infirmity in the order of the

Learned Adjudicating Authority. The interim stay order relating to non-constitution of the Committee of Creditors passed by this Tribunal on 03.02.2020 is hereby vacated and the Interim Resolution Professional shall take further action with regard to the Corporate Insolvency Resolution Process. There is no order as to costs.

(Justice Bansi Lal Bhat)
Acting Chairperson

(Dr. Alok Srivastava)
Member (Technical)

(Ms. Shreesh Merla)
Member (Technical)

New Delhi
25th September, 2020

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