

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 240 of 2019**

**IN THE MATTER OF:**

**Overseas Packaging Industries Pvt. Ltd. ...Appellant**

**Vs.**

**Sify Technologies Ltd. ...Respondent**

**Present: For Appellant: - Ms. Garima Sharma, Advocate.**

**For Respondent: - Mr. Ankit Chaturvedi, Advocate.**

**O R D E R**

**17.05.2019**— The Appellant, who claimed to be ‘Operational Creditor’ filed application under Section 9 of the ‘Insolvency and Bankruptcy Code, 2016’ (‘I&B Code’ for short) which has been rejected by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai, on the ground of non-availability of evidence relating to debt and default.

2. We have heard the learned counsel appearing for the parties and perused the records.

3. Form 5, which is the application under Section 9 has been enclosed by the Appellant, wherein ‘particulars of operational debt’, which includes documents, records and evidence of default is to be shown, as stated by the Appellant is as follows:

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**Part-IV**

<b>PARTICULARS OF OPERATIONAL DEBT</b>		
1	TOTAL AMOUNT OF THE DEBT. DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE AND THE DATE FROM WHICH SUCH DEBT FELL DUE	Rs 14,91,508.20 Plus interest Rs 1,65,025.04 (working as per annexure)
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKING FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	Rs 14,91,508.20 Plus interest Rs 1,65,025.04 (working as per annexure)

**Part-V****PARTICULARS OF OPERATIONAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]**

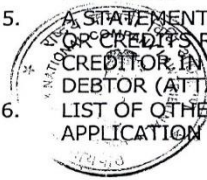
1. PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY) **NOT APPLICABLE**

1. DETAILS OF RESERVATION / RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS **NOT APPLICABLE**

PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE DEFAULT, IF ANY **-NOT APPLICABLE**

(ATTACH A COPY OF THE ORDER) **NOT APPLICABLE**

2. RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD) **NOT APPLICABLE**
3. DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925) (ATTACH A COPY) **NOT APPLICABLE**
4. PROVISION OF LAW, CONTRACT OR OTHER DOCUMENT UNDER WHICH OPERATIONAL DEBT HAS BECOME DUE ANNEXURE
5. A STATEMENT OF BANK ACCOUNT WHERE DEPOSITS ARE MADE OR CREDITS RECEIVED NORMALLY BY THE OPERATIONAL CREDITOR IN RESPECT OF THE DEBT OF THE CORPORATE DEBTOR (ATTACH A COPY) ANNEXURE
6. LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF

**TRUE COPY**

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OPERATIONAL DEBT AND THE AMOUNT IN DEFAULT  
ANNEXURE

I, [*L V RAMANAN/ person authorised to act on behalf of the operational creditor*] hereby certify that, to the best of my knowledge, [*name of proposed insolvency professional*], is fully qualified and permitted to act as an insolvency professional in accordance with the Code and the rules and regulations made thereunder. [*WHERE APPLICABLE*]

[has *L V RAMANAN* paid the requisite fee for this application through [*state means of payment*] on [*date*].

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor Name in block letters <b>L V Ramanan</b> For OVERSEAS PACKAGING INDUSTRIES PVT. LTD Position with or in relation to the operational creditor Branch Manager, Chennai Office Address of person signing , 3rd floor, Creative Enclave No.148-150, Luz Church Road, Mylapore, Chennai – 600 004	Authorised Signatory.
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Instructions

Please attach the following to this application:

- Annex I Copy of the invoice / demand notice as in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 served on the corporate debtor.
- Annex II Copies of all documents referred to in this application.
- Annex III Copy of the relevant accounts from the banks/financial institutions maintaining accounts of the operational creditor confirming that there is no payment of the relevant unpaid operational debt by the operational debtor, if available.
- Annex IV Affidavit in support of the application in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- Annex V Written communication by the proposed interim resolution professional as set out in Form 2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. [*WHERE APPLICABLE*]
- Annex VI Proof that the specified application fee has been paid.

**Note:** Where workmen/employees are operational creditors, the application may be made either in an individual capacity or in a joint capacity by one of them who is duly authorised for the purpose.



4. From the aforesaid 'particulars of operation debt', we find that no document or record or any evidence of default has been enclosed by the Appellant, as the Appellant marked the columns as "not applicable" or left the same blank.

5. Learned counsel for the Appellant relied on the other page to suggest that there is evidence of default. Invoice dated 22<sup>nd</sup> January, 2018 at Page 36 raised by the Appellant has been enclosed, wherein the name of the buyer has been shown as 'Perfect IT Solution'.

6. The aforesaid invoice has been taken into consideration by the Adjudicating Authority to come to a definite conclusion that the buyer is 'Perfect IT Solution' as shown in the invoice and not 'Sify Technologies Limited' (Respondent herein).

7. Learned counsel for the Appellant submitted that 'Perfect IT Solution' is agent of 'Sify Technologies Limited', which the Respondent has also admitted in their Demand Notice. However, such disputed question cannot be decided either by the Adjudicating Authority or by this Appellate Tribunal, as in the invoice the name of the buyer has been shown as 'Perfect IT Solution' and not 'Sify Technologies Limited'.

8. There being a disputed question of fact, we are of the view that it is a case which can be decided by a Court of Competent Jurisdiction, hence the application under Section 9 is not maintainable.

9. The appeal is dismissed. However, the order passed by the Adjudicating Authority or this Appellate Tribunal will not come in the way of the Appellant to move before a Court of Competent Jurisdiction for appropriate relief.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice A.I.S. Cheema)  
Member(Judicial)

(Kanthi Narahari)  
Member(Technical)

Ar/g