

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.201

C.P.(IB)/229(AHM)2020

Order under Section 9 of IBC, 2016

IN THE MATTER OF:

Golden Services
Through Its Proprietor Balkishan Gome

.....Applicant

v/s

.....Respondent

AUM Event & Promotions India Pvt Ltd

Order delivered on: 08/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT-I)**

CP (IB) No.229/AHM/2020

(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

Golden Services

Through its Proprietor
Balkishan Gome
Having its registered office at:
79/2, Nehru Nagar Indore,
Madhya Pradesh, 452001

**Applicant/
Operational
Creditor**

VERSUS

**AUM Event & Promotions India
Private Limited**

Through its Chairman/Director/
Company Secretary or any Principal
/Authorized Officer
Having its registered office at:
01- "Arihant", 83/B, Swastik
Society, B/H. St. Xavier's Ladies
Hostel, Nr. Swastik Char Rast,
Ahmedabad, Gujarat, 380009
CIN: U93000GJ2008PTC054468

**Respondent/
Corporate
Debtor**

CORAM:

MR. SHAMMI KHAN (MEMBER JUDICIAL)

MR. SAMEER KAKAR (MEMBER TECHNICAL)

APPEARANCE:

For the Operational Creditor: Mr. Deepesh Gome, Adv

For the Corporate Debtor: Mr. Maulik Nanavati, Adv.

O R D E R

1. The Present Application was filed on **17.03.2020** by **Golden Services** Through its Proprietor Balkishan Gome (hereinafter referred to as “**the Applicant/Operational Creditor**”) against **AUM Event & Promotions India Pvt. Ltd.**(hereinafter referred to as “**the Respondent/Corporate Debtor**”) 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 with a prayer to initiate the Corporate Insolvency Resolution Process (in short “**CIRP**”) against the Corporate Debtor for having defaulted in payment of its outstanding dues of **Rs.8, 26,149/-**.
2. On perusal of Part-I of the Form-V reveals that the Applicant/Operational Creditor is one Golden Service through its Proprietor Balkishan Gome. The registered office of the Applicant/Operational Creditor is situated at 79/2 Nehru Nagar, Indore (M.P.) 452001.

3. On perusal of Part-II of the Form-V reveals that the Respondent/Corporate Debtor is one AUM Event & Promotions India Private Limited having CIN No. U93000GJ2008PTC054468 incorporated on 14.07.2008. The registered office of the Respondent/ Corporate Debtor is situated at 01-“Arihant”, 83/B, Swastik Society, B/H. St. Xavier’s Ladies Hostel, Nr. Swastik Char Rast, Ahmedabad, Gujarat, 380009.
4. An affidavit for filing this application is signed by one CS Chetan Narwani, Company Secretary and authorized representative of Applicant having its registered office at S-85, Yeshwant Plaza, Opp. Railway Station Road, Indore (M.P.) 452001 authorized by Authorization letter dated 06.03.2020 which is annexed to the Petition.
5. On perusal of Part-III of the Form-V reveals that the Applicant/Operational Creditor has not proposed the name of any person to be appointed as Interim Resolution Professional.
6. On perusal of Part-IV of the Form-V reveals that total dues as claimed by the Applicant/Operational Creditor is Rs.8,26,149/- consisting of Rs.5,65,856/- being principle and amount of Rs.2,60,293/- as interest at the rate of 2% as on 14.11.2019.
7. The averments made by the Applicant in its application are summarized hereunder:-

a) It is submitted that during the period from October 2017 to January 2018, the Operational Creditor provided and delivered

various types of services (specifically, Housekeeping Services and Pest Control Services) to the Corporate Debtor.

- b) The Corporate Debtor, until 15.02.2018, made payments to the Operational Creditor but subsequently stopped further payments.
- c) The Applicant herewith submitted copies of the Bank statements from IDBI Bank, illustrating payments made by the Respondent. The last payment, amounting to Rs.3,00,000/- and dated 15.02.2018, was received in the Current Account of Golden Services with IDBI Bank.
- d) The total outstanding debt is comprised of the principal amount of Rs.5,65,856/- and an aggregate interest amount of Rs.2,60,293/- at a rate of 2% per month. The total default amount, as indicated in the attached invoice, is Rs.8,26,149/-.
- e) Prior to commencing legal proceedings, the Applicant issued a statutory Demand Notice on 04.11.2019, in the prescribed format of Form 3 under Rule 5 (1) (a) of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016.
- f) The Respondent in its reply to the demand notice dated 15.11.2019 disregarded any such claim/debt raised by the petitioner.

g) The Applicant relies upon below mentioned documents to prove its case:-

	Particulars	Annexures	Page No.
1.	Working of Computation of the amount of Unpaid Invoice and dates of default	A1	10
2.	Copy of Bank statements showing the Respondent's last payment dated 15.02.2018	A2	11-12
3.	Copy of Email, Demand notice in Form 3&4 along with proof of dispatch and service thereof.	A3	13-39
4.	General Affidavit verifying the petition	A4	40-42
5.	Affidavit Under Section-9 of the Insolvency and Bankruptcy code, 2016.	A5	43-45
6.	Reply sent by the Respondent through itself dated 15.11.2019	A6	46
7.	Copy of pan card and Aadhar card and GST Registration certificate of Applicant.	A7	47-49
8.	Authority Letter for Appearance	A8	50
9.	Memorandum of Appearance, Vakalatnama	A9	51
10.	Complete Invoices & Copy of mail communication with Corporate Debtor.	A10	52-59

8. The Respondent through one Prakash Kundalia Director of the Respondent company has filed its reply through Affidavit on **20.07.2020** having diary Inward No. **5180**. It is

submitted that no formal written agreement with regard to interest exists between the parties.

9. The Applicant filed a rejoinder through affidavit on **18.08.2020** having *diary inward No.6239* and contended that multiple emails were dispatched to corporate debtor requesting payment and emphasized on email dated 23.10.2023 stating that non-payment of debt will attract interest at a rate of 2% per month for the preceding 10 months.
10. This Tribunal vide Order dated **05.04.2021**, has dismissed this petition i.e. **CP(IB) 229 of 2020** for want of prosecution with liberty to revive the same showing sufficient cause for non-appearance.
11. Further, **Mis.App/3(AHM)2021** was filed for restoration, which was allowed and restored **CP(IB)229(AHM)2020** vide order dated **15.06.2021** by this Tribunal.
12. The Applicant has filed written arguments on **08.11.2021** through Diary Inward no. **D1667**.
13. In the Interim Order dated **29.03.2023** passed by this Hon'ble Tribunal, it is recorded that the Corporate Debtor has admitted his liability of debt.

14. The Respondent has filed written submissions on **29.08.2023** through Diary Inward no. **D3281** admitting its debt liability and with a view to resolve disputes between the parties, paid the principal amount of Rs.5,65,856/-

15. Interim order dated **31.08.2023** records as under:

“Learned Proxy Counsel Mr. Deepesh Gome for the applicant submits that, without the consent of the applicant, the respondent has transferred Rs. 5,32,536/- to the account on 28.08.2023, and the interest part has not been paid, which is confirmed by the respondent stating that principal amount due has been cleared only interest is left. Let both the parties sit together and reconcile about the interest part.”

As such it is an admitted position between the two parties that the present matter pertains to interest only.

16. We have heard the Ld. Counsel for both the parties and perused the material available on record. It is noted that total outstanding debt is comprised of the principle amount of Rs.5,65,856/- and an aggregate interest amount of Rs.2,60,293/- at a rate of 2% per month. The total default amount, as indicated in the attached invoice, is Rs.8,26,149/-.

17. Since the principle amount had been paid by the Respondent on 28.08.2023, we are not dealing with the objections of the Respondent and rejoinder of the Applicant at this stage and confine ourself to the remaining issue of the interest.

18. It is noted that the Respondent admitted the liability and paid the principal amount i.e. **Rs.5,65,856/-** on **28.08.2023** which is also confirmed by the Applicant leaving the Interest remain unpaid. This

Tribunal vide its order dated 31.08.2023 directed both the parties to sit together and reconcile about interest. However, no such reconciliation has taken place between the parties. Therefore, the Applicant is pursuing the present application for claiming Interest.

19. In this regard reliance can be placed upon order by Hon'ble National Company Law Appellate Tribunal in case of '**S.S. Polymers Vs. Kanodia Technoplast Limited**' in 'Company Appeal (AT) (Ins) No. 1227 of 2019 decided on 13.11.2019' in which a similar controversy was involved and the following observations have been made which read thus:-

“3. The Adjudicating Authority has noticed that a sum of Rs.25,00,000/- out of Rs.32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs.7,71,800/- was also paid by 'Corporate Debtor' to the Applicant by 17th January, 2019 through NEFT(s). The said amounts were paid before the admission of the application under Section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under Section 9 of the I&B Code for a sum of Rs.2,16,155/- towards interest. In these background, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed. 4. The Learned Counsel for the Appellant relied on 'Invoices' to suggest that in the 'Invoices', the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'. 5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which

is barred in view of Section 65 of the I&B Code. 6. We find no merit in this Appeal and it is accordingly dismissed.”

20. Admittedly, before the admission of an application under Section 9 of the Insolvency & Bankruptcy (I&B) Code, the 'Corporate Debtor' paid the principal amount; the applicant is pursuing present application for the interest amount, apparently there is no interest clause in the agreement produced before us and the applicant is relying on the invoices.
21. The present case is covered under the judgment of Hon'ble NCLAT in *S.S. Polymers (supra)*.
22. Accordingly, in light of the above facts and above referred judgment the present petition **CP(IB)/229/AHM/2020** is dismissed.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

Anish Keshari/LRA