



SL. No.4

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 10.09.2024 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>IA (IBC)/496/2024 in Company Petition IB/332/9/2021</b>
<b>NAME OF THE COMPANY</b>	<b>Karvy Stock Broking Limited</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Kapston Facilities Management Ltd</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Karvy Stock Broking Limited</b>
<b>UNDER SECTION</b>	<b>9 of IBC</b>

**ORDER**

**IA (IBC)/496/2024**

Orders pronounced, recorded vide separate sheets. In the result, the application is allowed.

**Company Petition IB/332/9/2021**

Orders pronounced, recorded vide separate sheets. In the result, Company Petition is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-II**

**CP (IB) No.332/9/HDB/2021**

*[Under Section 9 of the IBC, 2016 read with Rule 6 of the Insolvency  
and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

**Between:**

M/s. Kapston Facilities Management Limited,  
Registered office at # 287, MIG – 2, IX Phase,  
Kukatpally Housing Board (KPHB),  
Hyderabad

Corporate office at:

Plot No: 75, Kavuri Hills,  
Hyderabad - 500033

.... Applicant/ Operational Creditor

AND

M/s. Karvy Stock Broking Limited,  
Registered office: Karvy Millennium,  
Plot No.31 Financial District,  
Nanakramguda, Gachibowli  
Hyderabad – 500032

.... Respondent/ Corporate Debtor

**Date:10.09.2024**

**CORAM:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)  
Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsel/Parties present:**

For the Applicant : Mr. Avinash Desai, Senior Counsel  
For the Respondent : Mr. Lokesh Agarwal, PCS

**Per: Rajeev Bhardwaj, Member (Judicial)**

**ORDER**

1. When M/s. Karvy Stock Broking Limited (herein after referred as “**Corporate Debtor/Respondent**”) failed to pay the debt of Rs.1,07,63,333/- including interest, M/s. Kapston Facilities Management



Limited, (herein after referred as “**Operational Creditor/Applicant**”) filed the present Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 (“**IBC**”) for initiating the Corporate Insolvency Resolution Process (“**CIRP**”) against the Respondent.

2. **Petition:**

- 2.1. The Respondent is a company registered under the provisions of Companies Act, 1956, providing stock broking and research advisory services in India. The Operational Creditor is also registered under the Companies Act and is engaged in the business or providing facilities management services of the nature of “Security & Housekeeping”.
- 2.2. The Respondent entered into an agreement Annexure-A3 with the Operational Creditor on 20.04.2011 for providing services to the Respondent. The services were being rendered since 2011, but the Letter of Intent **Annexure-A4** was issued in favour of the Operational Creditor on 26.04.2019 for providing services of the “Security & Housekeeping” at the offices of the Respondent and its group of companies. In this regard, both the parties have entered into formal agreement **Annexure-A5** dated 25.03.2019. This agreement was further renewed vide letter **Annexure-A6** on 01.05.2019 till 30.04.2021.
- 2.3. As per the practice, the invoices were to be raised in the name of the Respondent for making the payment within a period of 30 days from the date of the invoice. However, the Respondent never adhered to the timeline.



- 2.4. The matter regarding payment was taken up with the Respondent orally as well as by sending emails many times, but to no avail. Finally, the Operational Creditor sent demand notice dated 28.06.2021 asking for the payment of Rs.1,07,63,333/- which includes principal amount of Rs.91,21,469/- and interest of Rs.16,41,864/-, the details of the invoices which are still unpaid have been given in Para No.17, Part-IV of the Petition.
- 2.5. The default in making the payment occurred for the first time on 01.10.2019 for the invoices raised on 31.07.2019 and 31.08.2019, which is a continuing one and thereafter, the operational debt fell due on the expiry of 30 days of the issuance of each invoice.

3. **Counter:**

- 3.1. This Petition is not maintainable because the Respondent is not a Corporate Person as defined under Section 3 (7) IBC, 2016. Actually, the Respondent is a 'financial service provider' as defined under Section 3(17) IBC and registered as a stock broker with the SEBI.
- 3.2. The Operational Creditor has also failed to prove the threshold limit required to file Petition under Section 9 of IBC. The total amount claimed is Rs.1,07,63,333/- which includes Rs.16,41,864/- as interest. However, the Respondent has never agreed for the payment of interest and therefore, if the interest amount is excluded, the minimum amount of Rs.1 Crore as per the Section 4 of IBC has not been met.



4. **Rejoinder:**

- 4.1. The Applicant has reaffirmed and reasserted the contentions made in the petition by denying that the Respondent is not a corporate person by referring to the order passed by the SEBI.
- 4.2. Similarly, the Respondent is also liable to pay interest because it is registered under the provisions of the MSME Act. Under the said Act, buyer is liable to pay compound interest of three times the bank rate notified by the RBI. Therefore, by virtue of Sections 16 and 17 of the MSME Act, the Operational Creditor is entitled to charge interest for the delayed payment from the Respondent.

5. **Findings:**

- 5.1. Petition under Section 9 of the IBC requires a strict proof of debt and default. The Petition can be filed by the Operational Creditor who is defined under Section 5(20) of the IBC, which says:

*“operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred*

- 5.2. In view of definition under Section 5(20), the Applicant is an Operational Creditor as the debt is owed to it by the Respondent. For determining whether M/s. Karvy Stock Broking Limited is the Corporate Debtor or not, we need to look at the definition of corporate person under Section 3(7) IBC:

*“Corporate person means a company as defined in “Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any **financial service provider**.” (Emphasis provided)*



5.3. Thus, as per sub-section 7 of the Section 3, the corporate person means:

- (i) a Company
- (ii) LLP
- (iii) any other persons incorporated with limited liability under any law

5.4. However, the financial service provider is not included in the definition of corporate person and accordingly an application cannot be filed for initiation of CIRP against the financial service provider. Here, we may also profitably refer to the decision of Hon'ble NCLAT in *Globe Capital Market Ltd. vs. Narayan Securities Ltd. Company Appeal (AT) (Insolvency) No.32 of 2024 & I.A No. 62 of 2024*.

5.5. The next question falls for consideration is whether Respondent is a financial service provider. Section 3 (17) of the Code defines 'Financial Provider' as follows:-

*3 (17) "financial service provider" means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;*

5.6. Thus, financial provider is one who is dealing in the business of financial services. For this, we refer to Sections 3(16) and 3(18) which define 'financial services' and 'financial sector regulator', respectively:

*3(16) "financial service" includes any of the following services, namely:*

- (a) accepting of deposits;*
- (b) safeguarding and administering assets consisting of products, belonging to another person, or agreeing to do so;*
- (c) effecting contracts of insurance;*
- (d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;*
- (e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of-*
  - (i) buying, selling, or subscribing to, a financial product;*



(ii) *availing a financial service; or*  
(iii) *exercising any right associated with a financial product or financial service;*

*3(18) "financial sector regulator" means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;*

5.7. **Annexure R3** of the Counter makes it clear that the Respondent is a stockbroker with registration number INZ000172733 and was also a member registered with National Stock Exchange of India Ltd, BSE Ltd and SEBI. For its stock broking activities. Stock broking is a ‘financial product’ as defined under Section 3(15) of IBC and therefore the Respondent is deemed to be a financial service provider under Section 3(17)(e). Section 3(15) is extracted below:

*3(15) "financial product" contracts of insurance, means securities, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed;*

5.8. In this context, the Applicant has contended that the Respondent was not dealing in the business of providing financial services at the time of initiation of the present petition in view of ad-interim ex-parte order issued by SEBI on 22.11.2019 (**Annexure A1 of Rejoinder**), which prohibited the Respondent from accepting new clients for its stockbroking activities and further confirmation of this order by the SEBI on 24.11.2020 (**Annexure A2 of Rejoinder**). Additionally, SEBI issued a show cause notice on 23.11.2020, scheduling hearings before SEBI (**Annexure A4 of Rejoinder**).



- 5.9. However, this contention of the Applicant is meritless because SEBI's restrictions were limited to prohibiting the Respondent from taking on new clients for stockbroking activities. As per the Certificate of Registration issued by SEBI, it is explicitly stated that the Certificate remains valid unless it is suspended or cancelled in accordance with the regulations. We find no evidence of any suspension or cancellation of the Respondent's registration earlier than 31.05.2023 (i.e., order of cancelling the Registration of the Respondent) which is later than filing of the present petition (i.e.,10.12.2021) and the date of default.
- 5.10. Besides non-maintainability of the present petition because the Respondent is not a corporate person, the amount claimed is also not above the threshold limit under Section 4 IBC.
- 5.11. The Operational Creditor has claimed an amount of Rs.1,07,63,333/- which includes interest component of Rs.16,41,864/- for the period starting from 31.07.2019 to 31.07.2020 raised vide invoices contained in **Annexure-A11**. In these invoices, the period of services rendered by the Operational Creditor has been mentioned, but there is no reference as when the said amount will become due. However, in agreement **Annexure-A3** executed between the parties, it was stipulated that the Respondent shall make payment within 15 days of receipt of bills. In the Letter of Intent **Annexure-A4** dated 26.04.2019, it was provided that the payment was to be made within 60 days from submission of the bills. In column No.2, Part-IV of the Petition, the Operational Creditor has specifically given the date about the debt and default and this is reproduced as below:

*The default in making payment occurred for the operational debt fell due first on 01.10.2019, for the invoices raised on 31.07.2019 and on*





*31.08.2019, which is a continuing one and thereafter, the operational debt fell due on the expiry of 30 days on various invoice dates and on every such date default occurred.*

- 5.12. Therefore, the Respondent at the most was required to make the payment after 60 days and not 30 days of the issuance of bill. For every bill, there is different cause of action and it is not continuing as claimed by the Operational Creditor.
- 5.13. When the interest is not part of the contract between both the parties, the Operational Creditor cannot claim that part to bring the case within threshold limit. Here, we want to refer to the decisions in ***Swastic Enterprises v. Gammon India Limited [2018] ibclaw.in 46 NCLAT and S Polymers v. Kanodia Technoplast Limited [2019] ibclaw.in 193 NCLAT and Mr. Prashat Agarwal v. Vikash Parasrampur and Anr. Company Appeal (AT) (Insolvency) No.690 of 2022, ibclaw.in 590 NCLAT***. The Applicant is also not entitled for the benefits under the MSME Act because it is not registered under the said Act. Therefore, amount due from the Respondent is only Rs.91,21,469/-.
- 5.14. Threshold limit for filing petition under Section 9 IBC is Rs.1 Crore as per Section 4 of IBC. If the interest component is excluded from the total claim, the claimed amount will be below statutory limit.
- 5.15. Apart from this, even out of 85 invoices amounting to Rs.1,07,63,333/, 25 invoices fall within the period from 25.03.2020 to 24.03.2021 which are hit by Section 10(A) of IBC. The details of these bills have also been filed by the Respondent in IA No.496/2024 and this matches with the list of the invoices as mentioned in Para No.17, Part-IV of the Petition. The details have been extracted as below:

**TABLE**

Invoices that come within the ambit of Section 10A of the Code

S. No	Invoice Number	Date of Invoice	Invoice due date as per the Master Service Agreement & Scope of Work (@Annexure 5, Company Petition)	Invoice Amount	Whether the Invoice is barred by Section 10A
1.	KFM36/1920/0730	29.02.2020	30.03.2020	2,60,417	Yes
2.	KFM36/1920/0731	29.02.2020	30.03.2020	42,399	Yes
3.	KFM36/1920/07993	29.02.2020	30.03.2020	1,16,058	Yes
4.	KFM36/1920/08061	20.09.2020	30.03.2020	5,55,684	Yes
5.	KFM36/1920/08725	31.03.2020	30.04.2020	5,01,723	Yes

6.	KFM36/1920/08757	31.03.2020	30.04.2020	71,833	Yes
7.	KFM36/1920/08759	31.03.2020	30.04.2020	2,58,150	Yes
8.	KFM36/2021/00466	30.04.2020	31.05.2020	53,284	Yes
9.	KFM36/2021/00505	30.04.2020	31.05.2020	11,450	Yes
10.	KFM36/2021/00508	30.04.2020	31.05.2020	5,037	Yes
11.	KFM36/2021/00650	30.04.2020	31.05.2020	1,88,886	Yes
12.	KFM36/2021/01384	31.05.2020	30.06.2020	26,191	Yes
13.	KFM36/2021/01467	25.06.2020	25.07.2020	65,844	Yes
14.	KFM36/2021/01470	25.06.2020	25.07.2020	1,52,857	Yes
15.	KFM36/2021/02212	28.06.2020	28.07.2020	3,43,000	Yes
16.	KFM36/2021/02791	31.07.2020	30.08.2020	2,71,762	Yes
17.	KFM36/2021/03472	31.08.2020	30.09.2020	2,19,066	Yes
18.	KFM36/2021/04152	30.09.2020	30.10.2020	2,57,704	Yes
19.	KFM36/2021/05605	30.11.2020	30.11.2020	2,15,477	Yes
20.	KFM36/1920/00309	29.02.2020	30.03.2020	75,697	Yes
21.	KFM36/1920/00341	31.03.2020	30.04.2020	37,354	Yes
22.	KFM36/2021/00016	30.04.2020	30.05.2020	21,542	Yes
23.	KFM36/2021/00041	31.05.2020	30.06.2020	19,415	Yes
24.	KFM36/2021/00077	30.06.2020	30.07.2020	19,415	Yes
25.	KFM36/2021/00101	31.07.2020	30.08.2020	9,394	Yes
<b>TOTAL</b>				<b>37,99,639</b>	
<b>Total Operational Debt (Principal) claimed in the Company Petition</b>					Rs.91,21,469/-
<b>Total Operational Debt (Interest) claimed in the Company Petition</b>					Rs.16,41,864/-

5.16. Section 10A mandates that no application for initiation of CIRP can be filed in respect of default that has occurred between 25.03.2020 to 25.03.2021. This prohibition is in relation to default which occurs during the Section 10A period, but not in cases where the default has taken place prior to or post Section 10A period. There is no scope of any interpretations except that CIRP cannot be initiated under Section



9 of IBC if the default has taken place during the said period. The Hon'ble Supreme Court has explicitly held this in ***Ramesh Kymal versus Siemens Gamesa Renewable Power Private Limited (supra)*** as how the main provision of Section 10A is to be interpreted with first proviso and the explanation. We want to refer para Nos. 27 and 29 which are reproduced below:

27. Adopting the construction which has been suggested by the Appellant would defeat the object and intent underlying the insertion of Section 10A. The onset of the Covid-19 pandemic is a cataclysmic event which has serious repercussions on the financial health of corporate enterprises. The Ordinance and the Amending Act enacted by Parliament, adopt 25 March 2020 as the cut-off date. The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP "for the said default occurring during the said period". The expression "shall ever be filed" is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred on or after 25 March 2020 for a period of six months, extendable up to one year as notified. The explanation which has been introduced to remove doubts places the matter beyond doubt by clarifying that the statutory provision shall not apply to any default before 25 March 2020.

28. The substantive part of Section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of the CIRP in respect of a corporate debtor for a default occurring on or after 25 March 2020; the embargo remaining in force for a period of six months, extendable to one year. Acceptance of the submission of the Appellant would defeat the very purpose and object underlying the insertion of Section 10A. For, it would leave a whole class of corporate debtors where the default has occurred on or after 25 March 2020 outside the pale of protection because the application was filed before 5 June 2020.

29. We have already clarified that the correct interpretation of Section 10A cannot be merely based on the language of the provision; rather it must take into account the object of the Ordinance and the extraordinary circumstances in which it was promulgated. It must be noted, however, that the retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the corporate debtor or the right of creditors to recover it.

(own emphasis)



5.17. The judgments of *Beetal Teletech Limited vs. Arcelia IT Services Private Limited and Narayan Mangal vs. Vatsalya Builders & Developers Private Limited* relied upon by the Applicant are not applicable in the present case, because in those cases default occurred prior to Section 10-A period and continued thereafter. In the present case, 25 invoices were raised during Section 10(A) period. We also want to rely upon decisions of Hon'ble NCLAT in *Plus Corporate Ventures Private Limited v. Transnational Growth Fund Limited, order dated 31.10.2022 in Company Appeal (AT) (Insolvency) No. 1270 of 2022 and Anil Kaushal v. Colliers International (India) Property Services Private Limited and others, 2022 SCC Online NCLAT 331.*

5.18. In view of the aforesaid discussion, the amount of 25 invoices, amounting to Rs. 37,99,639/- fall within the excluded period under Section 10-A IBC besides interest part can't be included in the total claim. Accordingly, the remaining amount of default is below the threshold limit of Rs.1 Crore.

5.19. As a sequel to our aforesaid discussion, the Petition is dismissed.

**Sd/-**

**(SANJAY PURI)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)**  
**MEMBER (JUDICIAL)**

*Apoorva*