

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

**Company Appeal (AT) (Ins) No.01 of 2021**

[Arising out of Impugned Order dated 18<sup>th</sup> December, 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Delhi Bench, in Company Petition (IB) No.671/ND/2020]

**IN THE MATTER OF:**

**Gangadhar Udayan Dravid,**

Director of Katalist Viewpaper Private Limited  
KH No. 338/10/3, First Floor, Shahbad Pur,  
Delhi – 110061

**... Appellant**

**Versus**

**1. Saurav Keshan**

Proprietor of Inspired Traveller  
D-22, 3<sup>rd</sup> Floor, Amar Colony,  
Lajpat Nagar – 4, New Delhi – 110024  
E-mail: [cs@gmacs.in](mailto:cs@gmacs.in)

**... Respondent No. 1**

**2. Katalist Viewpaper Pvt. Ltd.**

Through the Interim Resolution Professional  
Mr. Pankaj Kumar Singhal  
Reg. No. IBBI/IPA-002/IP-N00532/2017-18/11561  
KH No. 338/10/3, First Floor, Shahbad Pur,  
Delhi – 110061  
E-mail: [aprassociatesllp@gmail.com](mailto:aprassociatesllp@gmail.com)

**...Respondent No. 2.**

**Present:**

**For Appellant: Shri Shantanu Chaturvedi, Advocate**

**For Respondent: Shri Karanveer Jindal and CA Mohit Gulati,  
Advocates (R-1)**

**Shri Pankaj, Advocate (R-2)**

**JUDGEMENT**  
**(22<sup>nd</sup>February, 2021)**

**Per: Dr.Alok Srivastava, Member(T)**

**1.** This appeal has been filed by Gangadhar Udayan Dravid erstwhile Director of Katalist Viewpaper Private Limited under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called IBC) aggrieved by the judgment of the National Company Law Tribunal. New Delhi, Bench VI (hereinafter called Adjudicating Authority) in Company Petition (IB) No.671/ND/2020 vide its order dated 18.12.2020 (hereinafter called the Impugned Order). By the Impugned Order the Adjudicating Authority has admitted the Company Petition filed by Saurav Keshan (proprietor of M/s. Inspired Traveller) (Respondent-1 in the present appeal) against Katalist Viewpaper Private Limited (represented by the Resolution Professional Respondent No. 2 in the present appeal).

**2.** The Appellant is an erstwhile Director of Katalist Viewpaper Pvt. Ltd.(Corporate Debtor) which is a company registered under the Micro, Small and Medium Enterprises Act, 2006. Saurav Keshan (Respondent No.1) is proprietor of the firm Inspired Traveller (Operational Creditor), which is engaged in, among other things, designing advertisements and producing video films.

**3.** The Appeal claims and it is argued that the Corporate Debtor/Katalist Viewpaper Pvt. Ltd. (Katalist in short) had limited role of an intermediary

between Respondent No. 1/Operational Creditor Saurav Keshan the Proprietor of Inspired Traveller and Group M Media Pvt. Ltd. It is claimed that Operational Creditor was engaged by Group M for design of Advertisements for launch of a Product of HUAWEI Technology Pvt. Ltd. (Honor in Short). Corporate Debtor was engaged only to give digital and documental support to Group M and to issue purchase orders on behalf of Group M and to route payments as and when received from Group M and to release the same to Operational Creditor against the services given by Operational Creditor to Honor and Group M. The Appellant claims that the Corporate Debtor had limited role and there was no liability or obligation on it to make the payments. Appellant claims that Group M failed to release the payments of Operational Creditor. It is also argued that even before the time to file Written-Submissions was over, Impugned Order was passed.

**4.** The Respondent No. 1 filed a reply to the appeal memo, on which a rejoinder was filed by the Appellant. The Appellant and Respondent No.1 also filed written submissions alongwith relevant case laws in support of their respective contentions. Detailed arguments of both parties were heard in support of their contentions.

**5.** The Ld. Counsel of Appellant has contended that the submissions regarding the existence of dispute about the liability of payment were not appreciated and without regard to the facts, the Adjudicating Authority has returned an incorrect finding about the non-existence of dispute between the

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Corporate Debtor and the Operational Creditor. He has also pleaded that the Corporate Debtor was in fact Group M and he was only a collection agent for Group M, passing on payments to the Operational Creditor Inspired Traveller as received from Group M. During the course of arguments, the Appellant's Learned Counsel has brought to our attention various e-mails exchanged between the Operational Creditor, Group M, Honor, Huawei Technologies Pvt. Ltd. and KatalistViewpaperPvt. Ltd. starting from June, 2019. The emails impressed upon the Operational Creditor that the payments for the services rendered were undertaken through the Motivator Group M, which was working on behalf of Honor and Group M. Group M routed the payments through Corporate Debtor for services rendered by the Inspired Traveller. The Appellant's Learned Counsel has stated that, therefore, the payments due to the Operational Creditor are not to be made by KatalistViewpaperPvt. Ltd. which is not the Corporate Debtor in the situation.

**6.** The Learned Counsel for Respondent No. 1 has reiterated in his arguments that the purchase orders for providing the relevant services were issued by the Corporate Debtor KatalistViewpaperPvt. Ltd. to the Operational Creditor SauravKeshan. He has stated that all the invoices issued by Operational Creditor vide dates 07.03.2018, 13.6.2018, 16.10.2018 and 18.1.2019 (attached on pp 41-44 in the Appeal Paper Book) have been accepted for payment by Corporate Debtor KatalistViewpaperPvt. Ltd. He has given details of TDS deposited by the Operational Creditor SauravKeshan in the

name of Corporate Debtor as Deductor(attached on pp 45-48 of the Appeal Paper Book). He has also placed reliance on the Balance Sheet filed by the Corporate Debtor for the year ended 31.3.2019 and Statement of Profit and Loss for the year ended 31.3.2019, wherein SauravKeshan (proprietor of Inspired Traveller) the Operational Creditor has been shown as the creditor for an amount of Rs.25,32,852.00 (page 25 of reply of Respondent No.1). He has also stated that the trail of e-mails exchanged between various parties, which have been referred by the Corporate Debtor to show that he was in a Principal-Agent relationship (Katalist as Agent and group M as Principal) are being built up as an afterthought by Katalist to escape from its liability for clearing pending debt as Corporate Debtor. Learned Counsel referred to Appeal Para7 (e) to state that it is admitted position that there was no formal Agreement, leave apart. Tripartite Agreement executed between parties.

**7.** In his written submission the Appellant has explained the relationship that existed between Honor,Motivator Group M, Operational Creditor SauravKeshan (proprietor of M/s. Inspired Traveller) and the Corporate Debtor KatalistViewpaperPvt. Ltd. through a flow chart. The Appellant has also claimed that the payments being cited as due and payable are not payable by Corporate Debtor, as it is not liable to pay. He has cited *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. (2018)* to support his argument that CIRP cannot be initiated when liability to pay the Operational Debt is disputed. He has also cited *Midland Overseas vs M.V. "CMBT Tana" and Ors. AIR 1999 Bom Company Appeal (AT) (Ins) No.01 of 2021*

401to claim that where Principal is disclosed, the Agent cannot be held liable for payment in terms of Section 230 of the Indian Contracts Act, 1972. It is argued that the service was also not received by the Corporate Debtor.

**8.** Respondent No. 1 has submitted in his Written Submission that the Corporate Debtor has raised purchase orders upon the Operational Creditor for availing the services of the Operational Creditor and terms and conditions of the purchase orders are not disputed. He has also pressed the point that the Operational Creditor has raised invoices of the completed work upon the Corporate Debtor which has been duly received and accepted by the Corporate Debtor. In addition, Corporate Debtor has made certain payments against these invoices to the Operational Creditor and even deducted TDS from such payments. He has argued that there is no dispute with respect to the quality of services provided by the Operational Creditor or with the quantum of debt. The dispute raised by the Corporate Debtor is a sham dispute, which does not constitute a dispute in terms of Section 5(6) of IBC as it is neither related with the quality of services nor to the amount of debt nor any breach of terms by the Operational Creditor. He has also argued that if all the e-mails that have been filed by the Appellate are viewed together, it is quite evident that there are issues between the Corporate Debtor KatalistViewpaperPvt. Ltd. and other entities, Group M and Honor. Therefore, the Corporate Debtor is trying to shift the liability that accrues on it to another party without any basis and deny the rightful claim of operational debt of the Operational Creditor Inspired Traveller.

**9.** There are two issues that are germane to this appeal that should to be examined. These are :-

**(i)** Whether KatalistViewpaperPvt. Ltd. is the Corporate Debtor and Inspired Traveller (proprietor SauravKeshan) the Operational Creditor with regard to the designing of advertisement and allied services provided?

**(ii)** Whether any real dispute exists regarding the operational debt between the corporate debtor and operational creditor prior to the filing of application by the Operational Creditor under Section 8 of the IBC?

**10.** In order to examine point (i) of the aforesaid paragraph 9, it is useful to review purchase orders, invoices, TDS certificates and e-mails exchanged between Operational Creditor Group M, Honor and the Corporate Debtor between 7/6/2019 and 11/07/2019. These documents are available in the Appeal paper Book from pages 38 to 71. In addition, the demand notice issued by the Operational Creditor dated 4.12.2019 and the reply/notice of dispute dated 10.12.2019 are also seen in this context.

**11.** Perusal of the Record shows that:

**i.** Respondent No.1 was given the work relating to designing advertisements and producing video films for products of Honor, a smart phone brand, owned by Huawei Technologies Pvt. Ltd. by Corporate Debtor. The Corporate Debtor Katalist Viewpaper Pvt. Ltd. issued purchase orders to the

Operational Creditor for video products and workshop organisation. From time to time the Operational Creditor raised invoices dated 13.06.2018, 16.10.2018 and 18.01.2019 for payment for the services rendered to the Corporate Debtor Katalist Viewpaper Pvt. Ltd. Out of these invoices, some payments were made by the Corporate Debtor while some other payments remained pending.

**ii.** After the last payment made by the Corporate Debtor on 17.06.2019 amounting to Rs.7,52,328/-against the fourth invoice issued by the Operational Creditor, no further payment was made to the Operational Creditor. The Operational Creditor sent reminders and e-mails to the Corporate Debtor requesting for release of outstanding payment, which was not done by the Corporate Debtor.

**iii.** The Operational Creditor sent a Demand Notice dated 04.12.2019 as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding payment of unpaid operational debt, in Form 3, specified in Rule 5 of the aforementioned Rules. In the demand notice, the Operational Creditor mentioned the amount of debt as Rs.17,80,524/- (Rupees Seventeen Lakhs Eighty Thousand Five Hundred and TwentyFour Only). As per details given in the demand notice, the last payment of Rs.7,52,328/- (Rupees Seven Lakhs Fifty Two Thousand Three Hundred and Twenty Eight Only) was received by the Operational Creditor on 17.6.2019 from the Corporate Debtor, and thereafter no payment was made by the Corporate Debtor.



**iv.** After issuing of Demand Notice on 4.12.2019 by the Operational Creditor, the Corporate Debtor sent a reply dated 10.12.2019. In the reply he refused his liability to make the pending payment. A catena of e-mails was exchanged between Group M, Honor, Operational Creditor and the Corporate Debtor wherein the Corporate Debtor claimed that the Operational Creditor was taken on board by Group M for delivering the services. In essence, he maintained that Group M hired the Operational Creditor to carry out the design of advertisements and perform other services for Honor as required by Group M, and, therefore Group M is the Corporate Debtor and is responsible and liable to pay all the pending dues.

**v.** Thereafter the Operational Creditor filed an application under Section 9 of the IBC before the Adjudicating Authority, which was admitted vide order dated 18.12.2020. Accordingly, CIRP was initiated against the Corporate Debtor Katalist Viewpaper Private Ltd. along with other consequential actions as stipulated under the IBC.

**12.** Learned Counsel for the Appellant referred to flowchart of relationship between the various parties provided by the Appellant. The flowchart presents a very complex and complicated relationship between all the parties. No document or agreement has been presented by the Appellant to buttress its claim of any formal relationship between the parties as is being claimed in Flow Chart. More specifically no formal agreement or document has been put forth to show that there was a prior arrangement between Honor, Group M, Katalist

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and Inspired Traveller regarding the modality of issuing purchase orders, raising invoices and making payments for services rendered by Inspired Traveller. The judgement in *Midland Overseas vs M.V. "CMBT Tana" and Ors.* AIR 1999 Bom 401 cited by the Corporate Debtor doesn't provide any help to him, as this judgement relates to a situation where the relationship of Principal-Agent is disclosed and known to all the parties from the beginning. In the present appeal, this relationship does not exist as a prior, formal agreement between the Corporate Debtor and Group M is missing.

**13.** The flow chart and trail of emails shown by the appellant cannot post-facto 'manufacture' a relationship where none was created in the beginning as a formal arrangement. The issuing of purchase order by Katalist and raising of invoices by Inspired Traveller (through Saurav Keshan) addressed to Katalist are a pointer to the Corporate Debtor-Operational Creditor relationship between the two parties. Additionally, it is agreed by both the Appellant and Respondent No. 1 that payments were made by Katalist to Inspired Traveller in relation to the first few invoices and Katalist never raised an issue about it. All the emails that are now presented by the Appellant in support of its claim (about it not being the Corporate Debtor) unambiguously indicate the issue of account reconciliation between Katalist and Group M.

**14.** If we dig deeper in the trail of e-mails between various parties and the fact that there was no formal arrangement between the parties, the conclusion is clear that Katalist Viewpaper Pvt. Ltd. is the Corporate Debtor and Saurav  
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Keshan (proprietor of Inspired Traveller) is the Operational Creditor in so far as the services relating to design of advertisements and video productions is concerned, regarding which purchase orders and invoices for payment have also been presented in the case. There is certainly no dispute regarding the quality of work and service given or any other aspect of the services provided by the Operational Creditor to the Corporate Debtor. This is also supported by the fact that Katalist Viewpaper Pvt. Ltd. has been making payments as per invoices raised by Inspire Travellers and only later some payments remained, when this imaginary dispute has been raised. Reading the e-mails the impression we have gathered is that after Corporate Debtor placed Purchase Orders and as per the purchase Orders services were rendered by Operational Creditor, Corporate Debtor released some payments but later made Operational Creditor run for its dues to other entities claiming amount had to come from Group M. In such situation only because Operational Creditor approached other entity does not mean that it was a tripartite relationships. It was plain and straight matter. Corporate Debtor placed Purchase Order and Operational Creditor rendered service accordingly which has only been partly paid by Corporate Debtor. In absence of any formal agreement entity placing Order for services is the entity liable to pay when matter is under I&B Code, 2016. We need not decide the liability from the e-mails, like one would do in a Civil Suit. From the above discussion, it is quite evident that some dues as claimed by the Operational Creditor Inspired Travellers remained unpaid by the Corporate

Debtor Katalist Viewpaper Pvt. Ltd. This responsibility cannot be shifted or apportioned to any other party. Whatever informal and internal arrangements exist between Honor, Group M and Katalist Viewpaper Pvt. Ltd. cannot affect or impact status of Inspired Traveller as Operational Creditor and also the relationship of Inspired Traveller with Katalist Viewpaper Pvt. Ltd. as Corporate Debtor.

**15.** In the light of the discussion in the earlier paragraphs it is abundantly clear that Appellant M/s Katalist Viewpaper Pvt. Ltd. is the Corporate Debtor and Inspired Traveller (with its proprietor Saurav Keshan) is the Operational Creditor in accordance with the definitions given in the IBC.

**16.** Now examining point (ii) mentioned in Paragraph 8, it is a fact admitted by the Appellant that purchase order No. PO/KVPL/0005 for video production, second purchase order No. PO/18-19/005 for organisation of workshops etc., and third purchase order No. PO/18-19/005 for Honorography were issued by Katalist Viewpaper Pvt. Ltd. to Saurav Keshan, Proprietor of Inspired Traveller. The services were rendered as per Orders placed. After performing the services, the Operational Creditor has issued four invoices dated March 7, 2018 for Rs.12,39,000/-, June 13, 2018 for Rs.14,65,985/-, October 16, 2018 for Rs.9,77,323/- and January 31, 2019 for Rs.8,21,988/-, all in the name of the Corporate Debtor Katalist Viewpaper Pvt. Ltd. It is quite obvious when these purchase orders and the invoices were issued, there wasn't any dispute raised by Katalist about the raising of invoices in its name.

**17.** A dispute is sought to be raised by alluding to the trail of email exchanged between all the parties concerned, which are attached in the appeal paperbook on pages 49-71. A close examination of these emails makes it clear that the dispute that is sought to be shown is a creation as an afterthought to escape from the responsibility of making good the operational debt owed by Katalist (the Corporate Debtor). A detailed discussion on this point has already been done.

**18.** It stands to reason that the Operational Creditor Inspired Traveller should not be made victim of the unresolved issues of accounts reconciliation between Group M and Katalist Viewpaper Pvt. Ltd. This dispute has no relevance to the provision of services or its quality by Inspired Traveller and, therefore, it is not a dispute as covered under Section 5(6) of IBC. Since it is not a pre-existing dispute regarding the services rendered by the Operational Creditor and hence, it will have no cover of help from the judgment of the Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*, as has been claimed by the Appellant.

**19.** In the light of the detailed discussion in the aforementioned paragraphs, the Appellant has not been able to make a water-tight case in his favour by either refuting the relationship of Corporate Debtor with Operational Creditor (between itself and Inspired Traveller) or establish pre-existing dispute as is required in Section 8 (2)(a) of the IBC to escape from the rigours of CIRP.

**20.** Learned Counsel for Appellant claimed that Corporate Debtor Katalist was only a routing agent for placing purchase Order and making payment. It is argued that Katalist itself did not receive any service and in the arrangement was not to get any money for acting as Routing Agent. We pointedly asked the Learned Counsel that if it was not to receive anything why was it there. Learned Counsel then tried to submit that it was only acting in social cause. We are not impressed. There is no document of Agreement to show that Katalist is Agent of Group M. Arrangement between Group M and Katalist is not relevant for Operational Creditor. Entity that placed Orders and got services rendered, must pay. It is irrelevant in the facts of the matter whether Corporate Debtor itself consumed the services or got the same for other entity.

**21.** In our view, there is no pre-existing dispute with regard to the services rendered and considering the purchase orders issued by the Corporate Debtor, in the absence of any documents to the contrary establishing liability to the contrary, the Corporate Debtor was/ is liable for the Operational Debt. The dispute created in the e-mails by the Corporate Debtor to shift liability to Group M is not true dispute with regard to the services taken from the Operational Creditor and services rendered by the Operational Creditor. The defence raised by the Appellant is spurious and illusory and thus can be no basis to deny admission of the Application under Section 9. When the Adjudicating Authority had heard the arguments of the Learned Counsel for the parties, even if it had given opportunity to file Written-Submissions and if by

error before time given to file Written-Submissions was over, the Impugned Order was passed, that by itself would not be sufficient ground to set aside the Impugned Order itself. We have given more than sufficient opportunity to the Appellant to place whatever case the Appellant wants to put on record but we do not find any substance in the same. The Learned Counsel for the Appellant relied on some Judgments of this Tribunal relating to Principal/Agent matters, but we are not burdening this Judgment by referring to them as it appears to us that those Judgments are based on their own facts where even Documents/Agreements existed to show the relationships, which is not the case in the present matter.

**22.** We, therefore, find no merit in the appeal and consequently no ground for intervention in the impugned order dated 18.12.2020 of the Adjudicating Authority. The appeal is thus dismissed with no order as to costs.

**[Justice A.I.S. Cheema]  
Member (Judicial)**

**[Dr.Alok Srivastava]  
Member (Technical)**

**New Delhi  
22<sup>nd</sup>February, 2021**

/aks/

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