

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 2454(ND)/2019

IN THE MATTER OF:

VALUEFIRST DIGITAL MEDIA PVT. LTD.
REG. OFFICE AT G - 270, PHASE - 6, NEAR RUDRA
PUBLIC SCHOOL, AYA NAGAR, NEW DELHI -110047
THROUGH ITS AUTHORISED REPRESENTATIVE
MR: VINAY SINGH

ALSO AT:

B 18, INFO TECHNOLOGY PARK,
SECTOR 34, GURUGRAM,
HARYANA-122001

...OPERATIONAL CREDITOR

VERSUS

NASCENT COMMUNICATION PVT. LTD.
PANKAJ TOWER 1 BASEMENT,
G BLOCK COMMUNITY CENTER, NEAR PVR CINEMA,
VIKASPURI, NEW DELHI -. 110018
THROUGH ITS DIRECTOR

.....CORPORATE DEBTOR

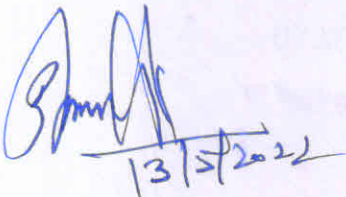
SECTION: U/S 9 OF IBC, 2016

Order Delivered on: 09.05.2022

CORAM:

MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

MR. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)


13/5/2022

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ACS



PRESENT:-

For the Applicant/Operational Creditor: Adv. Kumar Anurag Singh, Adv. Abhishek Vikram, Adv. Zain A. Khan

For the Respondent/Corporate Debtor: Adv. Abhay K. Das, Adv. Shabnam Shalini

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The present petition has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor on the grounds of its inability to liquidate its operational debt.

2. The facts mentioned in the application in brief are as follows: -
- i. That the Operational Creditor provides end-to-end business communication solutions to its clients. The Corporate Debtor deals in providing bulk SMS services.
 - ii. That the Corporate Debtor had approached the Operational Creditor for the purpose of sending out bulk SMS throughout the country in the month of January 2017. During the course of work, the Corporate Debtor never raised any objection to the quality of the service and accepted the services provided.
 - iii. That the Operational Creditor raised 9 invoices for an amount of Rs. 1,87,36,941.29/- which were not cleared by the Corporate Debtor despite various reminders.
 - iv. That the Corporate Debtor has deducted TDS in respect of the invoices raised by the Operational Creditor and deposited the same with the IT Dept, which proves that the Corporate Debtor has approved the Invoices raised by the Operational Creditor.
 - v. That the Operational Creditor issued a demand notice dt. 07.07.2019 for the payment of unpaid debt, which was received

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on 16.07.2019 by the Corporate Debtor. No reply to the demand notice is received.

- vi. That the total amount of debt is Rs. 1,87,36,941.29/- along with interest at the rate of 24% per annum, for the entire period of delay in payment. The amount fell due from 30.04.2017 onwards.

3. The Respondent/Corporate Debtor has filed a reply and submitted the following:

- i. That the Operational Creditor had been one of the vendors for the Corporate Debtor since 2015 and in total 57 invoices were generated of Rs. 10,07,14,284/- of which payment were done for Rs. 8,19,57,427/-. Even during April-October, 2017, the Corporate Debtor made payment of Rs. 1,37,14,391/- in favour of the Operational Creditor. The Operational Creditor has made wrong statements that they started business with the Corporate Debtor in January, 2017 and that they issued only 9 invoices, whereas the Operational Creditor has issued 57 invoices.
- ii. That the Operational Creditor had not rendered proper service for any of the payments done to them. The Operational Creditor was asked to provide proof of service for all the payments made to them and the raw logs for the services used which they failed to submit. Thus, without proof of service/ logs, it is difficult to say whether the Corporate Debtor has to recover excess payment made to Operational Creditor or the Operational Creditor has any outstanding due against the Corporate Debtor.
- iii. That as per the last e-mail dated 17.09.2019 of the Operational Creditor, it was stated that they would be providing proof of service and post that any invoice processing would be done. The Corporate Debtor also clearly told that in case the proof of service was not submitted, the Corporate Debtor would look for legal recourse for recovery of huge amount paid to the Operational Creditor.
- iv. That the affidavit dt. 24.09.2019 u/s 9(3)(b) of the Code is improper and defective as the Operational Creditor has failed to



disclose that Corporate Debtor and the Operational Creditor had been talking and exchanging mails relating to the dispute/correctness of invoices. Hence, there is an existence of dispute between the parties.

4. The Applicant/Operational Creditor has filed a rejoinder and submitted the following: -

- i. That the Corporate Debtor never asked for logs until the Operational Creditor sent the demand notice to the Corporate Debtor and did not raise any dispute during the relevant period when the invoices or the follow-up emails were sent to it. The dispute was raised for the first time upon the receipt of Demand Notice.
- ii. That all the full and final payments made by the Corporate Debtor were in relation to undisputed invoices which are not part of the application. The Corporate Debtor has attached 57 invoices and 49 out of the said 57 invoices stand fully discharged and paid for. The Corporate Debtor has never raised any dispute in respect of the invoices.
- iii. That the Corporate Debtor had received the demand notice on 15.07.2019 by speed post and on 22.07.2019 by email and on 23.07.2019 by courier and started asking for logs since 06.09.2019, two weeks after it received the demand notice.
- iv. That, in fact, it was the Operational Creditor that had been asking, vide email dated 18.03.2019, for raw logs for a certain period. The Corporate Debtor replied on 20.03.2019 that "Tech team is yet to revert on retrieving the logs. I will confirm soon." The Operational Creditor followed up with another email on 25.03.2019, 29.03.2019, 15.04.2019, 23.04.2019, 02.05.2019, 15.05.2019 & 06.09.2019 but there was no reply.
- v. That the Corporate Debtor has suppressed the fact that it had sent multiple emails to the Corporate Debtor asking for payment on 20.09.17, 23.10.17, 13.11.2017, 05.03.2018, 06.03.2018 & 28.06.2018.

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5. The Applicant/Operational Creditor has filed written submissions. The scanned copy of the same is reproduced below:

1. That the Petitioner had filed the Petition under Section 9 of the IBC against the Respondent as the Respondent had failed to pay a sum of Rs. 1,87,36,941.29/- against the 9 invoices raised by the Petitioner between 30.04.2017 and 01.10.2017 [Pg 34-42 of the Petition].
2. The Petitioner had provided bulk SMS services to the Respondent whose registered office is situated within jurisdiction of this Hon'ble Tribunal.
3. That the Petitioner had sent eight emails to the Respondent asking it to make the payment [Pg 43-47 of Petition]. The Respondent did not reply to any of the email where payment was demanded.
4. That the Respondent has paid TDS on the Invoices raised by the Petitioner [Pg 52 of the Petition] which amounts to acceptance of the Invoices by the Respondent.
5. That the Respondent did not raise any dispute in relation to the 9 Invoices raised by the Petitioner.
6. That the Petitioner sent Demand Notice dated 07.07.2019 under Sec 8 IBC to the Respondent which was successfully delivered to the Respondent on 15.07.2019 by speed post, on 23.07.2019 by Courier and Email [Pg 27-31 of the Petition]. The Respondent did not reply to the Demand Notice.
7. That the Respondent, who had been assuring the Petitioner over emails that it shall be providing the raw logs [Email dated 20.03.2019 @Pg 43



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of Petition], after receipt of the Demand Notice, took a U-turn and started to demand logs from the Petitioner instead.

8. That the Respondent raised the dispute for the 1st time vide email dated 15.09.2021 [Pg 27 of the Reply by the Respondent] after receipt of the Demand Notice sent by the Petitioner. There is no communication whatsoever to establish that the Respondent ever raised any dispute before receipt of Demand Notice. The Respondent has only been raising dispute after receipt of Demand Notice.
9. That the Petitioner had been providing the counts every month and since the Respondent had the access to the MIS Dashboard, it used to download the requisite data. Real time DLRs were also available with the Respondent. The Respondent used to pull out the logs themselves as and when required by it. The Respondent only started asking for the logs after the receipt of the Demand Notice in order to delay the payments to the Petitioner. The Petitioner did provide the logs subsequently, but the Respondent, due to ill intentions, kept on asking for data which was hitherto available with them.
10. That the Respondent had not placed on record any document in its reply which substantiate of its claims. It has annexed approx. 60 invoices raised by the Petitioner and have already been cleared by the Respondent and is not the subject matter of the present case.
11. That the Hon'ble Tribunal may take into consideration the conduct of the Respondents who did not appear on three dates (30.10.2019, 13.11.2019 & 02.12.2019) inspite of Notice being served on it. Thereafter it sought time on three dates (15.01.2020, 05.02.2020 & 17.02.2020) from this Hon'ble Tribunal to settle this matter / file its reply. However, the Respondent never approached the Petitioner for settlement or file its reply. Infact, the right of the Respondent to file its reply was closed by this Hon'ble Tribunal vide Order dated 02.03.2020.



6. The Respondent/Corporate Debtor has filed written submissions. The scanned copy of the same is reproduced below:

The petition is not maintainable on the following grounds :

(1) The Demand Notice dt.7.07.2019 issued u/s-8(1) of IBC by Mr. Abhishek Vikram Adv stating that he is acting through its AR Mr. Vinay Singh (pg. 20-21 of Petition), whereas Board of Directors of Petitioner company has authorized Mr. Vinay Singh only on 1.08.2019 (pg. 33 of Petition) & Mr. Vinay Singh signed Vakalatnama in favour of Mr. Abhishek Vikram on 28.08.2019 (pg. 65 of Petition) which authorized/empowered him to act on behalf of Operational Creditor thereafter. Thus the Demand Notice dt.7.07.2019 issued by Mr. abhishek Vikram was without any authority which makes it nullity and the whole proceedings thereafter is vitiated and becomes null and void.

(2) The Petitioner has filed Affidavit dt.24.09.2019 u/s-9(3)(b) of IBC and has made wrong statement on oath by stating u/para 7 (pg. 63 of Petition) that the respondent has not raised any dispute in relation to payment demanded by the Petitioner. However, the petitioner has deliberately concealed the mails exchanged between the parties on 6.09.19, 12.09.19, 15.09.19 & 17.09.19 (pg.28 & 27 of Reply) while swearing Affidavit dt.24.09.19 and also while filing Petition dt.24.09.19. The said mails clearly demonstrate that Respondent had consistently been asking raw logs (proof of service) & the Petitioner had been promising to provide the same on numbers of occasions but never provided the same. Further, Petitioner deliberately



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concealed the mail dt.17.09.19 where they agreed the contention of Respondent and again promised to provide the logs, however, the same has not been given by them till date.

Mails from Respondent to Petitioner :-

On 6.09.19 : "Dear Mukesh, Logs need to be shared by you. I had earlier also conveyed this. Please share IP wise raw logs to proceed on this any further." (pg. 28 of Reply).

On 12.09.19 : "Dear Anurag, you have not shared any logs. The invoicing is from your side, how do you expect me to share logs for the same?" (pg. 27 of Reply at bottom).

On 15.09.19 : "Dear Anurag, you asked for co-operation & we tried to assist you. Unfortunatley we can not provide these logs for multiple of reasons. You need to provide raw logs against the invoices you have raised. Logs of services have been asked multiple times from you & multiple timelines were also committed by you but eventually you did not provide any logs. I am not getting it that when you confirmed provision of logs once, why you are not providing them now and insisting us to provide the same. You have raised invoices which are not matching with our records. Industry standard practice is to provide CDR. Why should there be even any discussion on this ?" (pg. 27 of Reply).

On 17.09.19 the Petitioner mailed to Resp., " Dear Amit, Trust you are doing good. As requested by you in the below mail we shall share the logs with you. Please get the action done soon from your end soon once the logs are shared. Thanks for your co-operation." (pg.27 of Reply).

Thus, the petitioner concealed the said material facts & made wrong statement on oath and also tried to mislead this Hon'ble Court and the same reflects the conduct of Petitioner and is not entitled for equitable relief.

This Hon'ble Court specifically asked about any mail prior to date of demand notice dt.7.07.2019 asking for sharing records for coming on the conclusion of any outstanding.



Respondent has come across mail dt.31.05.2019 which inadvertently could not be placed in Reply is enclosed here.

(3) There is Concealment of facts with intent to mislead this Hon'ble Court by making blatant lie u/para 4 (pg.10-11 of Petition) stating that "the Corporate Debtor had approached Operational Creditor in the month of Jan. 2017 seeking its expertise & services to be provided for bulk SMS & allied services", whereas both had been doing business since 2015 (as being reflected u/pg.49-51 of Petition). The Petitioner raised 57 Invoices (pg. 39-95 of Reply) and not just 9 as alleged in Petition & Respondent paid more than 8 Crore including 1.37 Cr. during April-Oct.2017 (pg. 33-38 of Reply/ Bank statement).

(4) False & Contradictory Affidavit dt.24.09.2019 : The Petitioner u/para 19 (pg.14-15 of Petition) states that the Bank refused to give any confirmation letter u/s-9(3)(c), however, in the same breath, the petitioner u/para 3 & 4 of Affidavit dt.24.09.19 (pg.55-56 of Petition) sought exemption from filing Bank Statement u/IBC Rule 2016 under the pretext that confirmation letter has already been given by the Bank.

(5) Contradictory Index/ documents : Under pg.15 (just above para 20) of Petition, Petitioner gives details of Annexure-III, however, Annexure-III under page 53 to 56 has altogether different documents.

(6) This is not a case of admitted liability and the invoices raised are under dispute. Neither Bank confirmation u/s-9(3)(c) nor Bank Statement u/IBC Rule 2016 nor proof of service (logs) as promised has been provided. Both the sides has claims and counter claims and needs vigorous evidence to prove the veracity of claim that who owes whom. The disputed question of facts can not be decided in summary proceeding. Moreover, IBC is not a recovery proceeding. Thus, the present Petition is not maintainable.



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7. We have heard the Learned Counsel appearing for the applicant and respondent and perused the averments made in the application, reply, rejoinder and written submissions filed on behalf of the respective parties.

8. On perusal of the averments made in the application, reply, rejoinder and written submissions, we observe that: -

- i) It is an admitted fact that the demand notice dated 07.07.2019 was delivered to the Corporate Debtor but no reply to the demand notice was sent by the Corporate Debtor to the Operational Creditor.
- ii) The contention of the respondent's counsel is that the demand notice sent by the Operational Creditor through his counsel was not a valid demand notice, as the Operational Creditor's company has authorized Mr. Vinay Singh, only on 01st August, 2019 who signed the Vakalatnama in favour of the Counsel Mr. Abhishek Vikram on 28th August, 2019
- iii) The second contention of the respondent is that there is a pre-existing dispute between the parties, prior to the issuance of the demand notice and the respondent has placed reliance upon the emailed exchanged between the parties on 6th September, 2019, 12th September, 2019, 15th September, 2019 and 17th September, 2019 enclosed at page 28 and 27 of the reply and by placing reliance on those emails, the respondent's counsel submitted that there was a pre-existing dispute between the parties.

9. In terms of the aforesaid facts, we consider the submission of the parties. So far, the delivery of the demand notice is concerned, at this juncture, we would like to refer to the postal receipts and the tracking report regarding the delivery of the demand notice at page 27 and 28 of the application and the scanned copy of the same are reproduced below: -



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SPEED POST RECEIPT

Track on www.indiapost.gov.in
(Dial 1800 266 6868)

भारतीय डाक
India Post

EN2951766651N IUR:6968295170665
SP DELHI HIGH COURT SQ <110003>
Counter No:6, 13/07/2019, 10:38
To: NASCENT COMHIN PVT LTD,,
PIN: 110018, Yillak Nagar S.O. (West Delhi)
From: ARHISHK VIKRAM ADV, D/C
Wt: 240gms
Amt: 35.40 (Cash) Tax: 5.40



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the Corporate Debtor, therefore, delivery of the demand notice is not in dispute. The only point raised by the Learned Counsel appearing for the respondent that it was sent by the Advocate, who has accepted the Vakalatnama on 28th August, 2019 from the authorized representative Mr. Vinay Singh, who was authorized by the Board of Directors to execute the Vakalatnama. Now, it is the settled principle of law that the demand notice sent by the Advocate will be treated as a valid demand notice.

11. Therefore, at this juncture, we would like to consider this aspect whether for the issuance of the demand notice, it is necessary to execute the Vakalatnama or mere giving instruction is enough to act on the instructions of the client to issue the demand notice.

12. It is also admitted fact that the applicant / Operational Creditor or any of the directors of the operational creditor has not challenged the authority of the counsel regarding sending of the demand notice, it is the respondent on whose behalf, this has been challenged. The contention of the respondent is based upon the Vakalatnama filed alongwith the petition under Section 9 of the IBC, 2016, and not on the Vakalatnama or the instructions which was given to the Advocate for issuance of the demand notice. Therefore, at this juncture, we would like to refer to Section 8 and 9 of the IBC, 2016 and both are reproduced below: -

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, 1 [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 3 [payment] of the operational debt in respect of which the default has occurred.

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 subsection (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 1 [by the corporate debtor, if available;]

2 [(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 any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order-



(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

- (a) the application made under sub-section (2) is complete;
- (b) there is no 3 [payment] of the unpaid operational debt;
- (c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
- (d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
- (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if -

- (a) the application made under sub-section (2) is incomplete;
- (b) there has been 1 [payment] of the unpaid operational debt;
- (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;
- (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
- (e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.

13. On conjoint reading of the two provisions shows that whenever a default occurred, Operational Creditor has right to deliver a demand notice of unpaid operational debt but the application under Section 9 of the IBC, 2016 can only be filed, if the Operational Creditor does not receive payment from the Corporate Debtor in terms of the demand notice issued under Section 8 (1) of the IBC, 2016, or notice of the dispute was not raised by the Corporate Debtor.

14. In terms of the provision refer to Supra, now we consider the case in hand and it is seen that admittedly, the Corporate Debtor has not sent reply



to the demand notice nor raised any dispute and it is also not the case of the Corporate Debtor that after receiving of the demand notice, the payment was made by the Corporate Debtor to Operational Creditor, therefore, the right to file an application under Section 9 can arise only, if the payment refer to in the demand notice has not been made ^{या} or if any dispute is raised. In other words, the sending a demand notice under Section 8 (1) of IBC, 2016 and filing an application under Section 9 of IBC are two different stages for filing an application u/s 9 of the IBC 2016. Therefore, only on the basis of the Vakalatnama filed alongwith the application, in our considered view, cannot be a basis to determine the issue that before filing the application under Section 9 of the IBC, 2016, the concerned lawyer who had issued the demand notice under Section 8 (1) of the IBC was not authorized by the Operational Creditor to issue the notice.

15. At this juncture, we would also like to refer to first line of the demand notice, it is specifically mentioned that: -

"Dear Sir,

Under the instructions from and on behalf of Our client, **VALUEFIRST DIGITAL MEDIA PVT. LTD.**, having registered office at G-270, G-Block, Phase -6, Near Rudra Public School, Aya Nagar, New Delhi - 110047, acting through its Authorized Representative Mr. Vinay Singh (hereinafter "**Our Client**"), we hereby serve upon you the following notice for and on behalf of Our Client:"

16. Therefore, in our considered view, the ground taken by the Corporate Debtor that the Advocate who sent the demand notice was not authorized by the Operational Creditor is not liable to be accepted.

17. Now coming to the other questions regarding the dispute, admittedly, no reply to the demand notice was sent by the Corporate Debtor to the Operational Creditor.

18. The Learned Counsel appearing for the respondent has referred to the email exchanged between the parties. On perusal of the email referred by the respondent's counsel at page 27 and 28 of the reply as well as the written submission, we notice that all these emails are after the delivery of the



demand notice and not prior to that. We further notice that the Corporate Debtor / respondent has not placed any document on record to show that prior to the issuance of the demand notice, the Corporate Debtor has raised any dispute. Though, it appears that the operational creditor has been demanding the amount since 2017, which would be apparent from the emails enclosed at page 31, 30 and 29 of the reply filed by the respondent.

19. At this juncture, we would like to refer to the submission of the Learned Counsel appearing for the Corporate Debtor, though, in course of hearing, he has failed to produce any document but by filing the written submission, the respondent has enclosed one email dated 31st May, 2019 and submitted that this email was prior to the issuance of the demand notice. For better appreciation of the contention of the respondent, we would like to refer to this emails. The scanned copy of the email dated 31st May, 2019 is reproduced below: -

■ Airtel 4G 57 1:03 PM ENCLOSURE @ 81%
 < 60 Nascent-O/s Payments. Mail dt. 31.05.2019 (4)

----- Forwarded message -----

From: Amit Kothari <amit@mobishastra.com>
 Date: Fri, May 31, 2019 at 10:29 PM
 Subject: Re: Nascent-O/s Payments.
 To: Vinay Singh <Vinay.Singh@vfirst.com>
 Cc: gulshan sainsi <gulshansainsi7@gmail.com>, Amit Kothari <amit.kothari@nascentonline.com>, Anubhav Batra <anubhav.batra@vfirst.com>, anurag nanda <anurag.nanda@vfirst.com>

Dear Vinayji,

Please share records of submission IP wise as we are unable to find out that data from our end. As discussed earlier also, this is important to come to conclusion on any outstanding towards Valuefirst.

Sent from my iPhone

On May 31, 2019, at 5:42 PM, Vinay Singh <Vinay.Singh@vfirst.com> wrote:

Dear Amit

Please share the payment plan for the attached pending Invoices.

An amount of Rs1,87,36,941.29 as per our books of accounts.

Best,
 Vinay Singh

<image001.png>



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20. On perusal of the emails, we notice that the Operational Creditor is claiming the same amount by this email which he has mentioned in part-IV of the application and reply to this email shows that the Corporate Debtor has not denied the liability rather by sending by reply to the email, he simply asked to share the record of submission, IP wise.

21. At this juncture, we would like to refer to the averments made at page 3 of the reply as well as paragraph 4 (b) at page 12 and the scanned copy of the same are reproduced below: -

The Operational Creditor (Applicant herein) had been one of the vendor for the Corporate Debtor (Respondent herein) since 2015 and the respondent had been using applicant's service for long. In total 57 Invoices were generated of Rs.10,07,14,284/- of which payment were done for Rs.8,19,57,427/-. Even during April-October, 2017, the respondent company made payment of Rs.1,37,14,391/- in favour of applicant company. The applicant intentionally concealed these facts with ulterior motive and deliberately made wrong statement that applicant started providing services to the respondent since January 2017 and further misstated that only 9 invoices were generated.

Amphor



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b) Without prejudice, to the aforesaid, it is submitted that Corporate Debtor/ respondent has already made huge payment of Rs.8,19,57,427/- to the Operational Creditor/ Applicant in good faith that the applicant will provide log/ proof of service for the confirmation of their invoices. In good faith, the respondent kept paying them but the applicant kept on giving some or other excuses for not submitting the logs and thus the applicant has failed to submit the proof of service/ logs for the confirmation of their disputed/inflated 57 invoices.

22. On the basis of averments referred to Supra, we are of the considered view that the service rendered by the applicant to the Corporate Debtor is not in dispute, the invoice raised by the applicant to the Corporate Debtor is not in dispute and out of Rs. 10,07,14,284, payment of Rs. 8,19,57,427 was made, this fact has also been admitted by the respondent.

23. In sequel to the above, we are of the considered view that the grounds taken by the respondent in respect of the maintainability of the application are not sustainable. The respondent has failed to convince the Bench that there is pre-existing dispute prior to the delivery of the demand notice, of course, after receiving the demand notice, there may several emails exchanged between the parties on this issue.

24. Hence, we are unable to accept the contention that there was a pre-existing dispute and the amount claimed by the applicant in Part-IV was not due and payable by Corporate Debtor.

25. Now in terms of Section 9 (v)(i), we consider the application filed by the applicant and we are of the considered view that the application filed by the applicant is complete and there is no payment of unpaid operational debt, no



notice of dispute has been received by the Operational Creditor. The Operational Creditor has not proposed the name of the IRP.

26. Accordingly, we hereby ADMIT the petition. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying: -

- (a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) *transferring, encumbering, alienating or disposing of by the corporate debt or any of its assets or any legal right or beneficial interest therein;*
- (c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating



Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

27. Since the operational creditor has not proposed the name of IRP therefore, we hereby appoint **Mr. Ravi Bansal**, Insolvency Professional having Registration No. - IBBI/IPA-001/IP-P00162/2017-18/10331 and E-mail: ipravibansal@gmail.com, New Delhi duly empaneled with the IBBI as the IRP from the list approved by the IBBI. Accordingly, he is appointed as IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

28. The Operational Creditor is directed to deposit a sum of Rupees two lakh to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

29. Copies of the order be sent to both the parties as well as to the IRP.



Sd/-

Avinash K. Srivastava
(Member Technical)

Sd/- 09.05.2022

Abni Ranjan Kumar Sinha
(Member Judicial)

Pih 13.5.2022
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110002