

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No. 220/IBC/NCLT/MB/MAH/2017
CP No. 389/IBC/NCLT/MB/MAH/2017

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

M/s. Times Innovative Media Private Limited
..... Operational Creditor in CP 220/2017
(Petitioner/Applicant)

v.

M/s. Brand Connect Communications (India)
Private Limited
..... Corporate Debtor in CP 220/2017
(Respondent)

AND

M/s. Jagran Prakashan Limited
..... Operational Creditor in CP 389/2017
(Petitioner/Applicant)

v.

M/s. Brand Connect Communications (India)
Private Limited
..... Operational Debtor in CP 389/2017
(Respondent)

Heard on : 19.02.2018

Order delivered on : 27.03.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner in CP 220/2017 :

Mr. Pratyush Ranjan, Advocate a/w. Mr. Yash Jain, Advocate i/b. Halai & Co. – Advocate
for the Petitioner/Applicant.

For the Petitioner in CP 389/2017

Ms. Vishaki Bhatia, Advocate i/b. Ajay Law Associates – Advocates for the
Petitioner/Applicant.



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For the Respondent :

- 1) Mr. V. P. Verma, Advocate a/w. Mr. M. S. Bharadwaj, Advocate i/b. MSB Legal – Advocate for Respondent.
- 2) Mr. Sujit Indore, Practicing Company Secretary – Authorised Representative for the Respondent.

Per: M. K. Shrawat, Member (J)

ORDER

1. This order shall decide two Insolvency Petitions viz. CP 220/2017 and CP 389/2017 filed by the different Operational Creditor namely, 'M/s. Times Innovative Media Private Limited' and 'M/s. Jagran Prakashan Limited', respectively, against the same Corporate Debtor i.e. 'M/s. Brand Connect Communications (India) Private Limited'.
2. M/s. Times Innovative Media Private (hereinafter as **Applicant in CP 220/2017**) Limited has filed the Petition for Winding-up against 'M/s. Brand Connect Communications (India) Private Limited' (hereinafter as **Debtor**) U/s. 433 (e) and 434 of the Companies Act, 1956 in the Hon'ble High Court, Bombay which was transferred to this Bench after enactment of Insolvency and Bankruptcy Code, 2016 (hereinafter as **Code**) and numbered as CP No. 220/IBC/NCLT/MB/MAH/2017.
3. M/s. Jagran Prakashan Limited hereinafter as **Applicant in CP 389/2017**) has filed the Petition for Winding-up against 'M/s. Brand Connect Communications (India) Private Limited' (hereinafter as **Debtor**) U/s. 433 (e) and 434 of the Companies Act, 1956 in the Hon'ble High Court, Bombay which was transferred to this Bench after enactment of the **Code** and numbered as CP No. 389/IBC/NCLT/MB/MAH/2017.
4. After the Transfer, Applicant in CP 220/2017 has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 14.07.2017 by invoking the provisions of Section 9 of the Code, pertaining to operational Debt of ₹ 2,57,24,248/-.
5. After the Transfer, Applicant in CP 389/2017 has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 12.04.2017 by invoking the provisions of Section 9 of the Code, pertaining to operational Debt of ₹ 3,72,670/-.



6. During the hearing of 23.01.2018 it is noticed that, the Debtor is not representing himself in both the Insolvency Proceedings, but, against the Debtor there are certain petitions U/s. 397-398 of the Companies Act, 1956 are presently pending before NCLT. Those petitions were represented by the Debtor Company through its representatives and those Petitions in the past were posted to 19.02.2018. Hence, it was directed that both the Insolvency Proceedings be tagged together. During this hearing the Representative of the Debtor have not shown any interest in the Insolvency Proceedings. Hence, we have decided to proceed in these Insolvency Proceedings on their merits.
7. Applicant in CP 220/2017 in the requisite Form, under the Head "Particulars of Corporate Debtor" stated the description of the debtor as, 'M/s. Brand Connect Communications (India) Private Limited' having registered address at, 523/524, 5th Floor, A – Wing, Bonanz, Sahar Plaza, Andheri – Kurla Road, Andheri (E), Mumbai, Maharashtra – 400059. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as ₹ 2,57,24, 248/- which comprises of Principal Amount of ₹ 1,71,70,106/- and amount of Interest of ₹ 85,54,142/- at the rate of 18 % per annum.

Background of the Case in CP 220/2017

8. The Debtor has approached the Applicant in CP 220/2017 for displaying advertisement of its client namely "Yes Bank" and "Mahindra & Mahindra Ltd and Burgs" on various advertisement sites at Mumbai Airport.
9. For the provided service the Applicant in CP 220/2017 has raised various invoices during the period of 18.05.2013 to 31.01.2014.
10. The said invoices are duly acknowledged by the Debtor and no dispute has been raised so far by the Debtor in respect of those invoices. In fact the Debtor has made part-payment towards the said invoices. This proves that the services provided were accepted and on receiving the claim, the amount was payable.

Submissions by the Applicant in CP 220/2017 :

11. The Learned Counsel for the Applicant in CP 220/2017 has submitted that, the Applicant promptly carried out the work assigned by the Debtor strictly in Terms and Conditions and also according to the requirements and specifications of the Debtor.



12. It is further submitted that, the Applicant in CP 220/2017 has raised various invoices upon the Debtor for the done work and all those invoices are acknowledged by the Debtor.

13. It is further stated that, the Debtor has made the part-payment towards the total amount under the said invoices. The copy of Bank Statement reflecting the said payment from the Debtor is annexed with the Application/Petition.

14. It is further stated that, the Applicant in CP 220/2017 has constantly followed-up with the Debtor for the payment of Outstanding Amount through various e-mails. But the Debtor has neglected to make the payment.

15. Further that, feeling aggrieved the Applicant in CP 220/2017 has issued a notice U/s. 434 (a) of the Companies Act, 1956 for Winding-up of the Debtor and the said notice was duly served upon the Debtor. But the Debtor has not replied to the said notice.

16. Hence, the Applicant in CP 220/2017 has filed the Winding-up petition U/s. 433 (e) of the Companies Act, 1956 in the Hon'ble Bombay High Court. But before the service of the Petition on the Debtor the Code came into force and the Petition has been transferred to this Bench.

17. It is further submitted that, after the Transfer, the Applicant in CP 220/2017 has complied with the procedure laid down by the "Transfer of Proceedings Rules" and filed the requisite information with this Bench.

18. Further that, the requisite Form i.e. Form No. 5 filed under the provisions of the Code has also been served upon the Debtor. But the Debtor has not represented himself so far before this Bench.

19. The Applicant in CP 220/2017 has, time to time, informed the date of hearing to the Debtor. The **Affidavit of Service** is also placed on record.

20. It is further submitted that, as the Insolvency Proceedings are tagged with the Petitions filed U/s. 397-398 of the Companies Act, 1956 the Representative of the Debtor approached before this Bench in those matters. But they are reluctant to represent these Insolvency Proceedings. Hence, this Application/Petition deserves admission which shall result into commencement of CIRP.

Findings :

21. We have gone through the background of the case and the pleadings on record and came to conclusion that, the Debtor is aware of these insolvency proceedings filed



against him but he is reluctant to represent the matter. It is further noticed that, not only the Debtor but the Petitioner who has filed the petitions U/s. 397-398 of the Companies Act, 1956 is also aware of these proceedings as he is one of the Directors of the Debtor. But due to Interim Order passed by the Company Law Board he is unable to represent the Company as he is not in possession of the Documents of the Company.

22. Considering the facts and circumstances, in our opinion, the Applicant in CP 220/2017 has established that the nature of Debt is an "Operational Debt" as defined under section 5 (21) of the Definitions under The Code. Further, he has also established that there is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor.
23. Further that, on the basis of the evidences on record the Applicant in CP 220/2017 has established that the services have been provided by him and valid invoices were raised to claim the amount but there is no payment of Debt on the part of the Corporate Debtor.
24. We have also perused the notice sent under Section 434 (a) of the Companies Act, 1956 and also the Affidavit of Service placed on record by the Applicant in CP 220/2017 and it came to our notice that the said notice and also the requisite Form under the Code i.e. Form 5, both are duly served upon the Debtor. And if the Debtor wanted to place on record evidence of 'Dispute' then he could have raised the objection earlier but he has not done so far. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt.
25. Further that, inspite of notices of hearing the Debtor choosed to remain absent for hearing. In fact, on this date of hearing the Debtor has chosen to represent only the Petitions filed U/s. 397-398 and not these Insolvency Proceedings.
26. Further we have also perused our record and it is noticed that from the side of Debtor no representation was made earlier to this date of hearing. In fact, the representative of Debtor has not even marked his appearance on the Attendance sheet of these Insolvency Proceedings.
27. As a consequence, as the Debtor does not want to represent his case and keeping the admitted facts in mind that the Applicant in CP 220/2017 had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been duly completed by the Applicant in CP 220/2017. Hence, we are of the conscientious view that the CP 220/2017 deserves '**Admission**'.



28. Before we arrive at a conclusion it is worth to place on record certain facts. These two Insolvency Petitions/Applications are listed for hearing along with the Petitions U/s. 241-242 of the Companies Act, 2013 and U/s. 397-398 of the Companies Act, 1956 bearing no. CP 07/2017 (Rakesh Gandhi v. M/s. Brand Connect Communications (India) Private Limited), CP 01/2015 (Sunil Dubey v. M/s. Brand Connect Media Private Limited) and CP 117/2014 (Sunil Dubey v. M/s. Brand Connect Communications (India) Private Limited) respectively. In respect these Insolvency Proceedings number of Notices have been issued, however, returned "un-claimed". Since these Petitions have been transferred from the Hon'ble Bombay High Court and the requisite Forms are on record, in the absence of any reply from the side of the Respondent Debtor, these Petitions are **Admitted** for further action.

29. The Insolvency Professional on appointment shall collect the information and the accounts from the concerned parties and place on record the financial position of the Debtor Company. Further, the Insolvency Professional on appointment shall submit a report pertaining to the impact of the Insolvency Proceedings on CP 07/2017 and TCP 117/2014 filed under provisions of the Companies Act.

30. The Applicant in CP 220/2017 has proposed the name of Interim Resolution Professional. Consequentially we hereby appoint Mr. Pawan Kumar Ramdhani Agarwal, having registration no. IBBI/IPA-001/IP-P00414/2017-18/10737, as Interim Resolution Professional.

31. Having admitted the Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP and the same shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

32. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.



33. The appointed IRP shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. Liberty is granted to intimate the same even at an early date, if need be.

34. The CP 220/2017 is Admitted, (as a consequence the another Petition filed by the 'M/s. Jagran Prakashan Limited' bearing no. CP 389/2017 becomes infructuous and stood merged with this Order. A liberty is there to 'M/s. Jagran Prakashan Limited' for filing its claim before the appointed IRP which is granted by the Code itself.

35. The Petition/Application bearing no. CP 220/IBC/NCLT/MB/MAH/2017 is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 27th March, 2018

Avinash



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On 13/04/2018


Assistant Registrar
National Company Law Tribunal Mumbai Bench