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IN THE NATIONAL COMPANY LAW TRIBUNAL BENGALURU BENCH

Sl No.150

C.P. (IB) No.266/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of

M/s. Dentsu Aegis Network Communications India Private Limited

(formerly known as Posterscope Outdoor Advertising Pvt Ltd)
6th Floor, B-Wing,
Poonam Chambers, Worli,
Dr.Anne Besant Road,
Mumbai-400018.

- Petitioner/Financial Creditor/

Versus

M/s. Ayurwin Pharma Pvt. Ltd

No. 1094, 19th Main
1st Block, Rajajinagar,
Bangalore-560 010

- Respondents/ Corporate Debtors

Date of Order: 5th February, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri. Lomesh Kiran Nidumuri
With Ms. Sahana Devanathan

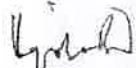
For the Respondent : None

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P (IB)No.266/BB/2019 is filed by M/s. Dentsu Aegis Network Communications India Pvt Ltd.(hereinafter referred to as 'Petitioner/Operational Creditor) U/s 9 of the IBC, 2016, R/w Rule




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6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Ayurwin Pharma Pvt Ltd., on the ground, that it has committed default for total amount of Rs.12,58,27,633/- (Rupees Twelve Crores Fifty Eight Lakhs Twenty Seven Thousand Six Hundred and Thirty Three Only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- (1) M/s. Dentsu Aegis Network Communications India Private Limited (Petitioner/Operational Creditor) bearing the CIN: U74300MH1986PTC039002 and having its Registered Office situated at 6th Floor, B-Wing, Poonam Chambers, Worli, Dr.Anne Besant Road, Mumbai- 400018.
- (2) M/s. Ayurwin Pharma Pvt. Ltd (Respondent/Corporate Debtor) was incorporated on 02.11.2011 having CIN: U2423KA2011PTC061041 and having its registered Office situated at No.1094, 19th Main, 1st Block, Rajajinagar, Bangalore-560010. Its Authorised Share Capital of Rs.50,00,000/- and Paid-up Share Capital of Rs.1,00,000/-
- (3) It is stated that on 20.03.2014, the Corporate Debtor entered into agreement with Carat Media Services Private Limited for providing media services, the scope of which included developing, planning and implementing the Corporate Debtor's media strategy across print, digital, television and radio platforms and perform the requisite allied functions. Carat Media Provided the Corporate Debtor with the Services required to the satisfaction of the Corporate Debtor.
- (4) It is stated that the Carat Media raised several invoices with respect to the Services that were provided by it to the Corporate Debtor under the Agreement from time to time, payments of which were supposed to be made by the Corporate Debtor within 30 days of the date of the invoice in terms of the



Agreement. However, the Corporate Debtor has failed to make full payments toward the invoices that were raised by Carat Media. The officials of Carat Media relentlessly followed up with Corporate Debtor, its directions and offices for payments. After much pressure, the Corporate Debtor issued four cheques toward partial discharge of the total outstanding that was due and payable under the Agreement for the Services that were provided by Carat Media. These cheques were issued in acknowledgement of the debt that was due and payable by the Corporate Debtor to Carat Media. However, to Carat Media's shock, the first tranche of cheques were dishonoured upon presentation. Aggrieved by dishonour of Cheques, Criminal proceedings were initiated and they are pending. Upon communication of the same to the Corporate Debtor, the Corporate Debtor acknowledged its debt and sought for time to arrange funds to pay the dues owned by it to Carat Media. However, every subsequent tranche of cheques provided by the Corporate Debtor was also dishonoured.

- (5) It is stated that thereafter the Corporate Debtor signed and acknowledged the balance confirmation sheet dated 07.02.2016 acknowledging that the Corporate Debtor owned a sum of Rs.8,25,58,755/- (Rupees Eight Crores Twenty Five Lakhs Fifty Eight Thousand Seven Hundred and Fifty Five Only) to Carat Media as on 07.12.2016. Thus, the Corporate Debtor expressly and unequivocally acknowledged its liability to make payment. Despite deducting Tax Deducted at Source from its previous payment to Carat Media, the Corporate Debtor had failed to remit the same to the Income Tax Department, thereby , forcing Carat Media to clear the dues owed by the Corporate Debtor with the Income Tax Department. The Corporate Debtor had pay a sum of Rs.48,22,090/- (Rupees Forty Eight Lakhs Twenty Two



Thousand and Ninety only) to the Income Tax Department, which is due and liable to be payable to Carat Media. Therefore, as of March 2017, the Corporate Debtor's dues owed to Carat Media, including the invoices that remained unpaid and the TDS deducted but not remitted to the Income Tax Department, stood at Rs.8,73,80,845/- (Rupees Eight Crores Seventy Three Lakhs Eighty Thousand Eight Hundred and Forty Five Only). In addition, the Corporate Debtor is also liable to pay interest at the rate of 18% per annum on the outstanding dues in accordance with Clause 9.3 of the Agreement.

- (6) In these circumstances, Carat Media was constrained to issue a notice dated 03.05.2017 demanding payment of Rs.8,73,80,845/- (Rupees Eight Crores Seventy Three Lakhs Eighty Thousand Eight Hundred and Forty Five Only) owed by the Corporate Debtor within 15 days of the receipt of the notice along with interest. Thereafter, the Corporate Debtor issued on cheque bearing no.419206 drawn on Corporation Bank dated 30.04.2017 for a sum of Rs.23,61,500/- (Rupees Twenty Three Lakhs Fifty Thousand only) and the same was honoured. However, despite numerous follow-ups by Carat Media, no further payments were forthcoming from the Corporate Debtor towards the payment of the Debt due. Thereafter, the Corporate Debtor failed to make payment of an additional amount of Rs.14,32,427/- (Rupees Fourteen Lakhs Thirty Two Thousand Four Hundred and Twenty Seven Only) for invoice dated 15.06.2017 that became due to Carat Media for the Services rendered by it to the Corporate Debtor for the period September- November, 2016. Thereby, the dues owed by the Corporate Debtor to Carat Media stood at Rs.8,64,96,781/- (Rupees Eight Crores Sixty Four Lakhs Ninety Six Thousand Seven Hundred and Eighty One only).



- (7) It is stated that in this background, Carat Media was constrained to issue another Demand Notice in Form-3 dated 20.06.2018 to the Corporate Debtor to which the Corporate Debtor, once again, did not reply. At this point, it became amply clear to Carat Media that the Corporate Debtor had no intention of marking payments owed by it to Carat Media. In light of the fact that the Corporate Debtor had admitted its liability to Carat Media, and had thereafter issue cheques towards discharge of its debt which came to be dishonoured, it was evident that the Corporate Debtor was unable to pay its admitted debts due to Carat Media, who was then constrained to file an application under section 9 of the Insolvency and Bankruptcy Code, 2016 seeking to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, The same numbered as Diary No.1413/2019 and was awaiting listing before the Hon'ble National Company Law Tribunal, Bengaluru. In the meanwhile, the "advertising agency - media planning and buying" business of Carat Media was demerged into Posterscope which was subsequently renamed as Dentsu Aegis Network Communications India Private Limited, pursuant to the Scheme of Arrangement being sanctioned by the Hon'ble NCLT, Mumbai on 06.04.2018. Pursuant thereto, the debt owed to Carat Media by the Corporate Debtor stood transferred to the Operational Creditor. In that light, the proceedings in Diary No.1413/2019 were withdrawn with liberty to file fresh proceedings in the name of the Operational Creditor.
- (8) It is stated that subsequently, the Operational Creditor issued a fresh Demand Notice in Form-3 demanding payment of an amount of Rs.12,58,27,633/- (Rupees Twelve Crores Fifty Eight Lakhs Twenty Seven Thousand Six Hundred and Thirty Three only) to the last known registered address of the Corporate



Debtor on 24.04.2019, which was returned with endorsement 'Addressee Left'. The Operational Creditor has also effected serviced of the Demand Notice in Form-3 on Mr. Chaluvraj, the Director of the Corporate Debtor on the official email address provided to the Ministry of corporate Affairs. The email has been delivered to and duly received by the Corporate Debtor, despite which there has been no respond. Therefore, the Corporate Debtor has failed to rebut the presumption in law and fact that it is indeed due and liable to pay the debt to the Operational Creditor.

- (9) The Hon'ble Court was pleased to issue notice to the Corporate Debtor and the Managing Director of the Corporate Debtor by order dated 30.07.2019. In compliance of Rule 6(2) of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules 2016, dispatched a copy of the petition along with the annexures through Registered Post and Courier to the Corporate Debtor and the Managing Director at the registered office address of the Corporate Debtor as mentioned per the Company Master Data available on the Ministry of the Corporate Affairs website, www.mca.gov.in. The copy sent to the registered office address was returned with the endorsement "Addressee Left". A soft copy of the Petition along with the court-processed notice was also sent to the registered email address as per MCA records of the Corporate Debtor at chaluvaraj@ayurwin.com on 30.08.2019. As per Rule 38(4) of the NCLT Rules, 2016, the same is deemed to be good service. However, as precaution, the Petitioner also caused Newspaper publication, with permission of the Tribunal, in "The Hindu and Udayavani their editions dated 19.10.2019. However, none appears for the Respondent.
- (10) It is stated that the Corporate Debtor, despite expressly and unequivocally acknowledging its liability to the Operational



(Signature)

Creditor vide Balance Confirmation dated 07.12.2016, has failed to make any payment towards discharge of its debt to the Operational Creditor. As on date of issuance of Form-3 dated 24.04.2019, an amount of Rs.12,58,27,633/- (Rupees Twelve Crores Fifty Eight Lakhs Twenty Seven Thousand Six Hundred and Thirty Three Only) is due and payable by the Corporate Debtor to the Operational Creditor. The Corporate Debtor issued the following cheques in favour of Carat Media towards partial repayment of monies owned to it.

- a. Cheque bearing No.419207 dated 30.04.2017 for Rs.23,16,500/-
- b. Cheque bearing No.419208 dated 30.04.2017 for Rs.20,83,655/-
- c. Cheque bearing No.419209 dated 30.04.2017 for Rs.20,83,855/-
- d. Cheque bearing No.419210 dated 30.04.2017 for Rs.20,83,655/-
- e. Cheque bearing No.419211 dated 30.04.2017 for Rs.5,91,445/-
- f. Cheque bearing No.852976 dated 30.09.2017 for Rs.7,64,798/-
- g. Cheque bearing No.852979 dated 30.04.2017 for Rs.3,63,70,139/-

It is stated that Carat Media deposited the aforementioned cheques with its banker, Citibank N.A., Fort Branch, Mumbai on 24.07.2017. However, much to its shock and dismay, each and every one of the cheques issued by the Corporate Debtor were dishonour with endorsements "Account Closed" and "Account Blocked". The dishonour of the above cheques was communicated to the Corporate Debtor. However, despite repeated and frequent follow-ups and reminders for repayment of the same, the Corporate Debtor did not come forward to



make payments. In that light, Carat Media was constrained to file Complaint No.8448/2017 filed before the Hon'ble Metropolitan Magistrate, 33rd Court at Ballard Pier, Mumbai, U/s 138 read with Section 141 of the Negotiable Instruments Act, 1881 seeking punishment against the Corporate Debtor in accordance with law. Since the Corporate Debtor repeatedly failed to appear before the Learned Magistrate, a Non-Bailable Warrant ("NBW") was issued against the Corporate Debtor. And the case was adjourned to 10.02.2020 for renewal of the NBW.

It is stated that the Corporate Debtor continues its production and manufacturing activities from its factory premises, as well as the premises of another Company, despite vacating its Registered Office. It is alleged that the Respondent intentionally and deliberately avoiding personal service of notice.

(11) The Petitioner has relied upon the following judgements by way of written submission dated 18.12.2019:

- a. State of M.P.v. Hiralal ¹
- b. Madan & Co.v. Wazir Jaivir Chand ²
- c. C.C.Alavi Haji v.Palapetty Muhammed & Ors. ³
- d. Shree Chaitanya Constructions v. Sudhir Poonamchand Parakh & Ors ⁴
- e. Kamal Gulati v. IDV Technology Solutions Private Limited ⁵
- f. Anil Kheterpal v. Innovari Technologies PVt. Ltd ⁶
- g. Jammu & Kashmir Bank Limited v. Ajaz Nanda Designs Private Limited ⁷

¹ (1996) 7 SCC 523

² AIR 1989 SC 630

³ (2007) 6 SCC 555

⁴ 2019 (5) ALT 290

⁵ 2019 SCC Online NCLT 3

⁶ IB-569/ND/2018

⁷ (IB) - 1739(PB)/2018



- h. Bidue SRL v. Bhor Engineering Private Limited ⁸
- i. GHCL Limited v. Gold King Tex India Pvt. Ltd ⁹
- j. J.B Tiwari v. Biostadt India Limited & Another in Company Appeal (AT) (Ins) ¹⁰
- k. Jakhotia Polychem Private Limited v. Leesha Polymera Private Limited ¹¹
- l. Chava Bharath Kumar & Others v. Leather Export House (India) in Pvt. Ltd. ¹²
- m. Hemang Steel Traders v. Omni Auto ¹³
- n. M.S. Enterprise v. Oren Kitchen Appliances Private Limited reported ¹⁴
3. Heard Shri. Lomesh Kiran Nidumuri, learned Counsels for the Petitioner, and none appeared for the Respondent. We have carefully perused the pleadings of the Petitioner, and the extant provisions of the Code, the Rules made there under, and the law on the issue.
4. The case was initially filed on 13.06.2019 and thereafter, it was listed on various dates for admission viz., 30.07.2019, 20.08.2019, 09.09.2019, 27.09.2019, 30.09.2019, 28.10.2019, 08.11.2019, 27.11.2019, 28.11.2019, 18.12.2019, 22.01.2020 & 05.02.2020. And it was adjourned on those dates due viz., for compliance of the office objections, serving the notice etc. Since nobody appears for the Respondent, paper notification was given on 19.10.2019 in "The Hindu" English newspaper and "Udayavani" vernacular language-Kannada newspaper. However, neither Respondent nor anybody represents for it.
5. Shri. Lomesh Kiran Nidumuri, learned Counsel for the Petitioner while reiterating various averments with regard to debt and default

⁸ C.P.No. 553/I&BP/2019

⁹ CP/1211/IB/2018

¹⁰ No.268/2018

¹¹ C.P.N. 889/I&BP/2019

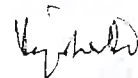
¹² C.P./635/(IB)/CB/2017

¹³ CP (IB) No.1258/KB/2018

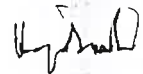
¹⁴ 2018 SCC Online NCLT 19537



- in question, as briefly stated supra, has further submitted that notice as ordered by the Tribunal is deemed to be served and the Debt and default in question is admittedly not in dispute and also suggested a qualified Resolution Professional namely Ms. Shirley Mathew, with Registration No. IBBI/IPA-001/IP-P01043/2017-18/11716, who has filed his written Consent in Form 2 on 20.08.2019 by inter alia declaring that no disciplinary proceedings pending against her with the Board or the Indian Institute of Insolvency Professionals of ICAI.
6. As stated supra, the Debt and Default in question, are admittedly not in dispute, and the Respondent, though ample opportunities are extended, failed to avail it. As stated supra, Criminal Proceedings are also pending against the Respondent. The instant Petition is filed strictly in accordance with the extant provisions of the Code, and also suggested a qualified Resolution Professional namely Ms. Shirley Mathew, with Registration No. IBBI/IPA-001/IP-P01043/2017-18/11716, who has filed his written Consent in Form -2 on 20.08.2019 by inter alia declaring that no disciplinary proceedings pending against her with the Board or the Indian Institute of Insolvency Professionals of ICAI. Therefore he is provisionally eligible to be appointed as IRP. Hence, the Instant Company Petition is fit case to admit by initiating CIRP appointing by IRP, and declaring moratorium etc., in respect of the Corporate Debtor..
7. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, under provisions of Section 9 of the Code and other extant provisions of the IBC, 2016, we hereby admitted C.P.(IB)No.266/BB/2019 by initiating Corporate Insolvency Resolution Process (CIRP) in respect **M/s. Ayurwin Pharma Pvt Ltd**, the Respondent/Corporate Debtor, with the following consequential directions:




- 1) **Shri Shirley Mathew**, bearing **Registration No.** IBBI/IPA-001/IP-P01043/2017-18/11716, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/ Corporate Debtor namely M/s. Ayurwin Pharma Pvt Ltd to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the Corporate Debtor 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;
 - e) 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;
 - f) The provisions of sub-section (i) shall not apply to such transactions as may be notified by the Central



- Government in consultation with any financial sector regulator;
- g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016, and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
- 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) Post the case for report of IRP on **11.03.2020**.


(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Brunda



CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL


Deputy Registrar
National Company Law Tribunal
Bengaluru Bench


Rajeshwari M