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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/5/2020

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 and
Rule 6 of the Insolvency and Bankruptcy [Application to Adjudicating
Authority], Rules, 2016)*

***In the matter of M/s. Southasian Digital Media and Entertainment
Private Limited***

AMP Communications Private Limited

ECO House 401/402/403, Vishweawar Nagar,
Off Aarey Road, Goregaon East,
Mumbai – 400 063

...Operational Creditor

-Vs-

Southasian Digital Media and Entertainment Private Limited

(Formerly Known as 8K Miles Media Private Limited)

No.7, 3rd Floor,
Ganapathy Colony, III Street,
Teynampet, Chennai – 600 018

... Corporate Debtor

Order pronounced on 28th September 2021

CORAM:

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : Haripriya, Advocate
For Corporate Debtor : None present*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Under Consideration is an Application filed under Section 9 of
the Insolvency & Bankruptcy Code, 2016 ("hereinafter referred to

as IBC, 2016”) by **AMP Communications Private Limited** (*hereinafter called as "Operational Creditors"*) for the purpose of initiating the Corporate Insolvency Resolution Process (CIRP) against **M/s. Southasian Digital Media and Entertainment Private Limited** (*Formerly Known as 8K Miles Media Private Limited*) (*hereinafter called as "Corporate Debtor"*).

2. Part – I of the Application discloses the fact that the Operational Creditor herein is a Private limited company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U55101TN2005PTC058031 which was incorporated on 17.11.2005 and that its Authorized Share Capital and Paid up Capital are Rs. 25,00,00,000/- and Rs. 24,39,54,070/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.7, 3rd Floor, Ganapathy Colony, III Street, Teynampet, Chennai – 600 018. Part – III of the Application discloses the fact that the Operational Creditor has not proposed the name of the Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the same from the list furnished by the Insolvency and Bankruptcy Board of India.



3. From Part-IV of the Application it is seen that the applicant has alleged that an "Agreement for Service" dated 31.01.2018 has been entered into between the Operational Creditor and the Corporate Debtor for provision of services with respect to specialized services including communication strategy, digital strategy, social media strategy, advertising, conducting promotional activities, procuring sponsorships and other related services to the Corporate Debtor for its team "The Bengaluru Tigers" which has participated in the then Super Fight League, a Mixed Martial Arts League Sports Tournament, 2018 and pursuant to the said agreement and on completion of the requested services, two invoice dated 27.02.2018 and 29.03.2018 to a tune of Rs. 6,78,500/- has been raised. On failure of payment of the said amount the Operational Creditor is hereby claiming a sum of Rs. 8,66,255/- which includes 12% p.a interest rate as per the agreement till 16.10.2019.

4. Part V of the Application shows that the applicant has attached few relevant documents in order to prove the existence of the Operational debt and the amount in default;

- i. Agreement for Service, dated 31.01.2018
- ii. Two Invoice, dated 27.02.2018 and 29.03.2018
- iii. Legal Notice, 19.07.2019
- iv. Demand Notice, dated 07.09.2019
- v. Reply Mail to Demand Notice, dated 11.09.2019



5. On perusal of the records it is found that the Operational Creditor herein is a private limited company providing services with respect to specialized services including communication strategy, digital strategy, social media strategy, advertising, conducting promotional activities, procuring sponsorships and other related services in the field. On the other hand the Corporate Debtor along with one Mr. Tiger Shroff is the owner of "The Bengaluru Tigers" Team which has participated in the Super Fight League, a Mixed Martial Arts League Sports Tournament held between February and March, 2018.

6. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has approached the Operational Creditor herein for provision of service in relation to the Tournament, as a result of which Agreement for Service, dated 31.01.2018 has been entered into between the parties. Based upon which, it was submitted that the Corporate Debtor has availed services worth Rs.6,78,500/- which includes Digital Media and Social Media Management Service and Engagement services with respect to social media followers, efficiency and Facebook engagement.

7. The Learned Counsel for the Operational Creditor submitted that as per Clause 2.4 of the Agreement of Service, any payment

of consideration in accordance with the services enjoyed has to be paid within 15 days from the date of invoice, in furtherance of which the service provider therein is reserved with the right to charge interest @ 18% p.a. Also it was submitted that any dispute in the invoice shall be raised within 5 days from the date of invoice upon which it shall be deemed to be accepted. Hence it was submitted by the Learned Counsel for the Operational Creditor that even after raising two invoices dated 27.02.2018 and 29.03.2018 to a tune of Rs.2,06,500/- and Rs.4,72,000/- respectively the Corporate Debtor has not either raised any dispute nor has come forward to pay the invoice amount even after the time limit as the agreement.

8. Under the said circumstances, it was submitted that the Operational Creditor has issued a Demand Notice as mandated under Section 8 of IBC, 2016 to the Corporate Debtor on 10.09.2019 via email and also by Registered post on 11.09.2019 and the same was delivered to the Corporate Debtor on 13.09.2019 and it is further submitted that after receiving the Demand Notice via email, the Corporate Debtor has replied to the email of the Operational Creditor on 11.09.2019 requesting the Operational Creditor to provide list of services rendered by them and only if such list is provided the issue can be resolved. Thereafter on 21.09.2019 the list of services provided has been

annexed and was sent to the Corporate Debtor, however even after the receipt of the same, it was submitted that there was no reply from the Corporate Debtor nor the Corporate Debtor has made any payments. Under such circumstances, the Learned Counsel for the Operational Creditor submitted that the debt and default on the part of the Corporate Debtor is proved and hence prayed for the initiation of the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

9. In relation to the Corporate Debtor, it is seen that when the matter was posted for hearing on 03.02.2020, none appeared on behalf of the Corporate Debtor even though an advance copy of application has been served. Later, the matter was again adjourned to 22.01.2021 for notice and also for filing Affidavit of Service on the part of the Operational Creditor. However, when the matter was taken up for hearing on 22.01.2021, there was no representation on behalf of the Corporate Debtor even though the notice has been duly served to the Corporate Debtor which is evident from the Track consignment report issued by the postal authorities. Under the circumstance, we are constrained to hear the matter on merits and in the absence of the Corporate Debtor, based upon the submissions made by the Learned Counsel for the Operational Creditor.



10. Heard the submissions made by the Learned Counsel for the Operational Creditor and perused the files including the pleadings placed on record. From the documents submitted by the Operational Creditor it is seen that they have rendered services to the Corporate Debtor as per the Agreement for Service, dated 31.01.2018 and also the Operational Creditor has raised invoices dated 27.02.2018 and 29.03.2018. Further, it is seen that the Corporate Debtor even after receipt of the Invoices have not raised any dispute in relation to the services provided by the Operational Creditor, however has failed to pay the sum to the Operational Creditor which is due and payable as per the Invoice dated 27.02.2018 and 29.03.2018. Thus, the Operational Creditor has proved that there is an 'operational debt' and 'default' which has been committed on the part of the Corporate Debtor. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter also under Section 10A of IBC, 2016.

11. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the present Application has been filed on 01.09.2019, which is well

before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

12. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition, as filed by the Operational Creditor, is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between July – December 2021 appoints **Ms. Santhanalakshmi**, with Reg. No. *IBBI/IPA-002/IP-N00831/2019-2020/12661*, (*email id:- advocate.santhanalakshmi@gmail.com*) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. The IRP appointed shall take in this regard such

other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

13. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in

any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

14. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

15. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (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.

16. The Operational Creditor is directed to pay a sum of **Rs.1,00,000/-** (*Rupees One Lakh Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be

communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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