

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. No. 3533/I&BP/2018

Under section 8 & 9 of the IBC, 2016

In the matter of

Praxis Corporate Services Private Limited,
A - 209, Kailash Business Park, Veer
Sarvarkar Marg, Vikhroli West, Mumbai-
400079

....Petitioner

v/s.

Powai Cubicles Private Limited.

H- 1, 1103, 11th Floor Bhoomi Park, Phase 2, NR
Jankalyan Nagar Off Marve Road, Malad West,
Mumbai 400095.

....Respondent

Order delivered on: 18.02.2018

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. Harish Pandya, Advocate i/b Kookada & Associates.

For the Respondent: Mr. Prakash K. Pandya, Company Secretary.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by Praxis Corporate Services Private Limited, (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Powai Cubicles Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 18.12.2017 and 01.12.2018 in making payment to the extent of Rs. 14,07,150/- by invoking the provisions of Sections 8 & 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.
2. The Petitioner submits that they have rendered Professional Services to the Corporate Debtor for the purpose of preparing project report and securing loan facilities from the banks. The Petitioner submits that accordingly, after doing necessary paper work, the Petitioner approached and negotiated with various banks for loan and on their efforts Bassein Catholic Co-operative Bank sanctioned loan to the Corporate Debtor on 20.11.2017 and the said loan was availed by the Petitioner.

3. The Counsel for the Petitioner during the hearing of this Petition, on a specific query from the Bench whether the invoices were accounted in the books of the Petitioner and whether the GST as stated in the invoices were paid, replied that the GST will be paid only after receipt of the payment from the Corporate Debtor. The following are the extract of so called invoices raised by the Corporate Debtor.

"PRAXIS CORPORATE SERVICES PVT LTD
A209 KAILASH BUSINESS PARK VEER SAVARKAR MARG
VIKHROLI(W) MUMBAI 400079
TEL: 912266972501/02 EMAIL: praxis@vsnl.net

18/12/17

M/s. POWAI CUBICLES PVT LTD
H/1, 1103, Phase II, Bhoomi Park,
Near Jan Kalyan Nagar, Marwe Road,
Malad(W), Mumbai: 400095

Subject: Debit Note

Sir,

This is in reference to preparation of project report and loan facilities. Our professional fees as follows:

Fees	9,00,000.00
GST(18%)	<u>1,62,000.00</u>
TOTAL	<u>10,62,000.00</u>

Please issue the cheque in favour of M/s PRAXIS CORPORATE SERVICES PVT LTD
BANK DETAILS: BANK OF INDIA A/C No. 001320110000322
IFSC CODE: BKID0000013

PAN :AACCP4105E
GST :27AACCP4105E3ZT

Thanking you

Regards,

For PRAXIS CORPORATE SERVICES PVT LTD

(Authorized Signatory)

PRAXIS CORPORATE SERVICES PVT LTD
A209 KAILASH BUSINESS PARK VEER SAVARKAR MARG
VIKHROLI(W) MUMBAI 400079
TEL: 912266972501/02 EMAIL: praxis@vsnl.net

01/02/18

M/s. POWAI CUBICLES PVT LTD
H/1, 1103, Phase II, Bhoomi Park,
Near Jan Kalyan Nagar, Marwe Road,

Malad(W), Mumbai: 400095

INVOICE

Sir,

This is in reference to preparation of project report and loan facilities. Our professional fees as follows:

Fees	2,92,500.00
GST(18%)	<u>52,650.00</u>
TOTAL	<u>3,45,150.00</u>

Please issue the cheque in favour of M/s PRAXIS CORPORATE SERVICES PVT LTD

BANK DETAILS: BANK OF INDIA A/C No. 001320110000322

IFSC CODE: BKID0000013

PAN	:AACCP4105E
GST	:27AACCP4105E3ZT

Thanking you

Regards,

For PRAXIS CORPORATE SERVICES PVT LTD

(Authorized Signatory)"

4. The above two invoices as claimed by the Petitioner cannot be treated as invoice which creates a debt so that an action can be brought under the Code for initiation of CIRP. As far as the indirect tax of GST is concerned unless a proper bill is raised, the Petitioner cannot claim it from the Corporate Debtor. The so called invoices (one debit note and one invoice) does not even have a number and were not accounted in the books of the Petitioner. Hence the Petitioner is not a creditor within the meaning of section 3(10) of the Code, which provides that, creditor means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder. Unless otherwise a proper bill is raised the amount claimed is not a debt within the meaning of section 3(11) of the Code, which defines debt as a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.
5. Let us also analyze the case whether the Petitioner will succeed in establishing their case under the Code, even in the remote possibility of accepting the debt as claimed.
6. The Petitioner submits that, previously on 01.03.2018, a Demand Notice (not in Form 3 or Form 4) was sent through an advocate demanding the payment for the invoices dated 18.12.2017 and 01.02.2018 for Rs. 10,62,000/- and Rs. 3,45,130/- respectively.

7. The Corporate Debtor vide reply dated 06.04.2018 raised certain disputes as below:

"3.1.5. That on the basis of the various representations made by Praxis, our client was induced to engage Praxis for assisting it in its fund-raising endeavors. However, for the first few months from its engagement, praxis was unable to make any headway in arranging the finance required by our client.

3.1.6. That after the engagement of Praxis, our clients, through its independent efforts, availed a sanction letter for a term loan from ICICI Bank Limited. Around the same time, Praxis informed our client that is had managed to arrange of conditional sanction of a loan from the Bassein Catholic Co-op Bank Limited ("BCCB"). Further, Praxis informed that it had negotiated the interest rate of the personal mortgage loan from BCCB from 11.50% to 10.00%. At this stage, your client also proposed its fee of 1.50% plus GST, payable as 50% on first disbursement and 50% on the second disbursement.

3.1.7. That owing to the representation made by Praxis as stated above, our client ended its discussions with ICICI Bank Limited. By its email of September 23, 2017 sent through its Director Mr. Anil Sharma, our client emphasized the significance of time, and in particular asked that the following activities be completed within the respective time frames.

Activity	Required Date of Completion
TSR of Powai Office nos. 1601 and 1602	On or before Sept. 26, 2017
TSR of Powai Office no. 1604	Between Sept. 26, 2017 and Oct. 03, 2017
Disbursement of loan for office no. 1604	Between Sept. 26, 2017 and Oct. 03, 2017
Disbursement of loan for furnishing	On or before Oct. 31, 2017

Further, our client required that the sanction letter from BCCB be negotiated to include the provision that "Moratorium Period is 6 months. In case of a deviation between the projected and the actual cash flows, it will be revised to 9 months. In the same email, for undertaking and completing the all of the aforementioned responsibilities within the stated time frame, our client offered fees to Praxis @ 1.25% plus GST of the term loan disbursement, not including the home loan. This provision was not included in the sanction letter procured by Praxis.

3.1.8. That despite clear instructions to Praxis, Praxis did not fulfill any of the aforementioned responsibilities. This failure by Praxis adversely affected the interests of our client during the commercial negotiations among our client and its contractual counterparties. To illustrate, to our client's grat surprise and disappointment, the representation made by Praxis that the rate of interest on the loan arranged by it was 10.00% was found to be patently untrue. The rate of interest applicable for the loan arranged by Praxis was not 10.00% as our client was led to believe by Praxis, but was, in fact, 11.50%, which was practically the same rate that our client had received from BCCB without any intervention from Praxis. By the time this fact was discovered by our client, our client had already abandoned its discussions with ICICI Bank Limited, in spite of having received a sanction letter for a loan carrying a rate of interest which was as low as 9.50%. Similarly, the non-compliance with the other responsibilities put our client in a position of grave uncertainty

as regards the receipt of the loan and the fulfillment of our client's payment obligations to its contractual counterparties. This situation forced our client to accept the loan organized by Praxis.

The above facts, evidenced through written communications among the parties, show a deficiency in services rendered to our client by your client is at liberty to initiate the remedies available to it under the available civil laws for recompense of damages suffered by our client as a consequence of the careless and negligent approach of your client to the work entrusted to it by our client, as well as due to the misrepresentations made by your client in order to introduce our client to accept its services."

8. The Petitioner, again on 07.05.2018, issued another Demand Notice in Form 3 stating that, they have raised the enclosed invoices for the services provided by them to the Corporate Debtor. They have also enclosed the invoice dated 18.12.2017 and 01.02.2018 along with the Demand Notice.
9. The Corporate Debtor by the reply Dated 17.05.2018 denied the liability stating that there exists a bona-fide dispute concerning the services rendered by the Petitioner and further stated that nature of dispute and claims arising out of the dispute are well documented in their previous reply notice dated 06.04.2018.
10. The Corporate Debtor filed reply to the Petition reiterating the same contentions raised by them in their replies to the demand notice notices. The Corporate Debtor raised disputes as early as on 06.04.18 before the issue of demand notice on 07.05.2018 in Form 3.
11. The Hon'ble Supreme Court in the case of Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software (P) Limited- 2017 (SCC Online SC 1154) held as below :-

"40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application".
12. When the law laid down by the Hon'ble Supreme Court in the above case is applied to the facts of the present case it is established that there is a clear dispute as to the quality of service rendered by the Corporate Debtor as provided u/s 5(6)(b) of the Code. Here the dispute regarding the quality of service is that the Corporate Debtor had not obtained the loan in time and the rate of interest for which the loan was obtained was not in terms of the representation made by the Corporate Debtor.

13. In view of the above discussion the Petition is dismissed. No cost.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Bhaskara Pantula Mohan
Member (Judicial)