

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

**C.P. (IB) No. 449/MB/2023**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016

***In the matter of***

Floron BPO & Consultancy Services Pvt.  
Ltd.

(CIN: U72300MH2015OPC270001)

...Operational Creditor

*v/s.*

Service Lee Technologies Pvt. Ltd.

(CIN: U74120MH2015PTC265511)

...Corporate Debtor

Order Pronounced on: **05.03.2024**

***Coram:***

Ms. Madhu Sinha  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

***Appearances:***

For the Petitioner	:	None appeared
For the Respondent	:	Mr. Nausher Kohli <i>a/w</i> Mr. Ahsan, Ld. Counsel for the Respondent

**ORDER**

1. This is a Company Petition filed on 10.05.2022 under Section 9 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) by Floron BPO and Consultancy Services Private Limited (“**Operational Creditor**”) for seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against Services Technologies Private Limited (“**Corporate Debtor**”) for the amount payable to the Operational Creditor.

**Submissions of the Operational Creditor**

2. The Corporate Debtor is a company incorporated on 13.06.2015 under the Companies Act, 1956, as a company limited by shares with the Registrar of Companies, Mumbai, having its registered office at 1022, Building 10, Second floor, Solitaire Corporate Park, Andheri East, Mumbai- 400093. This Bench has jurisdiction to deal with the present petition.
3. The captioned petition is filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a principal sum of ₹19,82,51,250/- (Rupees Nineteen crores, eighty-two lakhs, fifty-one thousand, two hundred and fifty only) along with interest of ₹2,30,85,225/- (Rupees Two crores, thirty lakhs, eighty-five thousand, two hundred and twenty-five only) totaling to a sum of ₹22,13,36,475/- (Rupees Twenty-two crores, thirteen lakhs, thirty-six thousand, four hundred and seventy-five only). The date of default, as specified in Part-IV of the present petition, is 30.08.2018.
4. The Operational Creditor submits that the Corporate Debtor entered into an Agreement of Statement of Work (“**Agreement**”) with it, *dated* 21.08.2017, for the former’s outbound call-center services. Pursuant to which, the Operational Creditor claims that it paid all invoices which were

raised thereof for the services rendered by the Corporate Debtor *w.e.f.* 21.08.2017 until *circa* January 2019, whereupon the Corporate Debtor *allegedly* failed to make payments citing several reasons *viz.* management change, internal audit issues etc.

5. Consequent to the afore-stated non-payment by the Corporate Debtor, the Operational Creditor raised invoices for the services rendered in consonance with the said Agreement. The Operational Creditor submits that a total of 110 (one-hundred and ten) invoices were raised *w.e.f.* January 2019 amounting to a principal amount of ₹19,82,51,250/- (Rupees Nineteen crores, eighty-two lakhs, fifty-one thousand, two hundred and fifty only). The said invoices, as mandated under Clause {6(ii)} of the Agreement *dated* 21.08.2017, were payable by the Corporate Debtor within 15 (fifteen) working days from the date of respective invoices raised.
6. The Operational Creditor contends that it demanded payment under the afore-mentioned invoices from the Corporate Debtor on various instances, but to no avail. The Operational Creditor thereby issued a Statutory Demand Notice in Form-3 *dated* 31.12.2021 under Rule 5 of the Insolvency and Bankruptcy (*Application to Adjudicating Authority Rules*), 2016, demanding payment of the unpaid operational debt for a principal sum of ₹19,82,51,250/- (Rupees Nineteen crores, eighty-two lakhs, fifty-one thousand, two hundred and fifty only) along with interest of ₹2,30,85,225/- (Rupees Two crores, thirty lakhs, eighty-five thousand, two hundred and twenty-five only) calculated @ 18% p.a., thereby totaling to a sum of ₹22,13,36,475/- (Rupees Twenty-two crores, thirteen lakhs, thirty-six thousand, four hundred and seventy-five only)
7. On account of inaction by the Corporate Debtor in this regard, the Operational Creditor decided to initiate CIRP of the Corporate Debtor to

recover its dues under Section 9 of the IBC, 2016.

Hence, the present petition.

**Submissions by the Corporate Debtor**

8. At the outset, the Corporate Debtor disputes and denies the veracity of the invoices raised and relied hereupon by the Operational Creditor. The Corporate Debtor submits that pursuant to deficiency in services, alleged over-invoicing and successive failure(s) to pay the required GST dues on the valid invoices raised by the Operational Creditor herein, and the former suffering resultant financial losses; The Operational Creditor *allegedly* suspended/terminated provision of its services without any prior notice *w.e.f.* 29.06.2019 (hereinafter “Termination Date”).
9. The Corporate Debtor submits that the invoices up to April 2019 were cleared after confirmation of GST deposit being made by the Operational Creditor, however, invoices for the services raised in May 2019 and June 2019 were without any supporting documents and their veracity was therefore disputed. The said invoice for the month May 2019 was subsequently cleared, however the invoice for the month of June 2019 remained disputed on account of the Operational Creditor not supplying the supporting documents as against the same. Howsoever, payments were also made admittedly against June 2019 by the Corporate Debtor as on 28.06.2019, before the services were suspended/terminated on the said termination date.
10. At the backdrop of the afore-stated invoices, the Corporate Debtor submits that it was served with a Demand Notice by the Operational Creditor u/s. 8 of the IBC, 2016, dated 31.12.2021 purportedly claiming an amount of ₹22,13,36,475/- (Rupees Twenty-two crores, thirteen lakhs, thirty-six

thousand, four hundred and seventy-five only) from the former. The Corporate Debtor, in relation to the said Demand Notice, disputes and denies the veracity of the claim amount demanded/ claimed therein.

***Findings***

11. Heard the Learned Counsel for the Corporate Debtor hereto.

11.1. This Bench *vide* Order *dated* 29.08.2023, notes that there was no representation on behalf of the Operational Creditor herein. The matter-at-hand was therefore, heard on merits.

11.2. We have further taken note of the Total Gag Order passed by the Hon'ble Bombay High Court *via* Interim Order *dated* 11.03.2020, in Suit (L) No. 266 of 2020.

12. Upon perusal of the record files, we are of the considered view that:

12.1. The Operational Creditor has specified the Date of Default in Part-IV of this petition as 30.08.2018, albeit without any factual basis. Without prejudice to the afore-stated, the invoices for the services provided by the Operational Creditor were raised *w.e.f.* 21.08.2017. Admittedly, the Corporate Debtor has cleared the invoices raised from 21.08.2017 to 28.06.2019, amounting to ₹2,35,62,223. The *alleged* defaults therefore pertain to the period post the clearance date *viz.* 28.06.2019.

12.2. The Operational Creditor has claimed an amount of ₹22,13,36,475/- *via* Demand Notice *dated* 31.12.2021, which purportedly includes *inter alia* amounts raised *vide* several invoices, and an amount of

₹7,00,00,000/- as against “*Office Space Rental Due and Infrastructure Rental Due*”. We note that there is no factual basis for the Operational Creditor to claim the afore-stated amount(s) as, it is for reasons contrary to the services rendered in light of scope and terms of said Agreement dated 21.08.2017.

**12.3.** Additionally, there is no interest clause in the said Agreement nor in the invoices relied upon by the Operational Creditor, the veracity of the latter being *ex-facie* bogus herewith. This is contrary to the position set out by the Hon’ble NCLAT in the case of *Mr. Prashat Agarwal vs. Vikash Parasrampuria and Santanu T. Ray [Company Appeal (AT) (Ins) No. 690 of 2022]*. The relevant part of the judgment is extracted hereinunder:

“ **3(6)** “claim” means (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured; right to remedy for breach of contract under any law for the time being in force, if (b) such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;  
Since, interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for “right to payment” (Section 3(6) IBC) and therefore will form part of “debt” (Section 3(11) IBC) ”.

**12.4.** The present petition therefore, in light of the afore-stated observations, deserves to be dismissed.

### **ORDER**

**13.** It is accordingly hereby ordered as follows:

- 13.1.** The petition bearing C.P. (IB) No. 449 of 2023 filed by Floron BPO and Consultancy Services Private Limited, for initiating CIRP against Services Technologies Private Limited is hereby **Rejected**.
- 13.2.** We make it clear that any observations made in this Order shall not be construed as expressing opinion on merits. The right of the Operational Creditor available as per law before any judicial/quasi-judicial forum shall not be prejudiced on the grounds of rejection of the present Application.

**Sd/-**

**MADHU SINHA**  
**MEMBER (TECHNICAL)**  
**05.03.2024**

**Sd/-**

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**

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