

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

CP 479 (IB)/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of

Olevia.com

...Operational Creditor/ Applicant

v/s

Topsgrup Service (India) Limited

...Corporate Debtor/ Respondent

Order Dated 23rd September 2019

Coram: Hon'ble Member (Judicial): Mr V.P. Singh

Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Adv. Surbhi Soni

For the Respondent: Adv. Prasad Sarvankar

Per V.P Singh, Member (Judicial)

ORDER

1. This is an application being CP 479/2019 filed by **Olevea.com**, Operational Creditor/Applicant, Sole Proprietorship Concern, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Topsgrup Service (India) Limited**/ Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) claiming a default of ₹7,80,138.25/- (Rupees Seven Lakh Eighty Thousand One Hundred Thirty Eight and Paise Twenty Five Only) for the services rendered by the Operational Creditor to the online portal of the Corporate Debtor.
2. Mr Sarvam Bansal files this application, being authorised by the Operational Creditor to file this Application.
3. The Operational Creditor has raised 20 invoices from 01.09.2017 to 08.06.2018 for the services rendered to the Corporate Debtor in the said period, for principal sum of ₹6,59,922.60 (Rupees Six Lakh Fifty-Nine Thousand Nine Hundred and Twenty Two and Paise Sixty Only) The Applicant has claimed a sum of ₹1,20,138.65/- (Rupees

One Lakh Twenty Thousand One Hundred and Thirty-Eight and Paise Sixty Five Only) making the total claim amount ₹7,80,138.25/- (Rupees Seven Lakh Eighty Thousand One Hundred and Thirty-Eight Only) as on 04.12.2018.

4. The Corporate Debtor has assured the Applicant in the email dated 10.08.2018 that the payments will be made. The relevant excerpt of the email is extracted hereinbelow:

"Rest assured, as discussed what is meant to be paid by Topsgroup would be paid to Olevea, this is my commitment, which has always been adhered to and you have acknowledged and recognised the same".

5. The Applicant issued Demand Notice dated 17.09.2018 demanding a sum of ₹7,54,102.94/- (Rupees Seven Lakh Fifty-Four Thousand One Hundred and Two and Paise Ninety Four Only) as on 14.09.2018. The Corporate Debtor issued Reply Notice dated 26.09.2018 in response to the Demand Notice stating that the services of the Applicant which were hired by the Corporate Debtor and its sister concern, 'Cheep.care' were terminated upon dissatisfaction of the services vide email dated 14.06.2018, the services were also terminated due to dissatisfaction of the quality of services during the website development of phase II (at initial stage) vide email dated 07.09.2018 and the said Reply lists out the deficiencies in the services received by the Corporate Debtor. Copies of the Demand Notice and the Reply Notice/ Notice of Dispute are annexed to the Application.
6. The Applicant issued letter dated 19.12.2018 along with a copy of the Application and with an intimation of next date of the proceedings and the same duly served on the Corporate Debtor on 24.12.2018. Further, the letter dated 14.06.2019 along with the Court Notice was duly served on the Corporate Debtor on 21.06.2019. Copy of the Affidavit of Service dated 20.07.2019 is annexed to the Application.
7. We observe from our Order dated 13.08.2019 that the parties jointly sought time for a filing settlement agreement, and the same was granted as the last opportunity. It is seen that despite providing

ample time and sufficient opportunity to the Corporate Debtor, neither the Affidavit-in Reply is filed, nor the settlement agreement.

8. The Applicant has filed an affidavit in compliance of section 9(3)(b) of the Code, dated 19.12.2018, stating that the Corporate Debtor has received the Demand Notice dated 26.09.2018 and in response to that the corporate debtor gave a reply whereby they raised a dispute regarding deficiency of service.
9. We have heard the parties and perused the record.
10. On perusal of the invoices for the period 01.09.2017 to 08.06.2018 and the Corporate Debtor has acknowledged its liability vide email dated 10.08.2018. The Corporate Debtor has issued Reply Notice in response to the Demand Notice raising dispute regarding the deficiency in service. However, it is imperative to note that the Corporate Debtor has not raised any dispute before the receipt of the Demand Notice in any of the email conversations. It is also imperative to mention that the Corporate Debtor has not placed any document on record to establish the pre-existing dispute. To the contrary, the Corporate Debtor in its email dated 10.08.2018 assured to the Applicant that the payments will be made.
11. It is pertinent to mention that the Hon'ble Supreme Court in the case of *"Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 Supreme Court Cases 353, held:*

"All that the adjudicating authority is to see at the stage of admitting/rejecting the application 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 defence which is mere bluster. However in doing so, the authority does not need to be satisfied that the defence is likely to succeed so long as the dispute is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application, Moreover the existence of the dispute and /or the suit or arbitration proceeding must be pre-existing i.e It must exist before the receipt of the demand notice or invoice"

12. In the light of the decision mentioned supra, and the facts of the Application at hand, it is observed that there is no real dispute which was in existence before the receipt of Demand Notice. The application has been filed well within limitation. The application is complete and deserves to be admitted.
13. The Applicant has not proposed the name of a registered insolvency resolution professional to act as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code along with declaration of the proposed IRP, in Form 2, that no disciplinary proceeding is either pending or initiated against him.
14. The Application under section Section9 of I&B Code, 2016 filed by the Operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and is complete. The existing operational debt of more than rupees one lakh against the corporate debt and its default is also proved. Accordingly, the petition filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 9 of I&B Code, 2016, filed by **Olevea.com**, against **Topsgroup Service (India) Limited**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - a) the institution of suits or continuation of pending suits or proceedings against the 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 activity 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement under section 13 of the the I&B Code regarding initiation of corporate insolvency resolution process should be made immediately.
- VI. That this Bench at this moment appoints **Mr Uday Shreeram Sakrikar**, a registered insolvency professional having Registration Number **[IBBI/IPA-001/IP-P01230/2018-19/11927]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
15. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor, and the Interim Resolution Professional even by way of

email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted immediately.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

23rd September 2019