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**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 09.09.2020

**THROUGH VIDEO CONFERENCING**  
**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 140/BB/2020	For pronouncement of orders	Sec 9 of I&B code 2016	Famous Innovations Digital Creative Pvt Ltd	Santhosh Muthalli for ATV Legal	Umaiyal Enterprises Services Pvt Ltd	

ADVOCATE FOR PETITIONER/s:

MS. PRADNYA GADRE

ADVOCATE FOR RESPONDENT/s: —

**ORDER**

CP (IB) No. 140/BB/2020 is disposed of by separate order.



**MEMBER (T)**



**MEMBER (J)**

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

C.P. (IB) No.140/BB/2020  
U/s. 9 of IBC, 2016  
R/w Rule 6 of I&B (AAA) Rules, 2016

**Between:**

M/s. Famous Innovations Digital Creative Private Limited  
Rose Cottage Complex,  
Complex 61, Dr.S.S.Rao  
Road, Parel,  
Mumbai – 400 012 - Petitioner/Operational Creditor

**And**

M/s. Umaiya Enterprises Services Private Limited  
Awfis, Level 7, Raheja Tower,  
26-27, M.G.Road,  
Bengaluru – 560 001 - Respondent/Corporate Debtor

**Date of Order: 09<sup>th</sup> September, 2020**

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

**Parties/Counsels Present (Through Video Conference):**

For the Petitioner : Ms. Pradnya Gadre

For the Respondent : None

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P. (IB) No.140/BB/2020 is filed by M/s. Famous Innovations Digital Creative Private Limited ('Petitioner/Operational Creditor), U/s. 9 of the IBC, 2016, R/w Rule 6 of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Umaiya Enterprises Services Private Limited (Respondent/Corporate Debtor), on the ground that

it has committed default for total amount of Rs.17,87,141/- (Rupees Seventeen Lakhs Eighty Seven Thousand One Hundred and Forty One only) which includes principal amount and interest @ 18% p.a.

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

- (1) M/s. Famous Innovations Digital Creative Private Limited (herein after referred to as "Petitioner/Operational Creditor") is a Private Limited Company was incorporated on 21.02.2013, bearing CIN: U93000MH2013FTC240679. The Company is engaged in the business of providing services relating to designing and developing creative advertisements.
- (2) M/s. Umaiya Enterprises Services Private Limited (herein after referred to as "Respondent/Corporate Debtor"), is a Private Limited Company, was incorporated on 05.06.2018, under the provisions of the Companies Act, 2013, bearing CIN: U74999KA2018PTC113708. Its Authorized Share Capital is Rs.10,00,000/- and Paid-Up Capital of Rs.5,00,010/-. It is involved in the business of e-commerce.
- (3) Both the Parties entered into a 'Service Agreement' dated 13.12.2018 (effective from 01.12.2018), wherein the Operational Creditor agreed to provide the services to the Corporate Debtor as per the terms contained therein. As per the terms of the Service Agreement, it was agreed that the Corporate Debtor shall pay Rs.5,00,000/- as retainer fee for a period of 6 months excluding other bonus and entitlements. As agreed, the Operational Creditor started providing services to the Corporate Debtor.
- (4) On 23.01.2019, the Corporate Debtor sent an email informing the Operational Creditor to halt the services, which was in breach of the terms agreed in Service Agreement. The Operational Creditor communicated to the Corporate Debtor that termination of services is subject to prior written notice of



90 days and continued to provide the services to the Corporate Debtor till March, 2019, and the Corporate Debtor received the services provided by the Operational Creditor. It is an admitted fact that the Corporate Debtor never disputed the services provided by it.

- (5) Accordingly, the Operational Creditor raised various invoices till March, 2019 on the Corporate Debtor. Since the Corporate Debtor failed to make the payment even after various reminders, the Operational Creditor issued Demand Notice in Form 3 on 08.08.2019, as per the provisions of the Code, demanding an amount of Rs.17,87,141/- along with interest of Rs.2,04,155/- at the rate of 18% p.a., as on 25<sup>th</sup> November, 2019. Thereafter, on 29.08.2019, the Corporate Debtor replied to the notice sent by the Operational Creditor, under the provisions of the Code. In response to this, on 30.09.2019, the Operational Creditor sent a reply denying the allegations made by the Corporate Debtor. In terms of Service Agreement, the Corporate Debtor shall make the payment within 45 (forty five) days from the date of receipt of invoice.
3. Heard Ms. Pradnya Gadre, learned Counsel for the Petitioner, **through Video Conference** and none appeared for the Respondent. We have carefully perused the pleadings of the Party and extant provisions of the Code, the Rules made thereunder and the law on the issue.
4. Though the case was filed on 12<sup>th</sup> December, 2019, the Petitioner could not attend office objection in time. Therefore, the case was listed on 12.03.2019 for compliance of office objections. It was subsequently listed for hearing on 18.03.20, 15.06.20 and 18.06.20 but none appears for the Petitioners on these dates. So the Tribunal ordered notice to the Respondent on 22.06.20. However, service of notice could not be effected on the Respondents till date and resultantly none appears for the Respondents. And the notices sent

through Registry of the Tribunal returned un-served. The Petitioner also failed to serve notices on the Respondent till date.

5. By perusal of various correspondence, enclosed to the Company petition, prima facie show that the Respondent has broadly admitted the debt in question, though they have raised dispute by way of its Reply. In order to consider for admission of a case filed under the provisions of Code, it is necessary to establish not only debt and default in question but also Corporate Debtor has become insolvent by virtue of its financial position. However, the Petitioner, even not pleaded that the Corporate Debtor has become insolvent except pleading that the Respondent failed to pay their outstanding dues. However, the Petitioner plead with the Respondent to clear their outstanding amount as they are small entrepreneurs and fulfilled their commitment to their staff. The Petitioner could not service notice on the Respondent even though sufficient time was granted to it. Therefore, instead of keeping it pending on the file of this Tribunal for service of notice and to furnish financial status of Corporate Debtor, it would be just and proper to dispose of the instant Company Petition with a direction to the Respondent to settle the issue, instead of prosecuting the litigation, in their own interest.
6. In the result, **C.P. (IB) No.140/BB/2020** is hereby disposed of with the following directions:
  - 1) We hereby direct the Respondent/Corporate Debtor to settle the issue in question by taking into consideration of the status of Operational Creditor, being a small entrepreneur;
  - 2) In case, the Respondent/Corporate Debtor failed to settle the issue in question, within a period two months from the date of receipt of a copy of this order, the Petitioner is at liberty to file fresh case in accordance with law for the same cause of action.



- 3) The Registry is directed to forward a copy of this order to both the Parties to take appropriate action.



**(ASHUTOSH CHANDRA)  
MEMBER, TECHNICAL**



**(RAJESWARA RAO VITTANALA)  
MEMBER, JUDICIAL**

Shruthi