

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

**CP (IB) No. 4107/MB-IV/2019**

Under Section 9 of the I&B Code, 2016

In the matter of:

**KYROS SOFT-TECH LIMITED**

[CIN: U72200TG2000PLC033864]

...Operational Creditor/Applicant

V/s

**HEALTH INDIA TPA SERVICES PRIVATE  
LIMITED**

[CIN: U67200MH1997PTC105960]

...Corporate Debtor/Respondent

Order Dated: 16.05.2023

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Avinah R. Khanaolkar, Ld. Counsel.  
For the Respondent(s) : Mr. V.V Khemka a/w Mr. Manoj Agiwal,  
Ld. Counsel.

**ORDER**

*Per: Kishore Vemulapalli, Member (Judicial)*

1. This is an Application being CP (IB) No. 4107/MB-IV/2019 filed on 19/11/2019 by M/s. Kyros Soft Tech Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of M/s. Health India TPA Services Private Limited, Corporate Debtor.

1.1. The total amount claimed by the Operational Creditor, as specified in the Part IV of the Company Petition is Rs. 3,06,25,547/-, is due and payable by the Corporate Debtor as on 14.02.2019. The debt of default is 08.01.2018.

2. The Corporate Debtor i.e. M/s. Health India TPA services Private Limited and the Operational Creditor i.e. Kyros Soft-Tech Limited entered into an agreement dated 30.01.2015 for providing work services to the Corporate Debtor. The services provided to the Corporate Debtor pertained to the enrolment of the beneficiaries and issuance of smart card by the Operational Creditor.

2.1. The Operational Creditor further submits that, total Invoices raised by the Operational Creditor were amounting to Rs. 3,44,78,067/-. Out of the total amount of invoice raised around Rs. 38,52,520/- has been paid by the Corporate Debtor. The remaining unpaid amount still payable by the corporate debtor amounts to Rs. 3,06,25,547/-.

2.2. The Operational Creditor issued a demand notice under section 8 of Insolvency and Bankruptcy Code, 2016 in respect of the unpaid amount,

demanding payment on 02.04.2019. The said notice was replied by the Corporate Debtor stating that agreement dated 30.01.2015 enclosed is not signed; the invoices placed on record under caption “pending invoices” is erroneous as the total purported pending invoices is about Rs. 26.60 crores and the claim as per the demand notice is about Rs.3.06 crores; the letters dated 20.01.2012, 02.05.2014 and 16.12.2016 are not “work orders” rather they are experience letters; no statement of any books of account showing payments made by the insurance companies is enclosed by the Operational Creditor.

3. The Corporate Debtor in its reply has stated that there is a pre-existing dispute; the agreement dated 30.01.2015 is incomplete bearing only the signature of the Operational Creditor, even after the incomplete document the payment is to be made from the insurance company; no amount is received from the insurance company; the additional documents placed on record i.e. work orders and invoices are in default; the data submitted by the Operational Creditor for the work done in certain states has not been accepted by the State Nodal Authority till date on account of differences, thus the insurance company has not accepted the invoice of the Corporate Debtor.

Findings:

4. This bench has carefully gone through the documents and pleadings available on record and considered the arguments.
  - 4.1. This bench notices that that the clause 2.1 of the service agreement in relation to Uttarakhand State provides that “ *payment of KYROS will be made on the receipt of the service charges from the Insurance Co. by Health India TPA Services (I) Pvt. Ltd. which will be equivalent to the service charges which will be different for every State and district mutually agreed by both the parties and becomes as an annexure towards the*

*enrolment services and as per the scope of work pertaining to Health cards + applicable service taxes). This is subject to timely raising of the invoice along with the necessary certifications required by the Uttarakhand state Government. Any other services involved shall be executed after mutual agreement for additional scope of work”*

4.2. In view of agreement between the parties making the Corporate Debtor liable to pay for the services received from the Operational Creditor only upon receipt of corresponding payment from its clients, this bench asked the Corporate Debtor to file an Affidavit on record explaining the amount received from the insurance company and disbursed to the Operational Creditor so far.

4.3. The Corporate Debtor filed an additional Affidavit dated 19.04.2023 stating that it has paid to the Operational Creditor all amounts corresponding to the payment received by it from the Insurance Company. Out of 7 invoices 4 invoices have been paid after taking into account the deductions made by the insurance company; and payment against 3 invoices is yet to be received from the Insurance Company. Apart from this a sum of Rs. 2,21,61,193/- is payable after receipt of corresponding payment from the insurance company.

4.4. Based on the documents placed on record it is clearly evident that the debt claimed due is not in default as the Corporate Debtor has not received corresponding payment from Insurance Company, thus it is not obligated to make payment to the Operational creditor as on date. Though there exists an operational debt of Rs.2,88,64,283/- as admitted in the affidavit dated 19.04.2023, but the said debt has not fallen due for payment. Accordingly, no default can be said to have arisen. In the absence of default present petition is not maintainable.

5. As per the material on record this Bench is of the view that it is a fit case for dismissal u/9 of IBC,2016.

**ORDER**

6. The petition bearing CP(IB) 4107/MB-IV/2019 filed by M/s. Kyros Soft Tech Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of M/s. Health India TPA Services Private Limited, Corporate Debtor is **Dismissed**.
7. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

PRABHAT KUMAR  
MEMBER (TECHNICAL)  
16.05.2023.

Sd/-

KISHORE VEMULAPALLI  
MEMBER (JUDICIAL)