



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

IA 3772/MB-IV/2022

In

CP (IB) No.1224/MB-IV/2019

Under Section 60 (5) of IBC, 2016

Siti Network Limited

.... Applicant

V/s

Darshan Bharatbhai Patel

.... Respondent

In the matter of:

Adonis Mobitrade Private Limited

...Operational Creditor

V/s

Shop CJ Network Private Limited

...Corporate Debtor

Order Dated: 21.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant(s) : Ms. Antara Kalambi i/b ANB
Legal, Advocate.

For the Respondent(s) : Mr. Nipun Singhvi i/b
Mr. Kamil Lokhandwala,
Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being IA No. 3772/MB-IV/2022 filed by Siti Network Limited the Applicant (or "Applicant") against Mr.

Darshan Bharatbhai Patel (“Respondent/ Resolution Professional”),
under Section 60 (5) of IBC, 2016 (“the Code”) seeking following
reliefs:

- a. To direct the Respondent/Resolution Professional to admit the entire claim of the Applicant as stated in the Proof of claim of the Applicant as stated in the Proof of Claim dated 26.04.2022 filed on 26.04.2022 by the Applicant;
 - b. Grant such further and other consequential reliefs as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.
2. The brief submissions on behalf of the Applicant is as under:
- 2.1 The Corporate Debtor approached and requested the Applicant to place its satellite TV Channel on the network of the Applicant to and subsequently, they executed a Channel Visibility Agreement dated 28.03.2016 for Channel placement at various locations and on the request of the Corporate Debtor was subsequently extended from time to time.
 - 2.2 Vide an E-mail dated 24.07.2018, the Corporate Debtor informed the Applicant that due to certain unavoidable circumstances, they are not in a position to extend the Agreement for period post 31.07.2018. By its E-mail dated 09.08.2018, the termination date was fixed at 24.08.2018.
 - 2.3 The Corporate Debtor made part-payment after the termination of the Agreement till 12.12.2018. on receipt of the aforesaid part payments, the total outstanding amounts due and payable is

Rs.1,27,87,284/- plus 18% interest till realization on its outstanding principal amount.

- 2.4 On 26.04.2022, the Applicant through its advocate filed Proof of Claim before the Respondent. On 27.04.2022, the Respondent acknowledged the receipt of the Proof of Claim. Between 03.05.2022 till 27.05.2022, the Respondent and Applicant's Advocate exchanged E-mails in relation to clarification and documents sought by the Respondent.
- 2.5 Vide E-mail dated 01.06.2022, the Respondent informed the Applicant's Advocate that the Applicant's claim could not be admitted as per the Regulation 12 (2) of IBBI (Resolution Process for Corporate Person), 2016, as the claim was to be submitted within 90 day from the CIRP date.
- 2.6 On 09.09.2022, the Respondent requested for additional details for verifying the claim. The Applicant responded to the said E-mail clarifying the concerns of the Respondent. However, vide an E-mail dated 17.09.2022, the Respondent rejected the entire claim of the Applicant stating as follows:

“The undersigned rejects your claim on the following grounds:

- Agreement expired on 31.03.2016 and no subsequent agreement thereafter.*
- As per the books of accounts there is no pending liability towards claimed invoices.*

- There is no confirmation account provided by SNL towards the claim.

- The claim is treated as disputed. In light of the reply of Corporate Debtor as per Annexure-P of your claim submission, which is the reply filed by the Corporate Debtor in the matter of the Company Petition No.3971 of 2019 which is filed under section 9 of the IBC, 2016.”

3. The Respondent has filed its Affidavit in reply stating that the Respondent pursuant to order dated 26.08.2022 of this Bench, sought additional evidences for the Applicant and rejected the Claim of the Applicant on the following grounds:
- i. Agreement expired on 31.03.2016 and no subsequent agreement thereafter;
 - ii. As per the books of accounts, there is no pending liability towards claimed invoices;
 - iii. There is no confirmation account provided by SNL towards the claim; and
 - iv. The claim is treated as disputed, in light of the reply of the Corporate Debtor filed in CP (IB) 3971 of 2019.
4. The Applicant has filed Affidavit-in-Rejoinder dated 25.01.2023 refuting the contentions of the Respondent.

Findings:

5. On perusal on e-mail communication placed on record, we find that the Corporate Debtor vide its E-mail dated 30.07.2018 had informed the Applicant that *we wish to inform you that due to unavoidable circumstances we are not in position to renew/extend the agreement for any further period post July 31, 2018. Kindly treat this email as advance termination notice of 07 days.* Thereafter, vide E-mail dated 09.08.2018 the Corporate Debtor agreed that 24.08.2018 shall be last date to carry their channel on Applicant's network. Further, E-mail dated 01.05.2018, the Corporate Debtor has proposed two options in relation to pricing and Applicant vide E-mail dated 26.07.2018 agreed to one of option. Further, their other E-mails communications which suggest that the Corporate Debtor was availing services of the Operational Creditor. On perusal of Form B filed by the Applicant with the Resolution Professional, we noticed that all these E-mails were enclosed with the claim form. An E-mail dated 15.02.2017 from the Applicant to the Corporate Debtor only suggest that there may be certain disagreement on the pricing for the period after expiry, but these E-mail communications clearly demonstrate that the Corporate Debtor was availing applicant's services till 24.08.2018. In view of this findings, we direct the Resolution Professional to determine the amount of claim of the Applicant. The Applicant shall produce necessary evidences to enable the Resolution Professional for ascertainment of agreed price for the services availed till 24.08.2018. In view of the foregoing the Application is deserves to be allowed
6. In view of the above discussion, IA No. 3772/MB-IV/2022 filed by Siti Network Limited the Applicant (or "Applicant") against Mr.

Darshan Bharatbhai Patel (“Respondent/ Resolution Professional”),
under Section 60 (5) of IBC, 2016 (“the Code”) is **Allowed** and
Disposed of.

Sd/-

Prabhat Kumar
Member (Technical)
21.03.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)