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IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

C.P. (IB) No.278/BB/2019  
U/s 9 of IBC, 2016  
R/w Rule 6 of I&B (AAA) Rules, 2016

**IN THE MATTER OF:**

M/s. Manipal Media Network Ltd.  
Regd. Off: Udayavani Building,  
Press Corner,  
Manipal - 576 104.

- Petitioner/Operational Creditor

**Versus**

M/s. M.N.S. Printers Pvt. Ltd.  
Regd. Off: No.345/4,  
Bhattara Halli, Old Madras Road,  
Bangalore - 560 049.

- Respondent/Corporate Debtor

**Date of Order: 25<sup>th</sup> October, 2019**

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

**Parties/Counsels Present:**

For the Petitioner : Shri Yashavanth Sajjanagoudar

For the Respondent : Shri Anish Acharya

**ORDER**

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

1. C.P. (IB) No.278/BB/2019 is filed by M/s. Manipal Media Network Limited(hereinafter referred to as 'Petitioner/Operational Creditor') U/s 9 of the IBC, 2016 R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016 by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. M.N.S. Printers Private Ltd. (hereinafter referred to as 'Respondent/Corporate Debtor') on the ground that it has committed default for total outstanding amount of Rs.28,54,801.38/- (Rupees Twenty



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Eight Lakhs Fifty Four Thousand Eight Hundred and One and Thirty Eight Paise Only) since 15.10.2018.

2. Brief facts of the case, as mentioned in the Company Petition, and also in Summary dated 23.10.2019, which are relevant to the issue in question, are as follows:

- (1) M/s. Manipal Media Network Limited (hereinafter referred to as 'Petitioner/Operational Creditor') is a Public Limited Company incorporated on 22.12.1948 with CIN: U22221KA1948PLC001159 and having its registered office at Udayavani Building, Press Corner, Manipal - 576104. The Company is engaged in the business of printing and publishing daily newspapers in Kannada viz. 'Udayavani' and its supplements.
- (2) M/s. M.N.S. Printers Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor') is a Private Limited Company incorporated on 29.09.1999 under the Companies Act, 1956 with CIN: U22219KA1999PTC025781 and having its registered office at No.345/4, Bhattara Halli, Old Madras Road, Bangalore - 560 049. Its Authorised Share Capital is Rs.2,00,00,000/- and Paid-up Share Capital is Rs.2,00,00,000/-. The Company is involved in printing and service activities related to off-set printing of newspaper and magazines.
- (3) It is stated that the Petitioner and Respondent entered into a Contract, called as Printing Agreement dated 01.09.2014 wherein the Respondent has intended to outsource the print job to Petitioner and requested the Petitioner to be a Print partner for Respondent for printing of newspaper edition namely 'Kannada Prabha' and its supplements from various region like Gulbarga, Hubli and Manipal. In pursuant to the



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said contract, the Petitioner printing the newspaper as per their print order prescribed in Clause 8 of the Printing Agreement dated 01.09.2014, the Petitioner used to charge agreed fees based on the number of copies printed and other relevant considerations. Further, in pursuant to Clause 9 of the said Agreement, the Petitioner agreed to raise bills on the Respondent on a fortnightly basis and the Respondent agreed to make payment of the same within 15 days of receipt of the bill.

- (4) The Petitioner has printed news edition and its supplements from various regions as requested by the Respondent during September 2014 - October 2018, however, the Respondent has made payment to the invoices till March 2018 only. The Respondent made default for the invoices raised for the month of April 2018 to October 2018. After various reminders, the Respondent finally responded and sought time to clear the due amount. The Petitioner continuously followed up for the payment and ultimately on 29.08.2018, the Sr. General Manager of Respondent replied to the mails sent by the Petitioner that *"As per the previous communications, we have not yet received the Credit Note for waste sale. Kindly send the credit notes till 01.08.2018. Also, requesting you to kindly send up updated Account Statement to reconcile and settle your dues accordingly"* In response to the said mail, the Petitioner has once again sent Ledger Statement to the Respondent.
- (5) The Petitioner, on several times requested Respondent both over phone as well as email to clear the outstanding due but the Respondent time and again assured to clear the payment. The Petitioner once again sent a mail requesting long pending bills (dues) and sent a detailed balance report to the



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Respondent. Even after waiting for long period, the Petitioner has not received any payment from the Respondent and thus issued Demand Notice dated 11.03.2019, as prescribed u/s 8 of the Code demanding the Respondent to pay the due amount of Rs.28,54,801.38/- and interest @ 18% p.a. thereon till realization within the stipulated period of 10 days. However, the Respondent, after receiving the demand, neither replied nor paid the due amount, failed to comply with the terms of the Agreement and defaulted in payment of an unpaid operational debt amount.

(6) It is also stated that the Petitioner obtained a Syndicate Bank Account Statement of its Current Account bearing No.01113070001628, where deposits are made or credits received normally in respect of the Respondent. As per the Certificate issued by Syndicate Bank, the Petitioner has not received any payments from Respondent after 27.06.2018. Accordingly, the Petitioner has obtained its statement of its Bank account confirming that there is no payment of the relevant unpaid operational debt by the Respondent, after sending the notice. Even after various follow ups and issuance of demand notices, the Respondent not paid the due amount, and thus constrained to file the present Petition.

3. The Company Petition is opposed by the Respondent by filing the Memorandum of Objections dated 24.10.2019 signed by Advocate for Respondent , by inter alia contending as follows:

(1) It is alleged that the Petition is filed on untenable, false and frivolous by suppressing and misrepresenting material facts of the case, and it would amount to 'Suppressio Veri Suggestio Falsi' based on which no relief could be sought for.



(2) It is stated that the Respondent is engaged in the business of printing and taking up other job work in printing. As the Respondent was desirous of sub-contracting works concerning the printing of an edition of Kannada Prabha at Mangalore and Gulbarga, the Petitioner was engaged to carry on the desired work as per the agreement dated 01.09.2014 to carry out the activities. And the Agreement was valid for a period of two years and it was further extended owing to mutual understanding between the parties as the agreement provided for the same. During the said course of transactions, the Agreement entered between the Respondent and Kannada Prabha, the client of the Respondent expired. The Respondent owing to their diligent services was hoping for the extension of such contract and thus the Agreement between the Petitioner and Respondent was deemed to have been continued by virtue of clause 22 of the said Agreement. In order to terminate contract, either of the parties was bound to give a notice for a period of 3 months for termination.

(3) It is contended that the Agreement further stipulated the rights and obligation of the parties before and after termination. Clause 14 and 15 of the Agreement stipulated that all the newsprint, newsprint waste and other materials shall be the property of the Respondent and the contents of the same at no point in time belong to the Petitioner. Further under the contract, there were certain other obligations which were cast upon the Petitioners for the printing and other requirements. However, the client has failed/ neglected to comply with the terms and conditions of the contract, which has been brought out by both the parties over the various correspondences exchanged between them. The



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Petitioner, on coming to know about the fact that the contract assigned to the Respondent by Kannada Prabha was terminated by efflux of time, the Petitioner, instead of seeking clarifications from the Respondent, has directly approached Kannada Prabha and applied for the printing contract similar to the nature that was granted to the Respondent in their name, side lining the Respondent. It may be noted that these obtaining of the contract in the name of the Petitioner is completed during existence of the Agreement between the Petitioner and Respondent. The Petitioner has made no efforts of terminating the Agreement dated 01.09.2014 in the manner specified under clause 22 of the Agreement, thus the act of Petitioner during the course of Agreement is nothing but a breach of trust and are liable to pay damages for the same. The acts of the Petitioner are against the established business principles and standards.

- (4) It is contended that owing to these dishonest acts of Petitioner, the Respondent has suffered huge loss and had to shut down their plant at Hubli. The Petitioner being aware of dispute involved in these transactions has approached this Adjudicating Authority to harass the Respondent. Further, the Respondent, as per the terms of the Agreement, was the absolute owner and in possession of the goods, supplies and products within the possession of the Petitioner during the course of the existence of the Agreement or after the termination of the Agreement. The Petitioner in the event assumed to have terminated the Agreement, should have handed over the possession of the goods, supplies and products to the Respondent, which they have failed to do so. Instead, the Petitioner in absolute breach of terms of the Agreement handed over said goods to Kannada Prabha and



thus constituted breach of the Agreement. These and further acts of the Petitioner constitutes a breach of the Agreement entered into between the Parties.

- (5) The Hon'ble Supreme Court in a judgment stated that when there is an existence of dispute between the parties, the proceedings under the Code cannot be invoked. Further, the provisions of Code cannot be invoked for the purpose of recovery. Further, clause 24 of the Agreement laid down the foundation for dispute resolution. Thus, filing the present Petition by invoking the provisions of Code is uncalled for and not maintainable and hence the claim made by the Petitioner is unsustainable and thus it is liable to be dismissed in limine.
4. Heard Shri Yashavanth Sajjanagoudar, learned Counsel for the Petitioner and Shri Anish Acharya, learned Counsel for the Respondent. I have carefully perused the pleadings of both the parties and extant provisions of the Code and the Law on the issue.
5. Shri Yashavanth S., learned Counsel for the Petitioner, while reiterating various averments made in the Company Petition, and also in the Synopsis, as briefly stated supra, has further submitted that the instant Company Petition is filed in accordance with law where the debt and default is admittedly not in dispute and a qualified Insolvency Professional namely Shri Srinivas Thatikonda is suggested to be appointed as Interim Resolution Professional.. The disputes raised by the Respondent are not at all tenable and baseless and made just for the sake of statement of objections. Therefore, he urged the Adjudicating Authority to admit the case by initiating CIRP in respect of the Corporate Debtor with all resultant directions.



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6. Shri Anish Acharya, learned Counsel for the Respondent, while reiterating various averments made in the Memorandum of Objections, as briefly stated supra, has further submitted that the Petitioner is liable to pay damages as the Petitioner violated several terms of the Agreement in question and failed to handover the goods, supplies and products in question to Kannada Prabha. There are several Hon'ble Supreme Court judgments in support of his case. Therefore, he urged the Adjudicating Authority to dismiss the Company Petition as not maintainable.
7. The case was listed on several dates and adjourned at the request of parties on the ground that they are going to settle their issue. However, they failed to settle the issue and thus the Respondent ultimately caused to file Memo of objections, on their behalf by Advocate for Respondent. In support of Memo, there is a verifying Notarised Affidavit dated 24<sup>th</sup> October, 2019, signed by Mr. Nanasaheb Chorge, who is stated to be authorised Signatory of the Respondent Company, Identified by their Advocate. Surprisingly, Authorised Representative has not filed Reply/Statement of Objection and only Advocate for Respondent has filed Memo of objection. Therefore, memo of objections filed by Advocate is not in accordance with law and it is hardly have valuable defence.
8. The facts as narrated above, the validity of Agreement in question is not in dispute and various emails enclosed to the Petition have also established that the debt and default in question are not in dispute. The Petitioner has admittedly issued the Demand Notice dated 11.03.2019 in Form 3 under Rule 5 of the I&B (Application to Adjudicating Authority) Rules, 2016 by demanding the Respondent to pay the outstanding amount of Rs.28,54,801.38/- (Rupees Twenty Eight Lakhs Fifty Four Thousand Eight Hundred and One Only). However, the Respondent failed even to respond to



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the Demand notice. The Petitioner has also filed an Affidavit u/s 9(3)(b) of the Code in support of Company Petition dated 04.07.2019 by Shri Rajesh Shetty, Authorised Representative of M/s. Manipal Media Network Limited, by inter alia stating as follows:

- (1) The Corporate Debtor is engaged in the business of printing and taking up job works in Printing. The Petitioner/ Operational Creditor is engaged in the business of printing and publishing daily newspapers in Kannada viz. Udayavani and its supplements.
- (2) The Corporate Debtor sub-contracted the printing of 'Kannada Prabha' daily and its supplement to the Petitioner pursuant to a duly executed Agreement dated 01.09.2014. Pursuant to Clause 8 of the Printing Agreement, the Operational Creditor charged agreed fees based on the number of copies printed and other relevant considerations. Further, pursuant to Clause 9 of the Printing Agreement, the Operational Creditor agreed to raise bills on the Corporate Debtor on a fortnightly basis and the Corporate Debtor agreed to make payment of the same within 15 days of receipt of the bill.
- (3) The Petitioner carried on the job as per the Agreement and raised the invoice accordingly. The Petitioner continuously followed up for the same but Corporate Debtor assured to clear the payment but never acted upon it and the same can be perceived through its mail. The Corporate Debtor failed to comply the terms of the Agreement and defaulted in payment of an unpaid operational debt to the amount of Rs.28,54,801.38/- and interest @ 18% p.a. thereon till realization within the stipulated period of 10 days, after



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having received notice from the Petitioner dated 11.03.2019 u/s 8 of the Code.

- (4) The Corporate Debtor has paid its last payment on 27.06.2018 and remaining amount is not paid till date. A copy of the Certificate was issued by the Syndicate Bank for the period of June 27, 2018 to till date. It is said and confirmed that apart from the aforesaid bank account, there is no other bank account wherein any deposits are made, or credits are received by the authorised representative in respect of the debt from the Corporate Debtor.
- (5) Thus, it is clear that despite repeated commitment and assurance given by the Corporate Debtor to the Petitioner, the Corporate Debtor is unable to pay its operational debts and therefore liable to be wound up/liquidated in accordance with law.
9. The case was listed for admission and hearing on various dates viz. 08.08.2019, 23.08.2019, 06.09.2019, 11.10.2019 and 23.10.2019 in order to give opportunity to the Respondent to explore for settlement of the issue raised in the Company Petition. However, the Respondent failed to avail opportunity forcing the Adjudicating Authority to consider the case, as per merits.
10. The Respondent for the first time by way of Memo of objections raised un-tenable grounds as briefly stated supra. The Respondent has not initiated proceedings against the Petitioner for the alleged damages or invoked Alternative Dispute Resolution as per the Agreement in question. Therefore, it is a fit case to admit by appointing Shri Srinivas Thatikonda having Regn.No.IBBI/IPA-002/IP-N00631/2018-19/11886, as the IRP in respect of the Corporate Debtor, who also has given his Consent in Form 2 dated 04.10.2019, by inter alia certifying that there are no disciplinary



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proceedings pending against him with the Board or ICSI Institute of Insolvency Professionals, and he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor, etc.

11. In view of the above facts and circumstances of the case and by exercising powers conferred on this Adjudicating Authority, under Section 9(5)(i) and other extant provisions of the Code, Company Petition bearing C.P. (IB) No.278/BB/2019 is hereby admitted by initiating CIRP in respect of the Corporate Debtor with following consequential directions:

(1) Shri Srinivas Thatikonda with Regn.No.IBBI/IPA-002/IP-N00631/2018-19/11886, is hereby appointed as Interim Resolution Professional (IRP) to conduct Corporate Insolvency Resolution Process in respect of the Corporate Debtor, namely **M/s. M.N.S. Printers Private Limited** and to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

(2) The following moratorium is declared prohibiting all of the following, namely:

- 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 action under the Securitisation 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 the possession of the corporate debtor.
- e. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
- g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file his progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on **27<sup>th</sup> November, 2019**.

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*Rajeshwar*  
**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**

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*Mary*  
 Deputy Registrar  
 National Company Law Tribunal

29/10/19  
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