

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 369 of 2020**

(Arising out of Impugned Order dated 16.12.2019 passed by the  
Adjudicating Authority/National Company Law Tribunal, Bengaluru  
in CP (IB) No. 327/BB/2019)

**In the matter of**

**M/s. Manipal Media Network Ltd.  
Udayavani Building,  
Press Corner,  
Manipal-576104.**

**Also at**

**1<sup>st</sup> Floor, Kandur Mall,  
S.V. Patel Chowk,  
Kalaburgi-585102**

**....Appellant**

**Vs.**

**M/s. Vishwakshara Media Pvt. Ltd.  
No. 915, Dhanush Plaza,  
2<sup>nd</sup> Floor, Ideal Homes Township,  
Rajarajeshwari Nagar,  
Bengaluru-560098.**

**....Respondent**

**Present**

**For Appellant: Shri Gautam Singh, Advocate**

**For Respondent: Shri D.P. Chaturvedi, Advocate**

**Judgment**

(Date: 21.6.2021)

**{Per: Dr. Alok Srivastava, Member (T)}**

This appeal is against the order of Adjudicating Authority,  
(NCLT Bengaluru) dated 16.12.2019 in CP (IB) No. 327/BB/2019,  
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qua which application under Section 9 of the Insolvency and Bankruptcy Code (hereafter called the IBC) filed by the Operational Creditor M/s. Manipal Media Network Limited was dismissed on the ground of pre-existing dispute.

2. While the precise amount of debt in default is disputed by the Respondent, he has not disputed that the amount in default is more than Rs. One lakh which is the threshold for maintainability when the application under Section 9 of IBC was filed by the Appellant before the Adjudicating Authority.

3. The facts of the case are as follows: –

The Appellant (Operational Creditor) Manipal Media Network Private Limited, and the Respondent (Corporate Debtor) Vishwakshara Media Private Limited, entered into three separate agreements wherein the Appellant became the printing-partner of Corporate Debtor for printing of three newspaper editions and supplements of newspaper “Vishwavani” issued from Gulbarga, Hubli and Manipal. These three separate agreements, all signed on 4.12.2015, have been entered into between the Appellant and the Respondent – first one relating to the Gulbarga printing facility, the second one relating to the Hubli printing facility and the third one relating to the Manipal printing facility for Vishwavani newspaper and its supplements. The Appellant’s case is that the Respondent kept on making requests through emails for printing jobs even after

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the expiry of the term of the agreements on 3.12.2017 and the Appellant kept on raising invoices for printing charges every fortnight as was required under the agreement, and the Respondent continued to make payments till January 2018. On the other hand, the Respondent says that the agreements dated 4.12.2015 were for a period of two years, which expired on 4.12.2017, and thereafter they were not extended through written mutual agreement of both the parties. Therefore, Respondent claims the agreements were not in force for the period the dues are being claimed for payment by the Appellant and hence no payments are due to be made to the Appellant.

4. The Appellant has alleged that the Respondent defaulted in payment of invoices for the period February, 2018 to November, 2018. In order to get his pending payments, the Appellant e-mailed all the pending invoices to the Respondent on 27.8.2018 informing him about the total amount due for payment. He has further alleged that, through an email dated 5.9.2018, the Respondent (Corporate Debtor) sought time from the Appellant to make the pending payments. There is a catena of e-mail communications between the Appellant and Respondent between 6.9.2018 to 27.2.2019 (attached in Appeal Paper book, pp.188-222), seeking pending payment by the Appellant, and from the Respondent asking for time to clear

pending payments. Through an email dated 19.2.2019 (pg. 224 of Appeal book), the Respondent informed the Appellant for making part payment of pending dues and restarting printing from 1.3.2019 at Gulbarga printing unit and promised to pay Rs. 10 lakhs in advance. Later, the Respondent informed the Appellant through e-mail dated 27.2.2019 that the restarting of printing at Gulbarga unit has been postponed. Since the Appellant was not getting any satisfactory resolution in the issue of pending payments, the Appellant issued demand notice under Section 8 of the IBC on 23.4.2019 which did not elicit any reply from the Respondent. Thereafter, on 7.6.2019, the Appellant filed an application under Section 9 of the IBC for repayment of its debt which was due and payable. The Adjudicating Authority dismissed this application vide its order dated 16.12.2019 on the main ground of pre-existence of dispute regarding the pending debt.

5. IA No. 969/2020 was filed by the Appellant praying for condonation of delay of 18 days in filing this appeal. Looking to the reasons presented by the Appellant in IA No. 969/2020, we condone the delay in filing this appeal.

6. The Respondent has submitted his reply cum objections to the Appeal Memo upon which the Appellant has filed rejoinder. Both the parties have submitted their written notes and presented

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oral arguments in detail.

7. The Appellant has also stated that the Adjudicating Authority has made an unjustified conclusion in the Impugned Order that the debt is based on an agreement that has lapsed and the application under Section 9 of IBC filed by the Appellant is untenable which is basically for recovery of the amount alleged to be due and also that there was a pre-existing dispute. The Adjudicating Authority has also held that the amount claimed in invoices which includes 18% rate of interest applied on pending amount is not in accordance with the relevant clause of the agreement and the Adjudicating Authority is not required to do an enquiry to calculate the exact amount due. On these grounds the application of Appellant under Section 9 of IBC has been dismissed.

8. The Ld. Counsel for Appellant has stated in the written submission that the Respondent Vishwakshara Media Private Limited (Corporate Debtor) approached the Appellant Manipal Media Network Ltd. (Operational Creditor) for printing job of its three newspaper editions at Gulbarga, Hubli and Manipal and three separate agreements were signed on 4.12.2015 between the parties for the printing jobs. Clause 7A of the agreements stipulate that the minimum number of chargeable copies of Vishwavani newspaper for each day shall be 10,000 each. It also stipulates

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that the permissible printing wastage will be less than 4% as it is the standard wastage for 10,000 copies. The Ld. Counsel has argued that as the number of copies increase, the percentage of wastage decreases, but if the print order is small, the percentage of wastage becomes high. The wastage percentage of 4% is in relation to the 10,000 copies and hence as the number of copies directed to be printed by the Corporate Debtor for various editions was much lower than 10,000, the wastage percentage of newsprint was more than 4%. He has pointed to the print order for Kalaburgi edition for 30.5.2017 (attached on page 211 of Appeal Memo) is 2668. Similarly, the print order for Bangalore edition for 30.5.2017 is 3502. These print orders are given by the Corporate Debtor. Quite evidently these print orders are less than 10,000 copies stipulated in the agreement as the minimum print order. The Ld. Counsel of Appellant has claimed that, therefore, the percentage of wastage of newsprint is higher than what was stipulated in the agreements for printing.

9. In oral arguments, the Appellant's Ld. Counsel has argued that the agreements were initially for two years, which could be extended by mutual written agreement. He has urged that the agreements between the parties for printing at all the aforementioned printing units was, by conduct of parties, extended because the Respondent kept on sending written communication in *Company Appeal (AT) (Insolvency) No. 369 of 2020*

the form of emails for printing beyond 3.12.2017 which were being complied by the Appellant by providing printed copies of the newspaper editions, and the Appellant was subsequently raising invoices for the print jobs. According to the Appellant these invoices were duly accepted by the Corporate Debtor and there is no e-mail on record which shows any objection or demur by the Corporate Debtor regarding taking up these print jobs and payments were accordingly made till January, 2018. In support he has attached copies of print orders given by the Respondent – Corporate Debtor from December 2018 to August 2019 in the appeal memo (attached at pages 15 to 462 of the Appellant's Rejoinder). The Appellant has claimed that the payments have to be made within 7 days of raising of invoices as per Clause 8 of the agreement.

10. The Learned Counsel for Appellant has argued that for 16 days there was no printing, since the Corporate Debtor failed to supply newsprint for printing of the newspaper editions and supplements. In support of his arguments, the Applicant has cited e-mail dated 7.3.2018 (page 205 of Appeal Memo) from Basavaraju, an employee of Corporate Debtor to Sudarshan Sherigar, an employee of Operational Creditor. Again on 7.3.2018, Sudarshan Sherigar wrote an email that newsprint is not reaching on time and they do not have any newsprint stock to print the newspaper.

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Vishveshwar Bhatt of the Corporate Debtor wrote on 5.3.2018 to Sudarshan Sherigar that since there is newsprint crunch there are delays in sending it to Manipal. Again in an e-mail dated 27.2.2018 a representative of Corporate Debtor has urged the Operational Creditor to use newsprint of other publications which may be available with them for the time being. All these e-mails go to show that newsprint which was to be supplied by the Corporate Debtor as per the agreement was not reaching the Operational Creditor on time and hence there was a delay in printing of the newspapers. Therefore, the 16-day delay in printing, as alleged by the Respondent (Corporate Debtor) cannot be ascribed to the Appellant (Operational Creditor).

11. In his arguments and written submission the Ld. Counsel for Respondent has claimed that the Appellant's claim for payment of debt is in respect of the three lapsed agreements, all dated 4.12.2015, which were valid only for a period of two years. Therefore, the application filed by the Operational Creditor under section 9 of the IBC is against the terms of the said agreements. The Ld. Counsel of Respondent has also claimed that the Appellant failed to respond to various emails of the Respondent and did not provide proper and satisfactory information and clarification about the high percentage of wastage of newsprint. He has pointed to emails dated 28.9.2016, 5.10.2016, 25.5.2017, 2.7.2018 and

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9.8.2018 wherein the Respondent sought clarification from the Appellant regarding the high percentage of wastage of newsprint in printing and that the Respondent did not receive any clarification or explanation about it from the Appellant. He, therefore, did not perform his part in accordance with the terms and conditions of the said agreement. The Respondent's Ld. Counsel has pointed to Clause 6 of the said agreements to maintain that the overall wastage of newsprint had to be less than 4% and the minimum number of chargeable copies was 10,000 in Clause 7A of the agreements. The Learned Counsel has claimed that any actions taken after the lapse of said agreements are invalid and the Corporate Debtor is not obliged to make payments for such print jobs. The Respondent's Ld. Counsel has also pointed out that in terms of clause 24 of the said agreements, in case of any dispute the matter has to be referred to an arbitrator under the Arbitration and Conciliation Act.

12. The Respondent's Ld. Counsel has furthermore claimed that the Appellant did not print and supply newspaper for 16 days, thereby causing a loss of Rs 9,77,000/- to the Respondent. He has also mentioned that the interest rate on pending debt should have been charged at 15% per annum as per the agreement, whereas the Appellant has claimed 18% per annum as interest on the pending amount. Finally, the Respondent's Ld. Counsel has claimed that the *Company Appeal (AT) (Insolvency) No. 369 of 2020*

provisions of IBC can be used only in cases of insolvency and bankruptcy and cannot be invoked for recovery of amounts that are outstanding.

13. The issues that are germane to this appeal are:

- (i) Whether the agreement that had allegedly lapsed on 3.12.2017 was extended by conduct, as has been claimed by the Appellant and whether the printing jobs carried out at the request of Corporate Debtor will be covered by the terms of the agreement
- (ii) Whether the percentage of wastage of newsprint and the minimum number of chargeable copies are in consonance with the provisions in the agreement and is there a pre-existing dispute regarding percentage as has been claimed by the Respondent,
- (iii) Whether the Appellant can invoke provisions of IBC in view of Clause 24 of the agreements for printing, which relates to arbitration under Arbitration and Conciliation Act.

14. When we consider the conduct of the parties after the lapse of the said agreement on 3.12.2017, we find that the Respondent continued sending emails for printing to the Appellant and the Appellant was duly complying with these requests. Therefore, written communication between the two parties by giving orders on *Company Appeal (AT) (Insolvency) No. 369 of 2020*

email for printing jobs for the newspaper editions and acceptance of those orders by the Appellant was in the nature of written mutual consent of both the parties and is tantamount to working according to the terms of the agreement even beyond the lapse of period mentioned in agreement. Thus even though there was no explicit written mutual agreement for the extension of the agreement, the conduct of both the parties shows that both the parties were working together even after 3.12.2017 as if the agreements continued to be in force. In support the Appellant has attached a list of 66 email communications wherein there are emails that show that the Appellant continued to receive orders for printing even after the said expiry of the agreements as per their original term, and that these orders were complied with and the Operational Creditor continued to raise invoices for the same and receive payments till January, 2018.

15. The Appellant issued Demand Notice dated 23.04.2019 which was not responded to by the Respondent. It is worth noting that the Demand Notice under Section 8 of the IBC is to afford the Corporate Debtor an opportunity to clarify his position regarding payment of debt that the Operational Creditor is claiming to be due. Sections 8 and 9 of IBC are reproduced below for ready reference:

*“8. (1) An operational creditor may, on the occurrence of a*  
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*default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed. Persons who may initiate corporate insolvency resolution process. Initiation of corporate insolvency resolution process by financial creditor. Insolvency resolution by operational creditor.*

*(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor— (a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute; (b) the repayment of unpaid operational debt— (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

*Explanation. — For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.*

*9. (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.*

*(2) xxxxxxxxxxxx”*

16. The Demand Notice has to be responded to within 10 days, as required in Section 8(2) for the purpose of bringing to the notice of the operational creditor the existence of a dispute or evidence of repayment of operational debt. The Corporate Debtor has not done so, prompting the operational creditor to take action as per Section 9 (1). Later during hearing before the Adjudicating Authority, the Corporate Debtor raised the issue of existence of a dispute. It appears to be a spurious dispute, raised to ward off the responsibility of repayment of debt as claimed by the operational debtor.

17. The doubtful nature of dispute can also be inferred from the fact that Ld. Counsel of Respondent (Corporate Debtor) has stated in arguments that he had sent emails regarding the high percentage  
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of wastage of newsprint on 28.9.2016, 5.10.2016, 25.5.2017, 2.7.2018 and 9.8.2018. The first invoice that is included in the demand notice which is due for payment is of 22.2.2018. All the other invoices included in the demand notice are of dates later than 22.2.2018. Quite obviously the emails seeking clarification for high wastage of newsprint sent in 2016 and 2017 relate to invoices which are not included in the demand notice. In all probability payment against these invoices have been made despite the issue of newsprint wastage having been raised. It is not clear why the same issue is raised again by the corporate debtor for later invoices. It appears that this issue has been shown as a pre-existing dispute as an afterthought by the Respondent.

18. It is also noteworthy that the respondent has on various occasions vide emails dated 20/2/2019, 19/2/2019, 22/10/2018, 24/9/2018, 6/9/2018 and 5/9/2018 assured for making pending payments. So on one hand the respondent keeps on promising to make the payment, while on the other he raises the issue of existence of a dispute when the application under Section 9 of IBC is filed before the Adjudicating Authority. These actions raise doubt regarding the veracity of the dispute and its pre-existence. We find the dispute now raised regarding delay and wastage to be mere bluster considering the conduct of Respondent.

19. Paragraph 9 of the impugned order mentions that it is not for the Adjudicating Authority to do a roving enquiry to ascertain the exact amount of unpaid debt and makes it a ground for dismissing the application. The law is very clear that it is enough if under Section 4 of IBC the unpaid debt is more than the threshold value of Rs. One Lakh for acceptance of application under section 9 of IBC. While there is dispute about the rate of interest claimed by the Appellant it does not significantly alter the quantum of unpaid debt, which will remain to be above Rs. One Lakh. We, thus find, that the application is maintainable on account of the unpaid debt being more than Rs. One Lakh, the threshold amount.

20. Another issue raised by the Respondent relates to the Appellant not printing the newspaper for 16 days and the loss incurred by the Respondent on this account. The Clause 3 of the agreement stipulates that the responsibility of supplying newsprint lay with the Corporate Debtor. Hence this issue does not provide any help to the Respondent in his case.

21. Finally coming to the issue of high percentage of wastage of newsprint in printing, as alleged by the Corporate Debtor, we find that the said agreements make it very clear that the minimum number of chargeable copies will be 10,000. In addition, the said agreements also stipulate that the wastage will be less than 4%.

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This wastage, quite obviously, is in relation to printing of 10,000 copies. It is understood that in printing jobs as the number of copies increase the quantum of wastage decreases and, conversely, as the number of copies decrease the quantum of wastage increases. In the present case, the number of copies that were required by the Respondent to be printed were well below 10,000, and therefore the quantum of wastage was more than 4%. In any case the invoices raised before 22.2.2018 were settled even though the corporate debtor had raised the issue of high wastage percentage. It is, therefore, logical to expect that the later invoices should also have been settled on the same principle. Hence, we find the insistence of the Respondent that the Appellant should provide clarification for higher wastage to be superfluous and according to us this dispute does not fall in the category of pre-existing dispute.

22. Regarding submitting the dispute to arbitration, we find that the matter was not referred for arbitration by either of the parties. This issue of possibility of arbitration has been raised at the appeal stage. It is not for this tribunal to direct the parties to go for arbitration.



23. In the light of the discussion in the above paragraphs we are of the opinion that the Appellant and the Respondent continued in their relationship of Corporate Debtor and Operational Creditor even after 3.12.2017 and hence effectively the agreements continued to bind the parties. The Corporate Debtor accepted the invoices raised on and after 22.2.2018 and in various emails kept on promising to make payments and buying time for making payments. The issue of wastage of newsprint being more than the stipulated 4% would have been relevant only if the print orders were more than 10000. In view of the fact that print orders for various editions of the newspaper Vishwavani were substantially less than 10,000, the higher percentage of newsprint wastage can't be ascribed to the Appellant. The Appellant is well within his right to raise invoices for the minimum chargeable copies of 10,000 as per clause 7A of the agreements.

24. Thus Appellant's application under Section 9 of IBC satisfies all the ingredients as laid down in law. The same deserved to be admitted. Therefore the appeal succeeds and the Impugned order dated 16/12/2019 is set aside. The matter is remitted back to the Adjudicating Authority. The Adjudicating Authority will admit the application (unless parties settle dispute before such Order), and pass further consequential directions as per provisions of IBC.

25. There is no order as to costs.

**(Justice A I S Cheema)**  
**Officiating Chairperson**

**(Dr. Alok Srivastava)**  
**Member(Technical)**

New Delhi  
21<sup>st</sup> June, 2021

/aks/