

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT - II**

C.P. (IB)- 1374 (MB)/ 2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Epigram,

Through its Sole Proprietor Nabeel Abbas

Having its registered office at: Roop Mangal, 3rd Floor, Near Rajesh Khanna Garden, 16th Road, Santacruz (W), Mumbai- 400 054 (Maharashtra)

.....Operational Creditor

Vs

Swiss Entertainment Pvt. Ltd.,

Having its Registered Office at: 2, Patel Palace CHS, Near Jeevan Vikas Kendra Marg, Koldongri, Sahar Road, Andheri East, Mumbai – 400 069 (Maharashtra).

.....Corporate Debtor

Order delivered on:- 14.10.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. Gauraj Shah, Advocate

For the Corporate Debtor : Ms. Lakshmi Raman, Advocate

ORDER

Per :- Justice P.N. Deshmukh, Member Judicial

1. This Company Petition is filed by *Epigram* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Swiss Entertainment Pvt. Ltd.* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Operational Creditor. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of **Rs.44,00,168/-** (Rupees Forty-Four Lakhs One Hundred Sixty-Eight Only) together with interest until 29th March 2019 amounting to **Rs.11,24,704/-** (Rupees Eleven Lakhs Twenty-Four Thousand Seven Hundred and Four Only) aggregating to a sum of **Rs.55,38,347/-** (Rupees Fifty-Five Lakhs Thirty-Eight Thousand Three Hundred Forty-Seven Only).
3. The Operational Creditor is engaged in the business of providing services such as Publicity Design, Film Announcements, Print Advertisement Campaigns and other such promotional activities. The Corporate Debtor approached the Operational Creditor to launch the publicity campaign for a movie in a two-

fold manner, one for printing material, designing and packaging and the other for Internet campaign. The Operational Creditor rendered the services according to instructions received from the Corporate Debtor either orally or by mail. Many transactions were undertaken in the course of business and the Operational Creditor submits that no defects or disputes were raised by the Corporate Debtor in the work performed.

4. The Operational Creditor further submits that according to the directions of the Corporate Debtor, all printing jobs were performed as per the requirements of one AA Films, the distributor of the movie (hereinafter referred to as "Distributor"). The Distributor increased the requirements of the printing job which led to escalation in the cost of services which was confirmed by the Corporate Debtor vide email dated 20th September 2017. Subsequently, **nine (9) invoices** were raised by the Operational Creditor out of which some are partially paid and the rest are wholly unpaid. Copies of the invoices and relevant email communications have been attached to this Petition. Copies of the Demand Notice and the Reply have also been duly annexed to this Petition.

5. The Operational Creditor then issued a **Demand Notice dated 2nd August 2018** to the Corporate Debtor demanding repayment of the outstanding dues. The Corporate Debtor filed a **Reply dated 9th August 2018** to the said Notice wherein it was argued that a dispute already exists in respect of the said invoices as the Corporate Debtor was not satisfied with the quality of work performed by the Operational Creditor and this issue was

brought to their attention vide **Letter dated 17th March 2018**. Meanwhile since no payment was made against the invoices, the Operational Creditor filed this Petition on **2nd April 2019**. Copies of the Demand Notice and the Reply to the same have been duly annexed to this Petition.

6. The Corporate Debtor filed a **Reply dated 3rd February 2020** to this Petition reiterating that pre-existing disputes remain unresolved with respect to the quality of work performed by the Operational Creditor and that according to the terms of the Engagement Letter dated 28th August 2017, the Operational Creditor had agreed to pay a sum of Rs. 70 Lakhs in case they were not satisfied with the work. It is argued that the dissatisfaction of the Corporate Debtor was communicated to the Operational Creditor vide Notice dated 17th March 2018.

FINDINGS

7. We have heard the submissions of the Counsel appearing for the Operational Creditor and Counsel appearing for the Corporate Debtor. After perusal of all the relevant documents, it is evident that the primary issue for consideration is whether a dispute existed prior to the issuance of the Demand Notice by the Operational Creditor. To examine this issue, the following communications are relevant. The Operational Creditor wrote to the Corporate Debtor on **7th March 2018** demanding payment of the amounts due against the 9 invoices raised totaling to a principal amount of Rs. 36,75,680/- including interest at the rate of 18% per annum. The Corporate Debtor replied to this Notice

vide Letter dated **17th March 2018** raising disputes regarding the quality of the work performed and other contentions relating to withholding of social media accounts belonging to the Corporate Debtor leading to financial losses and vehemently denied any obligation to pay pending dues to the Operational Creditor. On perusal of the e-mail communications between the parties, it is observed that there was no reference to any form of dispute regarding quality of the work and in fact, the Operational Creditor sought necessary approvals from those representing the Corporate Debtor before sending or finalizing the posters and other publicity material to which the Corporate Debtor responded positively. Later, the movie was released and even at this stage there was no indication of any dispute.

8. It is therefore evident that the disputes raised by the Corporate Debtor vide Letter dated 17th March 2018 were an afterthought and there is no evidence presented to demonstrate their dissatisfaction with the work done by the Operational Creditor before the Legal Notice dated 7th March 2018 was issued. It is worthwhile to note the observations of the Hon'ble Supreme Court in *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited [(2018) 1 Supreme Court Cases 353]* in this regard:

“40.....Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is

important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.”

Thus, it is clear that if the Corporate Debtor is unable to produce evidence to prove the existence of material disputes prior to issuance of the Demand Notice, then the shelter of this defence will not be available to the Corporate Debtor.

9. For the foregoing reasons, the instant Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

ORDER

- a. **The above Company Petition No. (IB)- 1374 (MB)/2019 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Swiss Entertainment Pvt. Ltd.**
- b. This Bench hereby appoints **Mr. Sanjay Vasant Samudra**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P02325/2021-2022/13607 as the Interim Resolution Professional having email address as samudrasvs@gmail.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim

Resolution Professional appointed herein, immediately upon communication of this Order.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for

liquidation of corporate debtor under Section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P. N. DESHMUKH
(MEMBER JUDICIAL)