

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH-VI**

**IB-1651/(ND)/2019**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**M/s Adfusion Media.**

Having its office at:-  
Plot No. P-8, Seconf Floor,  
Tilak Marg, C-Scheme  
Jaipur-302001

...Operational Creditor/Petitioner

**Versus**

**Biz Ad Optimiser Pvt. ltd.**

Having its Registered office at:-  
134, Som Dutt Chambers-II  
R.K Puram, New Delhi-1100066

...Corporate Debtor/Respondent Company

**Coram:**

**DR. P.S.N. PRASAD**  
**Hon'ble Member (Judicial)**

**DR. V.K. SUBBURAJ**  
**Hon'ble Member (Technical)**

Counsel for Operational Creditor: Mr. Susshil Daga, Advocate

**ORDER**

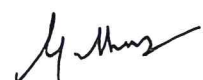
**As Per Dr. V.K Subburaj, Member (Technical)**

1. This is a petition filed by M/s. Adfusion Media the petitioner/operational creditor seeking to initiate CIRP against the Respondent company /Corporate Debtor M/s Biz Ad Optimiser Private



Ltd., under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor in settling the amount of Rs. 50,74,085/- including the interest component towards online services in respect of running advertisements and campaign for its client. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:-

- a. The Operational creditor is a partnership firm and is one of the leading and strong players in the field of Digital Marketing. Further the corporate debtor approached the operational creditor for obtaining online services in respect of running advertisements and campaigns.
- b. That in respect of the services, the Corporate Debtor itself issued release orders to the operational creditor and thereafter the operational creditor raised invoices upon which the payment has been defaulted.
- c. Based on the first occurrence of default on 17.09.2016 i.e upon raising of invoice and since then the operational creditor continued providing services to the corporate debtor on hollow assurances and miniscule part payment was made by the corporate debtor.
- d. That the operational creditor issued invoices against the corporate debtor from 17.09.2016 to 06.09.2018 for the services rendered by it which were duly acknowledged by the corporate debtor. Copies of the Invoices raised by the



operational creditor against the corporate debtor from 17.09.2016 to 06.09.2018 has been placed on record.

- e. That the operational creditor sent various reminders/e-mails/made verbal communications to the corporate debtor requesting for release of the outstanding payment of the unpaid operational debt. However, all the request of the operational creditor fell on the deaf ears of the corporate debtor as it failed to make payment against the invoices raised by the operational creditor, copies of the due invoices along with the corresponding release orders are placed on record.
- f. That the operational creditor sent a Demand Notice dated 22.01.2019 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via Speed Post. Copy of the Demand Notice dated 22.01.2019 demanding payment in prescribed Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 duly served upon the corporate debtor along with proof of delivery and track report are attached with the petition.
- g. That pursuant to the said Demand Notice dated 22.01.2019, Demand notice was again sent by the operational creditor on 20.04.2019 and via email on 04.05.2019 to the email address of the corporate debtor as given in the master data on Ministry of Corporate Affairs. The Form-3 dated 20.04.2019 along with



Registered AD Receipt and email sent on 20.04.2019 are attached with the petition.

2. The Corporate Debtor in its reply to the application submits that:
  - a. That the corporate debtor was given orders of three campaigns by OMD-Global Business Square for three Clients i.e Cisco, Nissan and Datsun in the year 2016 which was further sub contracted to Operational creditor vide Release orders for a value of Rs. 94,47,356/-.
  - b. Pursuant to the agreement, the corporate debtor transferred amount of Rs. 45,58,576.34/- in the account of operational creditor against certain invoices raised by the operational creditor as per release orders. The said amount is reflected in the bank account statements which are annexed as Annxure-9.
  - c. Further, it is submitted that initially there was no indication of fraud and payment were release timely. Thereafter few orders and during the execution of the said work, it was reported by the Agency, OMD- Business Square vide email dated 14.07.2017, 14.11.2017 and 15.11.2017 to the Corporate Debtor that the nature of execution of work is such that there could not be an issue of bot traffic in the website.
  - d. However, the corporate debtor noticed that the campaign target which was given to operational creditor was instead being fulfilled by the Corporate Debtor DSP Platform i.e TURN



as the traffic given by the Operational creditor was rejected by client Ad server (Tracking system) because of a Bot/Robotic/Fraud in nature. Further the same response was also brought to the notice of the corporate debtor by its agency OMD through the emails dated 06.07.2018 and 26.07.2018 respectively.

- e. It is also asserted that an investigation was conducted by the corporate debtor vide a software called Integral Ad Sciences (IAS) which is digital ad verification tool, offering technologies that drive high-quality advertising media and the software was specifically employed for addressing the issue of fraud, viewability, brand risk of the campaign. Further the said software provided an assessment with appropriate findings and conclusive proofs and the assessment report produced by the said software without any human intervention stated that Operational creditor has committed fraud against the Corporate Debtor during running of the online digital campaign. And the report can be downloaded from the link provided in the email released by the admin of IAS.
- f. Further, the corporate debtor also noticed that other publishers/vendors were regularly providing their campaign delivery report along with relevant proofs i.e Screen shots and Campaign server report. It has been stated that the corporate debtor cleared all the dues raised by other vendors except the invoices of the operational creditor as there were pending



compliances of the contract on the part of the Operational creditor owing to the fraudulent activities employed by the operational creditor.

- g. It is also the case of the respondent that while the aforementioned investigation was going on, a demand notice dated 20.04.2019 was sent to the corporate debtor on email id of the Company Secretary who was not attending the office owing of being unwell and had not accessed the email till he joined office in the first week of July, 2019 and found the demand notice after that the corporate debtor sent a reply dated 06.07.2019 to the legal notice and brought to the attention that a complaint and FIR has been lodged against an associate of the Operational creditor who have been engaged in the bot traffic/ fraud clicks. It is therefore informed to the operational creditor that no proceeding be initiated since dispute clearly exists between the parties.
  - h. It is submitted that already a sum of Rs. 45 Lakhs have been paid by the Corporate Debtor to the Operational Creditor. However, as the Operational creditor has resorted to fraud, it is liable to refund the entire amount.
3. In this regard, the petitioner has denied the allegations made in the reply of the corporate debtor and further submitted that:
- a. That the corporate debtor did not appear before the Hon'ble Tribunal since the very inception of the proceedings and made



its first appearance only when the order setting the Corporate Debtor Ex- parte was passed vide Order dated 27.09.2019. Thereafter the corporate Debtor filed its reply raising frivolous issues in order to create moonshine dispute.

- b. In respect to issue regarding server reports is concerned, the server reports were neither demanded nor disputed from the operational creditor at any point and non sharing of the reports tantamount to delay or withholding of the payments of the remaining invoices which is ex-facie contrary to the earlier payments made by the Corporate Debtor. Furthermore, the corporate debtor never mentioned of the server reports even when the reasons for the non-payments of the unpaid operational debt were asked by the Operational creditor.
- c. As far as the issue pertaining to pendency of FIR was concerned, it is submitted that the FIR lodged was against the employees of the Corporate Debtor itself and had no relation to any person of the Operational Creditor. Further the investigation authority involved in such FIR had never named the operational creditor or any of its employees in the pending investigation.
- d. With regard to raising of the invoices without confirmation of the Corporate debtor is denied as the corporate debtor in its application as well as in its rejoinder has furnished Release Orders upon receiving which the Operational creditor raised invoices.



- e. With respect to issue pertaining to the deficiency in the quality of service and that the delivery was done from the Corporate Debtor's house software "TURN" were never raised earlier and further no such terms and conditions existed that any house software would form basis of the payment and contrary past payments were done without any such condition narrated by the Corporate Debtor.
- f. It is further mentioned that the corporate debtor has made part payment in respect of the services provided by the Operational creditor earlier also, wherein no issues as dealt above were raised or communicated to the Operational Creditor even in its reply to the Demand Notice dated 06.07.2019.
4. At this juncture, we would also like to refer this fact that in course of hearing learned counsel appearing for the Corporate Debtor submitted that since the Operational Creditor was committing fraud in providing services its payments were stopped till the issue resolved. In the light of that condition, at this juncture, we would also like to consider, the reply if any filed by the Corporate Debtor in pursuance of the demand notice issued by the Operational Creditor under Section 8 (1) of the IBC. We find that the Corporate Debtor in para 2(g) of the reply mentioned that he has not sent the reply of the demand notice on time as the investigation was going on, and a demand notice dated 20.04.2019 was sent to the corporate debtor on email id of the



Company Secretary who was not attending the office owing of being unwell and had not accessed the email till he joined office in the first week of July, 2019 and found the demand notice after that the corporate debtor sent a reply dated 06.07.2019 to the legal notice and brought to the attention that a complaint and FIR has been lodged against an associate of the Operational creditor who have been engaged in the bot traffic/ fraud clicks. Therefore, at this juncture, we would like to refer Section 8 of the IBC and the same is quoted below:-

***“8. Insolvency resolution by operational creditor-***

- (1) An operational creditor may, on the occurrence of a 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.*
- (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, 1[if any, or] 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 2[payment] 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 3[payment] operational debt in respect of which the default has occurred.”*

5. Mere plain reading of the provision shows that the Corporate Debtor shall within a period of 10 days of the receipt of the demand notice of copy of invoices mentioned in Section 8(2), bring to the notice of the Operational Creditor existences of dispute if any or record of pendency of suit or arbitration proceeding filed by the receipt of such notice or invoice in relation to such dispute but admittedly this has not been done by the Corporate Debtor. Now at this juncture, we would like to refer Section 9 and the same is quoted below :-

***“9. Application for initiation of corporate insolvency resolution process by operational creditor. –***

*(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) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.*



(3) The operational creditor shall, along with the application furnish-

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt 1[by the corporate debtor, if available;]

2[(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

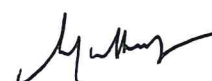
(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order-

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

(a) the application made under sub-section (2) is complete;

(b) there is no 3[payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;



*(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*

*(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.*

*(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if -*

*(a) the application made under sub-section (2) is incomplete;*

*(b) there has been 1[payment] of the unpaid operational debt;*

*(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;*

*(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or*

*(e) any disciplinary proceeding is pending against any proposed resolution professional:*

*Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.*

*(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.”*

6. Consequent to the issuing of notice by the petitioner through email service and issuing of notice by this Tribunal the corporate debtor's counsel Mr. Surya K. Dubey appeared on 29.10.2019 and offered to file vakalatnama as well as reply in the matter within 03 days time and



it was made clear to the counsel for the corporate debtor that no further extension of time would be granted and if the reply was not filed within the said period, the right to file reply would be closed and the matter would be proceeded further. However, despite opportunities given, the corporate debtor failed to appear and file the reply. Hence they were proceeded ex-parte in the hearing on 27.09.2019 and we heard the arguments made by the counsel of the petitioner.

7. We have gone through the documents filed by the petitioner and heard the arguments made by the counsel of the petitioner. A perusal of the correspondence indicates that with respect to issue regarding server reports is concerned, the server reports were neither demanded nor disputed from the operational creditor and non sharing of the reports tantamount to delay or withholding of the payments of the remaining invoices which is ex-facie contrary to the earlier payments made by the Corporate Debtor. Furthermore, the corporate debtor never mentioned of the server reports even when the reasons for the non-payments of the unpaid operational debt were asked by the Operational creditor. And as far as the issue pertaining to pendency of FIR was concerned, it is submitted that the FIR lodged was against the employees of the Corporate Debtor itself and had no relation to any person of the Operational Creditor. Further the investigation authority involved in such FIR had never named the operational creditor or any of its employees in the pending investigation. Further with respect to issue pertaining to the deficiency in the quality of service and that the



delivery was done from the Corporate Debtor's house software "TURN" were never raised earlier and further no such terms and conditions existed that any house software would form basis of the payment.

8. Consequent to the issuing of the first statutory demand notice, the parties were advised to enter into a Settlement Agreement vide Order dated 17.02.2020 whereby the corporate debtor had agreed to settle the amount. However, since the corporate debtor failed to comply with the terms of agreement with the operational creditor and could not reach to an amicable settlement vide Order dated 02.03.2020.
9. Going by the above details the operational creditor has clearly established the existence of debt and default on the part of the corporate debtor. Hence this Tribunal initiates CIRP on the corporate debtor with immediate effect.
10. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:
  - "(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  
Securitization 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.
- (2) 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.
- (3) The provisions of sub-section (1) shall not apply to such  
transactions as may be notified by the Central  
Government in consultation with any financial sector  
regulator.
- (4) The order of moratorium shall have effect from the date  
of such order till the completion of the corporate  
insolvency resolution process.”



11. The Operational Creditor has proposed the name of Mr. Tara Chand Sharma as the IRP. His details are as registration no. IBBI/IPA-002/IP-N00218/2017-18/10670, email: cstarachand@gmail.com. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report.

12. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

13. Renotify this case for report of the IRP on 28.04.2020.

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**(DR. V.K.SUBBURAJ)**  
**MEMBER (TECHNICAL)**

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**(P.S.N PRASAD)**  
**MEMBER (JUDICIAL)**