



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI SPECIAL BENCH (COURT-II)
Company Petition No. (IB)-980(ND)2020

IN THE MATTER OF:

Viswaroopa Info Services India Private Limited

H. No. 6-3-667/4, Flat No. 204,
2nd Floor, Sirimalle Towers,
Somajiguda, Hyderabad – 500082

...Applicant/Operational Creditor

VERSUS

SITI Visions Digital Media Private Limited

F-1, J Block Market,
Ashok Vihar, Phase-I,
North West Delhi -110052

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on: 08.06.2023

CORAM

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Sr. Adv. P. Nagesh, Adv. Harshal Kumar
For the Respondent : Sr. Adv. Arvind Nayar, Adv. Shivam Singh,
Adv. Akshay Joshi, Adv. Shubham Pande,
Adv. Shaswati Parhi



ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

M/s Viswaroopa Info Services India Private Limited (for brevity, the '**Applicant/Operational Creditor**') has filed the present Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. SITI Vision Digital Media Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s. SITI Visions Digital Media Private Limited is a Company incorporated on 07.06.2006 with CIN U64201DL2006PTC149333 under the provisions of the Companies Act, 1956 having its registered office at. F-1, J Block Market, Ashok Vihar, Phase-I, North West Delhi -110052, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs.1,50,00,000/- and its Paid-up Share Capital is Rs.1,47,76,210/- as per Master Data annexed.

3. The Application was previously heard and reserved by the predecessor Bench of this Adjudicating Authority vide order dated 25.05.2022. However, the matter was de-reserved vide order dated 03.06.2022, as the application was incomplete as Column 2 of Part IV of Form 5 was missing. The Applicant was also directed to bring on record



the list of invoices, which are unpaid and claimed towards the operational debt, and clarify whether the Applicant and the Respondent are related parties in terms of Section 5(24) of IBC, 2016.

4. In compliance with the aforesaid directions, the Applicant filed its additional affidavits dated 11.06.2022 and 16.07.2022 annexing therewith the amended Part IV of Form 5 and copy of the pending invoices. Further, the Applicant has averred the following as regards to the related-party disclosure -

“4. I say and submit that one of the director is, wife of the Managing Director of the Corporate Debtor company. I further submit that no provision under the code exists that due to one of the interested person in both the Companies (i.e. Operational Creditor & Corporate Debtor), Operational Creditor Company cannot initiate any Corporate Insolvency Resolution Process. Company is a separate legal entity and Company’s interest is paramount and it need to be protected by this Hon’ble Tribunal.”

5. The Respondent has also filed its reply affidavit stating the following regarding the related-party disclosure -

“10. That Ms. M. Sujatha, the authorized representative of the Operational Creditor, and her husband are shareholders of Corporate Debtor Company holding 9% equity together. Hence, the Operational Creditor and Corporate Debtor are related parties.

11. That it is humbly submitted that the Operational Creditor by suppressing vital information, not following the provisions of related parties and is trying to mislead this Ld.



Tribunal. On the last of hearing on 16.08.2022, the Counsel for the Operational Creditor made a false and misleading statement that Ms. M. Sujatha does not hold any shares in Corporate Debtor Company but whereas she actually holds 9% equity along with her husband in the Corporate Debtor Company.”

6. Before examining the application on its merits, we would, therefore, like to examine whether the Applicant and Respondent are “related parties” to each other. In order to adjudicate the same, we refer to Section 5(24) of IBC, 2016, which defines “related parties” thus:

(24) “related party”, in relation to a corporate debtor, means-

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of-



- (i) participation in policy making processes of the corporate debtor; or
- (ii) having more than two directors in common between the corporate debtor and such person; or
- (iii) interchange of managerial personnel between the corporate debtor and such person; or
- (iv) provision of essential technical information to, or from, the corporate debtor;

7. As per the contention of the Respondent, the Applicant is its related party because Ms. M. Sujatha, the authorized representative/ Director of the Operational Creditor, and her husband (who is Managing Director of CD) are shareholders of Corporate Debtor Company holding together 9% of equity share capital.

8. However, both parties have not indicated under which specific Clause of Section 5(24), the Applicant is a related party to Respondent. Since the Applicant is a Private Limited Company, therefore, we would like to examine the criteria stipulated under Section 5(24) (d) of IBC, 2016, which reads thus:

“(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent of its share capital.”

9. Applying Section 5(24) of IBC 2016, on the facts of the case, we found that none of the Directors of the Applicant Company is a Director/Manager in the Respondent/Corporate Debtor Company. Merely, because one of the Directors i.e., Ms. M. Sujatha in Applicant Company and her husband, who is Managing Director in Respondent/ Corporate Debtor Company who together hold 9% of shares of CD, will not attract Section 5(24) (d) of IBC, 2016.



10. However, we would still like to examine whether the Applicant is a related party to the Respondent in terms of Section 5(24) (f) of IBC 2016, which reads thus:

“(f) any body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor.”

11. As disclosed by the Applicant that one of its directors Ms. M. Sujatha is the wife of the Managing Director of the Corporate Debtor. However, in order to attract the provision of Section 5(24) (f) of IBC 2016, what is needed is that the said Director of the Applicant Company was acting on the advice/ direction/instructions of the Director/MD of the Corporate Debtor. There is nothing on record that could suggest that in the ordinary course of business, the Directors of Applicant Company or for that matter the Director Ms. M. Sujatha were acting on the instructions of the Directors/MD of the Respondent Company. In the absence of any corroborative material, this Adjudicating Authority cannot assume this fact merely on the basis of the relationship between two Directors as Husband and Wife.

12. In view of the above, we find nothing on record, which could suggest that the Applicant and Respondent Company are related in terms of Section 5(24) of IBC, 2016. Hence, we would like to proceed ahead with the adjudication of the present application on merits.

13. The detailed particulars of the Operational Debt claimed, the total amount of default, and the date of default are mentioned in the amended



Part IV of the application, which is reproduced below, for the sake of convenience:

Part – IV

PARTICULARS OF OPERATIONAL DEBT									
1. Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	<p>(a) Details of amount claimed to be in default and date on which the default occurred are as follows: -</p> <table border="1"> <thead> <tr> <th>PARTICULARS</th> <th>AMOUNT (IN Rs.)</th> </tr> </thead> <tbody> <tr> <td>Principal amount</td> <td>2,24,84,518</td> </tr> <tr> <td>Interest @ 12% p.a. (calculated till 31.05.2020)</td> <td>53,65,829</td> </tr> <tr> <td>Balance Payable</td> <td>2,78,50,347</td> </tr> </tbody> </table> <p>Principal outstanding of Rs.2,24,84,518 (Rupees Two Crores Twenty Four Lakhs Eighty Four Thousand Five Hundred and Eighteen Only), along with interest of 53,65,829 (Rupees Fifty Three Lakhs Sixty Five Thousand Eight Hundred and Twenty Nine only) cumulatively Rs.2,78,50,347 (Rupees Two Crores Seventy Eight Lakhs Fifty Thousand Three Hundred and Forty Seven only) as on 31st May, 2020.</p>	PARTICULARS	AMOUNT (IN Rs.)	Principal amount	2,24,84,518	Interest @ 12% p.a. (calculated till 31.05.2020)	53,65,829	Balance Payable	2,78,50,347
PARTICULARS	AMOUNT (IN Rs.)								
Principal amount	2,24,84,518								
Interest @ 12% p.a. (calculated till 31.05.2020)	53,65,829								
Balance Payable	2,78,50,347								

	<p>(The details of the workings for computation is annexed as Annexure – 14) Date of default: - 01.05.2019 (Since the last invoice was raised on 01.05.2019, therefore, the date of default is 01.05.2019)</p>
2. Amount claim to be in default and date on which the default occurred (Attached the working for computation of amount and dates of default in Tabular Form)	<p>Details of Transaction of account of which debt fell due:</p> <ol style="list-style-type: none"> 1. Viswaroopa Info Services India Private Limited (hereinafter referred to as the 'Operational Creditor') has setup an Optical Fibre Cable (OFC Core) network in Hyderabad, and maintains the said infrastructure. 2. Siti Vision Digital Media Pvt. Ltd. (hereinafter referred to as 'Corporate Debtor') is registered with the Postal and Telegraph department of the Government of India and has established and installed a Cable Television Network in Hyderabad. 3. The Corporate Debtor in order to relay the television signals from the transmission points or control rooms to local operators requires the OFC Core infrastructure of the Operational Creditor, and has approached the Operational Creditor for the same. 4. The Operational Creditor and Corporate Debtor entered into an Agreement on 24.05.2012 and renewed the same on 26.03.2015 and again on 31.08.2018, w.e.f 01.04.2018, under which the



Operational Creditor has agreed to grant the Corporate Debtor the Indefeasible Right of Use(Hereinafter referred to as IRU)of the Operational Creditor's OFC Core for a period of (3) three years. The copy of the Agreements is marked as **Annexure-4,5 and 6.**

5. Under the terms of the Agreement, the Corporate Debtor is to make a payment of a sum of Rs.8,00,000 (Rupees Eight Lakhs only) per month, plus applicable taxes, towards the IRU of Optical fibre cable (OFC)Core charges. The payment is to be made within the fifteen days of invoice issued for each month, failing which the Corporate Debtor is to pay interest @ 12% p.a. for the delayed period of payment.

6. The Corporate debtor had been paying the amounts as agreed initially and subsequently started paying amounts randomly and on account. The random and on accounts payments made by the corporate debtor were adjusted to the oldest invoice and as the corporate debtor was a long standing client, the delayed payments were accepted.

7. It is submitted that the Corporate Debtor inspite of utilising the infrastructure of the Operational Creditor since May,2017 has not made any payments towards the IRU charges towards monthly invoices, as agreed





under the agreements till the termination of agreement in June,2019. The Invoices totalling 25 (Twenty Five) issued from May, 2017 till June,2019 are marked as **Annexure-7.**

8. In spite of reminders, the Corporate Debtor failed and/or neglected to pay the outstanding sums. but only deposited the tax deducted at source on a monthly basis with the income tax authorities on account of the Operational Creditor. The Corporate debtor had also taken input tax credit for the GST paid by the Operational creditor. The annual tax statement under section 203AA of the Income Tax Act,1961 i.e Form 26AS certificate establishing payment TDS on the invoice amounts issued by the Operational creditor are marked as **Annexure-8.**

9. The Corporate Debtor however acknowledged the outstanding amount payable to the Operational Creditor and issued a ledger confirmation of the account of the Operational Creditor in its books, on 14.09.2019. A copy of the ledger confirmation given by the Corporate Debtor is given herewith as **Annexure-9.**The Bank statement of the Operational Creditor from 01.09.2019 till 31.07.2020 reflects no payment received by the Operational Creditor.The



Bank statements are marked as Annexure 15 and 19 herewith.

10. The Operational Creditor sent out a notice of demand in Form-3 dt.01.07.2020, which was delivered to the Corporate Debtor on 06.07.2020. However, the Operational Creditor failed to respond to the same. The Notice, Postal receipts and tracking report are marked as **Annexure 10,11 and 12**. It is submitted that the corporate debtor changed address after receipt of the Form-3 notice and the resolution of the Corporate debtor is filed and marked as **Annexure-13**.

11. The Operational creditor has two Directors i.e the signatory herein and Smt.K.Pushpalatha. It is submitted that Smt.K.Pushpalatha is the wife of Managing Director of the Corporate Debtor Company and as such the Board Meeting could not be held and Resolution could not be submitted for initiating the present insolvency proceedings. However, the majority of shareholders inclusive of the signatory herein, totaling 53% of the shareholding have passed the requisite resolution in the Extraordinary General Meeting (EGM) of the Company held pursuant to sub-section (4) of Section 100 of the Companies Act,2013 read with Rule 17 of the Companies (Management and Administration) Rules. 2014 giving consent for





initiation of the present insolvency proceedings against the corporate debtor. The 6 consent letters issued by the Shareholders & EGM Minutes are marked as **Annexure 17** herein. The List of shareholders of the Company is marked as **Annexure 18** herein

12. The Corporate Debtor is now indebted to the Operational Creditor for a principal sum of **Rs.2,24,84,518** with interest @12% of Rs. 53,65,829 totalling to **Rs.2,78,50,347/-** as on 31.05.2020.

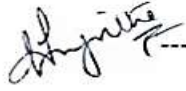
PRAYER

In the circumstances mentioned above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass the following orders:

- a) Admit the Instant Application/Petition.
- b) Pass an order initiating Corporate Insolvency Resolution Process under the provisions of the Insolvency and Bankruptcy Code, 2016.
- c) Pass an order/direction appointing a Resolution Professional or any other person to take charge over the Respondent Company assets, affairs, books of accounts





	<p>and to conduct the affairs of the Respondent Company.</p> <p>d) Pass an order that pending the hearing and final disposal of Present Application/ Petition an Interim Resolution Professional or any other person be appointed as Interim Resolution Professional to take over the possession of the assets, properties affairs, books of accounts and to conduct the affairs of company.</p> <p>e) Pass an order awarding costs of the Present Application.</p> <p>f) Further orders be made and directions be given as this Hon'ble Tribunal may deem fit and proper.</p> <p> (-----)</p> <p>Director/Authorised Representative</p> <p>M/s Viswaroopa Info Services India Private Limited</p>
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14. Thus, the Applicant has claimed an amount of Rs.2,78,50,347/- excluding interest as the unpaid Operational Debt due and relied on 01.05.2019 as the date of default.

15. It is stated by the Applicant that since the Respondent did not make the payment of its operational debt, it had issued a Demand Notice dated 01.07.2020 under Section 8 of IBC 2016 at the Registered office of the Respondent vide speed post, which was served to the Respondent on 06.07.2020. The Tracking Report of delivery of the demand notice has



been placed on record on page no. 214 of the application. The Applicant has also placed an Affidavit under Section 9(3)(b) of 2016 on pages 259 - 260 of the application stating that it did not receive any notice of dispute.

16. On issuance of the notice, the Respondent filed its reply and stated that the application has been filed without any authority and the Applicant itself had admitted on page no. 13 of the application that Board Resolution could not be issued for initiating the present insolvency proceeding.

16.1 It is further stated by the Respondent that the Applicant is being represented by Smt. M Sujatha Director, who is also a shareholder holds 32.23 % of the share capital in the Applicant Company, whereas the other 2 (two) directors of the Applicant are holding more than 64% of the share capital. The Respondent has added that the consent of the second director of the Applicant, namely, Mrs. K. Pushpalatha and other shareholders has not been obtained and the present Application is filed in a *mala fide* manner.

16.2 In terms of Sl. No. 39 of the Articles of Association (AoA) of the Applicant, the management and control of the Applicant Company is vested with the Board of Directors. The relevant extract of the AoA of the Applicant is produced as under:

“39. The management and the control of the business of the Company shall be vested with the Board of Directors, who may exercise all such powers and do all such acts and things as may be exercised or done by the Company...”



16.3 It is contended by the Respondent that the Applicant being a juristic person, can be controlled and managed only through the Board of Directors. In the instant Application, the Applicant through Smt. M. Sujatha has annexed with the Application, consent letters of 6 shareholders of the Applicant allegedly authorizing Smt. M Sujatha to initiate corporate insolvency proceedings against the Respondent. It is submitted that the aforementioned consent by the shareholders does not empower Smt. M Sujatha to act on behalf of the Applicant and initiate corporate insolvency proceedings against the Respondent.

16.4 It is further claimed by the Respondent that there are pre-existing disputes between the parties. It has stated that vide various e-mails dated 13.02.2014, 18.02.2014, 08.04.2014, 07.04.2014, 21.04.2014, 22.04.2014, 25.11.2014, 08.12.2014, 09.02.2015, 03.10.2015, 23.11.2015, 24.11.2015, 23.04.2015, 16.04.2015, 14.06.2016, 19.07.2018, 25.06.2019, 02.07.2019, 18.07.2019, 19.07.2019, 13.08.2019, 12.09.2019 and 16.09.2019 the Respondent, inter alia, informed the Applicant of the poor and deficient services and requested the Respondent for rectification of the same. However, the Applicant paid no heed to the complaints/requests made by the Respondent, and the deficiency in the services under the Agreements continued.

16.5 It is stated by the Respondent that owing to the poor services of the Applicant, the Respondent was left with no other alternative than to lay its own Optical Fiber Cable Network and terminated the Agreements. The Respondent complete the work of laying its own



Optical Fiber Cable Network between July/August 2018 and October 2018. Since after the establishment of the Optical Fiber Cable Network by the Respondent in the area of operation, which is the subject matter of the Agreements between the Applicant and the Respondent, the Respondent accordingly informed the Applicant that the services of the Applicant under the Agreements were no longer required and the same tantamounted to the termination of the Agreements with effect from 01.11.2018, which was subsequently recorded in the e-mail dated 25.06.2019 also marked to the Applicant.

16.6 It is further stated by the Respondent that till date; the Applicant has been withholding the assets of the Respondent to the tune of Rs. 8,80,00,000/- which were handed over to the Applicant for maintenance.

17. The Applicant has filed an additional affidavit dated 30.10.2021 stating that the shareholders of the Applicant in the Extra Ordinary General Meeting (EGM) held on 28.10.2021 has passed a resolution authorizing Smt. M. Sujatha to initiate the CIRP against the Respondent and the Form MGT-14 has been uploaded on MCA portal to that effect.

18. After hearing the submission of both the parties and perusing the documents and written submissions placed on record, this Bench observes that the Respondent has raised certain technical objections with respect to the maintainability of the present application, which need to be dealt with first.



19. It is contended by the Respondent that there is no Board Resolution annexed with the application authorizing the applicant to initiate the CIR process against the Respondent and therefore, the present application filed under Section 9 of IBC, 2016 is without any authority. Per contra, the Applicant vide its additional affidavit dated 30.10.2021 submitted that the shareholders of the applicant company, in the Extra Ordinary General Meeting held on 28.10.2021, passed a Resolution authorizing Smt. M. Sujatha to initiate the CIRP against the Respondent and the Form MGT-14 has been uploaded on the MCA portal to that effect. The applicant has placed the Form MGT-14 on record, which is reproduced below for immediate reference:

FORM NO. MGT-14		Filing of Resolutions and agreements to the Registrar	
[Pursuant to section 94(1), 117(1) of The Companies Act, 2013 and section 192 of The Companies Act, 1956 and rules made thereunder]			
Form Language	<input checked="" type="radio"/> English	<input type="radio"/> Hindi	
Refer the instruction kit for filing the form.			
1. (a)*Corporate Identity Number (CIN) of the company	U72900TG2009PTC062416	Pre-fill	
(b) Global Location Number (GLN) of the company			
2. (a) Name of Company	VISWAROOPA INFO SERVICES INDIA PRIVATE LIMITED		
(b) Address of the registered office of the company	H.NO. 6-3-6674, FLAT NO. 204, 2ND FLOOR, SIRIMALLE TOWERS, SOMAJIGUDA, HYDERABAD Telangana 500082 India		
(c) *e-mail id of the company	msaswamy@gmail.com		
3.* Registration of	<input checked="" type="checkbox"/> Resolution(s)	<input type="checkbox"/> Agreement	<input type="checkbox"/> Postal ballot resolution(s) under Section 110
	<input type="checkbox"/> Proposed resolution under section 94(1)		
4. Date of dispatch of notice for passing of			
(a) Resolution(s)	01/10/2021	(DD/MM/YYYY)	
(b) Postal ballot resolution(s)		(DD/MM/YYYY)	
5. Date of passing of			
(a) Resolution(s)	28/10/2021	(DD/MM/YYYY)	
(b) Postal ballot resolution(s)		(DD/MM/YYYY)	
6. Number of resolution(s) for which the form is being filed	1		
Details of the resolution			
(a) (i) Section of the Companies Act, 2013 under which passed	Others		
(ii) Section of the Companies Act, 1956 under which passed			
(b) Purpose of passing the resolution	Others under Companies Act, 2013		
If others, mention the section and purpose	Members Approval Ratifying the Petition		
(c) Subject matter of the resolution	Ratifying the application already filed under section 9 of Insolvency and Bankruptcy Code 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, made by majority shareholders of the company, seeking an order initiating corporate insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code 2016 against Siti Vision Digital Media Private Limited- Members Approval was sought.		
(d) Mention whether resolution passed by postal ballot	<input type="radio"/> Yes <input type="radio"/> No		
(e) Indicate the authority passing or agreeing to the resolution	<input type="radio"/> Board of directors <input checked="" type="radio"/> Shareholders <input type="radio"/> Class of shareholders <input type="radio"/> Creditors		
(f) Whether ordinary or special resolution or with requisite majority	<input checked="" type="radio"/> Ordinary resolution <input type="radio"/> Special resolution <input type="radio"/> Requisite majority		



10. Service request number(SRN) of Form INC-28

Attachments

- 1. Copy(s) of resolution(s) along with copy of explanatory statement under section 102
- 2. Altered memorandum of association
- 3. Altered articles of association
- 5. Optional attachment(s) - if any

List of attachments

Viswaroopa EGM Notice281021.pdf
Viswaroopa EGM Mts-28-10-21 NN.pdf

Declaration

I am authorized by the Board of Directors of the Company vide resolution no Dated (DD/MM/YYYY) to sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I further declare that :

1. Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the company.
2. All the required attachments have been completely and legibly attached to this form. It is also certified that copy of the resolution(s) or agreement(s) filed herewith is or are a true copy(s) of the original.
3. Any application, writ petition or suit had not been filed regarding the matter in respect of which this petition/application has been made, before any court of law or any other authority or any other Bench or the Board and not any such application, writ petition or suit is pending before any of them.

* To be digitally signed by



*Designation

Name of liquidator

* Director identification number of the director; or Income-tax PAN of the liquidator; DIN or Income-tax PAN of manager or CEO or CFO; or membership number of Company secretary;

Certificate by practicing professional

I declare that I have been duly engaged for the purpose of certification of this form, it is here by certified that I have gone through the provisions of the Companies Act, 2013 and rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/ applicant which is subject matter of this form and found then to be true, correct and complete and no information material to this form has been suppressed. I further verify that:

- i. The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;
- ii. All the required attachments have been completely and legibly attached to this form.

To be digitally signed by



- Chartered Accountant (in whole-time practice) or Cost Accountant (in whole-time practice) or Company Secretary (in whole-time practice)

whether Associate or Fellow Associate Fellow

Membership No.

Certificate of practice number

Note: Attention is also drawn to provisions of Section 448 and 449 which provide for punishment for false statement and punishment for false evidence respectively.



20. However, the Ld. Sr. Counsel for the Respondent still contended that the Resolution is of subsequent date to the filling of the present Application. In response, the Ld. Sr. Counsel for the Applicant relied on the Judgement of the Hon'ble Supreme Court in "**Dr. Satya Charan Law V. Rameshwar Prasad Bajoria**" [1950, 20 Com Cases 39, 48, AIR 1950 SC 133,] wherein the following was held:

"Ordinarily, the Directors are the only persons who can conduct litigation in the name of the Company, but when they themselves are the wrong-doers against the Company and have acted malafide or beyond their powers, and they will not take steps to seek redress for the wrong done to the Company, the majority of the shareholders must in such case be entitled to take steps to redress the wrong."

21. At this stage, we refer to Column 6, Part I of Form 5 i.e., the format of Section 9 Application prescribed under the Application to Adjudicating Authority Rules 2016, which reads thus:

6.	NAME, ADDRESS AND AUTHORITY OF PERSON SUBMITTING APPLICATION ON BEHALF OF OPERATIONAL CREDITOR (ENCLOSE AUTHORISATION)	
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On perusal of the above, we notice that the prescribed Form-5 only requires an "Authorization" to be enclosed. However, it does not specify the authorization to be in the form of a Board Resolution or a Resolution by Shareholders. **Since in the present case, the Applicant has filed Authorization in the form of shareholders' resolution, which is duly uploaded on the MCA portal, we find that the Authorization to file the Section 9 Application by the Applicant is valid.**



22. The Respondent in its reply as well as submissions made during the hearing has contended that there are pre-existing disputes between the parties. Hence, we would like to examine whether there is any pre-existing dispute between the parties. During the course of hearing, Ld. Sr. Counsel for the Applicant stated that there is no pre-existing dispute and the unpaid invoices pertain to the years 2017 to 2019 and the emails as annexed by the Respondent with the reply do not relate to those invoices. Per Contra, the Respondent in its Written Submissions has stated that the Respondent had sent an email dated 19.07.2018 intimating that they are facing a lot of technical snags and issues in maintenance. As a counter, the Applicant in its Written Submissions has stated that the email dated 15.07.2019 (Pages 54-55 of Reply) from Applicant to Respondent clearly reflects that there is no pre-existing dispute. The Applicant had asked the Respondent to terminate the agreement and repay the dues of the Applicant.

23. We would like to examine the contention of both the parties The Respondent has placed emphasis on the various e-mails dated 13.02.2014, 18.02.2014, 07.04.2014, 08.04.2014, 21.04.2014, 22.04.2014, 25.11.2014, 08.12.2014, 09.02.2015, 16.04.2015, 23.04.2015, 03.10.2015, 23.11.2015, 24.11.2015, 14.06.2016 19.07.2018, 25.06.2019, 02.07.2019, 18.07.2019, 19.07.2019, 13.08.2019, 12.09.2019 and 16.09.2019.

24. Since the Operational Debt is claimed for the unpaid invoices from 05.05.2017 to 01.05.2019, therefore, we ignore the e-mails prior to



05.05.2017. Further, we have already noted in para 15 of this order that the Applicant had sent the Demand Notice to the Respondent on 01.07.2020. Hence, for the purpose of adjudication of the issue relating to the pre-existing dispute, if any, we would like to refer to the e-mails exchanged during the period from 05.05.2017 to 01.07.2020.

25. Accordingly, first we refer to the email dated 19.07.2018 written by an official of Respondent to the Applicant, which reads thus:

Fw: Req for 6 F OFc Cable & 16 Db EDFA

Jogi Gopala Rao <j_gopalarao@yahoo.com>

Thu 19-Jul-18 05:11 PM

To: K Sivarama Krishna bp <sivarama.bp@siti.esselgroup.com>; Sunil Kumar KC <sunil.kc@siti.esselgroup.com>

1 attachments (24 KB)

Shivam to Uppal route map.docx

Dear sir, this requirement of four km.of 6f and one EDFA can be purchased and given to Shivam as a part of replacing with viswaroopa fiber.

Sent from Yahoo Mail on Android

----- Forwarded message -----

From: "rajnikanth goud" <erajnikanth@gmail.com>

To: "s_giri1973@yahoo.com" <s_giri1973@yahoo.com>, "Gopal Rao Sir" <j_gopalarao@yahoo.com>, "NARAYAN REDDY" <narayanreddysattu@gmail.com>, "sitivisionfinance" <sitivisionfinance@gmail.com>, "venkateshgoud.m" <venkateshgoud.m@vbbs.in>

Cc:

Sent: Thu, 19 Jul 2018 at 4:05 PM

Subject: Req for 6 F OFc Cable & 16 Db EDFA

dear sir ,

As you are well aware that we are facing lot of technical snags at tarnaka Noc Point.due to which whole Uppal ,nacharam ,boduppal and adjacent areas LCO's are getting affected.

to over come this problem we had given dual feed from uppal survey colony by keeping Tx point.but operators are insisting on EDFA signals as they are using EDFA at there distribution point.

but as we had provided this feed thru vision fibre there is alot of distrubance in maintainace.

we request you to kindly provide UG Link From Shivam NOC point to Uppal x Road or Provide Overhead 4 KM 6 f ofc and 1 EDFA.

thru which we can connect

total Uppal LCos 16 No's and boduppal and adjacent area Lco's which are under Distributor ,and also additional back up can b provided to Bairamalguda Noc Point.

route map attached

Regards

Rajnikanth



On perusal of the aforesaid e-mail, it can be observed that the Respondent had raised issues of “technical snags” and “disturbance in maintenance”. The Ld. Sr. Counsel appearing for the Respondent neither during the course of the hearing nor in their Written Submissions rebutted the charge or indicated any steps taken to resolve the issues.

From: Jogi Gopala Rao [mailto:j_gopalarao@yahoo.com]
Sent: 13 August 2019 10:34
To: Sunil Kumar KC <sunil.kc@siti.esselgroup.com>; Viswaroopa Infoservices <v.infoservices@gmail.com>
Cc: MSE Swamy <menduinfo@gmail.com>; Vijay Kalur <Vijay.Kalur@siti.esselgroup.com>; IVN Thrinath <IVN.Thrinath@siti.esselgroup.com>; K Sivarama Krishna bp <sivarama.bp@siti.esselgroup.com>; Alok Govil <Alok.Govil@siti.esselgroup.com>; Sanjay Arya <Sanjay.Arya@siti.esselgroup.com>; Mukesh Ghuriani <Mukesh.Ghuriani@siti.esselgroup.com>
Subject: RE: Remainder of the earlier letter dated 26th June regarding joint survey and UG equipment.

Dear Sunil Kumar and viswaroopa team,

Sir till now I have not received the joint survey details regarding the UG ducts and UG cable alongwith overhead cable details with splicing machines, ORDR's.

Instead of submitting the details just passing time to exchanging mail's which are not at all useful. So please look into the matter and finish the pending work with in the time period.

Thanks,

Best Regards,
J Gopala Rao

Vide aforesaid e-mail dated 13.08.2019, we further find that the Respondent had informed the Applicant that they did not receive the joint survey details regarding the UG ducts and UG cable and alleged that “*Instead of submitting the details just passing time to exchanging mails which are not at all useful. So please look into the matter and finish the pending work within the time period.*”



26. During the course of the hearing as well as in the written submissions, it was further contended by the Respondent that the Applicant has withheld its equipment worth Rs. 8,80,00,000/- which were handed over to the Applicant in terms of the Agreements/for the maintenance purpose. In support of its submissions, the Respondent has relied upon the emails dated 02.07.2019 & 18.07.2019 which read thus:

From: Jogi Gopala Rao <j_gopalarao@yahoo.com>
Sent: Tuesday, July 2, 2019 2:12 PM
To: Sunil Kumar KC <sunil.kc@siti.esselgroup.com>; Viswaroopa Infoservices <v.infoservices@gmail.com>
Cc: Vijay Kalur <Vijay.Kalur@siti.esselgroup.com>; IVN Thrinath <IVN.Thrinath@siti.esselgroup.com>; K Sivarama Krishna bp <sivarama.bp@siti.esselgroup.com>; Alok Govil <Alok.Govil@siti.esselgroup.com>
Subject: Remainder of the earlier letter dated 26th June regarding joint survey and UG equipment.

Dear sir,

This is reference to our earlier mail on 26th June regarding UG ducts and related equipment followed by Joint survey, till today i was not received any feedback or what is the plan to complete the assignment.

We are urgently required equipment to maintain our fiber lines.

Best Regards,
J Gopala Rao

XXXX

XXXX

XXXX

XXXX



On Thu, 18 Jul 2019 at 6:35 PM, Sunil Kumar KC:

<sunil.kc@siti.esselgroup.com> wrote:

Dear Viswaroopa team,

The major UG and OH Network and equipment of Siti Vision have been handed over to Viswaroopa on returnable basis for the maintenance purpose as follows in the year of Aug-2010.

Kindly handover the following in working condition to Siti Vision.

Sr #	Description	UOM	Qty	No of ducts
	UG OFC Network			
1	UG with with 48F handed over in good condition	Kms	32.5	4
2	Contract given for UG DIT and cable pull	Kms	39.8	6
	OH OFC Network			
3	OH OFC network Main trunk lines	Kms	363	
4	Splicing machine	Nos.	3	
5	OTDR	Nos	2	

Thanks and regards,

K. C Sunilkumar,

+91-9885555033.

However the Applicant, neither in its Written Submissions nor during the hearing gave any explanation as to why it withheld the equipment of the Respondent and did not return the same.

27. In view of the aforesaid e-mail communications dated 19.07.2018, 13.08.2019, 02.07.2019, and 18.07.2019 from the Respondent raising the issues relating to “technical snags” and “disturbance in maintenance”



and “return of equipment given for maintenance”, we observe that the Respondent has raised the plausible contentions prior to the issuance of demand notice i.e., 01.07.2020, which requires further investigation. At this juncture, we refer to the Judgement of the Hon’ble Supreme Court passed in the matter of **“Mobilox Innovations Private Limited Vs Kirusa Software Private Limited” in Civil Appeal No. 9405 of 2017:**

“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. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

28. **In view of the above, there being pre-existing disputes between the parties, the Application is dismissed.** However, nothing expressed herein shall be construed as an opinion before any other forum to affect the rights of both parties to agitate the matter further.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (J)