

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

CP (IB) 1848/MB/C-I/2019

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Bsmart Tech Private Limited

[CIN: U72300MH2013PTC247971]

Unit No. 808, 8th Floor, Marathon Nextgen Icon,
Ganpatrao Kadam Marg, Lower Parel (West),
Mumbai-400013.

... Operational Creditor/Petitioner

Versus

Aurangabad City Water Utility Company Limited

[CIN: U41000MH2011PLC219020]

6th Floor, Kohinoor City, Kiroi Road, Kurla West,
Mumbai-400070.

...Corporate Debtor/Respondent

Order Delivered on 16.06.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao

Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Operational Creditor : Mr. Nihal Shaikh, Advocate.

For the Corporate Debtor : Mr. Sidharth Singh, Advocate.

ORDER

Per: H.V. Subba Rao, Member (Judicial)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Bsmart Tech Private Limited** ("the Operational Creditor hereafter referred to as Petitioner"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Aurangabad City Water Utility Company Limited** ("the Corporate Debtor hereafter referred to as Respondent").
2. The Respondent was incorporated on 25.06.2011 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U41000MH2011PLC219020. Its registered office is at 6th Floor, Kohinoor City, Kirol Road, Kurla West, Mumbai-400070. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Total Outstanding amount alleged to be in default is Rs.10,07,375 (Rupees Ten Lakhs Seven Thousand Three Hundred and Seventy- Five Only) along with interest at the rate of 12% p.a. The Date of Default is 02.08.2015 as stated in Part-IV of the Petition.

Submissions made by the Petitioner:

4. The Petitioner is engaged in the business of data processing and SMS messaging networks. The Petitioner has been providing bulk SMS services to the Respondent and raised invoices pursuant to the services provided such as bulk SMS charges and Inter Operator Charges.

5. It is submitted that after 2015, the Respondent arbitrarily stopped making payments despite availing services from the Petitioner. The last payment made to Petitioner by the Respondent was on 27.04.2015 for an amount of Rs.7,844.13/- (Rupees Seven Thousand Eight Hundred and Forty-Four only).
6. It is submitted that the Petitioner addressed various emails to the Respondent to clear the outstanding dues. The Petitioner has annexed trail of emails from 24.09.2015 to 16.06.2016 showing communication exchanged between the parties. Finally, since the Respondent refused to make payments, the Petitioner vide its email dated 16.06.2016 terminated the services.
7. The Petitioner owing to the neglect and failure of the Corporate Debtor through its Advocates issued a Demand Notice dated 05.12.2018 under Section 8 of the Code. The said notice was delivered through Registered Post to the Respondent on 12.12.2018. The Corporate Debtor has replied to Demand Notice vide letter dated 08.01.2019.

Submissions made by the Respondent:

8. The primary defence taken by the Respondent is that there is a pre-existing dispute.
9. The Respondent with respect to pre-existing dispute submits that the Respondent vide its emails dated 25.11.2015, 02.12.2015, 25.01.2016 and 29.01.2016 addressed to the Petitioner raised issues pertaining to the difference in the SMS counts provided in the invoices. Further, the Respondent submits that the issues of deficiency of service was highlighted vide email dated 25.01.2016, the Petitioner has failed to consider the same. It is argued that the Respondent has raised the dispute

prior to the issuance of demand notice dated 05.12.2018 under section 8 of the Code.

10. The Respondent has relied on the Judgement of the Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited v/s Kirusa Software Private Limited*.

Findings

11. We have heard the submissions of both sides and perused the records.
12. The emails annexed both to the Petition as well Affidavit-in-reply clearly carve that there existed a dispute amongst the parties with respect to difference in SMS counts specified in the invoices vis-à-vis the actual SMS count contained in the system. The said issue was conveyed by the Respondent to the Petitioner vide email dated 25.01.2016 which is before the date of issuance of Statutory Demand Notice dated 05.12.2018 under the Code. Therefore, it is observed that there is a clear pre-existing dispute between the parties.
13. The law laid down by the Hon'ble Supreme in the landmark Judgment of *Mobilox Innovations Private Limited vs Kirusa Software Private Limited* (Civil Appeal No. 9405 of 2017) is clear on issue of pre-existing disputes under Section 9 of the Code. The relevant paragraph is reproduced as under:

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of

the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. 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.”

14. We are of the view, in the present case there exists a dispute which is not spurious. The Corporate Debtor has succeeded in proving the fact that there was pre-existing dispute amongst the parties, prior to the issuance of demand notice and the same was brought to the notice of the Operational Creditor vide email dated 25.01.2016. Therefore, this Adjudicating Authority has no option but to reject the Company Petition filed by the Operational Creditor. Further, needless to state, it is now settled by numerous judgements of the Hon’ble Supreme Court as well as Hon’ble NCLAT that the proceedings under the Code are not to be treated as recovery proceedings. The object and purpose of the Code is to put the Corporate Debtor back on its feet and not to enforce recovery of disputed debts.
15. In the above circumstances the petition bearing **CP (IB) 1848 /MB/C-I/2019** filed by **Bsmart Tech Private Limited**, the Operational Creditor,

under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Aurangabad City Water Utility Company Limited [CIN: U41000MH2011PLC219020]** the Corporate Debtor, is **rejected**.

Sd/-

ANU JAGMOHAN SINGH

Member (Technical)

16.06.2023

Priyal

Sd/-

H.V. SUBBA RAO

Member (Judicial)