

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH -V

C.P. (I.B) No. 560/MB/2021

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

Diligent Media Corporation Limited

Having its registered office at 18th Floor, A wing, Marathon Futurex, N M Joshi Marg, Lower Parel, Mumbai 400013.

.....Operational Creditor/Applicant

Vs

Datalink Multi Trading Private Limited

Having its registered address at S-106, Fantasia Plot No 47, Sec 30a Vashi, Navi Mumbai, Thane 400703.

.....Corporate Debtor/Respondent

Order Dated: 07.03.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

Appearances (Physical):

For the Operational Creditor: Adv. Shreni Sheety

For the Corporate Debtor: Adv. Kavita Singh

ORDER

1. This Company Petition is filed by **Diligent Media Corporation Limited** (hereinafter referred as "**the Operational Creditor/Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as "**CIRP**") against **Datalink Multi Trading Private Limited** (hereinafter called "**Corporate Debtor**") by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called "**Code**") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 16,70,23,315/-**.

Brief Facts:

2. The Petition reveals that the Operational Creditor is a private limited company registered under the provisions of the Companies Act, 1956, engaged in the business of publishing and printing 'DNA Newspaper. Furthermore, the Corporate Debtor is

a private limited company registered under the provisions of the Companies Act 1956 and is having its registered office at Navi Mumbai.

3. It is submitted by the Operational Creditor that they had approached the Corporate Debtor and requested the services of the Corporate Debtor about acquisition and purchase of land admeasuring 25,000 square meters at Hyderabad with RCC Building, equipment, machinery and pumping system as specified in the MOU ("Premises"). Pursuant to the above both the parties executed the MOU dated 1.04.2019, thereby appointing and engaging the Corporate Debtor for performing services in relation to the Premises in the manner set out therein. The terms and the conditions as entailed in the MOU obligated the Operational Creditor to pay an amount of Rs. 15,00,00,000/- as an advance towards aforesaid transaction.
4. Pursuant to the execution of the said MOU, the parties agreed to defer the payment of advance consideration to September 2019 due to unforeseen change in circumstances and agreed to reduce the consideration to Rs.13,87,50,000/-. The bank statement of Operational Creditor's shows the advancement of the said sum to the Corporate Debtor. However, despite various reminders, the Corporate Debtor failed to arrange the Premises in accordance with the specifications set out in the MOU.
5. It is the case of the Operational Creditor time and again, the Corporate Debtor gave oral assurances that it would soon deliver the Premises as per the specifications in the MOU. However, it failed to do so. Once again vide its letter dated 01.02.2020 (Exhibit E), the Operational Creditor requested for repayment of the monies advanced. However, the Operational Creditor did not receive any reply to the said letter. Neither any repayment was

proposed, nor any offer of handing over the premises came from the Corporate Debtor.

6. Hence there is a default of payment on the part of the Corporate Debtor and they are liable to repay the amount advanced to the Operational Creditor along with interest @12% p.a. aggregating to Rs. 16,70,23,315/- as per the terms & conditions of the MOU which is reproduced as under:

“Interest at the rate of 12% per annum would be charged to the Purchaser on the due consideration without prejudice to the discretion of the seller to terminate the MOU due to such default by the Purchaser”

7. The Operational Creditor thus commenced the proceedings under the Insolvency and Bankruptcy Code, 2016. Accordingly, the Counsel of the Operational Creditor issued the Demand Notice dated 6.04.2021 under Section 8 of the Code to the Corporate Debtor via email. However, the Corporate Debtor has not replied to the said Demand notice. Further it has also failed to make any payments, within the stipulated period of 10 days.
8. The counsel for Corporate Debtor further submits that due to intervening COVID-19 hit and subsequent lockdowns in the year 2020 their business got hit badly and therefore it failed to adhere to the terms of MOU. Further they also tried to negotiate with the Operational Creditor for settlement
9. The Case of the Corporate Debtor during the course of the arguments is that the interest amount @ 12% p.a. is calculated by the Operational Creditor is disputed as there is no default on the part of the purchaser/Operational Creditor. This clause specifically refers in the case of default in the part of the

purchaser/Operational Creditor hence the said clause is not applicable.

10. The Corporate Debtor further submits that owing to the above submission, the present petition cannot be done in guise of the Code whereas the provisions are only to be invoked for the purpose of resolution of Insolvency.

FINDINGS-

11. We have heard the submissions of the Counsel appearing for both the parties and perused the records.
12. On perusal of the evidence placed on record, it is evident that the Operational Creditor has established that he had advanced the amount of Rs. 13,87,50,000/- to the Corporate Debtor for performing the obligation which the Corporate Debtor failed to perform pursuant to the MoU between the parties. The aforesaid bank statement submitted by the Operational Creditor establishes the same.
13. The Corporate Debtors has disputed the 12% interest as the MOU indicates that the default should be on the part of the Operational Creditor in order to levy the said interest. Owing to the above contention of the Corporate Debtor, the bench is of the considered view that even if the said interest of 12% is not taken into consideration still the principal amount of Rs.13,87,50,000/- satisfy the minimum threshold required under IBC to trigger Corporate Insolvency Resolution Process application as per section 4 of IBC. Hence there is a default of payment on the part of the Corporate Debtor.
14. The MoU entered between the parties is dated 1st April 2019 and the present petition was filed on 04.06.2021. The date of default in payment occurred on January 1,2020 as per part 4 of

the Company Petition. Hence the present petition is not covered under the section 10A of the code.

15. The Petitioner has further proved that a demand notice dated 06.04.2021 was served upon the Corporate Debtor along with email issuing the same but the latter failed to respond to the said notice nor made any payment.
16. The Corporate Debtor has not raised any substantial dispute on the debt amount, it has admitted the debt, citing business slowdown as the reason for the non-payment.
17. As a result of the foregoing discussion, we are of the considered view that the Petitioner has been able to establish that there is existence of “**operational debt**” and “**default**” committed by the Corporate Debtor in this case.
18. Accordingly, the above Company Petition is ‘**admitted**’ by passing the following:

ORDER

- a. The above Company Petition No. 560/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Datalink Multi Trading Private Limited.**
- b. **Mr. Arun Kishanlal Bagaria** having registration No IBBI/IPA-002/IP-N00278/2017-2018/10836, having Email Id – arun@bagariaco.com is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs 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 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; 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, CP (IB) No. 560 of 2021 is **admitted**.

**SD/-
Madhu Sinha**

Member (Technical)

/Aakansha/

**SD/-
Reeta Kohli**

Member (Judicial)