

**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-V**

**IB-412/ND/2020**

**In the matter of:**

**Datacorp Traffic Private Limited**

Having its registered office at:  
Plot No. 2, Railway Station Road  
Harsha Layout, Kengeri, Bengaluru-560060

**...Applicants/Operational Creditors**

**V/s**

**VaaaN Infra Private Limited**

Having its registered office at:  
206, Saral Cooperative Group Housing Society Limited  
Plot No. 15, Sector 10  
Dwarka, New Delhi-110075

**...Respondent/Corporate Debtor**

**SECTION: U/S 9 of IBC, 2016**

**Order Reserved on: 14.12.2021**

**Order delivered on: 19.01.2022**

**CORAM:**

**MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**MR. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)**

**Present:**

For the Applicants : Adv. Aman Varma

For the Corporate Debtor: Adv. Jeetender Gupta

AKS

## ORDER

PER MR. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This application has been filed by **M/s Datacorp traffic Private Limited**(hereinafter collectively referred as “**Operational Creditor**”)under Section 9 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the **Vaaan Infra Private Limited** (hereinafter referred to as “**Corporate Debtor**”) for the non-payment of dues amounting to Rs. 3,97,17,481/- on account of services provided by the Operational Creditor to Corporate Debtor.
  
2. The Corporate Debtor is a Private Company duly incorporated under the Companies Act, 2013. Corporate Debtor has engaged the Operational Creditor for conduction of ATCC traffic surveys on 2 lane and 4 lane sites in the States of Gujarat and Maharashtra.
  
3. Facts of application filed by Operational Creditor in short are that:
  - under various purchases orders, the Corporate Debtor placed orders for conduction of ATCC traffic surveys on 2 lane and 4 lane sites in the States of Gujarat and Maharashtra and raised invoices for the same. As per the Clause 1 of the Payment terms under the purchase orders, the amount was payable within 60 days from the date of submission of invoices. Operational Creditor has sent all the invoices along with the cover emails as proof of submission of invoices.
  - Outstanding amount under the relevant invoices that are due for payment annexed as **Annexure F**. Contents of Annexure F are reproduced below:



LIST OF PENDING INVOICES RAISED BY DATACORP TRAFFIC PRIVATE LIMITED

Invoice No.	Date	Invoice Value (INR)	Net Amount Receivable (INR)	Outstanding Amount (INR)
2017-18/151	10-Mar-18	3,035,760	2,984,307	78,273
2017-18/152A	10-Mar-18	2,655,898	2,620,517	2,620,517
2017-18/153A	10-Mar-18	5,331,356	5,241,034	5,241,034
2017-18/154A	10-Mar-18	5,331,391	5,241,028	5,241,028
2018-19/205	01-Oct-18	13,328,486	13,102,588	13,102,588
2018-19/206	01-Oct-18	123,800	121,800	121,800
2018-19/207	01-Oct-18	247,800	243,600	243,600
2018-19/208	01-Oct-18	247,800	243,600	243,600
2018-19/209	01-Oct-18	829,748	808,836	808,836
2018-19/210	01-Oct-18	1,841,492	1,813,670	1,813,670
2018-19/211	01-Oct-18	1,841,493	1,813,668	1,813,668
2018-19/212	01-Oct-18	421,820	414,769	414,769
2018-19/213	01-Oct-18	843,840	828,538	828,538
2018-19/214	01-Oct-18	843,839	828,537	828,537
2018-19/215	01-Oct-18	619,500	609,000	609,000
2018-19/216	01-Oct-18	4,103,732	4,034,177	4,034,177
2018-19/217	01-Oct-18	2,109,001	2,073,845	2,073,845
Total Outstanding Amount				39,537,381

- That being aggrieved by the non-payment of invoices, Operational creditor issued a demand notice dated 25.11.2019 of INR 3, 97,17,481/- under the provisions of the Insolvency and Bankruptcy Code, 2016. That the corporate debtor has sent reply to Demand Notice via letter dated 28.12.2019 which was received by Operational creditor on 01.01.2020. Further,

Operational Creditor has replied to the letter sent by corporate debtor via letter dated 09.01.2020

**4. Brief Facts that were put forward by Corporate Debtor are as follows:**

- Corporate Debtor has alleged that Operational creditor has suppressed material facts regarding the existence of dispute prior to the demand notice and hence the application is not maintainable under the IBC, 2016. The Corporate Debtor had issued letters of dispute with regard to quality of services and delay in providing services much prior to issuance of demand notice.
- The Corporate debtor is involved in the business of Tech systems, Infrastructure & Intelligent Transport Solutions and Corporate debtor has been further engaged by **M/s Indian Highways Management Company Limited (IHMCL)** as a contractor for various highway projects being managed by IHMCL. For the same reason, Corporate debtor has entered into a business transaction with operational creditor for carrying out traffic survey and traffic data analysis and Corporate debtor has issued purchase orders no. **Datacorp/1047/3581 and Datacorp/1047/2582** dated 08.07.2015.
- Corporate Debtor alleged that as per the terms of contract between them, any survey report submitted by the operational creditor will only be liable to payment once it has passed the validation process of IHMCL Control Centre followed by Validation Certificate from IHMCL. IHMCL may reject the survey altogether if erroneous data is uploaded twice or if it object to the quality of the video submitted. **Clause 6 of the terms and conditions of the contract is referred. In every case of delayed report, there is a provision of penalty of Rs. 5000 per day will be levied and if same report gets rejected in**



**second attempt, the survey will not be considered and resurvey will be required.** Corporate debtor has annexed the email for proving the delayed or failed reports submitted by the operational creditor **Annexure R-2**.

- It is submitted by Corporate Debtor that IHMCL takes its own time to verify the surveys and it has no control over it and Corporate Debtor can only finalize payment towards operational creditor only after the receipt of the Validation certificates from IHMCL and Corporate debtor has received the final validation certificates from IHMCL during March 2019. That, Corporate Debtor further alleges that Operational Creditor has been delaying the submission of the reports since beginning due to which its future business with IHMCL is getting effected.
- The fact of legal notice being served by the operational creditor on the corporate debtor on an earlier occasion is also highlighted by the corporate debtor. The major contention with respect to legal notice is that the different amounts have been asked in legal notice and in demand notice.

**5.** In response to the reply submitted by Corporate Debtor, Operational Creditor further submitted that in every case of rejection of survey report, Operational creditor is entitled for re-submission of the reports. It is alleged by the Operational creditor that Corporate Debtor has only annexed only those mail conversations which corporate debtor has sent regarding certain reports but Operational Creditor immediately re submitted the survey reports to the Corporate Debtor and those resubmitted survey reports have been duly accepted by Corporate Debtor.

**6.** On the contention of the rejection of Reports, in response to the Demand Notice's reply received from Corporate Debtor, Operational Creditor submitted that there have been only 3 sites and as per **Clause 5 r/w Clause 7 of the Purchase Orders**, the total value of



the penalty to be levied upon for the delay in submission of survey, double rejection and delay in re-submission is INR. 1,10,000/- only. Also , it is further submitted by the Operational Creditor that, due to staffing issues to Corporate Debtor, it delayed the submission of reports to IHMCL and for the same delay, Operational Creditor is not to be accounted for.

7. On the question of Legal Notice served, earlier the demand notice is just seeking the repayment of the default amount and the Operational Creditor was just trying to get its dues clear and called upon the Corporate Debtor to make the payment of the outstanding dues. In fact the Corporate Debtor itself replied to the Operational Creditor's Legal notice via letter dated 10<sup>th</sup>October, 2019 admitting an amount of 1,93,23,609/- subject to provision of proper Accounts statements by Operational Creditor. Operational Creditor has annexed the relevant documents pertaining to the pending payments due from Corporate debtor, Ledger showing the detailed calculation of total payment receivable from Corporate Debtor **Annexure G etc.** which proves that a default has occurred and a payment was due from the Corporate Debtor. However, the Corporate Debtor failed and neglected to make payment due to the Operational Creditor. Copies of the aforesaid invoices/purchase orders, pending invoices along with demand notice and postal receipt sent as per Section 8 of the Insolvency and Bankruptcy Code, 2016 are annexed and marked as **Annexure D, E, I J (colly.)** of the paper book. Copies of the Ledger Account of the Corporate Debtor maintained by the Operational Creditor and Copy of Bank Statements of Operational Creditor are annexed herewith and marked as **Annexure- G, M (colly)** of the paper book. Copy of the reply to Demand Notice is also placed on record. **It is pertinent to mention here that Operational Creditor has sent the demand Notice on 25.11.2019 while Corporate Debtor replied to the same on 28.12.2019, and not within 10 days from the receipt of Demand Notice.**



8. We have heard the Ld. Counsels for Operational Creditor as well as for Corporate Debtor and perused the averments made in the application, reply and documents filed along with the application and reply as well as written submissions filed by the parties. Now, in the light of the submissions raised on behalf of the parties, we are of the considered opinion that:

- As per Section 8(2) of the IBC, 2016, the Corporate Debtor had to bring the existence of any dispute if any or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice of the Operational Creditor within 10 days of receipt of such notice i.e. 25.11.2019. But the Corporate Debtor sent the reply to the demand notice to the Operational Creditor on 28.12.2019, which is beyond the stipulated time period. Therefore, the said letter would not be considered as notice sent by the Corporate Debtor to the Operational Creditor showing the existence of any dispute or record of the pendency of the suit of arbitration proceedings filed before the receipt of such notice as per the IBC, 2016.
- As far as plea of pre-existing dispute is concerned, Corporate Debtor has failed to satisfy us that there is a pre-existing dispute. The mails which the corporate debtor is annexing is with respect to the rejection of the reports, which operational Creditor has resubmitted but Corporate debtor has concealed the fact of resubmission. As per the clauses mentioned in the Purchase order, for every failed report, Corporate debtor is entitled for resubmission and if there is delay in resubmission, there are provisions of Penalty which according to us does not negate the existence of default and Operational Creditor has sufficiently placed all the records, accounts, bank statements, invoices raised and summary of outstanding dues and establishes the existence of default as per the provisions of Section 9 of the IBC, 2016.



- We would also like to refer at this juncture, Section 9 of the IBC and the same is quoted below:-

**Section 9**

*(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 by the corporate debtor, if available; and*

*(d) such other information as may be specified.*

*(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 an 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 repayment of the unpaid operational debt;*

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

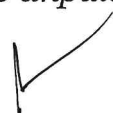
*(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*

*(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 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.*

**9.** The Application is complete in respect of Sec 9(5)(i) of the provisions of Insolvency and Bankruptcy Code, 2016 and liable to be **ADMITTED**.

**10. Accordingly, we hereby Admit the application.** Corporate Insolvency Resolution is initiated against the Corporate debtor. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 or 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 Securitisation 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.

Further:

(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:

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."*

**11.** The Operational Creditor has not proposed the name of any IRP.

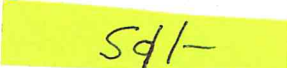
Accordingly, we appoint, **Mr. Satya Prakash** an Insolvency

Page 11 of 12

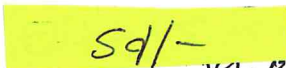


Professional, Registration No. **IBBI/IPA-002/IP-P00906/2019-20/12920** Email id: [cs.satyaprakash@gmail.com](mailto:cs.satyaprakash@gmail.com) duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

12. The Operational Creditor is directed to deposit a sum of Rs. 01 (One) lakh 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 CIRP costs.
13. Copies of the order be sent to both the parties as well as to the IRP.
14. The office is directed to send a free copy of this order to both the parties.

 Sd/-  
**AVINASH K. SRIVASTAVA**  
Member (T)

19/1/2022

 Sd/-  
**ABNI RANJAN KUMAR SINHA**  
Member (J)

19.01/2022