

SL No. 131

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON 12.11.2021 AT 10:30 AM
THROUGH VIDEO CONFERENCE

CP (IB) No. 15/9/HDB/2020
U/s 9 of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

Faicon Minds Consulting Pvt Ltd

...Operational Creditor

Vs

Wisdom IT Services Ltd

...Corporate Debtor

CORAM:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER JUDICIAL
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL**

ORDER

Order is pronounced. The company petition is admitted.



MEMBER (TECHNICAL)



MEMBER (JUDICIAL)

Karim

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.15/9/ HDB/2019

Under section 9 of IBC, 2016 read with
Rule 6 of I&B (AAA) Rules, 2016

In the matter of

Falcon Minds Consulting Private Limited
Having its office at
G-3/60, Model Town
New Delhi – 110 009.

**.. Petitioner/
Operational Creditor**

VERSUS

Wisdom IT Services India Private Limited
Having its registered office at:
7th Floor, Quadrant-4
A1, A2, A3 Modules
HITEC City, Madhapur, Hyderabad.
TG 500081.

**.. Respondent
Corporate Debtor**

Date of order: 12th November 2021

Coram:

**HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)**

AND

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Parties / counsels present:

For the Petitioner: Harshavardhan Abburi, Advocate.

For the Respondent: Mohammed Obaid ur Rahman and
M. Maharshi Viswaraj, Advocates.



Heard on: 15.09.2021 and 22.10.2021.

PER BENCH

This petition is filed by M/s Falcon Minds Consulting Private Limited/ Operational Creditor, stating that an amount of **Rs.10,71,953/-** is due and payable by the Corporate Debtor towards default committed by the Corporate Debtor. Said amount comprises of principal amount of Rs.9,57,113/- plus interest from the date of invoices. Hence this petition is filed under section 9 of Insolvency and Bankruptcy Code, 2016, read with Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments made in the petition are as follows:

2.1 The Operational Creditor is a private limited company incorporated under the Companies Act, 1956 having CIN : U74140DL2014PTC264021 registered with Registrar of Companies, National Capital Territory of Delhi and Haryana vide Certificate of Incorporation dated 27.01.2014 (page 15). It is engaged in providing 'resume writing services'. The Corporate Debtor too is a private limited company incorporated on 21.02.2011 under the Companies Act, having CIN: U72300TG2011PTC072767.

2.2 The Operational Creditor had rendered services of resume-writing to the Corporate Debtor and raised Invoices on 06.12.2018, 08.01.2019 and 04.02.2019.

2.3 The Operational Creditor has issued Form-3/ Form of Demand Notice demanding payment under the I&B Code, 2016. Learned counsel for the respondent/ Corporate Debtor has given Reply Notice dated 13.12.2019 (Page 10) to the learned counsel for the Operational Creditor. By the said reply the Corporate Debtor dismissed the claim

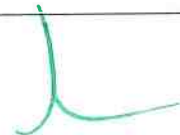


of the Operational Creditor that there is no operational debt of Rs.10,71,953/- and stated that the invoices sent along with Demand Notice are fabricated ones. The Corporate Debtor has called upon the Operational Creditor to validate such invoices from any Contract Agreement, if any, executed between the parties.

3. The respondent/ Corporate Debtor has filed Counter dated 19.03.2020 and the petitioner/ Operational Creditor has filed Rejoinder dated 01.04.2021, which are briefly discussed hereunder.

Averments made by the Corporate Debtor in Counter dated 19.03.2020.	Averments made by the Operational Creditor in Rejoinder dated 01.04.2021.
The Corporate Debtor is the victim of Demand Notice dated 25.11.2019 issued by the applicant. The claim made in the said Demand Notice for an amount of Rs.10,71,953/- is false and the same was issued to obtain wrongful gain from the respondent. (paras 2 and 3)	The Corporate Debtor is not the victim. On the contrary, the Operational Creditor is victim of mischief played by the Corporate Debtor. It is a matter of record that the Corporate Debtor owes a sum Rs.10,71,953/-. (para 2)
Reply Notice dated 13.12.2019 issued by the Corporate Debtor through its counsel reveals that the impugned claim is false and frivolous and the invoices are fabricated. (para 4)	It is denied that the transaction is false and frivolous, when there are many documents including several communications placed on record to show that the Corporate Debtor owes money to the Operational Creditor. (para 3)
Two false complaints being CR No.19/ 2019 and CR No.24/ 2019 with Cyberabad Police	Said two criminal complaints have nothing to do with the





<p>Station by service receivers of the company with intent to damage reputation of the respondent/ company. Consequently, accounts of the Corporate Debtor have been seized in CR No.19/ 2019. Aggrieved by institution of above two complaints, the respondent approached the Hon'ble High Court of Telangana. The Hon'ble High Court has quashed one CR and another is pending disposal at Cyberabad Police Station. (paras 5 and 6)</p>	<p>subject matter of this petition. (para 4)</p>
<p>There is no binding contract or agreement between the parties to the business. Nor the applicant had provided any attested contract or agreement between the applicant basing on which rates could be calculated and such invoices could be prepared. Thus, there is no operational debt. (paras 8, 9 and 10)</p>	<p>It is wrong to say that there is no agreement between the parties, when both of them were communicating and operating their business since 2012. E-mail communications between them do establish the agreement. The Operational Creditor has several records of their Bank statements wherein the Corporate Debtor has transferred several amounts in the past to the Operational Creditor. The Operational Creditor relied on Indian Contract Act, 1872, which provides that an agreement can</p>

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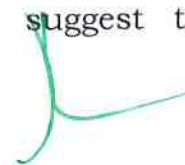
	be oral or written or deduced through conduct of the parties. The Operational Creditor changed its office without intimating the RoC, which is illegal. (para 6)
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4. The respondent/ Corporate Debtor has filed Written Arguments dated 16.09.2021, reiterating its contentions that:

- (i) there is no legally binding contract executed between the parties to substantiate the impugned invoices.
- (ii) Attested contract or agreement has not been executed between the parties.
- (iii) The respondent/ Corporate Debtor used to take services from applicant and used to make payments promptly to the applicant.
- (iv) Since two criminal complaints were lodged against the Operational Creditor, out of vengeance the applicant has filed the present frivolous petition based on concocted invoices.

5. We have gone through the petition filed by the operational creditor, Counter/ Written Submissions of the corporate debtor and Rejoinder of the Operational Creditor. As stated above the operational creditor has also filed copies of various documents including invoices raised by it and communications exchanged between the Operational Creditor and Corporate Debtor.

6. Overall facts and circumstances reveal that though there is no covenant between the Operational Creditor and Corporate Debtor with regard to the services rendered and the amount claimed by the petitioner/ Operational Creditor, probabilities suggest that the



Corporate Debtor did avail services of the respondent/ Corporate Debtor for which remuneration is payable to the Operational Creditor. Thus, in our opinion, theory of “preponderance of probability” would be applicable in the present case, to weigh the evidences of either side and to draw a conclusion in favour of a party which has more favourable factors in its side. The conclusions have to be drawn on the basis of admitted facts and materials and not on the basis of our own presumption of facts.

7. In order to prove the claim, the Operational Creditor has produced invoices at pages 32 to 85, communications exchanged between the Operational Creditor and Corporate Debtor at pages 32 to 85. Though the invoices have not been acknowledged by the Corporate Debtor, the communications exchanged do indicate that there were certain transactions between the Operational Creditor and Corporate Debtor, in terms of services provided and payments made in lieu thereof. For instance, the communication dated 01.05.2019 (page 35) from swathi.mallela@wisdomitservices.com purported to have been addressed to a representative of Operational Creditor states thus,

“We regret the inconvenience caused due to non-payment of invoices since November 2018. Unfortunately, we have been facing crisis within the company which led to non-payment of the salaries to the employees as well. However, we targeting to clear all the due in the month big May 2019 with no further delay.”

Even the Corporate Debtor has admitted in para 10 of its Written Argument dated 16.09.2021 that,

“I further respectfully submit that earlier when the respondent company was established, the respondent company used to take services from applicant and used to make payments promptly to applicant.”



8. It is true that in an application filed under section 9 of the I&B Code, 2016, the Tribunal has to see whether debt and default exist. In the present case though the Operational Creditor is not able to clearly establish the debt and default, based on the circumstances discussed hereinbefore and in view of the doctrine of preponderance of probabilities, we are of the view that the petition is required to be admitted against the Corporate Debtor. The petition is accordingly admitted.

9. Hence, the Adjudicating Authority admits this Petition under Section 9 of I&B Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

(A) Corporate Debtor, namely, M/s Wisdom IT Services India Private Limited is admitted in Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016.

(B) The Bench hereby prohibits 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;



- (C) 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.
- (D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.
- (E) 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.
- (F) That the order of moratorium shall have effect from the date 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, whichever is earlier.
- (G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (H) The Operational Creditor failed to name any one as IRP and has requested the Tribunal to appoint one for the CIRP. The IBBI has recommended a panel of IRPs for appointment as IRP, in compliance with section 16(3)(a) of the Code in order to avoid delay.



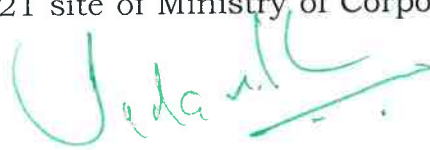
Accordingly, this Tribunal appoints Shri Pesaladinne Madhusudan Reddy having registration No.IBBI/ IPA- 002/ IP- N00926/ 2019-2020/ 12982, residing at 10-2-401 to 403/ 502, Tirumala Classic Apts, Road No.8, Street No.3, West Maredpally, Nehru Nagar, Secunderabad – 500026, e-mail: pmreddy2000@gmail.com as IRP. The aforesaid IRP has no disciplinary proceedings pending against him. Proposed IRP shall file Form-B issued by the Institute of Insolvency Professional within three days. His Authorisation for Assignment is valid upto 07.03.2022. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(I) The petitioner is directed to pay a sum of Rs.1,00,000/- (Rupees one lac only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

17. Accordingly, this Petition is admitted.

18. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


DR.N.V. RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

Karim