

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No. 214/BB/2018
U/s 9 of IBC, 2016
R/w Rule 6 of I&B(AAA) Rules, 2016

In the matter of:

M/s.Datamatics Digital Ltd.,
(Formerly known as TechJini Solutions Pvt. Ltd)
No.948, 24th Main, Gaayathri Chambers
J.P.Nagar, 2nd Phase,
Bangalore-560 078.

- Petitioner /Operational Creditor

Versus

M/s.Sipani Online Pvt. Ltd.
PO Box.7611, 7th Mile, Near Arkere Gate,
L&T Mile, Near Arkere Gate, L&T South City Road,
Bennerghatta Road,
Bangalore – 560 034.

- Respondent/Corporate Debtor

Date of Order: 18th July, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsel Present:

For the Petitioner : Ms.Asha.S.Anand
For the Respondent : Shri H.V.Nagaraja Rao

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P. (IB) No.214/BB/2018 is filed by M/s.Datamatics Digital Ltd.(Petitioner/Operational Creditor') under Section 9 of the IBC, 2016, R/w Rule 6 of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Sipani Online Pvt. Ltd. ('Respondent/Corporate Debtor'), on the ground that the



Corporate Debtor committed default for an amount of Rs.65,28,859/-(Rupees Sixty Five Lakhs Twenty Eight Thousand Eight Hundred Fifty Nine Only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s.Datamatics Digital Ltd. (Petitioner), formerly known as TechJini Solutions Pvt. Ltd. CIN No.U72200KA2005PLC038061, Registered office at : Gaayathri Chambers, Second Floor, No.948, 24th Main, J.P.Nagar, 2nd Phase, Bengaluru 560078.

(2) M/s.Sipani Online Pvt. Ltd. (Respondent) was incorporated on 07.10.2015. The Paid up Share capital of the Company is Rs.1,00,000/-. The parties had entered into an agreement for provisions of IT services for the Corporate Debtor's Company. The Corporate Debtor having enjoyed the services at the behest of the Operational Creditor, is now refusing to pay for the services.

(3) It is stated that the parties entered into a Master Professional Service Agreement dated 04.11.2015, by which the Operational Creditor was engaged by the Corporate Debtor to design an Android Application named as 'Style My Body' Android Application. This was a fixed-bid contract i.e. a project with a pre-determined cost of INR 97,50,000/- for a fixed scope of work as agreed by and between both the parties. The Corporate Debtor was aware that the additional scope of required would carry additional costing. For each portion of the project, a separate statement of work was executed between the parties outlining the scope of work, time-



lines, and required man-hours and the cost thereon. Based on the changes requested by the Corporate Debtor, this Statement of Work was amended from time to time. When the Corporate Debtor's team requested additions and modifications in the scope of work apart from the scope as agreed upon in the original Master Professional Services Agreement, consequently the scope of work widened thereby extending the time for completion and increasing the effort significantly, with a consequential effect on the timeline of the delivery.

- (4) It is stated that the Operational Creditor sent a list of dependencies for resolution dated 28.06.2016, by the Corporate Debtor for its clarity on the mater. The Operational Creditor was ready to complete the work and launch the Application, but the Corporate Debtor delayed the work as it did not resolve the dependences on their end and did not take matters further. Due to the delay caused by the additional scope of work, the launch date of the Application was postponed from 22.04.2016 to June 2016 and then to 14.07.2016. Further the Corporate Debtor modified the scope of work by executing the 2nd Amendment to the Statement of Work # 1 on 13.06.2016 which consequently caused further delay.
- (5) It is stated that the Corporate Debtor's team has acknowledged the postponement vide email dated 14.07.2016, and the live links for the applications were also shared with the Corporate Debtor. The Operational Creditor designed and delivery a fully working production-grade application as per the timelines mutually agreed with the Corporate Debtor on emails



and through various amendments to Statement of Work #1. The Operational Creditor also organized an event for the “go live” and launch of the Application. The Corporate Debtor changed his business model again and requested the Operational Creditor to include additional features in the fixed-bid engagement model. These new and additional features entirely changed the scope of work impacting the timelines and plan of Operational Creditor’s pertaining to the delivery date. Due to changes in the scope of work and considering the feasibility thereof, the parties mutually agreed to work on a monthly-retainer engagement model. The Statement of Work#2 was thus executed. Section 3 of the Statement of Work # 2, clearly states that one of the Client’s (Corporate Debtor) responsibility is : *“Providing the requirement for all development work since requirements are not currently defined”*. Section 4 of the Statement of Work # 2 also provided for additional work *“The following services are not included under this SOW#2 but may be made available through a separate Statement of Work: (Working on any other activities not listed in Scope (Section 3).*

- (6) It is stated that Phase 2 from 16th August 2016 to 17th February 2017 of the project commenced. The statement of Work #2 was to be renewed unless either party expressly revoked it by giving 30 days’ notice to the other party with a condition that termination shall not relieve the Corporate Debtor of the obligation to pay the Operational Creditor for the services rendered. The invoices were to be raised on a monthly basis in arrears for 6 consecutive calendar months from effective billable



start date i.e 16.08.2016. The invoices were raised from 29.02.2016 to 25.05.2017.

(7) Ultimately, Demand Notice in Form 3 of Code was issued on 12th October, 2017 by demand to pay the outstanding amount of Rs. 6,055,888/-. However, the Respondent instead of paying the outstanding amount, has sent reply dated 19th October, 2017 by inter alia denying the liability and on the contrary claimed refund of Rs. 113,69,776 and another Rs.50 Lakhs as damages. And this defence is nothing but to create artificial creating the existence of a "dispute" only with an intention to oust the jurisdiction of this Tribunal. And it is a moonshine defence made without any basis and supporting documents. In fact, till the date of filing the present case summary, the Corporate Debtor has not produced any plausible evidence to show the loss suffered by the Corporate Debtor due to any action of the Operational Creditor and legal remedy they have initiated or availed off against the Operational Creditor in view of the alleged "dispute". The Corporate Debtor does not have the funds to make the necessary payment and is therefore avoiding it, the financial statements as downloaded from the Ministry of Corporate Affairs for the financial year 2015-16; 2016-17, and 2017-18 also disclose the same.

3. The Respondent has opposed the Company Petition by filing Statement of Reply dated 14.02.2019, by inter alia contending as follows:

1) It is stated that the Application involves complicated questions of fact, which are thoroughly disputed and this Tribunal has no jurisdiction to decide such disputed and



complicated questions of fact. Such questions of fact must be decided by a Civil Court having jurisdiction over the subject matter. Hence the Application is liable to be rejected in limine.

- 2) The averment of the application regarding the total amount in default as Rs.65,28,859/- is also denied as totally false, arbitrary and illegal. The entire claim of the Applicant is wholly untenable, illegal and mala fide. In fact, the application owes huge sums of money to this Respondent for having not completed the project at all, leave alone to the satisfaction of the Respondent.
- 3) It is stated that the Respondent entered into a written contract with M/s.Techjini Solutions Pvt. Ltd., dated 4th November, 2015, styled as Master Professional Services Agreement, to design and develop an Android Phone application, named as 'Style My Body Android Application'. The said Android application was to be designed, developed, tested and handed over to the Respondent by the applicant without any software bugs, ready for commercial operation and usage by 22nd April 2016. The said Android Application was supposed to include following three parts.
 - a. Consumer Application
 - b. Merchant Application
 - c. Operations Admin/Operations Dashboard (Web Application)

It is alleged that till date, the said Application have not been developed by the Applicant and the Respondent has been made to suffer huge business losses on investment and corresponding losses in business opportunity.



- 4) It is stated that 'Statement of Work I' relied upon by the Applicant/Petitioner was drafted in a highly vague language, which could not be understood by any ordinary prudent individual. When the Respondent sought certain clarifications regarding the vagueness, the applicant, with mala fide intentions, stated that it is an agreement of International Standards and all clarifications would be given orally during execution of work and the same was made to be believed by the Respondent. The Respondent submitted that the Applicant has utterly failed to meet even a single time line of delivery agreed upon in the contract and the Android and Web Applicants which were supposed to be commercially launched by April 2016, has not seen the light of day. Since the Applicant completely failed to carry out its obligations in keeping up with the schedule and quality of performance on its part, the Respondent was forced to extend the deadline by more than two months, relaxing the penalty clause, till 1st July, 2016 as a grace period of complete the work in all respect. This fact is acknowledged by the email sent by the Applicant on 14th June 2016 through Mr.Virendra Vaishnav, Senior Project Manager of Techjini.
- 5) It is stated that the Applicant utterly and completely failed to deliver the Android Application as per the timeliness agreed under the contract, which made the Android Application, which was supposed to be developed, as obsolete and defunct to operate on the available devices in market. This forced the Respondent to incur further losses and the Respondent was left with no other choice but to seek modifications in the design of the Ops Admit Software/Dashboard and accordingly, the



Applicant, though illegal, charged an additional sum of Rs.3,06,109/- and Rs.27,52,893/- the said modifications were sought to be carried out due to the failure on the part of the Applicant in delivering the applications on time.

- 6) It is stated that the Applicant charged the Respondent on an hourly basis for design and development of the software but did not stick to the agreed timelines. There was absolutely no accountability on the part of the Applicant. The applicant made sure that it would extract as much of money as possible taking undue advantage of the vagueness in the contract drafted by it. The contract was drafted in such a way with the utmost mala fide intention, solely to cheat the Respondent and the same amounts to criminal breach of trust and cheating. The Respondent provided all the infrastructural facilities like providing office space, computers, tablets, printers, electricity, power back up, office staff, food, beverage, office space and equipment to the Applicant for designing and delivery the Software. On several occasion, the so-called technicians and staff were picked up and dropped by the Respondent out of curtesy, but the Applicant failed miserably and repetitively, even after extending the deadlines. The Applicant continued charge the Respondent without delivering results. The Respondent till date has paid the Applicant a sum of Rs.113,69,776/- towards a defunct application, yet to be delivered in an operational condition which is double the agreed price for the same.
- 7) It is stated that the Respondent has entered into another 'Statement of Work II', with an assurance from the applicant that it would deliver the completely operational

platforms to the Respondent by February 2017. Reputation and the Applicant is held responsible for the same.

- 8) The Respondent submits that the entire claim made by the applicant is illegal, arbitrary, untenable and mala fide. The Respondent has thoroughly disputed the illegal claims made by the Applicant in several emails dating back to the year 2015 itself and continuously thereon.
- 9) To cite a few: in an email dated 20.11.2015, addressed to Mr.Ranjith (Sales Manager, TechJini), Mr.Punit Sipani, director of the Respondent Company has expressed its grave concern regarding the failure of the Applicant in maintaining the agreed timelines and reluctance of the Applicant Company to agree to penalty clause. The extract of the mail, which read as under:

"I don't think there is any penalty clause affecting your side. Also understand that it's a 1 Crore contract is not a small amount. Also I have understood that the biggest problem from your side is maintaining time line and therefore this clause is very important. I hope you would understand that I am gravely seriously about this part as it will be affecting my planning and costs in future."

- 10) Vide email dated 17th August, 2016, addressed to Mr.Ranjith Jeyapal (Sales, Mangar, TechJini), the Respondent Company insisted on inclusion of a termination clause with 15th days' notice in Statement of Work II. Despite the request, the Applicant Company, with mala fide intention and using its dominant position, arm-twisted the Respondent into agreeing to a version favourable to the Applicant and refused to incorporate the termination clause. The Respondent Company, which

had already spent over Rs.1.6 Crores by then, was in no position to oppose the Applicant and being left with no other alternative, was forced to agree for the unconscionable terms in the contract.

- 11) The made a counter claim of Rs.113,69,776/- along with an interest @12% p.a., and damages of Rs. 50.00 Lakhs in response to the Demand notice issued under Code. Therefore, the Respondent prayed the Adjudicating Authority to dismiss the petition.
4. The case was listed for admission on various dates viz. 28.11.2018, 20.12.2018, 29.01.2019, 18.02.2019, 11.03.2019, 19.03.2019, 11.04.2019, 29.04.2019, 06.06.2019, 14.06.2019, 02.07.2019, 16.07.2019 & 18.07.2019, and it was adjourned on these dates, at the request of parties, on one ground, or the other including to explore for settlement of issue. Since the Respondent do not want to settle the issue and thus Adjudicating Authority passing this order as per merits.
5. Heard Ms.Asha.A.Anand, learned Counsel for Petitioner and Shri H.V.Nagaraja Rao, and learned Counsel for Respondent. We have carefully perused the pleadings of the parties and extant provisions of the Code and law.
6. Ms.Asha.A.Anand, learned Counsel for Petitioner, while reiterating the various averments made in the Company Petition, has further submitted that the instant Company Petition is filed in accordance with law. The debt and default in question is not in dispute and the Respondent after receiving Demand notice under Code, made counter claim in order to just raise dispute and she has also suggested a qualified Resolution Professional namely Mr.Konduru Prasanth Raju, with Registration No.IBBI/IPA-002/IP-N00708/2018-



2019/12200, who has also filed written Consent in Form-2 dated 30.07.2019, who is eligible to be appointed as IRP.

7. Shri H.V.Nagaraja Rao, learned Counsel for Respondent, while reiterating the various averments made in the Statement of Reply, has further submitted that in response to the demand notice has issued by the Petitioner dated 12.10.2017, Under Rule 5 of the I&B(AAA) Rules, 2016, the Respondent has given a reply dated 19.10.2017, by inter alia calling upon the Petitioner to refund a sum of Rs.113,69,776/- being the amount illegally collected by them and another sum of Rs.50.00 lakhs representing the damages, together with interest at 12% p.a on the same till realisation, within a period of 15 days from the date of receipt of this notice and also reserved the right to initiate the criminal proceedings against the Petitioner.

8. On perusal of the pleadings of both the parties, it is not in dispute that the agreement in question, which raises cause of action, is not in dispute but only contends that it was executed under un-exceptionable circumstances. It is also not in dispute that the Respondent raised any substantial pre-existing dispute except raising untenable grounds like simply denying the claim, making counter claim etc. It is relevant to point out that the Respondent having paid a sum of Rs.113,69,776/- to the petitioner, is now claiming to return the same amount with further amount of Rs. 50 lakhs towards damages , that too in reply to statutory demand notice issued by the Petitioner. Admittedly, the Respondent has paid the amount for the service rendered in question without raising question of alleged defective service.

9. The Petitioner has filed Ledger Entries of the Debtor (*at Page No.52 to 62, Annexure 'C' in the main CP*), to show that the Corporate Debtor is liable to pay the amount in question. The Petitioner, Ms.Swapna Dora, Manger-Finance, Accounts and MIS at Petitioner Company has filed a notarised affidavit dated 26.09.2018, by inter alia stating that the present Application/Petition is filed against the Corporate Debtor for committing default of non-payment of Rs.52,55,415/- along with interest of Rs.12,73,444/- towards services provided under the Master Professional Services Agreement and the Statement of Work, a Demand Notice was issued to the Respondent on 12.10.2017 and they have submitted a Reply on 19.10.2017 and a Rejoinder to the Legal Notice was also sent on 14.11.2017 for which there was no reply till date. The Respondent has not made the payment in its entirety and as such, the default in payment continues till this date.
10. In latest judgement rendered in *Transmission Corporation of A.P. Ltd. Vs. Equipment Conductors and Cables Ltd.*,¹ Supreme Court of India, it is, inter alia, held that existence of undisputed debt is sine qua non of initiating CIRP. As per para 34 of judgement, it is stated that Adjudicating Authority, while examining an application filed under Section 9 of Code, will have to determine:
- i. Whether there is an 'operational debt' as defined exceeding Rs.1 Lakh?
 - ii. Whether documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

¹(CA No.9597 of 2018) dated 23rd October, 2018, (2018) 147 CLA 112 (SC)



- iii. Whether there is existence of dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before receipt of demand notice of the unpaid operational debt in relation to such dispute?

If any one of aforesaid conditions is lacking, the application would have to be rejected. In the instant case, admittedly the Respondent has not raised any pre-existing dispute except giving reply by raising un-tenable ground that the payment made earlier with regards other transaction was liable to be recovered, which amount to admitting the debt and default in question and it cannot be termed as existing dispute.

11. Therefore, we are of the considered opinion that the instant Company Petition is filed in accordance with law by duly enclosing the documents to establish that the debt and default in question. There is no pre-existing dispute established by the Respondent and the dispute raised is on untenable and baseless grounds. Therefore, it is a fit case to admit by initiating CIRP, appointing IRP, Moratorium etc.
12. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, under Section 9(5)(i) and other extant provisions of the Code, C.P. (IB) No.214/BB/2018 is hereby admitted with the following consequential directions:
 - (1) We hereby appointed Mr.Konduru Prasanth Raju, with Registration No. IBBI/IPA-002/IP-N00708/2018 2019/12200, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor



namely M/s.Sipani Online Pvt. Ltd to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

(2) The following moratorium is declared prohibiting all of the following, namely:

- a. 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;
- b. transferring, encumbering, alienating or disposing of by the corporate debtor 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 Securitization 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.
- e. 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.
- f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the



Central Government in consultation with any financial regulator.

g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.

- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file his progress reports to the Adjudicating Authority from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on **30th September, 2019.**


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Raushan