

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 04.09.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 102/BB/2020	For pronouncement of orders	Sec 9 of I&B code 2016	M S Sudarshan	S K Ravi	Broadvisionn Services Pvt Ltd	Vinod Sundar Raman

ADVOCATE FOR PETITIONER/s:

ADVOCATE FOR RESPONDENT/s:

ORDER

CP (IB) No. 102/BB/2020 is disposed of by separate order.

MEMBER (T)

MEMBER (J)

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

C.P. (IB)No.102/BB/2020
U/s. 9 of the IBC, 2016
R/w Rules 6 of I&B (AAA) Rules, 2016

Between

Mr. M.S.Sudarshan,
No.881/F, V S Arcade,
4th Floor, Modi Hospital Road,
Basaveshwaranagar 2nd Stage,
Bengaluru – 560 079

... Petitioner/Operational Creditor

And

M/s. Broadvision Services Private Limited,
43/1, Flat-4, Ground Floor,
Vaishnavi Woods, 1st Main,
3rd Phase, J.P Nagar,
Bangalore – 560 078.

... Respondent/Corporate Debtor

Date of Order: 4th September, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Petitioner : Mr. S.K. Ravi

For the Respondent : Mr. Vinod Sundar Raman

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P. (IB)No.102/BB/2020 is filed by Mr. M.S. Sudarshan ('Petitioner/Applicant/Operational Creditor'), U/s. 9 of the IBC,

2016 R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Broadvision Services Private Limited, on the ground that it has committed default for total amount of Rs.85,80,290.26/-(Rupees Eight Five Lakhs Eighty Thousand Two Hundred and Ninety and Twenty Six Paise Only).

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

1. M/s. Broadvision Services Private Limited (Respondent/Corporate Debtor) was incorporated on 29.12.2008, with CIN: U85191KA2008PTC048722, having its registered office situated at No. 43/1, Flat-4, Ground Floor, Vaishnavi Woods, 1st Main, 3rd Phase, JP Nagar Bangalore - 560078. Its Authorised share capital is Rs.10,00,000/- and the paid up share capital is Rs.1,00,000/-.
2. Mr. M.S.Sudarshan, the Petitioner, is proprietor of M/s. MSM Consultancy Services, a proprietorship concern, providing the services of leasing high end configured systems and computer accessories to various companies. The Petitioner had leased many systems to the group Company of Corporate Debtor on monthly rental basis. On 19.03.2019, an email was sent to the Operational Creditor by the group Company (Sister Concern) of the Corporate Debtor to raise all invoices in the name of Corporate Debtor from the month of April, 2019 and also attached GST certificate of the Corporate Debtor for invoicing purpose. The Corporate debtor, after availing the services from the Operational Creditor, has failed to pay the rents for the services availed by them for the period from 03.04.2019 till



18.01.2020. The Operational Creditor sent several emails and a notice seeking payment of the rental amount due.

3. Aggrieved by the act of the Corporate Debtor, the Petitioner has issues sent a Form 3 notice demanding Notice dated 21.11.2019 by demanding to pay defaulted amount within a period of 10 days from the date of receipt of copy of this order provided there is existing dispute. However, the Corporate Debtor sent a reply dated 02.12.2019 by denying the liability. The Corporate Debtor has 73 systems (2 back-up systems) and 78 monitors in their custody/possession, which were leased out on rental basis by the Operational Creditor. However, the Corporate Debtor returned 41 systems and 41 monitors on 04.01.2020 and 32 systems and 37 monitors on 18.01.2020. But failed to pay the outstanding amount till date.
3. The Corporate Debtor/ Respondent has filed its Statement of objections dated 28.08.2020, by *inter alia* contending as follows:
 - (1) The Petition is not maintainable in view of the pre-existing dispute between the Parties. The Petitioner has failed to produce any document to substantiates the rates that have been charged is on agreed terms. The Corporate Debtor, as early as December 2018, has asked for discounted rates to be provided and made it clear in July 2019 itself that discounts needed to be retrospectively applied. The rates at which invoices have been raised have never been agreed to by the Corporate Debtor.
 - (2) There were certain outstanding amounts payable by the Corporate Debtor to the Petitioner, for the period from January to July 2019 totalling to about Rs.62 lakhs, in lieu of which, the Petitioner/Applicant has accepted a settlement amount for Rs.25 lakhs. Therefore, any amount due to the Applicant is only for the



period from August 2019 to January 2020, and applying the same calculation as in the above settlement, the amount payable by Corporate Debtor to the Applicant is only around Rs.18 lakhs. The Applicant, inspite of the meetings with the Corporate Debtor in December 2018, wherein discounted rates were to be provided, continued to raise invoices as per old rates, knowing fully well that these would not be honoured. The Applicant cannot be allowed to take advantage of his own inactions.

- (3) In reply to the Demand notice sent by the Applicant, the Corporate Debtor has replied in detail vide its reply dated 2nd December, 2019, highlighting all the above points and annexing the relevant documents. However, the Applicant in his Application has concealed this fact and has not approached this Tribunal with clean hands. Hence the Applicant has initiated this proceedings only to intimidate the Corporate Debtor and to give in to the Applicant's illegal demands, and is abusing this process as a recovery mechanism.
- (4) The Corporate Debtor is solvent Company and not insolvent by any stretch of imagination. The Corporate Debtor holds the distinction of being the first ever Indian Company to enter an official treaty co-production animation feature film title 'Mia and Me' under the Indo German Audio visual co production treaty signed between Govt of India and Germany, on February 16,2007. It has made a turnover of Rs. 5.67 cr during FY 2019-20 and the net profit of Rs. 30.20 Lakhs and it is in a position to meet all legal liabilities.
4. Heard Mr. S.K. Ravi, learned Counsel for the Petitioner, and Mr. Vinod Sundar Raman, learned Counsel for the Respondent, **through Video Conference**. We have carefully perused the pleadings of the



Parties and extant provisions of the Code, the rules made thereunder and the Law on the issue.

5. Mr. S.K. Ravi, learned Counsel for the Petitioner, while reiterating various averments made in the Company Petition, as briefly stated supra, has further submitted that the Petitioner is willing to settle the issue with the Corporate Debtor and thus the case may be disposed of granting liberty to the Parties to settle the issue between themselves.
6. Mr. Vinod Sundar Raman, learned Counsel for the Respondent, on other hand, while reiterating various averments made in the Reply, as briefly stated supra, has further submitted that even though the instant Petition is filed by suppressing material facts, and there is a legally tenable pre-existing dispute making the Petition not maintainable, the Corporate Debtor, in order to put an end to the un-warranted litigation, is expressed its willingness to settle the issue provided the Petitioner, offer reasonable terms and conditions for settlement of the issue in question.
7. By perusal of pleadings along with supported documents filed by the Parties, prima facie show that there are several disputed question of facts with reference to the claims in question. The Reply dated 2nd December, 2019 issued by the Corporate Debtor to the Operational Creditors, clearly established that there is legally tenable pre-existing dispute with regard to the quality of services rendered by Petitioner to the Respondent and also the calculation of claim itself is under dispute. It is well established principle of Law that CIRP cannot initiated, in an Application/Petition, filed U/s 9 of Code, if there is a tenable legal pre-existing ^{disputed} raised by other Party. It is also relevant to point out here ^{that} ~~though~~ the Corporate Debtor raised pre-



existing dispute and offered to settle the issue if any, by its Reply dated 2nd December, 2019 to the Demand Notice dated 21st November, 2019, by raising several issues. Since both the Parties expressed their willingness to settle the issue in question between themselves, we are inclined to dispose of the instant Company Petition by permitting them to settle the issue, instead of continuing the litigation, basing on principles followed on settling the earlier dues.

8. In the result, **C.P. (IB) No.102/BB/2020** is hereby disposed of by permitting and directing both the Parties to settle the issue in question amicably between themselves. No order as to costs.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**