



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 563/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Diligent Media Corporation Limited

[CIN: L22120MH2005PLC151377]

...Operational Creditor/Applicant

V/s

**Kasya Telecommunications & IT Solutions
Private Limited**

[CIN: U74999MH2017PTC296748]

...Corporate Debtor/Corporate Debtor

Order Dated: 25.07.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Swati Chandan, Advocate.

For the Corporate Debtor(s) : None Present.

ORDER

Per: Prabhat Kumar, Member Technical



1. This is an Application being C.P. (IB) No. 563/MB/C-IV/2021 filed on 04.06.2021 by Mr. Nishikant Upadhyay, Director of Diligent Media Corporation Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Kasya Telecommunications & IT Solutions Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
 - 1.1 The Operational Creditor has filed Board Resolution dated 12.02.2021 in support of authorization in favour of Mr. Nishikant Upadhyay, Director of the Operational Creditor authorising him to file the present company application on behalf of the Operational Creditor.
 - 1.2 The total amount of debt claimed by the Operational Creditor in the Part 4 of the Company Petition is Rs.45,04,06,466/- (Rupees Forty Five Crores Four Lakhs Six Thousand Four Hundred Sixty Six only) and it includes refund of advance amount of Rs.36,35,00,000/- along with interest @12% p.a. from 31.05.2019 amounting to Rs.8,69,06,466/- as on 01.06.2021. The date of default as mentioned in the Part IV of the Application is 31.05.2019.



2. The Operational Creditor is a private limited company 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 2013 and is having its registered office at Navi Mumbai.

2.1 The Operational Creditor had approached Corporate Debtor and requested the services of the Corporate Debtor with regard to design, maintenance, implementation, support and provision of IT consultancy services for customized software. The Operational Creditor had entered into a Memorandum of Understanding ("MOU") dated 01.09.2018 with the Corporate Debtor for supply of software and IT related services as specified in the MOU.

2.2 The terms and the conditions as entailed in the MOU obligated the Petitioner to pay certain amounts not exceeding Rs. 40,00,00,000/- (Rupees Forty Crores Only) crores to enable the Corporate Debtor to procure capital equipment and undertake allied activities.

2.3 The Operational Creditor had advanced a sum of Rs. 36,35,00,000/- from time to time to the Corporate Debtor towards the aforesaid agreement. As per the MOU, the



Corporate Debtor was to arrange the complete the work on or before 30.05.2019. However, despite repeated reminders it failed to do so as a result of which it is liable to refund the advance amount along with interest @12% p.a.

2.4 The Operational Creditor sent a notice dated 19.11.2019 to the Corporate Debtor calling upon it to repay the sums advanced. On 20.12.2019, the Corporate Debtor requested for time to respond to the Notice. However, no response was thereafter received in furtherance of their letter dated 20.12.2019.

2.5 The Operational Creditor vide its letter dated 17.01.2020, requested for repayment of the monies advanced. However, the Operational Creditor did not receive any repayment or the performance of the services.

2.6 Accordingly, it is liable to repay the amount advanced by the Operational Creditor alongwith interest @12% p.a aggregating to Rs.45,04,06,466/- (Rupees Forty Five Crores Four Lakhs Six Thousand Four Hundred Sixty Six Only).

2.7 Therefore, the Operational Creditor issued the Demand Notice dated 06.04.2021 under Section 8 of the Code to the Corporate Debtor by email. However, the Corporate Debtor neither



responded to the demand notice nor made any payments, towards part or full satisfaction of the operational debt owed to the Operational Creditor.

3. This matter was listed on 26.08.2021 and a court notice was issued to the Corporate Debtor. The Corporate debtor appeared on 03.12.2021 and sought time for settlement of the debt. On 23.12.2021, the Corporate Debtor was again asked to file reply; again on 07.04.2021, the Director of the Corporate Debtor sought 3 weeks, however, no reply was filed by the Corporate Debtor. Further, there was no representation on behalf of the Corporate Debtor on 21.06.2022, 23.08.2022, and 16.12.2022 on which, the Corporate Debtor was set *ex-parte*. Thereafter, the Corporate Debtor was not present again on 20.02.2023, 10.04.2023, 10.05.2023 and 20.06.2023, when this matter was reserved for order.
4. We have perused the documents and pleadings available on record and considered the arguments of both the sides.

- 4.1 We find that the Corporate Debtor has not raised any dispute as no reply has been filed and has also failed to supply the goods against the advance paid to the Corporate Debtor. Vide order dated 20.02.2023, the Operational Creditor was asked to state the value of total order under which advance of Rs. 36.35 crores was paid, but the Operational Creditor has not filed copy of any



Purchase Order issued pursuant to the said MOU. However, we find from the Agreement dated 01.09.2018 that the services were to be provided in 36 months and the Corporate Debtor was to be paid cost incurred plus 5% markup thereon.

4.2 The amount of advance against provision of services has been held to be the “*Operational debt*” within the definition of Operational Debt u/s. 5(21) of the Insolvency and Bankruptcy Code, 2016 in the case of *M/s Consolidated Construction Consortium Limited v. M/s Hitro Energy Solutions Private Limited, Civil Appeal No. 2839 of 2020 (judgment dated February 4, 2022)* by the Hon’ble Supreme Court.

4.3 The Operational debt is defined u/s 5(21) of the Code to mean “*a claim in respect of provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority*”.

4.4 On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant as the required threshold limit to file a petition u/s 4 of the Insolvency and



Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount. The Corporate Debtor has not notified the existence of any dispute. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission.

4.5 After perusal of the documents on record and arguments advanced by both the parties, this Bench is of the considered view that this Petition under section 9 filed by the Operational Creditor to initiate the CIRP in the matter of the Corporate Debtor deserves to be admitted under section 9(5)(i) of the Insolvency And Bankruptcy Code, 2016.

5. The Applicant has proposed the name of Mr. Brijendra Kumar Mishra, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00109/2017-2018/10257] and Email Id.- mishrabk1959@gmail.com; and has submitted his consent letter dated 11.07.2021 u/s. 9 (4) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

ORDER



This Application being C.P. (IB) No. 563/NCLT/MB/C-IV/2021 filed under Section 9 of I&B Code, 2016, filed by Diligent Media Corporation Limited, Operational Creditor/ Applicant against Kasya Telecommunications & IT Solutions Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 Operational 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.



VI. That this Bench hereby appoints Mr. Brijendra Kumar Mishra, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00109/2017-2018/10257] and Email Id.- mishrabk1959@gmail.com; as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VII. The Operational Creditor shall deposit a sum of Rs. 5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.



IX. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)

//LRA-Akshata Shah//

Sd/-

Kishore Vemulapalli
Member (Judicial)