

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

CP (IB) No.4287/MB.IV/2018

*Under section 9 of the Insolvency and  
Bankruptcy Code, 2016*

*In the matter of*

SITI Networks Limited

CIN: L64200MH2006PLC160733

...Operational Creditor

Versus

Network18Media & Investments Limited

CIN: L65910MH1996PLC280969

... Corporate Debtor

Order pronounced on : 04.08.2020

*Coram:*

Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Ravikumar Duraisamy : Member (Technical)

*Appearances:*

For the Operational Creditor : Mr Rohan Sawant a/w Ms  
WarishaParkar and Mr Ryan  
Mendes i/b Parinam Law  
Associates, Advocates

For the Corporate Debtor : Mr Ravi Kadam, Senior  
Advocate, a/w Mr Sagar Ghogre,  
i/b Mr Govind Solanke,  
Advocates

ORDER

*Per: Rajasekhar V.K., Member (Judicial)*

1. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by SITI Networks Limited (*Operational Creditor*), a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Authorised Signatory, Mr Amit Sethi, on the basis of a Board Resolution dated 01.08.2018 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Network 18 Media & Investments Limited (*Corporate Debtor*).
2. The Corporate Debtor is a listed public company limited by shares and incorporated on 16.02.1996 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is L65910MH1996PLC280969. Its registered office is at Empire Complex (1<sup>st</sup> Floor), No.414, Senapati Bapat Marg, Lower Parel, Mumbai 400 013, within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹ 1,00,46,506.00 (Rupees one crore forty-six thousand five hundred and six only) as principal and ₹ 1,49,06,813.00 (Rupees one crore forty-nine lakh six thousand eight hundred and thirteen only) as interest as on 12.01.2016, which is the date of default.
4. The case of the Operational Creditor is as follows: -
  - (a) The Operational Creditor is a Multi-System Operator (MSO) functioning in the State of West Bengal (*para 1 at page 4 of the Petition*);

- (b) In August 2011, the Corporate Debtor approached the Operational Creditor for allotment of band and placement on its cable network TV, The History channel on both analogue and digital modes. Subsequently, the parties entered into an Agreement for Allotment of Band and Placement on 01.09.2011 (*the Agreement*), which was to run for twelve months from 01.09.2011 to 31.08.2012 (*para 3 & 4 at page 4-5 of the Petition*);
- (c) The consideration was fixed at ₹ 90,00,000/- (Rupees ninety lakh only) plus service tax, divided into ₹ 7,50,000/- per month (*para 5 & 6 at page 5-6 of the Petition*);
- (d) The corporate debtor never raised any issues with regard to the services provided by the Operational Creditor. However, the monthly invoices raised by the Operational Creditor were not cleared on time (*para 9 at page 6-7 of the Petition*);
- (e) After repeated follow-ups, the Corporate Debtor made part payment to the tune of ₹ 12,79,99,875/- (Rupees twelve crore seventy-nine lakh ninety-nine thousand eight hundred and seventy-five only, against the unpaid invoices till 12.01.2016. After appropriating this amount, there still remains a sum of ₹ 1,00,46,506/- (Rupees one crore forty-six thousand five hundred and six only) due and payable by the Corporate Debtor (*para 10 & 11 at page 7 of the Petition*).
5. Invoices have been placed on record as Exhibit 'B' at pp.16-90. The invoices provide for interest in case of delayed payments, to be charged at the rate of 18% per annum. Bank statements are also attached as Exhibit 'C' at pages 93-203. The total debt due and payable to the Operational Creditor is ₹ 2,49,53,319.00 (Rupees two

crore forty-nine lakh fifty-three thousand three hundred and nineteen only), as mentioned at page 70-75 of the Rejoinder of the Petition.

6. The Operational Creditor had served a Demand Notice in Form 3 dated 09.08.2018 to the Corporate Debtor (Exhibit 'D', pp.204-207) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice.
7. Mr Ravi Kadam, Senior Advocate, a/w Mr Sagar Ghogrei/b Mr Govind Solanke, Learned Counsel appeared on behalf of the Corporate Debtor and made his submissions.
8. In its reply dated 03.05.2019, the Corporate Debtor has set up the following defence:-
  - (a) The Demand Notice has not been issued in accordance with Form 3 read with rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, inasmuch as it fails to give details of transactions on account of which the debt fell due and the date from which such debt fell due. The Demand Notice vaguely mentions that "various agreements including agreement dated 01.09.2011 for the periods as mentioned in the said Agreement" have been used. The wordings have been intentionally kept vague to cause confusion. Therefore, the Operational Creditor has failed to give particulars of the alleged operational debt such as total amount of debt, details of transactions on account of which the debt fell due, and the date from which such debt fell due. On this ground alone, the present CP should be dismissed with costs (*paras 4.2, 4.3, 4.4 at page 3-5 of the Reply*);

- (b) The Demand Notice does not contain the Statement of Accounts, though there is a reference to it. However, the same has been annexed to the present Petition at pp.91 to 93 as if it forms part of the Demand Notice. The Corporate Debtor disputes the authenticity of the Statement of Accounts and submits that it is based on non-existent liability having no co-relation to the said Agreement or the invoices raised under the said Agreement (*para 4.5 & 4.6 at page 6 of the Reply*);
- (c) In so far as the Agreement dated 01.09.2011 is concerned, the term thereof was from 01.09.2011 to 31.08.2012. An amount of ₹ 7.50 lakh was payable per month if the Agreement had run its full course. however, the Agreement was terminated on 11.05.2012 with effect from 13.06.2012. Hence, actually only ten invoices were raised under the said Agreement. The Operational Creditor has failed to give any explanation as to how it has raised seventy-five invoices (*paras 5.2 & 5.3 at page 7-8 of the Reply*);
- (d) In para 5 at p.5 of the Petition, it is stated that the Operational Creditor was entitled to receive ₹ 90 lakh. The manner in which this sum was to be received, has been stated in paras 6, 7 and 8. However, at page 7, para 10, it has been stated that the respondent (corporate debtor) has paid ₹ 12,79,99,875/- (Rupees twelve crore seventy-nine lakh ninety-nine thousand eight hundred and seventy-five only). No correlation between the alleged entitled amount and the amount paid has been established (*paras 5.4 at page 8-9 of the Reply*);
- (e) The Agreement for Allotment of Band and Placement was dated 22.11.2011 and not 01.09.2011 as claimed in the Application. This was an agreement to allot bands for and place The History

Channel on the cable network of Siti Cable Network Limited (earlier, Wire and Wireless (India) Limited) in Kolkata Territory (*paras 8 & 9 at page 10-11 of the Reply*);

- (f) In accordance with clause 2 of the Agreement, Wire & Wireless (India) Limited raised invoices dated 16.09.2011, 01.10.2011, 01.11.2011, 01.12.2011, 01.01.2012, 01.02.2012, 01.03.2012, 01.04.2012, 01.05.2012 and 01.06.2012 (a total of ten invoices). These invoices have been paid after deduction of necessary TDS vide cheques dated 29.02.2012 for ₹ 40,56,025/-, dated 27.08.2012 for ₹ 24,50,346/- and dated 28.12.2012 for ₹ 11,63,912/-. All three cheques have been duly cleared when presented for payment (*paras 11, 12, 13 & 14 at page 12-13 of the Reply*);
- (g) In so far as the invoices at pp.16-90 are concerned, they pertain to the period from 01.09.2011 to 31.08.2012. The invoices were raised by Wire & Wireless (India) Limited in the name of the Corporate Debtor. These were required to be paid within seven days from the date of each invoice. Most of the invoices do not pertain to the Territory of the said Agreement [*paras 25.9 (a) to 25.9 (vvv) at page 17-54 of the Reply*];
- (h) The invoices attached to the petition do not carry the logo of Wire & Wireless (India) Limited, which was used by the Operational Creditor on its invoices at the relevant point of time. Therefore, they seem to have been generated recently and may be fabricated (*para 25.10 at page 54 of the Reply*); and
- (i) Therefore, there is no amount due and payable to the Operational Creditor. All legitimate invoices have been paid. There is no acknowledgement of liability by making part payment, as alleged.

There is also the issue of limitation with respect to the invoices  
(*para 25.16 at page of the Reply*).

9. We have heard the arguments of both sides and perused the records.

*Findings*

10. In the original petition, there was reference only to one agreement dated 01.09.2011. When this was challenged by the Corporate Debtor in reply, a total of five agreements was brought out in the Rejoinder filed by the Operational Creditor. These agreements are dated 24.05.2012 (*For CNN-IBN*), 24.05.2012 (*for IBN-7*), 24.05.2012 (*for CNBC-TV18*), 24.05.2012 (*for CNBC-Awaaz*) and 22.11.2011 (*for The History Channel*). There is no reference to the agreement dated 01.09.2011 at all. There is no reason why copies of these Agreements were not sent along with the Demand Notice or annexed with the original company petition.
11. In so far as the original Company Petition itself is concerned, it pertained only to the Territory of West Bengal. However, the fresh set of Agreements attached to the Rejoinder and referred to in para iii(a) at p.6 thereof do not mention the Agreement dated 01.09.2011 at all.
12. The Operational Creditor has shifted positions, claiming in the Rejoinder that the invoices were raised based on all the agreements, which was not the stand taken in the original Petition at all. In para (b), the Operational Creditor submits that some of the invoices were "inadvertently" left out of the original Petition.
13. Under the IBC architecture, the claim of an operational creditor has to be based on the Demand Notice under section 8. In the present case, the Demand Notice did not specifically mention any agreement, but simply refers to "various agreements" executed between the parties to

carry or place "TV channels" on the network of the claimant. Only a portion of the invoices had been annexed. Copies of the Agreements had not been annexed, nor were any details furnished. The workings for computation of default required under Sl No.2 of the Demand Notice have not been attached therewith. In its place, statement of accounts was attached. There is no default date specified.

14. The Operational Creditor has also not attached the mandatory affidavit of no dispute in terms of section 9(3)(b) of the IBC.
15. For the reasons stated above, the present petition fails and therefore, the same is rejected.
16. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on grounds only of dismissal of the present petition by this Adjudicating Authority.
17. Let a copy of this order be communicated to the parties in terms of the provisions of section 9(5)(ii) of the IBC.

Sd/-  
Ravikumar Duraisamy  
Member (Technical)

Sd/-  
Rajasekhar V.K.  
Member (Judicial)