

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

CP (IB) No.4002/MB-IV/2019

Under Section 9 of the IBC, 2016

In the matter of

SITI NETWORKS LIMITED

[CIN: L64200MH2006PLC160733]

...Operational Creditor

v/s.

TELEVISION HOME SHOPPING
NETWORK LIMITED

(formerly TV 18 Home Shopping Network
Limited)

[CIN: U93091MH2006PLC281105]

...Corporate Debtor

Order Delivered on: 03.03.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Vishal Pattabiraman, Ld. Counsel

For the Respondent:

Mr. Allan David i/b MZM Legal, Ld.
Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) SITI NETWORKS LIMITED, (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against TELEVISION HOME SHOPPING NETWORK LIMITED (formerly TV 18 Home Shopping Network Limited), (“the Corporate Debtor”).

1.1. The petition is filed on 08.11.2019 claiming an amount of Rs.43,68,363 with interest of 18 % p.a. on the outstanding amount.

2. The Operational Creditor/Applicant is a company is engaged in providing services of placement of TV Channels all over India. The Corporate Debtor is engaged in service of providing TV channels on various networks.

2.1. The Corporate Debtor approached and requested the Operational Creditor/Applicant to place its satellite TV channel on the network of the Operational Creditor/Applicant. Both the parties executed several Agreements dated 16th October 2015, 24th November 2015 and 29th October 2015 at various locations.

2.2. The Operational Creditor/Applicant provided satisfactory services to the Corporate Debtor thereby abiding, implementing and ensuring compliance of the Agreement and raised the invoices for the consideration on the Corporate Debtor for the services. The Corporate Debtor did not raise any grievance with relation to the services and invoices provided by the Operational Creditor and continued to make part payments for raised

invoices for the period 01.01.2019 to 31.05.2019 the same. The Corporate Debtor was supposed to pay the agreed service fee on or before the due date, but failed to discharge its obligation and did not pay the full amount of the consideration despite receiving the services and invoices for the same

2.3. The Operational Creditor further submits that, vide an email dated 01st May 2018, the Corporate Debtor provided two options for the Renewal of the Agreement for the period of 14 months w.e.f. 01 April 2018 to 31 May 2019. The Operational Creditor/Applicant accepted their proposal vide e-mail; dated 30.07.2018 clarifying that the above renewal deal is mutually agreed for a period of 14 months and invoices to be generated accordingly.

2.4. Vide an email dated 02nd May 2019, the Corporate Debtor issued a termination notice to the Operational Creditor/Applicant and informed the Operational Creditor/Applicant that *“it was not in a position to renew/extend the Agreement for a further period due to unavoidable circumstances, the said email should be treated as an advance termination notice of 21 days”*.

2.5. In spite of several requests, the Corporate Debtor refused, neglected and avoided to pay its outstanding amounts, the Operational Creditor/Applicant issued a Demand Notice in Form 3 under the Insolvency and Bankruptcy Code, 2016 dated 20th August 2019 to the Corporate Debtor demanding payment in respect of the outstanding amount. The Corporate Debtor replied to the Demand Notice on 20th September 2019, by raising frivolous allegation with a desperate attempt to create a dispute.

2.6. The Operational creditor has stated that, the contents of demand notice dated 18.10.2019 are similar to the demand notice dated 20.09.2019 due

to this it has not placed any reliance on the demand notice dated 20.09.2019 as it was addressed on “without prejudice” basis.

2.7. The Operational Creditor/Applicant once again issued a Demand Notice dated 18th October 2019 on the Corporate Debtor. However, the Corporate Debtor till date has failed to respond the said demand notice.

3. The Corporate Debtor vide its reply to the Petitioner dated 20th September 2019 set out the above facts clearly disputing the unpaid operational debt as demanded by the Petitioner and has raised objection in relation to maintainability of the Company Petition; and there was no existing agreement between the parties for carrying and placing of channels of the Corporate debtor on the Operational Creditors network during the period invoices were raised.

3.1. The Corporate Debtor states that, in the terms of the channel carriage agreement, it was laid down that any extension or renewal of the agreement would be done mutually by both the parties and the original period under the Channel Carriage Agreement as adduced into writing by and between the Petitioner & the Respondent has already expired.

3.2. It is clearly understood from the email dated 1st May 2018 addressed by the Respondent to the Petitioner that the price was not acceptable to the Respondent and that the Respondent had proposed an alternate price at a 40% discounted rate to the Petitioner. The Respondent also stated that the deal period of placement would be from 1st April 2018 to 31st March 2019. The Petitioner after a period Approximately 2 months responded to the email addressed by the respondent accepting the said price quoted by the Respondent.

3.3. The Petitioner claimed dues under invoices raised for a period of 14 months which was clearly contested by the Respondent vide its email dated 9th May 2019. Despite being aware that the payments asked by the Petitioner are arbitrary and unsubstantiated the Petitioner went ahead and issued a demand notice upon the Respondent dated 20th August 2019 claiming an unpaid operational debt as alleged to be due and payable by the Respondent under the present Application.

3.4. The invoices raised by the respondent are arbitrary and not in the consonance with the arrangement proposed by the petitioner and further there is no agreement in writing between the parties on the arrangement proposed by its email dated 30.07.2018. As per the per section 3 of Interconnect Regulations 2018 “*every service provider shall within 30 days of receipt of request from a service provider must enter into an Interconnect Agreement, on non- discriminatory basis, with such service provider*”.

3.5. The Corporate Debtor in its additional reply has stated that, instead of Interconnect Regulations 2017 the it has relied upon Interconnect Regulations 2018 in its original reply. It is pertinent to note that while the Interconnect Regulations 2017 govern the Multi System Operators, Local Cable operators under section 2dd) and 2(bb). These regulations are *Pari Materia* to each other.

4. The Operational Creditor through its *Affidavit -in Rejoinder* has denied each and every averment made by the Corporate Debtor in reply and additional reply.

Findings

5. We have heard the submissions made by the counsel on both the sides and perused the records.

6. This bench notices that the Corporate Debtor has not disputed the placement of its channel on the network of Operational Creditor after expiry of the agreement on 31.3.2018 between both the parties and this fact is further validated by an email dated 02.05.2019 whereby the Corporate Debtor had communicated that *“due to unavoidable circumstances we are not in position to renew/extent the agreement for any further period. Kindly treat this mail as advance termination notice of 21 days (last date may 23, 2019)”*. As regards dispute as to the rates is concerned we do not find any merit in the contention of the Corporate debtor as it continued to place its channel on the Operational Creditor’s network and the proposal of the Corporate debtor vide email dated 01.05.2018 was confirmed by the Operational Creditor vide its email dated 26.07.2018. As follow up to this mail the Operational Creditor has further communicated to the Operational Creditor vide mail dated 30.07.2018 that *“we mutually the below deal for 14 months we are generating invoices accordingly”*. In view this the plea of dispute raised by the Corporate Debtor looks vexatious and artificial.
7. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Therefore, the Application filed by the Operational Creditor is liable to be admitted.

ORDER

The petition bearing CP (IB) No.4002/MB-IV/2019 filed by **SITI NETWORKS LIMITED**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **TELEVISION HOME SHOPPING NETWORK LIMITED** (“the Corporate Debtor) is **ADMITTED**.

- 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. The bench hereby appoints Mr. Sushil Kumar Agrawal, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P02136/2020-2021/13281 Email: avafca@gmail.com Mb No 9748055026. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- IX. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

PRABHAT KUMAR
MEMBER (TECHNICAL)
03.03.2023.

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)