



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT No. V, MUMBAI BENCH**

C.P. (IB)785/MB/2021

Under section 8 & 9 of the IBC, 2016

In the matter of

Mr. Sanjay Bhandari

404-405 Square One,

Juhu Gulmohur Road No. 1,

Near Juhu Circle Mumbai -400 049

.... Petitioner / Operational Creditor

V/s.

Eros International Media Ltd.

201, Kailash Plaza, floor Plot No.12, Off Veera

Desai Road, Andheri West, Mumbai - 400 053.

Respondent/Corporate Debtor

Order Reserved on 12.05.2023

Order Pronounced on 30.08.2023

Coram:

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearances:

For the Petitioner: Mr. Nausher Kohli

For the Corporate Debtor: Ms. Devika Madekar

Per: - Kuldip Kumar Kareer, Member (Judicial)



ORDER

1. This Company petition is filed by Sanjay Bhandar (hereinafter called “**the Petitioner**”/ “**Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Eros International Media Ltd. (hereinafter called “**Corporate Debtor**”) alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a sum of **Rs. 1,23,27,966/-**.

FACTS OF THE CASE

3. The Operational Creditor is the sole proprietor of S B Consulting, engaged in the business of providing various Financial & Business consulting services. The Corporate Debtor is the Company incorporated under the Companies Act, 1956 and engaged in the business of production, exploitation, and distribution of cinematograph films worldwide.
4. The Operational Creditor was hired to arrange for various bank loans for the Corporate Debtor for which a fee of 1.50% of the credit facility arranged was payable to the Operational Creditor by the Corporate Debtor. Additionally, a fee of 0.75% of any subsequent annual renewal / review of the said credit facility was to be paid to the Operational Creditor. The Corporate Debtor was required to pay Rs. 5,00,000/- per month plus taxes applicable towards the monthly fixed professional fee for the any other services provided by the Operational Creditor.
5. During November 2016, the Corporate Debtor, with the assistance of the



Operational Creditor, applied to Dena Bank for a cash credit facility of Rs. 75,00,00,000/-. On 09.06.2017, Dena Bank sanctioned a cash credit facility of Rs. 73,50,00,000/- in favour of the Corporate Debtor. Resultantly, as per the understanding, the Corporate Debtor was entitled to pay 1.50% of Rs. 73,50,00,000/- to the Operational Creditor i.e. Rs. 1,10,25,000/-.

6. On the request of the Operational Creditor, the Corporate Debtor paid an amount Rs. 10,00,000/- to Jyoti enterprises and Rs. 15,00,000/- Lakhs to Deepak Investment on behalf of the Operational Creditor. It has been submitted that the invoice raised by Deepak Investment upon the Corporate Debtor was Rs. 25,00,000/- and a payment of Rs. 15,00,000/- was made by the Corporate Debtor against the said invoice. On 22.06.2022, the Operational Creditor raised a proforma invoice upon the Corporate Debtor for the balance amount of Rs. 75,00,000/-.
7. On 30.10.2017, The Corporate Debtor has made payment of Rs. 5,00,000/- to the Operational Creditor through NEFT and subsequently on 09.01.2018, the Corporate Debtor made further payments of Rs. 25,00,000/- to the Operational Creditor through NEFT.
8. On 24.08.2018, the Operational Creditor has raised a proforma invoice upon the Corporate Debtor for an amount of Rs. 30,25,000/- being the balance fee due from the Corporate Debtor to the Operational Creditor.
9. In the meanwhile, the Corporate Debtor applied to Dena Bank for the renewal of the Cash Credit facility of Rs. 73,50,00,000/- which was renewed by Dena bank on 31.10.2018. As a result, the Corporate Debtor was liable to pay 0.75% of the renewed amount Operational Creditor i.e. Rs. 55,12,500/-. On 01.11.2018, the Corporate Debtor made a payment of Rs. 5,00,000/- by NEFT against the invoice dated 24.08.2018.
10. On 21.11.2018, the Operational Creditor has raised an invoice for an amount of Rs. 25,25,000/- being the amount outstanding towards the



invoice dated 24.08.2018 and the amount of Rs. 55,12,500/- dues towards renewal of the aforesaid cash credit facility on 31.10.2018, plus GST thereon aggregating to a sum of Rs. 94,84,250/-.

11. On 01.06.2021, after repeated reminders, the Operational Creditor sent a Demand Notice under Section 8 of the Code to the Corporate Debtor calling upon the Corporate Debtor to pay a sum of Rs. 1,23,27,966/-. The Corporate Debtor has sent a reply to the Demand Notice dated 01.06.2021 and refused to accept the liability.
12. On 24.06.2021, The Operational Creditor has sent a reply to the Corporate Debtor's reply dated 11.06.2021 calling upon the Corporate Debtor to clear the outstanding dues. Since no dues were paid after repeated reminders, this necessitated the Operational Creditor to file the present petition under Section 9 of the Code.

REPLY FILED BY THE CORPORATE DEBTOR

13. At the outset, the Corporate Debtor has stated that the said Application is not maintainable and even entirely misconceived in law as well on facts and deserves to be dismissed. It has further submitted that the Corporate Debtor is not liable to pay any amount much less the Operational Creditor's purported claim of Rs. 1,23,27,966/-.
14. The Corporate Debtor has submitted that the present petition filed under Section 9 of the IBC is an abuse of process of law, misconceived, based on collateral and extraneous considerations to attain an oblique motive to coerce and pressurize the Corporate Debtor.
15. The Corporate Debtor has further submitted that the Operational Creditor has suppressed several material and crucial facts including the fact that the Corporate Debtor had engaged the services of the Operational Creditor for arranging loans from Banks on two different occasions on totally different and distinct terms, conditions, and stipulations.



16. The Corporate Debtor has submitted that the Operational Creditor's services were hired as Financial Advisor on monthly retainership for a sum of Rs.5 Lakhs per month for the duration between commencement of the preparation of the Application of the cash credit facility of Rs.75 Crores till the sanction and disbursal of the same. Accordingly, the Corporate Debtor has agreed to engage services of the Operational Creditor for a monthly professional fee of Rs.5 Lakhs plus taxes starting from October 2016. The Operational Creditor raised monthly Tax Invoice for rendering Professional Services as Financial Advisor for months October 2016 to January 2017 as dated 16.11.2016, 28.12.2016, 01.02.2017 and 11.02.2017.
17. The Corporate Debtor has further submitted that since October 2016, the Corporate Debtor regularly has paid retainer fees of Rs. 5 lakh per month to the Operational Creditor, as agreed between the parties. It is further submitted that pursuant to the disbursal of the cash credit facility, the Corporate Debtor did not avail any services from the Operational Creditor and thus no amount was due and payable to the Operational Creditor.
18. The Corporate Debtor has submitted that it was agreed between the parties that the Corporate Debtor would pay additional Rs.30 Lakhs as financial consultancy fees towards the renewal of cash credit facility granted by Dena Bank. The Operational Creditor has raised two invoices for the same dated 26.10.2017 and 08.01.2018 and the Corporate Debtor has made the payment on 27.10.2017 and 09.01.2018 respectively.
19. As Dena Bank renewed the cash credit facility on 31.10.2017 the Operational Creditor demanded another payment of Rs.5 Lakhs claiming that the Operational Creditor had taken special efforts for securing the renewal of the aforesaid loan. Accordingly, the Corporate Debtor, although was not liable to pay the same, nonetheless paid a sum of Rs.5 Lakhs to the Corporate Debtor.



20. It has been submitted that there is no agreement between the Operational Creditor and the Corporate Debtor to pay 0.75% of Rs. 73.5 Crores, being the value of the renewal of cash credit facility as the professional fees or commission. Further, the correspondence exchanged between the Operational Creditor and the Corporate Debtor from December 2018 till date do not refer to the alleged and the purported oral agreement between the Operational Creditor and the Corporate Debtor to pay 0.75% of Rs.73.5 Crores as the professional fees or commission for renewal of the cash credit facility. In any event, mere issuance of invoice without there being an agreement between the parties to pay an amount as fees or commission does not create a binding obligation on the Corporate Debtor.
21. The Corporate Debtor has submitted that the proforma invoice dated 21.11.2018 does not in any manner create any liability. In fact, no valid invoices have been issued as there was no agreement, as alleged by the Operational Creditor and it is mere a document providing information regarding the particulars of the goods or services yet to be delivered to the buyer/customer.
22. It has further submitted that the claim of the Operational Creditor does not fall under the definition of “Creditor” under IBC much less the definition of “Operational Creditor” as no amount remains due and payable to the Operational Creditor.
23. The Corporate Debtor has further submitted that assuming without admitting the legality and validity of invoice bearing dated 12.04.2019, the value of the said invoice is less than Rs.1 Crore and, therefore, the Operational Creditor is not entitled file the said Application under section 9 of the IBC to invoke Corporate Insolvency proceeding against the Corporate Debtor.
24. The Corporate Debtor has further submitted that there exists a genuine and serious existing dispute between the parties. The Corporate Debtor, therefore, has prayed for the dismissal of the present petition.



REJOINDER FILED BY THE OPERATIONAL CREDITOR

25. At the outset, the Operational Creditor has submitted that the contentions, submissions and allegations contained in the Affidavit in reply are false, frivolous and untenable.
26. The Operational Creditor has submitted that the invoices raised by the Operational Creditor were not disputed even once till the issuance of Demand Notice dated 01.06.2021.
27. The Operational Creditor has submitted that there existed an understanding between the Corporate Debtor and the Operational Creditor with regard to payment of fees of 1.50% towards a new facility and 0.75% for renewal of an existing facility and the fact that the Corporate Debtor has made part payments after June 2017 proves the existence of the said understanding.
28. The Operational Creditor has submitted that it will be false to say that there was no understanding with regard to renewal of the term facilities as the name of the Operational Creditor was mentioned as Financial Advisor in the Corporate Debtor's letter to the Bank on 30.05.2018.
29. The Operational Creditor has further submitted that the Corporate Debtor, in the reply to the Demand Notice, had introduced a completely new story and raised false and non-existence dispute which were never raised before.
30. The Operational Creditor has submitted that value of the Invoice dated 12th April 2019 along with interest as set out in the Petition is well over the threshold limit of Rs.1,00,00,000/ (Rupees One Crore Only). The Operational Creditor has further submitted that for the sake of argument, the threshold limit of Rs.1,00,00,000/- (Rupees One Crore Only) only applies to dues payable from March 2020 onwards and not to dues payable pre-March 2020.
31. With the above averments, the Operational Creditor has prayed for the



admission of the present petition.

FINDINGS

32. We have heard the Counsel for the parties and have gone through the record.
33. This Petition has been filed under Section 9 by the Petitioner on account of the fact that the Corporate Debtor failed to pay a sum of Rs. 1,23,27,966/- on account of the services rendered by the Petitioner to the Corporate Debtor. As stated in Part-IV of the Petition, out of the total amount of Rs. 1,23,27,966/- an amount of Rs. 94,84,250/- on account of the principal amount was not paid. The Petitioner/Operational Creditor issued a demand notice under Section 7 but despite that the payment was not made. The Petitioner has further mentioned in Part-IV of the Petition that he is entitled to a simple interest @ 12% per annum from 01.12.2018 to 13.05.2020 on the amount of Rs. 80,37,560/- aggregating to Rs. 1,04,47,288/- It is further claimed that the Petitioner is also entitled to GST @ 18%. However, the Counsel for the Operational Creditor has not been able to pin-point as to whether there was any contract between the parties with regard to payment of interest. If the interest amount is excluded, the claimed amount would fall below the threshold limit of Rs. one crore. It is not disputed that the instant Petition under Section 9 of the Code was filed on 11.08.2021 i.e. much after the issuance of the notification on 24.03.2020 whereby the threshold limit was enhanced from Rs. One lakh to One Crore.
34. In this regard, the learned Counsel for the Operational Creditor has argued that since the Petitioner is registered under the MSME Act, he is entitled to claim interest as per the provisions of the said Act. The Counsel for the Operational Creditor has further pointed out in the invoice dated 12.04.2019, the MSME registered number of the Petition



is duly mentioned. According to the Counsel for the Operational Creditor, this entitles the Petitioner to claim interest even if there was no specific contract between the parties with regard to payment of interest as the Petitioner is registered under the MSME Act.

35. We have thoughtfully considered the above contentions raised by the Counsel for the Operational Creditor. In our considered view, merely because in just one of the invoices, MSME registered number of the Petitioner is mentioned, this by itself would not entitle the petitioner to claim interest @ 18% per annum, in the absence of a specific contract between the parties with regard to payment of interest. It is also noteworthy that in the invoices issued prior to 12.04.2019, the MSME registered number was not mentioned in any of the invoices. Therefore, under the circumstances, the Petitioner cannot be entitled to claim interest and if the interest amount is excluded the claimed amount, the same falls below the threshold limit of Rs. one crore. It is well settled that with the notification dated 24.03.2020, the threshold limit under Section 4 of the Code was enhanced from Rs. One lakh to Rs. One Crore. Since the instant Petition was filed after the issuance of the notification and the principal amount claimed is less than Rs. one crore, and there being no contract between the parties with regard to payment of interest, the Petition is liable to be dismissed on this ground alone.
36. As a result of the above discussion, the Petition under Section 9 of the Code is **dismissed** as it does not meet the threshold limit of Rs. One Crore prescribed under the Code.

Sd/-
Madhu Sinha
Member (Technical)

Sd/-
Kuldip Kumar Kareer
Member (Judicial)