



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-213(ND)2020

IN THE MATTER OF:

Arm Digital Media Private Limited

Registered office at :
208, Plot No.13,
2nd Floor Vardhman Times Plaza,
Pitampura New Delhi
North Delhi, Delhi-110034

...Applicant/Operational Creditor

VERSUS

M/s. Boltt Sports Technologies Private Limited

Registered office at:
G-28/119-120,
2nd Floor Sector-3,
New Delhi – 110085

...Respondent

Section: 9 of the IBC, 2016

Order Delivered on: 17.10.2022

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Rachita Rai

For the Respondent : Adv. Alishan Naqvee and Adv. Iman Naqvi

(IB)-213/(ND)/2020

M/s ARM Digital Media Pvt. Ltd. Vs. M/s. Boltt Sports Technologies Pvt. Ltd.



ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/s Arm Digital Media Pvt. Ltd. (for brevity, the '**Applicant/Operational Creditor**') has filed the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, **the 'IBC', 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Bolt Sports Technologies Pvt. Ltd. (for brevity, the '**Respondent**').

2. The Respondent namely, M/s. Bolt Sports Technologies Pvt. Ltd. is a Company incorporated on 30.11.2015 with CIN U19200DL2015 PTC287969 under the provisions of the erstwhile Companies Act, 2013, having its registered Office at G-28/119-120, 2nd Floor, Sector-3 Rohini, New Delhi-110085, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs. 4,00,00,000/- and Paid-up Share Capital is Rs. 35087730/- as per the Master Data of the Respondent.

3. It is submitted that the Applicant provides digital agency services in connection with the products/services/brand of their clients. The Respondent engaged the Applicant on providing the services for retainership and Media Campaign. On 25.07.2016, the Applicant and Respondent entered an 'Agreement for Digital PR Services', which lays



the terms of Rs. 3 lakh per month as Retainer Fee and 10% of the media buy as Agency Commission. As per the Agreement, the Respondent was required to pay the amount within 30 days of receiving an invoice.

4. It is further submitted by the applicant that the Applicant had raised 25 invoices from 3.09.2016 to 24.07.2017 for a total amount of Rs. 71,68,692/-, which the Corporate Debtor failed to pay in time.

5. Ultimately, the Applicant and the Respondent entered into a “Commercial Settlement Agreement” dated 31.08.2017, by which the respondent agreed to pay the dues through the post-dated cheques in 6 installments as per the details reproduced below:

S. No.	Date of Cheque	Amount (in Rs)
1.	10 th October 2017	5,00,000
2.	10 th November 2017	5,00,000
3.	10 th December 2017	5,00,000
4.	10 th January 2018	6,00,000
5.	10 th February 2018	6,00,000
6.	10 th March 2018	7,49,457
Total		34,49,457

6. It is further stated that whereas the first four payments totaling to Rs. 21,00,000/- were received as per the schedule, the last two cheques were not received from the Corporate Debtor. It is stated that the sum of Rs.12,89,457/- (Twelve Lakh Eighty-Nine Thousand Four Hundred and Fifty-Seven Rupees) is the balance principal amount due and payable.



7. The applicant has given the particulars of the Operational Debt claimed in Part IV of the application, which is reproduced below:

PART-IV

Particulars of operational debt		
1.	Total, amount of debt Details of transactions, on account of which debt fell due, And the date from which such debt fell due	Total amount of Default Rs. 16,93,636
2.	Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and dates of default in tabular form)	Principle amount-Rs. 12,89,457/- Interest amount - Rs. 4,06,179 Total amount of Default Rs. 16,93,636 Computation sheet attached as Annexure A-11.

8. As per part IV of the Application, the Applicant has claimed the total outstanding amount of Rs.12,89,457/- along with interest of Rs. 4,06,179/-.



9. It is submitted by the Applicant that it conducted various follow-ups through emails, calls messages, but neither any satisfactory reply nor the payment was received. During these follow-ups, the corporate debtor has also acknowledged the liability. The Applicant gave various opportunities to the Respondent for making the payment, but no payment is received by the Operational Creditor till date.

10. It is stated by the Applicant that finally, it had issued a Demand Notice under Section 8 of the IBC, 2016 to the Corporate Debtor on 21.06.2019 calling upon Respondent to pay the said sum within a period of 10 days. The Respondent neither paid the debt nor raised any pre-existing dispute.

11. On issuance of notice, the Respondent filed its reply on 14.01.2021 stating that:

11.1. The present Application is not maintainable as the applicant has failed to serve the Demand Notice u/s 8 of IBC to the Respondent.

11.2 The account of the Respondent stands settled with the Applicant in terms of the Commercial Settlement Agreement dated August 31, 2017, as per which the Respondent handed over six postdated cheques dated October 10, 2017, November 10, 2017, December 10, 2017, January 10, 2018, February 10, 2018 and March 10, 2018 for the total settlement amount of Rs.34,49,457 and as such nothing remains due and payable by the Respondent.



11.3. The default of payment of an instalment of the settlement agreement does not come within the definition of the operational debt. The applicant is seeking recovery through the present application, which is not permissible as per the IBC, 2016.

12. The applicant has also filed the Rejoinder stating that:

12.1. The applicant had issued 5 demand notices to the registered office of the Respondent Company at Rohini, Sector 3 and to its 4 Directors namely, Mr. Sunil Grover, Mr. Gurdeep Singh, Mr. Arnav Kishore and Ms. Ayushi, which have been duly served on registered address of the company to 3 Directors namely, Mr. Sunil Grover, Mr. Gurdeep Singh and Arnav Kishore. The only the demand notice addressed to Ms. Ayushi got returned as “not delivered”.

12.2. The respondent has surreptitiously concealed the fact that out of the six postdated cheques as per the settlement agreement, it has paid only 4 cheques. The Respondent has failed to bring on record any document to show that it has discharged its obligation.

12.3. The money is due and payable under the original agreement for Digital PR services dated 23rd July 2016, which is the genesis of the debt and by way of a Settlement Agreement dated 31.08.2017, the terms of the said debt were merely modified. It is wrong to conclude that because of the restructuring of the payment plan, the debt would cease to exist.

13. We have heard arguments of both the parties and perused the documents placed on record. The Respondent has contended that the



present Application is not maintainable as the applicant has failed to serve the Demand Notice under section 8 of IBC on them. Hence, before proceeding further, we would like to examine whether the Demand Notice under section 8 of IBC, 2016 was properly served on the respondent ?

14. While perusing the documents, we observe that in order to show that the Demand Notice has been sent to the Respondent, the Applicant has annexed the postal receipts at page 129 of the petition. However, we do not find any tracking or delivery report on placed on record to demonstrate that the demand notice was served upon the Respondent. Further, in its written submissions, the Applicant has admitted that there are no tracking reports generated/annexed as the portal does not allow generating tracking reports older than a year. In our view, the Applicant should have been diligent enough to timely retrieve the tracking reports to substantiate delivery of the Demand Notice to the Respondent.

15. At this point, it is pertinent to go through the Section 8 of IBC, 2016, contents of which are reproduced below:

“Section 8: Insolvency resolution by operational creditor.

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.



(2) *The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—*

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the [payment] of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. —For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding [payment] of the operational debt in respect of which the default has occurred.”

Now, we refer to Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which is reproduced below:

5. Demand notice by operational creditor. —

(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely. -

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4.



(2) *The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,*

(a) *at the registered office by hand, registered post or speed post with acknowledgement due; or*

(b) *by electronic mail service to a whole-time director or designated partner or key managerial personnel, if any, of the corporate debtor.*

(3) *A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any*

16. In the present matter, though the applicant appears to have sent the Demand notice to the Respondent (though the postal receipts annexed too are not very clear), however, it has failed to place or produce any documentary proof to substantiate that the demand notice was received by the Respondent. At this juncture, we refer to the para 29 of the judgement in ***Mobilox Innovations Private Limited versus Kirusa Software Private Limited in Civil; Appeal No.9405 of 2017***, wherein the Hon'ble Supreme Court, *inter alia*, observed as under:

“29. It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the



invoice to bring to the notice of the operational creditor the existence of a dispute, if any.....”

17. **Since the Applicant has failed to prove delivery of the mandatory Demand Notice to the Respondent prior to the filing of the present application, therefore, the application is Dismissed.**

**(L. N. GUPTA)
MEMBER (T)**

**(BACHU VENKAT BALARAM DAS)
MEMBER (J)**