

THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-295/ND/2023

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016.

IN THE MATTER OF:

M/s. DIGISPICE TECHNOLOGIES LIMITED

(formerly known as Spice Digital Limited)

Registered Office: -

622. 6th Floor, DLF Tower – A,

Jasola Distt. Centre, New Delhi - 110025

.....Operational Creditor

Versus

M/s. BHARAT SANCHAR NIGAM LIMITED

Registered Office: -

Bharat Sanchar Bhawan,

Harish Chander Mathur Lane,

Janpath, New Delhi – 110001

..... Corporate Debtor

Delivered on: - 09.02.2024

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Atul Chaturvedi

Hon'ble Member (Technical)

Appearances:

For Applicant : Mr. Sunil Sharma , Advocate

For Respondent : Mr. Dinesh Agnani, Sr. Advocate

O R D E R

Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s. Digispice Technologies Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s. Bharat Sanchar Nigam Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

a) It is submitted that, the Applicant Company is a private limited company engaged in the business of providing Value Added Services to cellular services, Mobile subscribers and GSM/PSTN/CDMA subscribers of various telecom operators/companies and others customers in India and the Corporate Debtor is a public sector unit providing all telecom services (Landline, Broadband, Mobile, Satellite communications etc.) to its customers across PAN India. The 100% stake of the Corporate Debtor is owned by the Govt. of India.

b) The Corporate Debtor is a telecom operator and engaged in business of providing various telecom and related service including 'VAS' Services to its subscribers throughout the country excluding Delhi & Mumbai. Corporate Debtor to meet its' business requirements procured / purchased 'VAS' Services from the Operational Creditor under various 'VAS' Service Contracts, in order to provide such VAS Services to its customers.

c) It is further submitted that, the VAS Services purchased by the Corporate Debtor were inter-alia in the nature of STK Menu, USSD/SMS/DATA/3G based value added services (VAS), premium consultancy based value added services, voice based value added services through IVR platform or Human Assisted Platform as well as in the nature of IVR based value added services for the Corporate Debtor's subscribers on all India basis. The Corporate Debtor received the said 'VAS' Services in good quality and utilized the services for its' business purposes without any objection.

d) It is further averred that for the 'VAS' Services purchased by the Corporate Debtor. The tax invoices were raised by the Operational Creditor, which were duly served on the Corporate Debtor. The Corporate Debtor has made last payment to the Operational Creditor on 24.01.2022. The Corporate Debtor has failed to meet its' contractual obligations to pay in timely manner as per contractual terms of the 'VAS' Service Contract.

e) It is further averred that, the Operational Creditor has reminded the Corporate Debtor to discharge its debt vide communications dated 22.04.2022, 24.05.2022 and 12.07.2022 but despite several requests and demands for payment of outstanding dues the Corporate Debtor has failed to pay the overdue operational debt. The Operational Creditor having no recourse has issued a demand notice dated 30.09.2022 under Section – 8 of

IBC 2016, in Form 3 for the demand of Rs. 5,41,94,624/-. The Corporate Debtor replied to the Demand Notice on 27.10.2022.

3. In response to the contentions raised by the Operational Creditor/ Applicant, Corporate Debtor has raised various counter contentions which are as follows: -

a. It is submitted by the Ld. Counsel for the Corporate Debtor that, the Operational Creditor has placed on record fabricated and manipulated invoices. Further submitted that, different Purchase Orders were issued at different points of time with the specific terms & conditions and the Invoices were raised by the Operational Creditor as per the alleged Purchase Orders. The invoices raised by the Operational Creditor are time barred and most of the invoices are not found in the records of the Corporate Debtor. Further, the Operational Creditor has placed on record various invoices which were rejected by the Corporate Debtor prior to issuance of demand notice.

b. The 'VAS' Agreement was executed between the parties on 10.04.2018 but the Operational Creditor has placed on record various invoices prior to the date of execution of the Agreement, i.e., 10.04.2018 and which are not related to 'VAS' Contracts.

4. We have heard the arguments advanced by the Ld. Counsel appearing for the Operational Creditor as well as for the Corporate Debtor and also perused the records.

5. The Operational Creditor's claim is based on the facts that the Corporate Debtor has purchased VAS Services from the Operational Creditor. As per the

demands and requirements of the Corporate Debtor 'VAS' Services were provided by the Operational Creditor to the Corporate Debtor and tax invoices were raised by the Operational Creditor, which were duly served on the Corporate Debtor and thus, the contract came into existence. It is stated by the Applicant that, since the Corporate Debtor did not make the due payment of the Operational Debt, the Applicant had issued Demand Notice dated 30.09.2022 under section – 8 of IBC, 2016 and served at the registered office of the Corporate Debtor. On the contrary, the Corporate Debtor has submitted that the Applicant has made claim with respect to the invoices, which are time barred and are not legally recoverable.

6. In the light of the arguments advanced and the documents submitted before this Adjudicating Authority, we would like to answer one important question which emerges for our consideration: -

I. Whether CIR process can be initiated against a PSU and if yes in what circumstances?

7. To answer this question we would like to place reliance on a judgement passed by Hon'ble Supreme Court in the matter of ***Hindustan Construction Company Ltd. & Anr. v. Union of India & Ors. WRIT PETITION (CIVIL) NO. 1074 OF 2019***. The relevant paragraph of the above mentioned judgement is reproduced below for reference: -

“63. From a conspectus of the above provisions, what is clear is that NHAI is a statutory body which functions as an extended limb of the Central Government, and performs governmental functions which obviously cannot be taken over by a resolution professional under the Insolvency Code, or by any other corporate body. Nor

can such Authority ultimately be wound-up under the Insolvency Code.”

8. The instant application has been filed under Section 9 of IBC seeking initiation of M/s. Bharat Sanchar Nigam Limited, which is a statutory body. We have to therefore examine as to whether CIRP can be initiated against a statutory body in the touchstone of the principle laid down by the Hon’ble Supreme Court of India in the case of ***Hindustan Construction Company Ltd. & Anr. v. Union of India & Ors.*** Though, the pleadings on record are silent on the functions and duties of the Respondent Company but it is well-known fact that BSNL is a public sector undertaking fully owned by the Government of India. It is engaged in providing Telecom Services throughout the country which includes landline mobile Broadband services etc. Considering the fact that the BSNL is a statutory body and discharges its functions as an extended limb of the Government of India. We are of the considered view that the ratio laid down in the judgment of the Hon’ble Supreme Court ***supra*** will be squarely applicable to the facts of the present case and therefore, it would not be prudent to initiate CIRP against the Corporate Debtor herein. The question is answered accordingly.

8. We have also examined the case on merits. While perusing the records we find that the Operational Creditor has placed on record various invoices to prove the existence of ‘debt’ but many invoices which are raised by the Applicant are time barred and do not have relation with the Purchase Order placed by the Respondent on the Applicant as they are raised prior to the ‘VAS’ agreement dated 10.04.2018 executed between the parties. Further, the Respondent Company has informed the Applicant company reason for non-payment of the invoices of Bihar Zone as the Applicant company has failed to maintain the quality of services but, on the contrary, the Applicant has intentionally placed on record various fabricated invoices of Bihar Zone to increase the quantum of debt. The averments of the Applicant stating that

there is a 'debt' which the Corporate Debtor is liable to pay has not been proved by placing suitable evidence on record. We have no hesitation to hold that the instant petition filed under section – 9 of IBC, by the Operational Creditor is only to recover its alleged dues and therefore liable to be dismissed.

10. In the light of the above findings IB – 295 (ND) 2023 stands ***dismissed.***

SD/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

SD/-

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