IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)

CP (IB) 448/ND/2020

(Under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of:

PRABHATAM ADVERTISING
PRIVATE LIMITED

…Applicant/Operational Creditor

Versus

PANOPTES INDIA PRIVATE LIMITED

…Respondent/Corporate Debtor

Order Pronounced on: 30.11.2021

Coram:

DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)

Ms. SUMITA PURKAYASTHA,
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

PRABHATAM ADVERTISING PVT. LTD.
Office at: 38, Rani Jhansi Road,
Jhandewalan, New Delhi-110055

...Applicant/Operational Creditor

Versus

1. **PANOPTES INDIA PVT. LTD.**
   Office at: C-30, Chirag Enclave,
   New Delhi-110048.
   Also at: 2nd Floor, Orchid Centre,
   Sector-53, Golf Course Road,
   Gurugram-122001.

…Respondent/Corporate Debtor

2. **UNION OF INDIA**
   Through Ministry of Corporate Affairs
   Office at: 5th Floor, A Wing,
   Shastri Bhawan, Dr. Rajendra Prasad Road,
   New Delhi-110001.

...Proforma Respondent

Present:

For the Applicant: Mr. Sunil Choudhary, Adv.

For the Respondent: None-Appeared

ORDER

Per: Dr. Deepti Mukesh, Member (Judicial)

1. The instant Application is filed by Prabhatam Advertising Pvt. Ltd. (for brevity '**Applicant**') through Ms. Neelam Khanna, authorized through board resolution dated 30.10.2019, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity **'Code'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Panoptes India Pvt. Ltd. (for brevity '**Corporate Debtor**').

2. The Applicant is private limited company, incorporated under the provisions of the Companies Act, 1956 on 08.04.2005, registered with Registrar of Companies, Delhi with CIN: U74999DL2005PTC134902 and its registered office is located at 38, Rani Jhansi Road, Jhandewalan, New Delhi-110055. The Applicant is in the business of advertising.

3. The Corporate Debtor is a Private Limited Company, incorporated under the provisions of the Companies Act, 1956 on 08.04.2010, duly registered with Registrar of Companies, Delhi with CIN: U85190DL2010PTC201319 and its registered office is located at C-30, Chirag Enclave, New Delhi-110048. The authorized share capital of the Corporate Debtor is Rs. 1,25,00,000/- and Issued, Subscribed and Paid-

up share capital of the Company is Rs.1,11,00,000/-. The Corporate Debtor is in the business of sale and purchase of car and also having a dealership of Audi cars.

4. It is the case of the applicant that in the month of May, 2018 the Corporate Debtor approached the applicant for publication of an advertisement of its showroom in the newspaper, Delhi Times of Times of India. Accordingly, applicant issued half page advertisement in the stated newspaper and raised three invoices, two invoice dated 23.05.2018 and one dated 31.05.2018 for an amount of Rs. 4,82,620/-, Rs. 8,66,250/- and Rs. 3,00,300/- respectively. Copy of invoices are annexed. The Corporate Debtor made part payment and after adjustment of the same, an amount of Rs. 4,25,599/- is due.

5. The applicant made several requests to the Corporate Debtor in person and also through email for payment of due amount but all in vain. Thus the Applicant issued demand notice in Form-3 to the Corporate Debtor under Section 8 of Code read with Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016. The said notice was sent by speed post at registered address of the Corporate Debtor on 17.09.2019. The Corporate never replied to the said demand notice.

6. The Applicant filed present Application under Section 9 of the Code. As per Part IV of Form-V, total amount claimed by the Applicant is Rs. 4,25,599/- along with 24% interest from the last date of invoice i.e. 23.05.2018.

7. Perusal of the records of the proceeding shows that despite service of notice by post and email upon the Corporate Debtor and in view of non-appearance, this Adjudicating Authority passed an order to proceed ex-parte against the Corporate Debtor on 24.12.2020. Thereafter the Corporate Debtor filed an application bearing IA No. 1389/ND/2021 for setting aside the ex-parte order dated 24.012.2020. The said IA was dismissed on 16.04.2021 with following order:

> "*Learned Counsel for the Corporate Debtor seeks for setting aside the ex-parte order passed on 24th December 2020. The said order was passed in December 2020 and the application seeking setting aside of the said order is filed in the month of March 2021. The application filed by the Operational Creditor contains email that there is an admission through email by the Corporate Debtor with respect to the dues payable. In view of the same, we dismiss the application.*"

8. It is seen from the emails annexed with the Application that in reply to the various email of the Applicant for payment of due amount, one Mr. Arpit Raj Kapoor representing himself as Manager-Marketing of the Corporate Debtor, with whom applicant was communicating, had sent email dated 20.08.2018, which is reproduced below:

> *"Please allow us some time to clear all your dues. Since we have been associated for a long time and will continue to do so. I request you to bear with us for some time. Please be assure that our finance team is working towards clearing all dues and will do so at the earliest.*
> *I will also share the marketing plan for our booking in September shortly.*
> *Have a nice day."*

9. The Applicant has filed an Affidavit under Section 9 (3) (b) stating that after serving of demand notice, no notice of dispute is given by the Corporate Debtor.

10. The Registered Office of the Corporate Debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this Application.

11. The date of default is mentioned as 23.05.2018 as the date of first invoice. The present Application is filed in December 2019. Hence the debt is not time barred and the Application is filed within the period of limitation.

12. It is apparent from the records that the Corporate Debtor has failed to make payment for the service availed from the Applicant and despite the issuance of notice under Section 8 of the Code by the Applicant, neither the payment was not made by the Corporate Debtor nor any notice of dispute was sent by the Corporate Debtor. Thereafter Corporate Debtor did not file reply to the present application and was proceeded ex-parte.

The application by Corporate Debtor for setting aside ex-parte order also rejected. In these circumstances the claim stands established and prima facie there is default in payment of the amount due to the Applicant and no dispute is in existence. Hence, this Tribunal is inclined to initiate the proceedings namely, Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor as envisaged under the provisions of the Code.

13. In the given facts and circumstances, the present application is complete and Applicant is entitled to claim its dues, remained uncontroverted, establishing the default in payment of the operational debt. The present application is admitted in terms of Section 9 (5) of the Code.

14. It is noted that in Part III of Form V, the Applicant has proposed Mr. Vinay Kumar Singhal as the Interim Resolution Professional. However, the written communication in Form-2 and certificate of registration of Insolvency Professional is filed of Interim Resolution Professional, Mr. Deepak Kumar Garg. Hence we appoint Mr. Deepak Kumar Garg having Registration Number IBB/IPA-002/IP-N00796/2019-20/12560 (email:deepakgarg07@rediffmail.com, Address: Shanti Niketan, Street No. 4, Tibra Road, Modinagar, Ghaziabad, Uttar Pradesh-201204), duly registered with ICSI Institute of Insolvency Professionals, as the Interim Resolution Professional of the Corporate Debtor.

15. As a consequence of the Application being admitted in terms of Section 9(5) of the Code and moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate Debtor prohibiting all of the actions mentioned under Section 14(1)(a) to (d).

16. We direct the Applicant to deposit a sum of Rs. 2,00,000/- with the Interim Resolution Professional, namely Mr. Deepak Kumar Garg to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. The needful shall be done within one week from the date of receipt this of order by the Operational Creditor.

17. Copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP appointed herein, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records and also to RoC for updating the Master Data. RoC shall send compliance report to the Registrar, NCLT.

Application is allowed and disposed of.

SD/-

Ms. SUMITA PURKAYASTHA,
MEMBER (TECHNICAL)

SD/-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)