

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
IB-67(ND)/2023**

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

IN THE MATTER OF:

M/s. VALUEFIRST DIGITAL MEDIA PRIVATE LIMITED

Having its registered office at:

G-270, G -Block, Phase -6, Near Rudra Public School,

Aya Nagar, New Delhi -110047

CIN: U64202DL2003PTC122688

Through its Deputy Manager - Legal

Mr. Nomaan Mahmood

..... Operational Creditor

VERSUS

M/s. VALUEMOBI MEDIA PRIVATE LIMITED

Having its registered office at:

H. No.-124-A-1, G/F, Katwaria Sarai,

New Delhi - 110016.

CIN: U72900DL2014PTC265188

..... Corporate Debtor

Order Delivered On: 13.02.2024

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Abhishek Vikram, Mr. Lalit Kumar, Advs.

For the Respondent : Mr. Ranjeet Kumar, Mr. Manjeet Kumar, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

IB-67(ND)/2023

Date of Order: 13.02.2024

1. This Application has been filed by M/s. Valuefirst Digital Media Private Limited, the Applicant/Operational Creditor before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), against M/s. Valuemobi Media Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 2,70,08,116/- (Rupees Two Crore Seventy Lakh Eight Thousand One Hundred and Sixteen Only) as debt along with interest @18%. The date of default in the present matter is 08.11.2021 as mentioned in the invoices.

2. Submissions of the Applicant/Operational Creditor:

- i.** The Operational Creditor provided SMS Solutions and allied services to the Corporate Debtor until 30.09.2019. The Corporate Debtor, however, started defaulting on the payments and hence the business relationship was terminated. Further, the Corporate Debtor approached the Operational Creditor in the month of October, 2021 for availing its bulk SMS service and allied services. The parties executed SMS Solution Provider Agreement dated 08.03.2022 to avail SMS, Email and Voice Solutions Services. Subsequently, an Addendum Agreement dated 30.08.2022 was executed to extend the term of the Agreement dated 08.03.2022.
- ii.** Based on the services provided by the Operational Creditor, the Operational Creditor raised 12 invoices dated 08.11.2021, 12.11.2021, 06.12.2021, 06.01.2022, 04.02.2022, 03.03.2022, 04.05.2022, 18.05.2022, 03.06.2022, 04.07.2022, 03.08.2022 and 07.09.2022 for a total amount of Rs. 5,93,11,285.93/-. A Table showing details of the 12 invoices raised by the Operational Creditor and the amounts pending against each invoice has been placed on record. The Operational Creditor also sent several reminder emails asking the Corporate Debtor to clear outstanding dues.

- iii.** It is submitted by the Operational Creditor that vide email dated 25.05.2022, the Corporate Debtor promised that an amount of Rs. 70 lakhs will be deposited by 31.05.2022 towards clearance of due. Further, vide email dated 27.06.2022, the Corporate Debtor promised to pay a sum of Rs. 50-60 lakhs towards the pending dues. However, only Rs. 7.5 lakhs out of the promised Rs. 60 lakhs were paid. Again, vide email dated 19.09.2022, the Corporate Debtor promised to release payment of Rs. 10 lakhs. The Corporate Debtor vide emails dated 13.09.2022, 28.09.2022, 30.09.2022 and 18.10.2022, acknowledged its liability and undertook to clear its outstanding dues. Subsequently, the Corporate Debtor made a part payment of Rs. 3,23,01,167/- towards the 12 invoices raised by the Operational Creditor.
- iv.** It is the case of the Operational Creditor that the Corporate Debtor vide email dated 16.11.2022 admitted its liability and undertook to pay Rs. 2.6 Cr. apart from the TDS. The Corporate Debtor vide another email dated 21.11.2022 also undertook to pay Rs. 25 lakhs per month towards its obligations to the Operational Creditor. Further, via email dated 28.12.2022, the Corporate Debtor stated *"We are trying hard to clear your outstanding, we will release some payment today"*.
- v.** The Operational Creditor issued a Demand Notice dated 28.12.2022 under Section 8 of the Code calling upon the Corporate Debtor to clear its dues and to pay the Operational Creditor an unpaid debt of Rs. 2,70,08,116/-. The said Demand Notice was served via speed post as well as via email dated 28.12.2022. While the service of the demand notice sent by speed post was unserved with the remarks *"Item Returned Addressee Left without instructions"* and *"Item Returned Unclaimed"*. Further, the service of the demand notice vide email was successful on the email id: idharish@live.in, accounts@vmobi.in, apathak@vmobi.in, hsharma@vmobi.in, corpcomm@vmobi.in. Consequently, the Corporate Debtor did not reply to the said Demand Notice.
- vi.** It is submitted by the Operational Creditor that the Corporate Debtor is commercially insolvent and is not in a position to meet its liabilities. As

the Corporate Debtor has not been able to make any payments toward settling its dues, it is subject to initiating of Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016. In these circumstances, the Operational Creditor is constrained to prefer this Application before this Adjudicating Authority.

3. Submissions of the Respondent/Corporate Debtor:

- i.** The Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant and stated that there is a pending dispute between the parties with respect to the GST issue as the Applicant had given wrong, false and misleading information and documents, based on which the Respondent had submitted the information to the GST Department and after scrutiny now the same had been declared false / discrepancy on the part of Respondent for which the respondent had suffered with cancellation of its GST Number.
- ii.** The Applicant collected GST against the bill of approximately Rs. 37 lakh but had not deposited the tax amount in the government account for which GST Department has issued show-cause notice. The Applicant had concealed the material facts that there are several email exchanges between the parties, pertaining to the GST issue i.e. Emails dated 28.07.2017, 20.08.2019, 11.07.2022, 09.07.2022, 11.11.2022 and several Whatsapp message exchange between the parties.
- iii.** The Corporate Debtor submitted that there is no settlement agreement had ever been entered into between the parties nor any SMS Service Provider Agreement dated 08.03.2022 nor any Addendum dated 30.08.2022 thereto have been signed or entered into by the Respondent /Corporate Debtor.
- iv.** The Applicant failed to bring on record any document to show on what basis the rate of interest and the total claim amount has been ascertained and hence the present petition is liable to be dismissed. The Applicant is silent as to how and when the amount claimed became due and payable by the Respondent to the Applicant and no document has been placed on record to this effect. Further, the Respondent

Company is a running concern and is a profit-making Company. Thus, no occasion arises for the declaration of Insolvency of the Respondent Company.

- v. It is the case of the Respondent that the entire balance amount due is in dispute as the Applicant is not entitled to receive any money from the Respondent Company and in fact, the Respondent Company is entitled to recover its claim/compensation for the damage done by the Applicant, as due to non-deposit of GST Amount in the account of the Government which was admittedly collected from the Respondent and hence the Respondent is facing financial loss.

4. **Analysis and Findings:**

- i. We have heard the Ld. Counsel appearing for both parties and also perused the records.
- ii. The only issue to be examined in this Application is whether there exists a plausible pre-existing dispute between the parties or not.
- iii. The Respondent has raised a Preliminary Objection as to the maintainability of the present application filed under Section 9 of the Code based on the existence of a prior dispute
- iv. The Corporate Debtor has written numerous emails to the Operational Creditor concerning the GST issue prior to the issuance of the demand notice dated 28.12.2022. Their argument is based on the following e-mail communications dated 20.08.2019, 09.07.2022, 30.05.2022 and 12.08.2022, which are extracted below for ready reference:

E-mail dated 20.08.2019

“From: valuemobi media pvt ltd <accounts@vmobi.in>

Sent: Tuesday, August 20, 2019 11:16 PM

To: 'Vinay Singh' <Vinay.Singh@vfirst.com>

Cc: 'Alok PATHAK' <apathak@vmobi.in>; 'hsharma' <hsharma@vmobi.in>

Subject: FW: GST Details

Hi Vinay,

Please check the trail mail, we have already provided the GST details. But we are not getting input as it is not showing in our GSTR2A.”

E-mail dated 09.07.2022

“RE: Invoice not showing in GSTR1

kavita verma <kavita.verma@vfirst.com>

Sat 7/9/2022 3:13 PM

To: Vmobi Accounts <accounts@vmobi.in>;

ashish.aggarwal@vfirst.com <ashish.aggarwal@vfirst.com>

Cc: Vinay Singh <Vinay.Singh@Vfirst.com>; anurag nanda

<anurag.nanda@vfirst.com>; Alok Pathak <apathak@vmobi.in>;

Harish Sharma <hsharma@vmobi.in>

Hi Ashish,

Please look into this.”

E-mail dated 09.07.2022

“From: Vmobi Accounts <accounts@vmobi.in>

Sent: Saturday, July 9, 2022 2:34 PM

To: kavita verma <kavita.verma@vfirst.com>

Cc: Vinay Singh <Vinay.Singh@Vfirst.com>; anurag nanda

<anurag.nanda@vfirst.com>; Alok Pathak <apathak@vmobi.in>;

Harish Sharma <hsharma@vmobi.in>;

ashish.aggarwal@vfirst.com

Subject: Re: Invoice not showing in GSTR1

Hi kavita,

How it is possible? You have raised the invoice to us and and I have all the invoices. if you want, i can share the invoice copy to you. please check the properly. because we have received the notice from GST Office. and i will submit your all invoice to GST department. please let me know it is deposited or not?”

E-mail dated 09.07.2022

“From: Vmobi Accounts <accounts@vmobi.in>

Sent: Saturday, July 9, 2022 1:56 PM

To: kavita verma kavita.verma@vfirst.com

Cc: Vinay Singh Vinay Singh@Vfirst.com; anurag nanda anurag.nanda@vfirst.com; Alok Pathak apathak@vmobi.in; Harish Sharma hsharma@vmobi.in
Subject: Invoice not showing in GSTR1

Dear Team,

Please find the attached sheet of Invoices details for 2017-18. these invoices are not showing in GST Portal, and we have claimed all the invoices. kindly give the clarification on this. because we have to reply to GST department.”

E-mail dated 30.05.2022

“From: Div Hauz Khas <divhauzkhas@gmail.com>

Sent: Monday, May 30, 2022 3:44 PM

To: Vmobi Accounts <accounts@vmobi.in>

Subject: Notice for intimating discrepancies in the returns after scrutiny for FY 2017-18(July 2017 to March 2018) - reg.

Please find enclosed herewith a copy of letter dated 30.05.2022 for necessary action.

Regards

Superintendent(Range - 57)

Division - Hauz Khas

CGST Delhi South”

E-mail dated 12.08.2022

“From: Div Hauz Khas <divhauzkhas@gmail.com>

Sent: Friday, August 12, 2022 6:23 PM

To: Harish Sharma <hsharma@vmobi.in>; Vmobi Accounts <accounts@vmobi.in>; Alok Pathak <apathak@vmobi.in>

Cc: manojjd2@gmail.com <manojjd2@gmail.com>

Subject: Notice Under DRC-01A

Please find attached the notice in respect of your unit for favour of necessary action.

Regards

Supertintenden (Range - 57)

Division - Hauz Khas

CGST Delhi South
Office of Deputy/ Assistant Commissioner
Hauz Khas Division
CGST Delhi South Commissionerate,
EIL Building, 2nd Floor, Bhikaji Cama Place, New Delhi”

- v. The e-mail communications dated 20.08.2019, 09.07.2022, 30.05.2022 and 12.08.2022, clearly establish the fact that the Corporate Debtor raised a pre-existing dispute before the issuance of Section 8 demand notice. It can be demonstrated that the parties were constantly in discussions over pre-existing and unresolved disputes.
- vi. It is noted that under the scheme of the Insolvency and Bankruptcy Code, 2016, any objection with regard to the pre-existing dispute has to be raised by the Corporate Debtor at the first instance, at the time of giving a reply to the Demand Notice under Section 8. However, in this case, the Operational Creditor has served the Demand Notice vide email, which has not been bounced back. However, the Demand Notice, sent by speed post to two different addresses of the Corporate Debtor appears to have been ‘not served’ since the remarks of the postal authorities with respect to the first service is “*Item Returned Addressee Left without instructions*” and the postal report w.r.t. the second service is “*Item Returned Unclaimed*”. The Corporate Debtor has not chosen to give any reply to the Demand Notice under Section 8 and raised any pre-existing dispute. However, the Corporate Debtor in its reply, filed before this Adjudicating Authority to the Application filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016, has raised the pre-existing disputes by producing various emails which have been discussed in the preceding paragraphs. Therefore, it cannot be said that the Corporate Debtor has lost the right to raise pre-existing disputes at a later stage.
- vii. Hence, we are satisfied that the Corporate Debtor had raised a pre-existing dispute with respect to the amount claimed by the Operational Creditor.

viii. It is well-settled law that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument, it would suffice for the Adjudicating Authority to reject the application filed under Section 9 of the Code, the Adjudicating Authority being precluded from determining as to whether the Corporate Debtor would be successful or not, with regard to the said dispute, at the time of decision making.

5. In view of the above analysis and findings, we are satisfied that the present Applicant fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly ordered as follows:

- i.** The Application bearing **IB-67(ND)/2023** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-

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

Sd/-

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