

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 746 of 2024

[Arising out of order dated 05.03.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – II), in (IB) –
757/ND/2023]

IN THE MATTER OF:

Multiplier Brand Solutions Pvt. Ltd.

Through Mr. Praveen Choudhary,
General Manager – Legal of Multiplier Brand
Solutions Pvt. Ltd.

R/o B1/G3, 2nd Floor, Mohan Co-operative
Industrial Estate Main Mathura Road,
New Delhi – 110044.

Email id: corp.finance@multiplier.co.in /
legal@multiplier.co.in

Phone: 9999887736

...Appellant

Versus

Amazon Wholesale (India) Pvt. Ltd.

Having Registered Office at:
Block E, 14th Floor, Unit Nos. 1401 to 1421
International Trade Tower, Nehru Place,
South Delhi, New Delhi – 110019

Email Id: legal-support@amazon.com

...Respondent

Present:

For Appellant : Mr. Neeraj Malhotra, Sr. Advocate with Mr. Lakshmeesh S. Kamath, Mr. Rajesh Khandelwal, Ms. Samriti Ahuja, Ms. Aditi Prakash, Mr. Rohit Patil and Mr. Nimish Gupta, Advocates.

For Respondent : Mr. Krishnendu Datta, Sr. Advocate with Mr. Vijayendra Pratap Singh, Mr. Raghav Seth, Mr. Ankitesh Ojha, Mr. Arnab Ray and Mr. Akhil Nene, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by an Operational Creditor has been filed challenging the Order dated 05.03.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – II), rejecting a Section 9 Application filed by the Appellant.

2. Brief facts of the case giving rise to this Appeal are:

- i. A Master Service Agreement was executed on 27.01.2020 effective from 01.05.2019 between Amazon Seller Services Private Ltd. and Multiplier Brand Solutions Private Limited, the Appellant herein.
- ii. The Agreement mentioned that Agreement is entered into between the Amazon Seller Services Private Limited and any of its affiliates domicile in India that issue Work Orders under this Agreement, collectively Amazon of the first part and Multiplier Brand Solutions Private Limited for service provider as second part.
- iii. The Agreement provided that service provider will provide services to Amazon on non-exclusive basis in accordance with the terms and conditions of the Agreement.
- iv. A Novation and Substitution Agreement was entered on 01.04.2021 between Amazon Seller Services Private Limited, Transferor, Amazon Wholesale (India) Private Limited, Transferee and Multiplier Brand Solutions Private Limited for replacing the Transferee with Transferor in relation to under the Principal Agreement.

- v. The Agreement provided that Transferor will relinquish and waive of all its rights, interest, liabilities and obligations under the Principal Agreement and Transferee will entitled to all such rights, interests and will discharge all such liabilities/obligations of Transferor under the Principal Agreement.
- vi. Master Service Agreement was renewed with effect from 01.05.2021, which was executed between Amazon Wholesale (India) Private Ltd. and Multiplier Brand Solutions Private Limited.
- vii. The Amazon Wholesale (India) Private Limited issued Purchase Order from 06.10.2022 to 04.05.2023, pursuant to Purchase Order, Operational Creditor, rendered deployment of manpower and related services for Amazon Device Project and raised invoices totalling to ₹3,69,57,379/-. Invoices were between 30.03.2023 to 26.05.2023.
- viii. Appellant requested the Respondent seeking approval of the invoices. Appellant received the response that invoices are approved for processing. Email dated 02.05.2023 was also received from the Corporate Debtor that 2 invoices are ready for payment but delayed for Settlement. Appellant sent various reminders to the Respondent requesting for clearing the outstanding dues.
- ix. The Corporate Debtor wrote to the Operational Creditor, vide email dated 02.06.2023, the Corporate Debtor has asked the Operational Creditor to share several data. There being allegations of fake data submitted by Operational Creditor with regard to its Amazon other

project with regard to which investigation had commenced by the Appellant itself several documents was called by Corporate Debtor. The Corporate Debtor also asked for supplying the findings relation to investigation carried on by the Multiplier Brand Solutions Private Limited with regard to fake data.

- x. There was email correspondence between the Parties. The Operational Creditor had wrote email dated 12.06.2023 to the Corporate Debtor, informing that on the basis of information shared due payment for Amazon Device be released which is kept on hold.
- xi. The Corporate Debtor replied vide email dated 16.06.2023, that data is ready for internal investigation and the decision shall be taken regarding payment hold, only after the Corporate Debtor has completed the review.
- xii. The Operational Creditor sent a Demand Notice dated 06.11.2023, demanding an amount of ₹3,69,57,379/- as on 03.11.2023, with interest of 18%.
- xiii. Demand Notice was replied by the Corporate Debtor vide email dated 18.11.2023 refuting the claim of the Appellant for payment of the amount. In the Reply to Demand Notice, the Corporate Debtor has detailed the correspondence between the Parties prior to issuance of Demand Notice where the Corporate Debtor has disputed the claim of the Appellant.

xiv. Section 9 Application was filed by the Appellant on 29.11.2023. Appellant also on 01.12.2023 issued an Arbitration Notice for an amount of ₹3,18,13,923/- which Arbitration Notice was also responded by Corporate Debtor. Respondent filed Reply to Section 9 Application to which Rejoinder was filed. Adjudicating Authority heard the Parties and by Order dated 05.03.2024, dismissed Section 9 Application on the ground that there are Pre-Existing Dispute between the Parties, hence the CIRP against the Corporate Debtor cannot be commenced.

xv. Challenging the Order impugned, this Appeal has been filed.

3. We have heard Learned Sr. Counsel Mr. Neeraj Malhotra appearing for the Appellant and Learned Sr. Counsel Mr. Krishnendu Dutta appearing for the Respondent.

4. Learned Sr. Counsel for the Appellant challenging the Order contends that dispute with regard to fake invoices issued by employees and staff of the Appellant relate to another project i.e. Vodafone, and the Appellant itself has commenced investigation with regard to invoices and fraud committed by some of the employees of the Appellant, which investigation and allegations have no concern with the invoices which are subject matter of Section 9 Application. It is submitted that 8 invoices on basis of which the Section 9 Application was filed where invoices issued subsequent to the Novation Agreement between the Parties dated 01.04.2021. It is submitted that there is no dispute with regard to 8 invoices which was issued by the Appellant between the period 30.03.2023 to 26.05.2023, totalling to ₹3,69,57,379/-. It

is submitted that said invoices were also approved by the Corporate Debtor. An email was received from the Corporate Debtor that invoices are ready for payment but delayed due to Settlement. Appellant sent various reminders to the Corporate Debtor for payment of outstanding amount. No outstanding payments having been received Demand Notice under Section 8 was issued on 06.11.2023 to which a Reply dated 18.11.2023 was received from the Corporate Debtor. In the Reply to the Demand Notice, Corporate Debtor has raised issues pertaining to ongoing investigation with regard to transaction pertaining to Vodafone Project, which have no concern with the invoices which are subject matter of Section 9 Application. There being no dispute with regard to invoices which have been raised by the Appellant in pursuance of Purchase Order received from Corporate Debtor, any alleged dispute with regard to invoices with regard to another Project can be no ground to contend that there is any Pre-Existing Dispute. It is submitted that Arbitration Notice which has been issued by the Appellant does not cover the invoices and the amount which are subject matter of Section 9 Proceeding. Adjudicating Authority failed to appreciate that there is no Pre-Existing Dispute between the Appellant and the Respondent, Corporate Debtor. Alleged dispute relied by the Adjudicating Authority was between Appellant and Amazon Seller Services Private Ltd., which is an entity different from Corporate Debtor. Amazon Seller Services Private Ltd. and Amazon Wholesale (India) Private Ltd. are two different legal entities. The Police Complaint which was filed by the Appellant dated 24.02.2023 and 30.03.2023, pertains to business transaction with Amazon Seller Services Private Ltd. and not with the Corporate Debtor.

Appellant had Suo Motu taken cognizance of the allegation and engage Ernst and Young to conduct fact finding in the said matter. Investigation undertaken by Ernst and Young pertains to Vodafone Project which project was being undertaken by the Appellant with Amazon Seller Services Private Ltd. and not with the Corporate Debtor.

5. Learned Sr. Counsel Mr. Krishnendu Dutta appearing for the Corporate Debtor refuting the submissions of the Counsel for the Appellant contends that by Novation Agreement dated 01.04.2021, all the liabilities/rights, interest entitlement obligations inter see between Amazon Seller Services Private Ltd. and Amazon Wholesale (India) Private Ltd. have been taken over by the Corporate Debtor. Transaction between the Appellant and Amazon Seller Services Private Ltd. cannot be said to be alien to the transaction between the Appellant and Corporate Debtor. Corporate Debtor has taken liabilities under the Master Service Agreement. Corporate Debtor is entitled to review the earlier transaction though done much prior to issuance of Demand Notice by Operational Creditor. Corporate Debtor has brought into the notice of the Appellant, its objections and the payment to the Appellant was put to on hold till the entire transaction which are under investigation are reviewed and resolved. It was brought into the notice of Appellant that 99% data with regard to services provided by the Appellant to the Amazon Seller Services Private Limited were forged and fictitious due to which excess amount has already been paid. Appellant himself has filed Police Complaint alleging fraud committed by its own employees in transaction with Amazon Seller Services Private Ltd. Appellant itself has entrusted the investigation of

entire transaction to Ernst and Young, which Report has never been shared with the Corporate Debtor. Large scale fraud having been committed by the staff and employees of the Appellant in transaction providing service with the Amazon Seller Services Private Ltd, the Corporate Debtor had rightly withhold the payment under invoices as claimed by the Appellant. The Corporate Debtor is entitled for rights, interest and liabilities which was pertaining to Master Service Agreement by virtue of Novation and Substitution Agreement dated 01.04.2021, hence the transaction which cause rights, liabilities and obligations on Corporate Debtor are relevant and any dispute raised with the entitlement of the Appellant under such transaction under which huge excess payment has been made are relevant factor on basis of which there were hold on the amounts payable to the Appellant under the invoices. There being clear cut Pre-Existing Dispute between the Parties, Adjudicating Authority did not commit any error in rejecting Section 9 Application filed by the Appellant.

6. We have considered the submissions of Counsel for the Parties and perused the record.

7. A Master Service Agreement was entered on 27.01.2020 between the Amazon Seller Services Private Ltd. and its affiliates with Multiplier Brand Solutions Private Limited, the Appellant herein. The Master Service Agreement in beginning itself notices following:

*“This Master Services Agreement ("**Agreement**") is effective as of May 01, 2019 ("**Effective Date**") and executed as on January 27, 2020, and entered into between **Amazon Seller Services Private Limited**, a private limited company having its registered office at 8'h Floor, Brigade Gateway, 26/1 Dr. Rajkumar*

Road, Bangalore - 560055 and any of its Affiliates domiciled in India that issue Work Orders under this Agreement (collectively, "**Amazon**"), of the First Part; **AND Multiplier Brand Solutions Private Limited** (formerly known as Multipliermudra Brand Solutions Private Limited) a company registered under Companies Act, 2013 with PAN No. AAKCM7037Q and having its registered office at B-1/G-3 2nd Floor, Mohan Co-op. Industrial Estate, Main Mathura Road Delhi - 110044 (hereinafter referred to as "**MBSPL**" or "**Service Provider**" which expression shall unless repugnant to the subject or context shall mean and include its successors, permitted assigns, and administrators) of the other Second Part.

For the purpose of this Agreement, the term "**Affiliate**" shall mean "any entity in which Amazon or its group companies have directly or indirectly, certain economic interest". For avoidance of doubt, any reference to an Affiliate of Amazon under this Agreement shall mean "an Affiliate domiciled in India".

Amazon and the Service Provider are hereinafter individually referred to as a "**Party**" and collectively referred to as "**Parties**".

8. Clause 1.1 to 1.4 deals with the services and payment, are as follows:

“1. SERVICES, WORK ORDERS.

1.1. Services. Service Provider will provide services to Amazon on non-exclusive basis, in accordance with the terms and conditions of this Agreement ("**Services**") as the Parties may, from time to time, agree and specify in work orders ("**Work Orders**") issued or signed by Amazon. The agreed form of Work Order is attached as Exhibit. A to this Agreement. Any Affiliate of Amazon will have the right to enter into Work Orders with Service Provider under this Agreement, and with respect to such Work Orders, such Affiliate becomes a Party to this Agreement and references to Amazon in this Agreement are deemed to be references to such Affiliate. With respect to Amazon, each Work Order is a separate obligation of the Amazon entities or entity that execute(s) such Work Order and no other Amazon Affiliate entity has any obligation under such Work Order. Amazon makes no promises or representations whatsoever as to the amount of business Service Provider can expect at any time under this Agreement.

It is further clarified that nothing in this Agreement prevents Amazon or any of its Affiliates from procuring same or similar Services from any other third party.

1.2. Work Orders. *This Agreement governs each Work Order, except that any conflict between the terms of this Agreement and a Work Order will be resolved in favor of the Work Order, if the Work Order explicitly states that it is intended to modify the conflicting terms of this Agreement. This Agreement does not obligate Amazon to engage Service Provider to perform any Services, or Service Provider to perform any Services, until both Parties have signed a Work Order. Both Parties must sign a Work Order for it to be effective.*

Notwithstanding the aforesaid, (a) Work Order will be binding on both Parties if Service Provider: (a) signs and it to Amazon; (b) begins performance; or (c) acknowledges it by email, facsimile or any other commercially reasonable means. If Service Provider commences Services for Amazon in the absence of a Work Order and Amazon accepts such Services, this Agreement will nevertheless apply, unless the Parties otherwise mutually agree in writing. Service Provider will, at no cost to Amazon, promptly and satisfactorily correct any Services or Work Product found to be defective or not in conformity with the requirements of this Agreement and the applicable Work Order.

1.3. On-Site Services. *If Service Provider provides Services on Amazon premises, Service Provider will, and ensure that its Personnel will: (a) abide by all Amazon's rules, policies, and procedures regarding such matters as safety, security, health, environmental and hazardous material management, misconduct, physical aggression harassment and theft (collectively, "**Rules**"); and (b) at Amazon's request, remove and promptly replace any Personnel (defined in Section 6 below) performing Services who behaves in a manner that is unlawful or inconsistent with any Rules.*

1.4. Payment / Records. *Amazon will pay Service Provider as provided in the Work Order. Service Provider is entitled to no other compensation or reimbursement for the Services. The Service Provider shall be solely responsible for all other compensation to its Personnel, including any statutory contributions that are required and maintain all other compliances that may be required under applicable Laws in respect of its Personnel. In the event Amazon is required to*

make any payments in respect of any Personnel or any Claims, Amazon shall have the right amongst others, to adjust the same against any sum payable to the Service Provider under this Agreement. Service Provider will, in accordance with generally accepted accounting standards, keep copies of all books and records relating to the Services during the Term of this Agreement and for a period thereafter as required under applicable laws. Amazon may upon reasonable notice and during normal business hours examine and make copies of all books and records relating to the Services. Service Provider will provide at least as favorable pricing treatment, as the pricing provided to any other entity or person purchasing services substantially similar to the Services. If Service Provider provides services substantially similar to the Services, at prices better than the prices extended to Amazon hereunder, the Service Provider shall offer at least the same favorable pricing to Amazon, on all subsequent purchases of the Services.”

9. The above Master Service Agreement clearly provided that the Agreement was with respect to Work Orders which were to be issued by Amazon Seller Services Private Limited or any of the affiliates of the Amazon group. Novation and Substitution Agreement was executed on 01.04.2021, which reads as under:

“NOVATION AND SUBSTITUTION AGREEMENT

This novation and substitution agreement ("Agreement") is entered into at Bangalore, on this 01/04/2021 and is effective on and from April 1, 2021 (“Effective Date”), amongst:

1. Amazon Seller Services Private Limited, a private limited company incorporated under the laws of India and having its registered office at 8m Floor, Brigade Gateway, 26/1, Dr. Rajkumar Road Bangalore, Karnataka - 560055, India (hereinafter referred to as the "**Transferor**", which expression will, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns);

2. **Amazon Wholesale (India) Private Limited**, a private limited company incorporated under the laws of India and having its registered office at G-01, Ground Floor, Salcon Rasvillas Building, Plot No. D-1, Saket District Centre, Saket, New Delhi - 110017, India (hereinafter referred to as the "**Transferee**", which expression will, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns); and

3. Multiplier Brand Solutions Private Limited, a company incorporated under the laws of India having its registered office at Multiplier Brand Solutions Private Limited, B1/3, 2nd floor, Mohan Co-operative Industrial Estate, Main Mathura Road, New Delhi - 110044 (hereinafter referred to as the "**Company**" which expression will unless / repugnant to the meaning or context thereof, be deemed to mean and include successors and permitted assigns).

In this Agreement, Transferor, Transferee, and Company are collectively referred to as the "**Parties**" and individually as the "**Party**"

Any capitalized term and expression used in this Agreement but not specifically defined herein, will have the same meaning and construction as defined or construed in the Principal Agreement (as defined below), unless the subject or context is repugnant thereto."

10. Clause 1 of the Agreement provides as follows:

"NOW THIS AGREEMENT WITNESSETH THAT:

1. From and after the Effective Date:

1.1. The Parties hereby agree that Transferee will replace Transferor in relation to and under the Principal Agreement. All references to Transferor under the Principal Agreement will be construed to be references to Transferee and the Principal Agreement vis-à-vis Transferor will stand novated and transferred in favour of Transferee.

1.2. Notwithstanding anything contained in the Principal Agreement, Transferor will relinquish and waive all its rights, interests, liabilities and obligations under the Principal Agreement and Transferee will be entitled to all such rights, interests and will discharge all such liabilities, obligations of Transferor under the

Principal Agreement (whether arising before or after the Effective Date).

1.3. All obligations or liabilities arising under this Agreement or the Principal Agreement (whether arising before or after the Effective Date) may only be enforced by Company against Transferee directly, and not against Transferor.”

11. Now we come to the case taken by the Appellant in Section 9 Application. Appellant’s case is that after the Novation Agreement dated 01.04.2021, Work Orders were received from the Corporate Debtor and in pursuance of which services were provided and invoices were issued by the Appellant from 30.03.2023 to 26.05.2023, totalling to ₹3,69,57,379/-. Appellant sent the various emails and reminders to the Corporate Debtor for payment of the aforesaid amount of ₹3,69,57,379/-. There was correspondence between the Parties in the above regard. When amounts were not paid the Section 8 Notice were issued by the Appellant on 06.11.2023. Section 9 Notice was issued where Purchase Order and payment pertaining to invoices from 30.03.2023 to 26.05.2023 was claimed Master Service Agreement as well as Novation Agreement was relied in the Section 8 Notice. The Notice was replied by the Corporate Debtor vide email dated 18.11.2023. In the Reply Notice, the Corporate Debtor has denied and disputed the contents of Demand Notice and pleaded that it does not owe Multiplier Brand Solutions Private Limited any debt. In the Reply Notice, it was pleaded by the Corporate Debtor that review indicates that Multiplier Brand Solutions Private Limited was misrepresenting and inflating sales figures for the services provided under the Master Service Agreement. In Paragraphs 4 to 7 of the Reply Notice following has been pleaded:

“4. Multiplier has conveniently concealed the facts raised by Amazon, including with respect to excessive invoicing based on fake sales, failure to follow protocol, all of which were motivated by the desire to illegally deceive and seek excess payments from AWIPL and its affiliates, including Amazon Seller Services Private Limited ("**ASSPL**") under the MSA. Amazon's review indicates that Multiplier was misrepresenting and inflating sales figures for the services it provided under the MSA.

5. As on date, Amazon's review based on limited information indicates that its entities have been defrauded in excess of USD 16.37 MM |~ INR 136,00,00,000/- (Rupees One hundred thirty-six crores only) on account of wrongful payouts towards sales incentives, asset management, service fee etc., under the MSA. This is still being investigated, despite Multiplier's refusal to provide information, though contractually obliged to do so, as well as Multiplier's failure to share its own finding into the fraud by its employees, despite repeatedly admitting that its employees were involved in fraudulent conduct. Multiplier's behavior is indicative of not just a contractual breach but also discloses a dishonest intention, as the withholding of information gives rise to the presumption that the information disclosed would establish the fraud already brought to Multiplier's attention.

6. It has emerged that the services provided by Multiplier under the MSA and the purported sales facilitated by the employees deployed by Multiplier were illegally and intentionally misrepresented and inflated on the basis of false invoices. Similarly, Multiplier's invoices were being artificially inflated based on phantom sales purportedly facilitated by Multiplier's employees, when the sales were actually through the Amazon marketplace. Such fabrication could not have been possible without the connivance and active role of Multiplier and its employees. Multiplier is responsible for the actions of its employees as per the MSA and under law, as Multiplier was the principal employer of these employees.

7. The MSA clearly and unequivocally states that Multiplier will be responsible for all acts, omissions, negligence and misconduct of its employees performing the services and Multiplier will be solely responsible for

all threat, damage and misconduct related to its employees.”

12. It was further pleaded by the Corporate Debtor that Multiplier Brand Solutions Private Limited has issued Demand Notice despite being aware that Amazon has been investigating transactions regarding Vodafone Project. Correspondence dated 12.06.2023 and 16.06.2023 was also referred to and it was pleaded that Appellant is also participating in the fact finding exercise. It was further pleaded that Multiplier Brand Solutions Private Limited is admitted that its employees have been guilty of fraud. Following was pleaded in Paragraph 12 & 13 of the Reply, which is as follows:

“12. Multiplier has issued the Demand Notice despite being aware that Amazon has been investigating these concerns. Multiplier has been informed of the fraudulent scheme at various times including in-person meetings held on June 02, 2023 and August 31, 2023 as well as in correspondence, inter alia on June 12, 2023 and June 16, 2023. However, the Demand Notice is silent on this material and crucial fact, as the disclosure of the same would demonstrate serious pre-existing disputes between the parties.

13. Multiplier is not only aware about the fact-finding exercise being undertaken by Amazon but sought to purportedly participate in the exercise by providing piece-meal information and documents, despite repeated requests. In fact, Multiplier in various emails such as on June 30, 2023 and August 02, 2023 has itself admitted that its employees have been guilty of fraud, but have failed to share the basis for the same, despite repeated requests.”

13. In the Reply Notice, further under the heading “Discovery of Multiplier’s artificial and inflated invoicing” has been dealt in Paragraphs 19 & 20, which is as follows:

“Discovery of Multiplier's artificial and inflated invoicing

19. Around the end of December 2022, Amazon grew suspicious about certain deficiencies and malpractices in the services provided by Multiplier under the MSA. Amazon observed high abuse of sales figures upon reviewing the sales data submitted by Multiplier for December 2022. Amazon informed Multiplier by an email dated February 09, 2023 about the possibility of high discrepancy in sales figures (of more than 99%). The deficiencies indicated the existence of a fraudulent design and put all the services provided by Multiplier into scrutiny.

20. The exact loss suffered by A WIPL cannot be quantified at this stage since the review and investigation is still ongoing and the documents requested from Multiplier are still pending. However, it cannot be doubted after reviewing the complete background that there is a pre-existing dispute under the MSA.”

14. Under the heading “Pre-Existing Dispute as disclosed in correspondence with Multiplier”. In Paragraphs 21 to 25, following is pleaded:

“Pre-existing dispute as disclosed in correspondence with Multiplier

21. The discrepancies about inflated invoices and excess amounts paid to Multiplier were brought to Multiplier's notice as far back as the meeting on June 02, 2023. From Multiplier's behalf, Mr. Sameer Mehta (CEO and Managing Director), Ms. Reema Arora (Director - Finance and Accounts), Mr. Rupinder Singh (Director - Managed Services), and Mr. Parveen Choudhary (General Manager - Legal) attended the meeting.

22. During this meeting, parties discussed all businesses where Multiplier provided services to Amazon. Multiplier also informed Amazon that it had engaged EY to conduct a fact-finding exercise. Multiplier explained its operations and services provided to Amazon. Undisputedly, there were gaps in the explanations and documents were required to support the concerns that were discussed during the meeting. Therefore, Amazon sent an email dated June 02, 2023 after the meeting, asking for specific and material documents and information. The information sought inter alia, all invoices raised on Amazon by

Multiplier, including A WIPL. The invoices were sought in order to investigate and verify the services provided by Multiplier under the MSA.

23. In light of the above, Multiplier has been aware of the concerns raised by Amazon, including AWIPL. In response to the request for information, Multiplier shared partial information by an email dated June 12, 2023 and informed Amazon that the data compilation was taking time due to the voluminous nature of the requisition. Multiplier also requested Amazon to release payments towards various projects.

24. Amazon responded to Multiplier by email on June 16, 2023 and requested Multiplier to share the pending data at the earliest as it has been more than two weeks since its request. Amazon also requested Multiplier to arrange a meeting with the EY team investigating the issues on Multiplier's behalf. Notably, **Amazon clarified that the requested data was necessary to complete the internal investigation and that the decision regarding payments, including payments from AWIPL, could only be made after the review was completed.**

25. Amazon continued to follow-up for the pending documents. Multiplier shared partial information on the Vodafone Project and the Devices Project by an email dated July 24, 2023. This clearly demonstrates the understanding between both parties that the concerns regarding inflated invoices and phantom services infected all services provided by Multiplier, including the invoices being demanded by Multiplier in the Demand Notice. These included services provided to AWIPL as well as services issued under the MSA, which was subsequently assigned to AWIPL. Therefore, AWIPL had a claim under the MSA as a counter-party to Multiplier both prior to the assignment as well as post assignment till the termination of MSA.”

15. When we look into the Reply given by the Corporate Debtor to the Demand Notice, the Reply Notice clearly indicates that Notice of dispute was issued by Corporate Debtor, raising several issues, including the Pre-Existing Dispute.

16. Learned Counsel for the Appellant has contended that issue of fake invoices which has been raised by the Corporate Debtor for which documents and data has been called for from the Appellant relate to different project i.e. Vodafone Project, whereas invoices which are subject matter of Section 9 Application relates to different project, i.e. Amazon Devices, hence, any issue pertaining to fake/inflated invoices are with respect to different Project and cannot be a reason to conclude that there is any Pre-Existing Dispute with regard to claim which is subject matter of Section 9 Application. There is no dispute between the Parties that the issues of inflated invoices which was flagged by the Corporate Debtor was with respect to Project Vodafone. It is however, relevant to notice that the service which was provided to by the Appellant with regard to Vodafone Project was also under the Master Service Agreement. Master Service Agreement which was initially entered between Amazon Seller Services Private Ltd. and the Appellant was subsequently novated with Amazon Wholesale (India) Private Limited, the Corporate Debtor.

17. We have already noticed the relevant Clauses of Agreement dated 01.04.2021, under which the Transferee i.e. Amazon Wholesale (India) Private Limited has taken all rights, interest and liabilities and obligations under the Principal Agreement. It is clear from Clause 1.2 of the Agreement which is to the following effect:

“1.2. Notwithstanding anything contained in the Principal Agreement, Transferor will relinquish and waive all its rights, interests, liabilities and obligations under the Principal Agreement and Transferee will be entitled to all such rights, interests and will discharge all such liabilities, obligations of Transferor under the

Principal Agreement (whether arising before or after the Effective Date).”

18. When the Corporate Debtor is entitled to all rights, interests and has to discharge all liabilities obligations of Transferor under the Principal Agreement, any entitlement or liability of it, which flow from the Master Service Agreement has to be shouldered/claimed by the Corporate Debtor. It cannot be said that inflated invoices which is claimed to have been issued by staff and employees of the Appellant though related to the different Project under the same Master Service Agreement is alien or foreign to claim which has been raised by the Appellant. In the present case, after coming to know about the issue of inflated invoices, Appellant itself has commenced investigation and filed the Police Complaint as well as directed for investigation through Ernst and Young, which is an admitted fact. Appellant in his Appeal has brought on record the Police Complaint which was submitted by Appellant on 24.02.2023. In the Police Complaint under the heading “suspected fraud related details” following has been stated:

“Suspected Fraud related details;

A couple of months back we had replaced handsets at these 400 outlets pan India in which, we replaced the Demo handsets with the new ones in each of these 400 Stores. During this coordination and replacement of Handsets from the Vodafone stores, in one of the courier assignments of old Demo Handsets, we found that 43 numbers of handsets worth approximately Rs. 9 Lacs (Nine Lacs) were missing which was sent from Bangalore Multiplier office on 28 July 2022 to Delhi Multiplier office by one of the team leader Mr. Deepak Kharakia. We immediately enquired about the missing mobile handsets and on our repeated questioning to the employee, himself i.e Deepak Kharakia and the other 15 handsets were possibly taken out by courier company guys which till date are not traced. In this*

incident prime accused Deepak Kharakia was terminated from company on his acceptance of theft as he agreed to refund the amount of the aggregate value of 28 nos of handsets to the company and pleaded not to initiate any action as it would ruin his career.

But while enquiring with Deepak Kharakia and conducting further fact finding, we realized that there could be a bigger fraud with many persons being involved and in connivance and hence started a detailed fact finding and enquiry at our end.

*Meanwhile our client Amazon has done some internal validation of sale data and has apprehended that the abuse of data is 99% and a huge fraud has been committed which means the total sale of handset reported is wrong vs the actual verified monthly data of sale of handsets, and the unique id created by sale of handsets by the representative in Vodafone store is also not a valid unique id. For example, December'22 data is annexed as **Annexure 1** with this letter to explain about how total sale of handset vs validated sales by the Amazon team is having huge difference and as per Amazon team, the fraud is committed to the extent of 99% of the figures put by the sales team which means the sale data is wrong or manipulated leading to wrongful loss for Amazon, Multiplier and wrongful gain to some persons who have manipulated the data, committed fraud and have pocketed the wrongful gains.”*

19. Appellant has also conducted its investigation and suspected fraud was flagged in its Report. It was in the above background that when the Appellant has written emails and reminders of payment, Corporate Debtor, vide email dated 02.06.2023 has asked for several documents and details for its review. The email dated 02.06.2023, which was sent has been captured by in Paragraph 11 of the Impugned Order, which paragraph is as follows:

“11. According to Mr. Krishnendu Dutta, Ld. Sr. Counsel once the Petitioner itself could raise a doubt regarding the genuineness of certain claim/invoices raised by its employees on Amazon Seller Services Pvt. Ltd., the Corporate Debtor cannot be unjustified in having similar doubts regarding the invoices raised

qua it. With reference to the e-mail dated 02.06.2023, which was sent by the Corporate Debtor to the Petitioner much before 03.11.2023 i.e. the date on which the Petitioner issued demand notice, Mr. Krishnendu Dutta submitted that the Corporate Debtor has raised the dispute regarding genuineness of the claims/invoices raised by the Petitioner right from the year 2017. The e-mail reads thus:-

From: RUHIL, DEVENDER ruhid@amazon.com

Date: Friday, 2 June 2023 at 6:47 PM

To: Sameer Mehta sameer.mehta@multiplier.co.in,
Rupinder Singh rupinder.singh@multiplier.co.in

Cc: Ajmani, Gaurav ajmanig@amazon.com

Subject: Privileged and confidential_Data needed

Dear Sameer and Rupinder,

This is in reference to our meeting today. As discussed, request if you could share the following data at the earliest:

#	Particulars
1	Demo data since program initiation i.e. Q4 2017 till date
2	Records maintained, if any to follow up with customer
3	Sales data since program initiation i.e. Q4 2017 till date
4	Incentive paid to promoters, cluster managers and program head, etc. – detailed break up with computation
5	List of all the stores along with the start date of the operations
6	List of all the employees working on the program along with their date of joining compensation details, designation, contact number, address and details of store associated
7	List of all devices purchased, leased under the program along with date of purchase, device id, store association details etc.
8	All the invoices raised under the program along with underlying supporting documents such as:

	<p>i) Invoices for salary payments along with employee wise payment breakup, proof of payments such as salary slips, pf returns.</p> <p>ii) Invoices for mobile devices/lease reimbursement along with payment proof, original invoice, list of mobile devices</p> <p>iii) Invoices for incentive along with employee wise computations, proof of payments, approvals taken etc.</p> <p>iv) Invoices for expense reimbursements with proof of payments, supporting documents</p>
9	Relevant email communications with Amazon POC wherein approvals were obtained for incentives, salary, reimbursement, store opening and payment approvals.
10	Attendance records of all the employees working under the program since 2017
11	Agreements and all subsequent addendums entered with Amazon
12	SOPs prepared to operate under this program, if any.
13	Copy of complaints filed against employees working under the program
14	Findings in relation to investigation carried out by Multiplier
15	Meeting with EY team who is conducting this investigation from March 23
16	All the invoices raised, in addition to listed above, by Multiplier on Amazon from 2017 till date

Please let me know shall you need any clarification regarding this.

Best regards,

Devender”

20. In the Reply of the Demand Notice, the Corporate Debtor has referred to two emails dated 12.06.2023 and 16.06.2023, which has been brought on record by the Appellant in the Memo of Appeal, which need to be noticed. Email dated 12.06.2023 was sent by one Praveen Choudhary of the Appellant to one Devender of Amazon, which emails reads as follows:

“From: Praveen Choudhary
praveen.choudhary@multiplier.co.in

Sent: Monday, June 12, 2023 2:11 PM

To: RUHIL, DEVENDER ruhid@amazon.com; Ajmani, Gaurav <ajmanig@amazon.com>

Cc: Sameer Mehta sameer.mehta@multiplier.co.in; Rupinder Singh rupinder.singh@multiplier.co.in; Reema Arora reema.arora@multiplier.co.in

Subject: RE: [EXTERNAL] Privileged and confidential_Data needed

Dear Devender,

You are requested to take note that since the data compilation is voluminous and taking a lot of time for us, we are in the process of collating the same and hence are sharing the data on a financial year basis. The below indicated data is for the period of FY 2022-23 for Amazon Vodafone Project.

As you have been aware, we have always been totally transparent on the data and Standard Operating Procedure (SOP) adopted with the Amazon team, and we assure you that the same transparency and adherence to the SOP shall continue from our side for your records and verifications.

We request that on the basis the information shared with you, our due payments for (Amazon Device, Amazon Global, Amazon Design team) be released which as of now are kept on hold by your team, this is required your urgent attention !

Needless to say, we shall be pleased to provide our best at all times.

Best regards,

Praveen Choudhary”

21. The above email which was sent by the Appellant relates to the claim of Appellant for payment for Amazon Device, i.e. subject matter of Section 9 Application. The email itself mentions that the amount has been **of now are kept on hold**. The aforesaid email was immediately replied by the Amazon on 16.06.2023, where it was again reiterated that decision regarding the

payment hold can only be taken when all data requested are provided. The email dated 16.06.2023 is as follows:

“From: RUHIL, DEVENDER

Sent: Friday, June 16, 2023 6:17 PM

To: Praveen Choudhary
praveen.choudhary@multiplier.co.in

Cc: Sameer Mehta sameer.mehta@multiplier.co.in;
Rupinder Singh rupinder.singh@multiplier.co.in;
Reema Arora reema.arora@multiplier.co.in; Ajmani,
Gaurav ajmanig@amazon.com

Subject: RE: [EXTERNAL] Privileged and confidential_Data needed

Hi Praveen,

Attaching herein the status of our data request in the light of the FY22 details shared by you. Request to please share the data at the earliest as it has been more than two weeks since we requested the data. Also, could we meet the EY team investigating this case on your behalf.

We hereby make it clear to your good self that we need the data for our internal investigation purposes. We shall be able to make a decision regarding the payment hold only after we have completed our review.

I am sure like us, you would also want an early resolution to this issue. Hence, the earliest you share the data the sooner we shall be able to complete our review.

Best regards,

Devender”

22. The above correspondence between the Parties which relates to the payments which are subject matter of Demand Notice and Section 9 Application is clear communication by Corporate Debtor that payments have been put on hold indicates that there was dispute raised by Corporate Debtor with regard to entitlement and payment of the invoices which are subject

matter of Section 9 Application much before issuance of Demand Notice dated 06.11.2023.

23. Thus, it is clear that the claim of Appellant for payment of invoices which are subject matter of Section 9 Application was disputed much before Demand Notice was issued.

24. In facts of the present case, Adjudicating Authority has not committed any error in refusing to initiate CIRP, there being Pre-Existing Dispute which is reflected with the correspondence which took place between the Parties much prior to issuance of Demand Notice.

25. We, thus are satisfied that no error has been committed by the Adjudicating Authority in rejecting Section 9 Application filed by the Appellant.

There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

21st November, 2024

himanshu