

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

CP (IB) No.196/Chd/Hry/2021

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

GroupM Media India Private Limited
7th & 8th Floor, Wing A, The ORB, Village Marol,
Andheri (East), Mumbai- 400 099
Rajeev.gupta@groupm.com
M: 9990001405

...Petitioner/Operational Creditor

Versus

Hooq Digital (India) Private Limited
Unit- 109, 1st Floor, Sec-30,
Park Centra, Build Gurgaon
Gurgaon- Haryana- 122002
legalindia@hooq.tv

...Respondent/Corporate Debtor

Judgment delivered on: 09.09.2022

**CORAM: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

For the Operational Creditor : Ms. Kritika Sharma, Advocate
For the respondent/corporate debtor : None
(Right to file the reply of the
respondent/corporate debtor
forfeited vide order dated
26.05.2022)

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The instant petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the 'Code') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

(hereinafter referred to as the '**Rules**') by GroupM Media India Private Limited (for short hereinafter referred to as the '**operational creditor/petitioner**') through its Authorized Representative Mr. Rajeev Gupta for initiating Corporate Insolvency Resolution Process (for short hereinafter referred to as the '**CIRP**') against Hooq Digital (India) Private Limited (for short hereinafter referred to as the '**corporate debtor/respondent**'). Copy of Board Resolution dated 09.11.2020 authorizing Mr. Rajeev Gupta, has been annexed as Annexure I with the petition. The present petition has been filed in Form 5 as prescribed in Rule 6 (1) of the Rules. The petition is supported by affidavit of Mr. Rajeev Gupta and the same is at page 24B of the petition.

2. The corporate debtor, namely, Hooq Digital (India) Private Limited is a company incorporated on 18.06.2015 under the Companies Act, 2013, having CIN U74140HR2015FTC055810 and its registered office is at Unit -109, 1st Floor, Sec-30, Park Centra, Build Gurgaon, HR 122002. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the corporate debtor is at 24D of the petition.

3. The brief facts, as stated in the petition, are that the operational creditor provided services of brand performance campaign/corporate image enhancement through display media planning, buying and implementation as per media plans approved by the respondent/corporate debtor and the corporate debtor has been a constituent/customer of the operational creditor. It is stated that a Media Service Agreement dated 31.07.2017 (for short hereinafter referred to as the '**Agreement**') was executed between the operational creditor and the corporate debtor and since July 2017, the corporate debtor had been availing the services of the operational creditor/petitioner and various invoices came to be raised by the

operational creditor upon the corporate debtor from time to time and part payments were also made by the corporate debtor from time to time.

4. It has been further stated that in or around June, 2018, as requested by the corporate debtor, certain terms of the Agreement were amended and the same were stated to be recorded by an Addendum. By the said addendum, a thirty day credit period was granted from the date of raising invoices with respect to non-TV media services, the same was mutually agreed upon after several discussions/negotiations, which have been recorded vide several e-mails. As per the terms of the Agreement, the operational creditor issued OT Media Estimates/Proforma Invoices and the same have been expressly approved by the corporate debtor for non-TV media services.

5. As per the specifications contained in the said Media Estimates and subsequent to the approval of the corporate debtor, the operational creditor carried out brand performance campaign on various platforms (Facebook, Google etc.), as agreed in the Agreement. As per the terms of the Agreement and several e-mails and terms and conditions of the invoices, it was agreed that the payments for non-TV medic services shall be due within thirty days from the date of invoice and failure to make such payment would attract interest at 18% p.a.

6. It has been averred on behalf of the operational creditor that towards the aforesaid services provided by the operational creditor, during the period December 2018 to May, 2020, the operational creditor raised 47 invoices, which were accepted by the corporate debtor without any dispute, demur or protest of any sort whatsoever. Out of the 47 invoices, 35 invoices having aggregate invoice amounting to Rs.2,12,30,127/- were those in respect of which default had

occurred prior to 23.03.2020. The corporate debtor had also made part payments for which due credit was given to the corporate debtor. Last payment was made on 29.10.2020 (Ledger at Annexure H, Page 138-140). Further, there were 5 credit notes raised from time to time and the same have been annexed as Annexure A-36 to A-39) of which due credit were given. Thus, it has been prayed that as on 23.03.2020, after giving credit towards part payment and credit notes, the operational creditor is entitled to balance outstanding sum of Rs.2,20,28,662/- . Hence, it has been submitted by the operational creditor in Form 5, Part IV that the amount claimed to be in default is Rs.2,20,28,662/- (Rupees Two Crores Twenty Lacs Twenty Eight Thousand Six Hundred and Sixty Two only) [inclusive of Principal sum of Rs.2,09,82,771.73 (Rupees Two Crores Nine Lacs Eighty Two Thousand Seven Hundred and Seventy One and Seventy Three Paise only) with interest @ 1.5% per month] payable as on 23.03.2020.

7. It is averred on behalf of the petitioner/operational creditor that since, the respondent/corporate debtor failed to make the payment, the operational creditor through its counsel had sent a Legal Notice dated 15.06.2020 through e-mail (Annexure F) to the corporate debtor asking the corporate debtor to pay the dues towards all outstanding invoices. After receiving no response, it had sent Demand Notice dated 15.09.2020 in Form 3 calling upon the respondent/corporate debtor to pay the operational debt in default. The said notice was stated to be sent to the respondent and its Directors via e-mail dated 17.09.2020 at the registered e-mail address with the MCA and the same was also couriered on 17.09.2020 to the respondent at the registered address of the corporate debtor, however, the same was returned back with the remark 'Consignee Shifted' from the registered

address. Copy of e-mail, demand notice, postal receipt and tracking details have been annexed as Annexure G with the petition.

Thus, it has been submitted on behalf of the operational creditor that despite receipt of demand notice via e-mail, the corporate debtor has failed to make any payment till date. No reply to the demand notice and no notice with respect to any dispute of the unpaid operational debt was given at any point in time either before the service of the demand notice or after service of the demand notice.

8. Vide order dated 25.10.2021 notice of the petition was issued to the corporate debtor to show cause as to why this petition be not admitted. The petitioner/operational creditor filed affidavit of service vide Diary No.00259/01 dated 17.12.2021, wherein it has been deposed by Mr. Rajeev Gupta, Authorized Representative of the petitioner/operational creditor that in compliance of order dated 25.10.2021, the petitioner/operational creditor has sent notice by way of e-mail on 10.11.2021 at all the e-mail addresses available with it, and out of the aforementioned e-mail addresses, the notice had been delivered on one of the e-mail addresses. Copy of e-mail has been annexed as Annexure A with the affidavit of service. Further, it has been deposed that notice of the petition along with copy of petition and complete paper book was sent through speed post on 11.11.2021 at the registered office address of the respondent/corporate debtor, however, the said notice was returned on 15.11.2021 with the remarks 'Addressee left without instructions'. The postal receipt dated 11.11.2021 along with tracking report has been annexed as Annexure B with the affidavit of service. Not only this, the petitioner/operational creditor also advertised the notice of petition and the date of hearing in two local daily newspaper viz. 'Financial Express' (English) Delhi
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NCR Edition and 'Jansatta' (Hindi) Delhi NCR Edition on 10.12.2021. Copies of newspaper clippings have been annexed as Annexure C with the affidavit of service.

9. When the matter was listed on 21.12.2021, Mr. Viraj Gandhi, Advocate, appeared on behalf of the respondent/corporate debtor and sought some time for filing the reply. On 24.03.2022, last opportunity was granted to the respondent/corporate debtor for filing the reply. Thereafter, when the matter was listed on 26.05.2022, Mr. Viraj Gandhi, Advocate stated that he had not received any instructions from the corporate debtor to appear despite several communications, therefore, the right to file the reply by the respondent/corporate debtor was forfeited.

10. We have heard the learned counsel for the petitioner and have gone through the records carefully.

11. The first issue for consideration is whether the demand notice in Form 3 dated 15.09.2020 was properly served. As discussed above, demand notice was sent through e-mail (Annexure G) on 17.09.2020 at the registered e-mail address of the corporate debtor as available on the master data of the MCA.

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The petitioner/operational creditor has filed an affidavit under Section 9(3)(b) of the Code, wherein it has been deposed that the no notice was given by the corporate debtor relating to a dispute of the unpaid operational debt at any point in time. Thus, it can be inferred that there is no pre-existing dispute between the parties.

13. The other issue for consideration is whether this application was filed within limitation. A perusal of the case file shows that the application was filed vide Diary No.00259 on 18.02.2021 (refiled on 16.08.2021), whereas the date of default is 23.03.2020, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

14. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹2,20,28,662/-. As noted above, the operational creditor has provided the details of the debt due and has also annexed with the petition copy of ledger account statement, statement of accounts along with invoices and credit notes. Accordingly, the petitioner/operational creditor has established the debt and the default, which is more than Rupees one lakh i.e. the threshold limit (pre-revised).

15. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default which is above threshold limit. There is no rebuttal to the claim filed by the petitioner as respondent/corporate debtor chose not to appear.

16. In Part-III of Form No. 5, no Interim Resolution Professional has been proposed by the petitioner. Accordingly, we appoint Mr. Satya Dev Kaushik as the Interim Resolution Professional in the matter of Hooq Digital

(India) Private Limited, whose name appears at Serial No.3 of the list provided by the Insolvency and Bankruptcy Board of India, which is valid till 31.12.2022.

17. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP in the case of the corporate debtor, Hooq Digital (India) Private Limited.

18. We also direct moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and

- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

19. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

20. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

21. The Law Research Associate of this Tribunal has checked the credentials of Mr. Satya Dev Kaushik and there is nothing adverse against him. In view of the above, we appoint Mr. Satya Dev Kaushik, having Registration No. IBBI/IPA-001/IP-P00804/2017-2018/11375, E-mail satyadevkaushik@hotmail.com, Mobile No.9810190267 as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Satya Dev Kaushik shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand

suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code

read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) This Adjudicating Authority further directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The IRP is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and by completing the resolution process in a time-bound manner.
- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this

Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

22. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousands Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

23. This petition is accordingly allowed and admitted.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

September, 09th, 2022