

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 2964/MB/2019

Under section 9 of the Insolvency and Bankruptcy
Code, 2016

RIPPLE IP SEREVICES LLP

[CIN: U93091DL2006PTC155308]

Having Office at A-20, First Floor, Guptas, Geetanjali
Enclave, Near Aurobindo College, New Delhi -110017

...Operational Creditor/Applicant

Versus

VUBITES INDIA PRIVATE LIMITED

[CIN: U72900MH2007PTC168009]

Reg. Office- 1st Floor, Mahalaxmi Engineering Estate,
L. J. First Cross Road, Mahim (West)

Mumbai - 400016

...Corporate Debtor/Respondent

Order Delivered on 25.11.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Adv. Kantawala a/w Adv. Amaya M.
Nair

For the Corporate Debtor : Sr.Adv. J.P.Sen a/w Adv. Monika
Tanna & Adv. Dhara Modi

ORDER

Per: Justice P.N. Deshmukh, Member (Judicial)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Ripple IP Services Private Limited,**

("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Vubites India Private Limited ("the Corporate Debtor")**.

2. The Corporate Debtor was incorporated 20.02.2007 under the Companies Act, 1956. The Registered Office of the Corporate Debtor is situated at 1st Floor, Mahalaxmi Engineering Estate, L. J. First Cross Road, Mahim (West), Mumbai – 400016. Therefore, this Bench has jurisdiction to deal with this petition.

Brief Facts of the case:

3. The Operational Creditor is engaged in providing various intellectual property (IP) solutions including patent research, patent preparation and prosecution, competitive analytics, IP process and other support services.
4. The present petition was filed on 06.08.2019 before this Adjudicating Authority (AA) on the ground that the Corporate Debtor failed to make payment of a sum of INR 48,51,753/- (Rupees Forty-Eight Lakhs Fifty-One Thousand Seven Hundred and Fifty-Three Only). The amount comprises of principal amount of INR 37,32,118/- (Rupees Thirty-Seven lakhs Thirty-Two Thousand One Hundred and Eighteen Only) and interest of Rs.11,19,635.40/- (Rupees Eleven Lakhs Nineteen Thousand Six Hundred and Thirty-Five and Forty Paise Only) calculated @18% p.a. The date of default is 29.04.2017.

Submissions made by Operational Creditor:

5. It is submitted that the Operational Creditor pursuant to formal engagement terms signed and agreed between the parties vide email dated 01.11.2012, rendered various IP services to the Corporate Debtor for the period from 12.06.2014 till 31.01.2017. Copy of the said email

dated 03.05.2013 is annexed as Annexure – II-C (page 152-156) to the Petition. In lieu of the said services rendered to the Corporate Debtor, the Operational Creditor raised various invoices from time to time upon the Corporate Debtor. Out of the said invoices, the Corporate Debtor failed to clear the invoices amounting to INR 37,32,118/- which became due and payable on 29.04.2017.

6. Therefore, the Applicant served a statutory demand notice under the Insolvency and Bankruptcy Code, 2016 dated 30.01.2019. The amount claimed in the demand notice is Rs.48,51,753/- (Rupees Forty-Eight Lakhs Fifty-One Thousand Seven Hundred and Fifty-Three Only).
7. Having failed to realise the payment under the unpaid invoices, the Operational Creditor issued Demand Notice under Section 8 of the Insolvency & Bankruptcy Code, 2016 dated 30.01.2019 demanding the unpaid operational debt of INR Rs.48,51,753/- along with interest calculated at the rate of 18 percent amounting to INR 11,19,635.40/- towards delay in payment. Copy of Demand Notice dated 30.01.2019 is annexed as Annexure – I (pages 39-123) to the Petition.
8. The Corporate Debtor sent reply to the said Demand Notice vide letters dated 08.02.2019. The Operational Creditor submits that the Corporate Debtor neither gave any notice of pre-existing dispute with respect to the amount of invoice and/or quality of services. The invoices were approved by the concerned personnel of the Respondent. Also, the Respondent erroneously stated that the invoices are time-barred. It is pertinent to mentioned here that it was as ongoing account, and the last invoice was raised on 30.03.2017. Accordingly, the claim is well within limitation period.
9. The Corporate Debtor sent a letter through its Counsel dated 08th February 2019 requesting therein not to initiate Corporate Insolvency

Resolution Process against the Corporate Debtor. Copy of the said letter is annexed as Annexure-II-K (page 110) to the Petition. The Corporate Debtor sent another letter through its Counsel dated 22.04.2019, copy of which is annexed as Annexure – II-L (pages 111-116) to the Petition wherein the Corporate Debtor has made averments as to the existence of dispute without substantiating the same with any proof of record of pending suit and/or arbitration in relation to the operational debt/claim.

10. The Operational Creditor has annexed copy of screenshots of communication where the personnel have assured them regarding payment of invoices. Annexure – II F, G and H (Pg.219-221).

Submissions made by Corporate Debtor by way of affidavit in Reply:

11. The Corporate Debtor submitted its reply vide Affidavit dated 09.12.2019 denying each and every allegation submits that the Petition filed under Section 9 of IBC, 2016 by the Operational Creditor is not maintainable and deserves to be rejected in view of the following grounds:
 - a) The Corporate Debtor is engaged in providing television advertising solutions for broadcasters and cable operators. The Corporate Debtor is the subsidiary of Rediff.com India Limited.
 - b) That as mentioned above, the Corporate Debtor has engaged the services of the Applicant in relation to the global patent registration for its business by way of a client intake form dated 10.06.2014. The Client intake form is not a Purchase Order. It is evident to note that the Applicant has tampered with the Client intake form by inserting words "Open Purchase Order" to stake a claim prior to the engagement.

- c) That the Client Intake Form in no way qualified to be a Purchase Order as alleged by the Applicant in its Demand Notice. Further, it is stated the Applicant before starting the work did not take permission of the Corporate Debtor about the estimated cost and did not even take a prior approval. The Applicant further raised the invoices after almost a period of one year from the date of the alleged cost as incurred by the Applicant. Exhibit "I" annexed to Reply is the list of invoices raised after almost a period of 1 year from the date of alleged cost.
- d) That it is further mentioned, the Corporate Debtor in the past unquestioningly and in good faith paid the Applicant amounts to the tune of Rs.53,39,993. However, on subsequently receiving unfounded claims for a further sum of around Rs.37,32,118 Corporate Debtor discovered discrepancies in the said amount claimed. Exhibit "J" Exhibit "I" annexed to Reply is the statement for the payment of Rs.53,39,993 to the Applicant.
- e) At the cost of reputation it is submitted that none of the Invoices as attached in the Petition are supported with the vouchers/ invoices that would corroborate the expenses that have actually been incurred by the Operational Creditor. It is further stated that, invoices follow no standard format. Again, such a big scale enterprise would not process such invoices without seeking corroboration of the fact that the purported work was authorized and approved and actually done.

No Alpha Numeric Code					
Sr. No.	Invoice No.	Date	Amount	Service	Page No.
1.	242015.R	13.08.2015	60166	No Alpha	169

				Numeric Code	
2.	412016.R	28.02.2017	74800	No Alpha Numeric Code	210

Reimbursement expenses that have not incurred but issued						
Invoice No.	Date	Case No.	Country	Amount	Service	Page No.
112016.R	12.03.2015	VUB003	US	46200	Work done on 12.08.2015	175

- f) It is further stated that, there are so many discrepancies in the Invoice that Applicant has raised some invoices undertaken with the different amounts having the same work. The copy of the Invoice given to the Corporate Debtor bears a different amount when compared to the Invoice attached in the Application. This clearly indicates that Invoices are fabricated and tampered by the Applicant. The particulars of such discrepancies in the Invoice are stated below:

Invoice No.	Date	Case No.	Country	Invoice amount annexed to Demand Notice	Invoice amount given before the demand notice was served	
82016.Reimb	6.04.2016	VUB005-USA	US	52463	60000	Invoice with

132016.Reimb	6.04.2016	VUB005- USA	US	99300	68000	different amount but same work on same date
182016.Reimb	6.04.2016	VUB005- USA	US	86060	92500	

12. With reference to the contents of Part IV (1) of Company Petition, the Corporate Debtor denies that, there is any outstanding debt. It is also denied that the Operational Creditor can claim 18% or any other sum on account of interest. The Corporate Debtor strongly denied that nothing is payable to the Operational Creditor as there was neither any order nor any clause in the invoice that specified about the interest claim of 18% or any other sum.

Findings:

13. We have heard the submissions of the Counsel appearing for the Operation Creditor and Corporate Debtor and perused the records.
14. The amount outstanding is INR 48,51,753/- (Rupees Forty-Eight Lakhs Fifty-One Thousand Seven Hundred and Fifty-Three Only). The amount comprises of principal amount of INR 37,32,118/- (Rupees Thirty-Seven lakhs Thirty-Two Thousand One Hundred and Eighteen Only) and interest of Rs. 11,19,635.40/- (Rupees Eleven Lakhs Nineteen Thousand Six Hundred and Thirty-Five and Forty Paise Only) calculated @18% p.a. and since the present petition was filed before the amendment increasing threshold limit, the present petition is in compliance with section 4(1).
15. The Corporate Debtor has replied to the demand notice and Application as required under the Code vide letters dated dated 08.02.2019.

16. The main contention of the respondent is that multiple invoices were raised on same date, however invoices with different amount but same work on same date. The aforesaid contention of respondent when corroborated with records found true and correct. At the same time, we also note that invoices which were raised were never acknowledged by the Respondent vide its stamp and signature. Therefore, it can be conferred that the Petitioner failed to establish its debt.
17. Upon perusing the records, in corroboration of admission of claim by the Respondent it is carved out that there is a pre-existing dispute between the parties. There are certain communications which indicate that there is certain amount which is to be released in 2017 and thereafter invoices were issued of different amount in it. Therefore, from the records it is culminated that there is dispute between parties regarding services and amount of invoices raised. Moreover, the Hon'ble Supreme Court in the matter of *Rajratan Babulal Agarwal versus Solartex India Pvt. Ltd. & ors. Civil Appeal No. 2199 of 2021* has observed that:

“60. When we speak about evidence, we must not overlook the law laid down in Mobilox (supra) that the court need not be satisfied that the defense is likely to succeed. The standard, in other words, with reference to which a case of a pre-existing dispute under the IBC must be employed cannot be equated with even the principle of preponderance of probability which guides a civil court at the stage of finally decreeing a suit. Once this subtle distinction is not overlooked, we would think that the NCLAT has clearly erred in finding that there was no dispute within the meaning of the IBC.”

18. The Petition bearing **CP(IB)2964/MB/2019** filed by the **Ripple IP Services Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application

to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Vubites India Private Limited (CIN: U72900MH2007PTC168009)** the Corporate Debtor, is rejected.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

25.11.2022

SAM

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)