IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.3685/MB.IV/2018

Under section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Novex Communications Private Limited
[CIN: U92132MH2002PTC135397]

…Operational Creditor

Versus

Four Pillars Event Management Services Private Limited
[CIN: U92190PN2017PTC169238]

… Corporate Debtor

Order pronounced on : 18.09.2020

Coram:

Mr. Rajasekhar V.K.	:	Member (Judicial)
Mr. Ravikumar Duraisamy	:	Member (Technical)

Appearances:

For the Operational Creditor	:	Ms Prachi Dhatavkar i/b Ms Priti Naik, Ms Turpti Nikam and Ms Pooja Gala, Advocate
For the Corporate Debtor	:	No representation

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by Novex Communications Private

Limited *(Operational Creditor)* [CIN: U92132MH2002PTC135397], a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Director, Mr Miket Kanakia, on the basis of a Board Resolution dated 07.07.2018, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Four Pillars Event Management Services Private Limited *(Corporate Debtor)*.

2. The Corporate Debtor is a private company limited by shares and incorporated on 06.03.2017 under the Companies Act, 2013, with the Registrar of Companies (RoC), Maharashtra, Pune. Its CIN is U92190PN2017PTC169238. Its registered office is at B-302, Ujwal Serene, Survey No.273/1, Near Mauli Garden, Baner Road, Pune 411 045, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 25.09.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹3,00,000.00 (Rupees three lakh only) as principal and ₹23,474.00 (Rupees twenty-three thousand four hundred and seventy-four only) as interest as on 20.03.2018, which is stated to be the date of default.

4. The case of the Operational Creditor is as follows: -

(a) The Operational Creditor is the assignee of copyrights over certain sound recordings, consisting of a large repertoire of songs in Hindi and other regional languages. The Operational Creditor has obtained these rights under Assignment Agreements signed with Zee Entertainment Enterprises Private Limited, Eros International Media Limited, Shemaroo Entertainment Limited and Tips Industries Limited. The Operational Creditor is also the

Authorised Agent of Yash Raj Films Private Limited in terms of section 30 of the Copyright Act, 1957. The assignment agreements and the authorisation by Yash Raj Films Private Limited cover on-Ground Performance Rights and usage of sound recordings and underlying works in any public venues with respect to the songs (para 4-5 at page 97 of the Petition);

(b) The Corporate Debtor is an event management company. It approached the Operational Creditor for obtaining on-Ground Performance Rights for an event called *"Da Bangg The Tour Pune"* which was held on 24.03.2018 at the Shree Shiv Chhatrapati Sports Complex Stadium, Pune. The Operational Creditor raised a proforma invoice dated 20.03.2018 on the Corporate Debtor ₹3,00,000/- (Rupees three lakh only), for non-exclusive public performance rights in sound records (para 6 at page 97 of the Petition);

(c) The Corporate Debtor issued a cheque for ₹3,00,000/- (Rupees three lakh only) drawn on Axis Bank Limited against the proforma invoice, However, when the cheque was presented for payment, it bounced (para 7-8 at pages 97-98 of the Petition).

5. Invoices have been placed on record as Exhibit 'I' at page 9. The invoices do not provide for interest in case of delayed payments. Bank statements are attached as Exhibit 'D' at pp.13-91. The total debt due and payable to the Operational Creditor is ₹3,23,474.00 (Rupees three lakh twenty-three thousand four hundred and seventy-four only), as mentioned at page 95 of the Petition.

6. The Operational Creditor had served a Demand Notice in Form 3 dated 31.07.2018 to the Corporate Debtor (Exhibit 'I', pp.6-7) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the

Demand Notice. Necessary affidavit of No Dispute in terms of section 9(3)(b) of the IBC has been annexed at Exhibit 'III' at pp. 98.

7. The Corporate Debtor has not submitted any reply in the matter.

8. We have heard the arguments of the Learned Counsel for the Operational Creditor and perused the records.

9. Section 5(21) of the IBC defines an *"Operational Debt"* to mean *"a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority."* Section 5(2) of the IBC defines the term *"Operational Creditor"* to be a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

10. In *M Ravindranath Reddy v G Kishan & others,*[1] the Hon'ble NCLAT has held that for an amount to be classified as an operational debt under the IBC, –

Firstly, the amount should fall within the definition of 'claim' as defined under section 3(6) of the IBC;

Secondly, such a claim should be within the confines of a 'debt' as defined under section 3(11);

Thirdly, such a debt should fall strictly within the scope of an 'Operational Debt' as defined under section 5(21) of the IBC, meaning thereby that the claim should arise in respect of –

(i) Provision of goods or services including employment; or

[1] Company Appeal (AT) (Insolvency) No.331/2019 dated 17.01.2020

(ii) A debt in respect of repayment of dues arising under any law for the time being in force and payable either to the Central Government, any State Government or any local authority.

Thus, only if the claim falls within one of the three categories as listed above, can it be classified as an operational debt. If the amount claimed does not fall under any of the above categories, then the claim cannot be categorised an operational debt, even though there may be a liability or obligation from one person to another.

11. This is a case where the existence of a jural relationship between the Operational Creditor and the Corporate Debtor has not been established. There is no claim in respect of any provision of goods or services. The respondent was expected to purchase a licence for public performance and broadcast of songs, in respect of which the petitioner is an assignee of copyright. This does not satisfy the definition of 'Operational Debt' within the meaning of section 5(21) of the IBC. Consequently, the petitioner cannot be treated as an 'Operational Creditor,' and the petition itself cannot be maintained under section 9 of the IBC.

12. For the reasons stated above, the present petition fails and therefore, the same is rejected.

13. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on grounds only of dismissal of the present petition by this Adjudicating Authority.

14. Let a copy of this order be communicated to the parties in terms of the provisions of section 9(5)(ii) of the IBC.

Sd/-	Sd/-
Ravikumar Duraisamy	Rajasekhar V.K.
Member (Technical)	Member (Judicial)

18.09.2020