IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

C.P. (IB) No.183/BB/2020
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Digiquora Consulting Private Limited
R/o. at No.609-610, 6th Floor,
Iscon Elegance, Prahladnagar,
Ahmedabad – 380 015. - Petitioner/Operational Creditor

Versus

M/s.SLK Global Solutions Pvt. Ltd.
SLK Green Park, 3rd & 4th Floor,
Tower B Amin Properties LLP SEZ,
Pujanahalli, Devanahalli,
Bengaluru – 562 110. - Respondent/Corporate Debtor

Order delivered on: 07th March, 2022

Coram: 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri W. M. Sundaramurthy
For the Respondent : Ms. Tamara Sequeira

O R D E R

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') by M/s. Digiquora Consulting Private Limited (hereinafter referred to as 'Petitioner/ Operational Creditor') to initiate the Corporate Insolvency Resolution

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Process ('CIRP') against M/s. SLK Global Solutions Pvt. Ltd. (hereinafter referred to as 'Respondent/Corporate Debtor').

2. The Corporate Debtor viz., M/s. SLK Global Solutions Pvt. Ltd., is a Company incorporated on 24.05.2001 under the provisions of Companies Act, 1956 with CIN: U72200KA2001PTC029055 having its registered office at SLK Green Park, 3rd & 4th Floor, Tower B Amin Properties LLP SEZ, Pujanahalli, Devanahalli, Bengaluru-562110. The Authorised Share Capital of the Respondent/Corporate Debtor is Rs.2,00,00,000/- and the Paid-up Capital is Rs.90,31,600/- as per the Company Master Data attached at Annexure-A of this Petition. It is involved in software publishing, consultancy and supply of software publishing including production, supply and documentation of ready-made (non-customized) software, operating systems software, business & other Applications Software, computer games software for all platforms.

3. The Operational Creditor entered into a Master Services Agreement on 28.08.2018 with M/s. Diligent International to perform services as specified in Statement of Work (SOW), pursuant to which a Tripartite Assignment Agreement was executed in favour of the Corporate Debtor on 04.02.2019 along with Statement of Work dated 04.02.2019.

4. Further, the Operational Creditor authorized the Corporate Debtor to use the Source code and all related work products and deliverables. Moreover, the Operational Creditor authorized the Corporate Debtor to use the source code in terms of Master Service Agreement dated 28.08.2018. The Operational Creditor was required to render its services and deliverables in terms of Statement of Work assigned by the Corporate Debtor and towards such services the Operational Creditor was entitled to raise invoice and serve the same on the Corporate Debtor for making payments within 30 days from the date of invoice failing which the Corporate Debtor was liable to pay interest @ 12% p.a.

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5. The Operational Creditor in due course of the contract raised the following invoices towards usage of source code and all related work products and deliverables.

Invoice Date	Invoice No.	Invoice Amount Rs.	GST Amount Rs.	Total Amount in Actuals Rs.
01.08.2019	DQ/19-20/17	3,57,882	64,419	4,22,301
01.08.2019	DQ/19-20/18	32,400	5,832	38,232
01.08.2019	DQ/19-20/19	61,88,353	11,13,904	73,02,256
01.08.2019	DQ/19-20/20	4,56,071	82,093	5,38,163
01.08.2019	DQ/19-20/21	6,70,000	1,20,600	7,90,600
01.09.2019	DQ/19-20/22	40,235	7,242	47,478
01.09.2019	DQ/19-20/23	13,10,176	2,35,832	15,46,008
01.09.2019	DQ/19-20/24	63,810	11,486	75,295
			TOTAL	1,07,60,333

6. It is submitted that the Corporate Debtor committed default by not clearing the outstanding as per the invoices raised and after the expiry of 30 days from the date of invoice the Operational Creditor issued a demand notice in terms of Section 8 of the IBC, 2016 as required under Rule 5 of the I&B (AAA) Rules, 2016.

7. It is submitted that upon receipt of demand notice, the Corporate Debtor issued a reply admitting the liability and failed to clear the outstanding as claimed in the demand notice. Hence, the instant Application to initiate CIRP seeking a claim of Rs.1,12,81,663/- along with interest @12% p.a.

8. The instant Petition is opposed by the Corporate Debtor by filing its Statement of objections dated 15.09.2021, by *inter alia* contending as under:

(a) It is submitted that there is a genuine dispute with respect to the amount claimed by the Petitioner. The Respondent raised a dispute well before issuance of the Demand Notice dated 22.01.2020. The Respondent has concrete information to show that the Petitioner conspired with former employees of the Respondent in order to obtain the contract with the Respondent and thereafter abused the said

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relationship and provided rates in excess of that market rate, consciously done to cause loss to the Respondent and to steal its Confidential and Proprietary information.

(b) In connection with the Petitioner's illegal actions, the Respondent filed Comm. OS No.401/2019 against the Petitioner and its cohorts, which is pending before the Commercial Court, Bengaluru as on date ("suit"). Thereafter, the Respondent moved the Hon'ble High Court of Karnataka in W.P.No.523/2020 and the Hon'ble High Court was pleased to grant an order of interim stay against the Respondents therein ("interim order"), which includes the Petitioner ("writ petition"). The Petitioner is fully aware of the existence of the said matters and has entered appearance before the Commercial Court. The dispute raised by the Respondent is bona fide and can be directly related to the amounts falsely claimed to be due.

(c) The Petitioner despite being in breach of the contract on which it relies i.e. the Master Services Agreement dated 28.08.2018 has proceeded to raise the invoices mentioned with the sole intention of making unlawful gains, at the expense of the Respondent. Further, despite being fully aware of the existence of the suit and the writ petition, it has filed the present application claiming an "admitted debt".

(d) In connection with the various illegal activities of the Petitioner, the Petitioner without providing any notice, pulled out the senior most resource (who was heading the entire team and project) deputed to the Respondent at a critical juncture of the project falsely claiming that he was pulled out due to "address an urgent matter that involved Anish Mody". The said statement was made as an after though, to cover up the various illegalities of the Petitioner, in response to the Respondents notice terminating the MSA. It is noted that the MSA was terminated with effect from 08.08.2019. The various invoices claimed to be due by the Petitioner are for periods during which no services were rendered during the said period and for periods after termination of the contract

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on which they rely. As such existence of a dispute is manifest from the exchanges between the parties and by no stretch of imagination can it be argued that there exists an "admitted debt" as is required by the Code.

9. In response to the aforesaid objections, the Operational Creditor has also filed its rejoinder dated 21.12.2021, by *inter alia* stating as under:

(a) It is submitted that the Corporate Debtor is making frivolous allegations which are unsustainable in the eyes of the law. Accordingly, Section 238 of the IBC mandates that provisions of the IBC shall have the overriding effect not withstanding anything inconsistent therewith contained in any other law for the time being in force, which inter alia includes any court including commercial courts. However, the said Commercial Court proceedings will not restrain the Petitioner from approaching and seeking reliefs from this Adjudicating Authority, as the same has no connection whatsoever to the instant claim.

(b) It is stated that the filing of Comm.O.S.No.401/2019 is clearly an afterthought of the Respondent. A connected matter bearing C.P. (IB) No.344/2019, where the Respondent settled the matter on 05.12.2019 as admitted claim, the invoices in the present claim are the continuation of the previous claim; a submission was made by the Operational Creditor during the pendency of the C.P. (IB) No.344/2019 to add the subsequent invoices, which are part of the present claim; however this Adjudicating Authority directed the Operational Creditor to file a fresh claim, resulting in the instant claim.

(c) Further, the Respondent with sole intention to harass the Operational Creditor, claims that there is dispute in the service rendered and has filed frivolous suit in Commercial Court seeking recovery of damages which is fictitious and devoid of merits. The same is numbered as Com.O.S.401/2019, where the Hon'ble Commercial Court recognising

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no merits in the matter refused to grant any interim order and instead ordered issuance of summons to the Defendants. Thereafter, a W.P.No.523/2020 was preferred against the Daily order dated 21.12.2019, challenging the issuance of notice and a stay was obtained in Com.O.S.401/2019, staying their own suit.

(d) However, it is noted that neither the Hon'ble Commercial Court nor the Hon'ble High Court have stayed this instant Petition, it is further clarified by the Operational Creditor that Com. O.S.No.401/2019 is a claim made by the Respondents to avoid the bona fide claim of the Operational Creditor. However, the Com.O.S.No.401/2019 is completely silent with regard to the invoices of the instant claim.

(e) The Respondent have availed the services rendered by the Operational Creditor in full and the invoices raised are in connection only to the services obtained by the Respondent and not post termination of the MSA dated 28.08.2018. Further, the Respondent has fully utilized the man power of the operational creditor and failed to pay in terms of the MSA dated 28.08.2018, and fraudulently making false accusations with the intention to shy away from the legitimate dues that are to be paid to the Operational Creditor.

(f) It is further stated that the Operational Creditor has produced all the relevant documents in respect to the claim made, however it is further submitted that under IBC, the Financial Creditor is not specifically required to disclose any facts which are not relevant for the purpose of ascertaining the debt and default of the Corporate Debtor. However, the Operational Creditor has produced all the relevant documents in respect of the claim made, the documents on record are held to be sufficient to prove the default made by the Respondent.

10. Heard Shri W.M. Sundaramurthy, learned Counsel for the Petitioner/ Operational Creditor and Ms. Tamara Sequeira, learned Counsel for the Respondent/Corporate Debtor. We have carefully perused the pleadings of

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the parties and extant provisions of the Code, and the Rules made thereunder.

11. It is the settled principle of law that if a dispute was in existence between the parties as on the date of issuance of the Demand Notice by the Petitioner to the Respondent, an Application under Section 9 is not maintainable. Admittedly, in the instant case the Petitioner issued a Demand Notice to the Respondent/Corporate Debtor on 22.01.2020 (Annexure-D) and even before issuance of the said Demand Notice i.e., in the year 2019 itself, the Respondent/Corporate Debtor filed a commercial suit bearing Comm.O.S.No.401/2019, with regard to the same subject matter; and the said suit was pending as on the date of issuance of the Demand Notice. On this ground alone the C.P. is liable to be dismissed, without going into other merits of the case.

12. In the circumstances and for the aforesaid reasons Company Petition bearing C.P. (IB) No.183/BB/2020 is dismissed.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

Shruthi