

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)

CP (IB) No.406 /BB/2019
U/s. 9 of the IBC, 2016 r/w
Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s. APEX AIM PRIVATE LIMITED

52B, Ground Floor, Phase-III,
OKHLA Industrial Estate
New Delhi-110020

... Operational Creditor

VERSUS

MEDIA MOMENTS INSIGHT PRIVATE LIMITED

No .48, 1st Main Road Domlur
Layout BangaloreKA 560071 IN

... Respondent/Corporate Debtor

Order delivered on:-05-01-2022

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

PRESENT:

For the Petitioner : Shri.Ajay R.Aneppanavar , Advocate
For the Respondent : Ms.Pruna Ponnappa, Advocate

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code,2016 (for brevity 'IBC'/'CODE') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **APEX AIM PRIVATE LIMITED** (hereinafter referred to as 'Operational Creditor/Petitioner')

CP (IB)No.406/BB/2019

— Sd —

through its Director Mr.Gaurav Tandon with a prayer to initiate Corporate Insolvency Process (CIRP) in case of **MEDIA MOMENTS INSIGHT PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor/Respondent').There is an affidavit of Mr.Gaurav Tandon,Director of the Operational Creditor in support of the contents of the application dated 16.08.2018 from page no.164-166 of the petition. The Board Resolution dated 18.03.2019 authorising Mr.Gaurav Tandon to represent the Company in the present application is attached at page 172 of the petition.

2. The Corporate Debtor namely, Media Moments Insight Private Limited, is a company incorporated on 05.12.2011 under the provisions of Companies Act,1956 with CIN No.U74999KA2011PTC061493 with its registered office at NO.48 1ST Main Road Domlur Layout Bangalore KA 560071 IN. Hence, the territorial jurisdiction lies with this Adjudicating Authority. The Authorized Share Capital of the Respondent Company is Rs.10,00,000/- and Paid –Up Share Capital of the Company is Rs.1,00,000/-. Copy of Master Data of corporate debtor is found attached at page 205 of the petition.
3. Brief facts of the case, which are relevant to the issue in question, are as follows:
It is submitted by the applicant that it has been engaging in the business of advertising agency through sale of space and time slot. The applicant had entered in to an Agency Advertising Agreement dated 30.10.2017 with Respondent regarding agency services including but not limited to marketing consultancy planning of special promotion activity, editorial publicity, public relations, journalism etc.
4. It is submitted that the applicant has executed the advertising engagement to the satisfaction of the Respondent and invoices with GST were raised which was

approved and confirmed by the Respondent. The Corporate Debtor has committed default for a total outstanding amount of Rs.1,29,34,250 /- (Rupees one crore twenty nine lakh thirty four thousand and two hundred and fifty only) including interest being Rs.33,35,047 /-(Rupees thirty three lakh thirty five thousand and forty seven only) as on 31.03.2019. Workings on Computation of interest claim amount is annexed to the application. The amount of debt was due after 7 days from the date of invoice raised by applicant.

5. The Respondent has deducted TDS on the bills accounted for. This is evident from 26AS of the applicant and the same is also reflected from the sales Register send by the Respondent through email dated 15.06.2018 reflecting all the invoices raised by the Applicant except one invoice. It is further submitted that the Respondent has paid certain amount out of invoices raised by the Applicant. It is stated that there was no dispute raised by the Respondent regarding any kind of deficiency in services and amount outstanding against them till the date of sending demand notice.
6. It is submitted that the applicant has delivered demand notice in Form 3 dated 01.08.2018 demanding the payment of an unpaid operational debt due from the respondent vide Courier on 02.08.2018. The said demand notice has been delivered to the Respondent on or before 03.08.2018.
7. The Respondent has sent reply through its legal counsel stating that payment has not been received from Respondent's customer and as per Agency Advertising Agreement the payment is dependent on receipt of payment from Respondent's customer. It is stated that there is nothing mentioned about the same in the Agency Advertising Agreement.

8. On 14.12.2021 the Learned Counsel for the Respondent Corporate Debtor stated through video Conference that they have not filed any reply/Objections opposing the C.P, however states that the Respondent is admitting the debt and its liability to pay to the Petitioner.
9. Heard Mr.Ajay R. Aneppanavar, learned Counsel for the Petitioner and Mr.Pruna Ponnappa, learned Counsel for the Respondent and perused the pleadings on record.
10. In the present case, the occurrence of default is evidenced by the details furnished by the Petitioner/applicant including the record of financial information (Form -C) issued by NESL in respect of the debt of the Corporate Debtor which is attached to this petition.
11. The first issue for consideration is whether the demand notice in Form 3 dated 01.08.2018 was properly served. The demand notice was sent to the registered address of the corporate debtor on 02.08.2018. In view of the same, it is held that the demand notice has been duly served.
12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. There is no dispute as to the liability of the Corporate Debtor.
13. The other issue for consideration is whether present application is filed within limitation. The transaction involving the defaulted amount dated back to October 2017. The demand notice was served on 01.08.2019 (page 13) and the application was filed on 19.08.2019. Therefore, the petition has been filed within the period of limitation.
14. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above,there is a total unpaid

operational debt (in default) of Rs.1,62,69,297/-which includes outstanding invoiced amount of Rs.1,29,34,250/- and interest at 18% of Rs.33,35,047/-. The Operational Creditor has executed the advertising engagement to the satisfaction of the respondent and invoices with GST were raised. Table of computation showing the calculation of outstanding debt amounting to Rs.1,62,69,297/-is found at Annexure VI of the petition. It could be seen that the operational creditor has sent the demand notice in Form 3 for the payment of outstanding dues attached in the petition. A copy of bank statement of operational creditor from 30.11.2017 to 31.01.2018 is attached as Annexure IX. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under section 9 of the Code stand satisfied. Accordingly, the petitioner proved the debt and the default, which is more than one lakh by the respondent corporate debtor.

15. In the given facts and circumstances, the present petition being complete and having established that the default in payment of the Operational Creditor for the default amount is above 1,00,000 the petition is admitted in terms of Section 9 of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (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 Financial Assets and Enforcement of Security Interest Act, 2002;
 - (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;
 - (e) 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 the moratorium period;
 - (f) 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 financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
 - (g) 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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;
16. In Part-III of Form No.1, Mr.Suresh Kumar S, Registration No. IBBI/IPA-001/IP-P00898/2017-2018/11495 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 06.11.2019 of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Suresh Kumar S and there is nothing adverse against him. In view of the above, we

appoint Mr. Suresh Kumar S, bearing Registration No.IBBI/IPA-001/IP-P00898/2017-2018/11495, registered address at # 436, 2nd floor, 40th Cross, Jayanagar 5th block,Bangalore 41, e-mail: casuresh@icai.org , as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying 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 for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
18. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.



— sd —

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)



— sd —

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)

Bhanu Priya (LRA)