



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.03
IB-446(ND)/2020

IN THE MATTER OF:

Yasir Iqbal

.... **APPLICANT/PETITIONER**

Vs.

Metallicz Media Pvt. Ltd.

.... **RESPONDENT**

SECTION

U/s 9 IBC code 2016

Order pronounced on 26.04.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-446(ND)/2020 is **dismissed**.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-446/ND/2020

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

YASIR IQBAL
(Proprietor of Art and Living Advertising & Interiors)
Registered office at:
D-9/4, OkhlaVihar, Jamia Nagar
Delhi - 110084

...Operational Creditor

Versus

M/s METALLICZ MEDIA PRIVATE LIMITED
RegisteredOffice at:
House No. 114, Sarikavihar, Najafgarh
New Delhi - 110043

...Corporate Debtor

Delivered on: 26.04.2023

Coram:

Shri BachuVenkatBalaram Das
Hon'ble Member (Judicial)

Shri AtulChaturvedi
Hon'ble Member (Technical)



Appearances:

Operational Creditor: Mr. Khilit Arora, Advocate

Corporate Debtor : Mr. Rahul Gupta, Advocate

ORDER

Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The instant application bearing IB-446/ND/2020 has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, one Mr. Yasir Iqbal (Proprietor of Art and Living Advertising & Interiors) is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Metalicz Media Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

- a. It is submitted that, The Operational Creditor is engaged in the business of branding as well as interiors and exteriors solutions. In 2017, the Corporate Debtor has placed an order on contract basis



for the brands VIVO Cladding, OPPO Cladding and MI Cladding in different states of India.

- b. It is further submitted that, the Operational Creditor as per the orders completed the work in different states of India and has placed the invoices for each work assigned by the Corporate Debtor.
- c. It is averred that, the Operational Creditor after completing the contract as per specification in different states of India raised the invoices of Rs. 47,25,449/- out of which Corporate Debtor has paid Rs. 35,83,000/-.
- d. It is averred that thereafter, after repeated reminders Corporate Debtor has failed to pay the dues.

3. We have heard the arguments advanced by Ld. Counsels appearing for Operational creditor as well as for the Corporate Debtor and also perused the record.

4. The Operational Creditor's claim is based on the facts that, an agreement was executed between the parties as per the contract Corporate Debtor has placed an order on contract basis for the branding of companies like VIVO, OPPO etc. The Operational Creditor has raised invoices after completing the work. The Operational creditor raised the invoices of Rs. 47,25,449/- out of which Corporate Debtor has paid Rs. 35,83,000/-.



5. It is further submitted that, Operational Creditor sent demand notice u/s 8 (1) of the Code to the Corporate Debtor on 10.12.2019. The total amount of debt in respect of which default is claimed in this notice is Rs. 11,42,449/-. Corporate debtor has not responded to the demand notice. The Corporate Debtor has not repaid the amount in default till date of filing the instant application even after persistent reminders and notices.

6. Per contra, Corporate debtor has raised contentions:-

I. The Corporate Debtor has submitted that, there is no buyer-seller relationship between them, as invoices raised by the Operational Creditor does not mention the name of Corporate Debtor.

II. The Corporate Debtor has raised second contention on the issue of validity of invoices and submitted that, the Operational Creditor has failed to mention GST No. on the invoices.

7. As regards to the first issue raised by the Corporate Debtor it is observed that, the invoices no. 64 to 70 are not issued in the name of Corporate Debtor. The name on the above mentioned invoices is 'Metalise Media Pvt. Ltd'. Further, while perusing the record we found that invoice no. 67 mentions the name of customer as 'M/s Bareilly Expense'. Further, invoice no. 37 at page no. 64 mentions the address of Corporate Debtor as Rajasthan expenses. As the Corporate Debtor has submitted that there is no buyer- seller relationship between the parties so it



is pertinent at this stage to refer decision of Hon'ble NCLAT in the matter of **Shruti Impex Vs. N.R. Commercials Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 566 of 2020**. The relevant para of the decision is reproduced below:-

(PARA – 14)

The Demand Notice sent by the Appellant to the Respondent contains no details of purchase orders given by the Respondent and mentions that the purchase orders were all given verbally and the contracts were oral. The reply of the respondent to the demand notice flatly denies existence of any buyer-seller relationship between the two parties. It has denied placing any orders for supply of materials with the Appellant and also denied making any payments for the said fictitious supplies. He has gone to the extent of claiming that the claim of operational debt is based on false and fabricated documents and stated that the supply of any material to any purchaser leaves a trail in forms and returns filed before the statutory authorities including VAT returns and remittances of output taxes. There should be valid way bills, and transporters' documents. In the absence of such supporting and corroborating documents and also any valid purchase order signed by the authorized signatory of the respondent the entire claim of the appellant is only false, fabricated and made with the malafide intention of harassing and blackmailing the respondent.

(PARA – 21)

In light of the aforesaid discussion, the appellant has not been able to establish that she is an operational creditor in the case and a relationship of corporate debtor and operational creditor exists between the Appellant and



the Respondent as required in the IBC. Therefore, she cannot claim any relief under Section 9 of the IBC. The appellant fails in her case and the appeal is, therefore, dismissed.

In the light of decision referred to **supra**, while considering the submissions of the Operational Creditor and by perusing the records, we have no hesitation to hold that the invoices raised by the Operational Creditor are fabricated and improper.

8. The second issue raised by the Corporate Debtor relates to the issue of validity of invoices as the Operational Creditor has failed to mention GST No. on the invoices. It is pertinent here to mention Rule – 46 of Central Goods and Services Tax Rules, 2017 which stipulates mandatory contents of invoices same is reproduces below for reference:-

Contents of invoice,

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number, in one or multiple series,

containing alphabets or numerals or special characters hyphen

or dash and slash symbolised as “-” and “/” respectively, and any

combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) name and address of the recipient and the address of delivery,



along with the name of State and its code, if such recipient is unregistered and where the value of taxable supply is fifty thousand rupees or more;

(f) HSN code of goods or Accounting Code of services;

(g) description of goods or services;

(h) quantity in case of goods and unit or Unique Quantity Code thereof; (i) total value of supply of goods or services or both;

(j) taxable value of supply of goods or services or both taking into account discount or abatement, if any;

(k) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

(l) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

(m) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;

(n) address of delivery where the same is different from the place of supply;

(o) whether the tax is payable on reverse charge basis;

and

(p) signature or digital signature of the supplier or his authorized representative.

9. Thus, it is amply clear that, it is mandatory to mention GSTIN No. on the invoices. While perusing the invoices place on record we found that, the



Operational Creditor has failed to mention the GSTIN No. on the invoices. Further, while perusing the records, we found not even a single invoice which mentions GSTIN No. Under GST a tax invoice is an important document as it not only evidences supply of goods or services, but is also an essential document for the recipient to avail Input Tax Credit. Thus, the tax invoice is the primary document evidencing the supply of goods and services which Operational Creditor has failed to prove. Taking into consideration all the aforesaid facts, we are of the view that, the Operational Creditor has failed to prove existence of Operational Debt which is payable by the Corporate Debtor. Thus, we have no hesitation to hold that, the claims raised by the Operational Creditor against the Corporate Debtor are neither tenable in the eyes of law nor on facts.

10. Accordingly, the instant Application bearing IB-446/ND/2020 is hereby ***dismissed***. No orders as to cost. A copy of this order is to be marked to the parties and also to IBBI for record.

SD/-

(Atul Chaturvedi)
Member (Technical)

SD/-

(Bachu Venkat Balaram Das)
Member (Judicial)