

Sl.No.201

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON 30.11.2021 AT 10:30 AM THROUGH
VIDEO CONFERENCE

CP(IB) No.31/9/HDB/2020
U/s 9 of IBC, 2016

IN THE MATTER OF:

Adventity Global Services Pvt Ltd

... Operational Creditor

Vs

Karvy Data Management Services Ltd

... Corporate Debtor

CORAM:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER JUDICIAL
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER TECHNICAL**

ORDER

Order pronounced vide separate sheets. **CP (IB) No. 31/9/HDB/2020** is admitted.


MEMBER (T)


MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 31/9/HDB/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

M/s. Adventity Global Services Private Limited
Registered Office at 101, Interface Buildings No.16,
Off Link Road, Malad (W), Mumbai- 400 064.

... Operational Creditor

AND

M/s. Karvy Data Management Services Limited
Registered Office at Karvy Gateway,
Plot No.38&39,
Nanakramguda, Financial District,
Gachibowli, Hyderabad, Rangareddi,
Telangana-500 032.

... Corporate Debtor

Date of Order: 30.11.2021

Coram:

Hon'ble Dr. N.V.Ramakrishna Badarinath, Hon'ble Member (Judicial)

Hon'ble Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Petitioner: Shri. R.Vijay Anand, Mrs. Rajani and other Advocates.

For Respondent: Shri. Rohit Pogula, Advocate

Heard on: 28.10.2021



PER: BENCH

1) The present petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process for an amount of Rs. 1,11,77,785.23/- with interest @ 12% per annum as on 20th October, 2019.

2) **AVERMENTS IN PETITION**

a) It is averred that operational creditor and corporate debtor entered into a business transfer agreement dated 17th January, 2017 and the same is enclosed as Annexure A-4 to the petition.

b) It is averred that under business transfer agreement all costs and fees relating to transfer of business shall be borne by the corporate debtor. Operational creditor had incurred fees and costs towards services rendered by the operational creditor to the corporate debtor under BTA. Thus operational creditor raised invoices which are mentioned below:

Invoice No. IA1A00005 dated 29th October, 2017 for Rs.2,19,804.50/-.

Invoice No. IA1A00013 dated 24th August, 2017 for Rs.18,30,902.50/-.

Invoice No. IA1A00014 dated 24th August, 2017 for Rs.68,30,902.50/-.

c) Further operational creditor averred that on 21st July, 2018 the corporate debtor made part payment of Rs.50,00,000/- towards invoice No. IA01000013 dated 24.08.2017 and failed to make payments as on due dates and continued to default despite repeated reminders.

d) Thus operational creditor issued Demand Notice/Form-3 dated 22.08.2019 under Section 8 of the I&B Code, 2016 demanding payment in respect of unpaid operational debt from the Corporate debtor. Since there was no reply from the corporate debtor, operational creditor thus filed the present petition for initiating CIRP against the corporate debtor.

The present petition is supported with the following documents:



- A copy of Business Transfer Agreement executed between the operational creditor and corporate debtor. (Annexure-4).
- Invoices raised by the operational creditor. (Annexure-5-7).
- Demand Notice issued by the operational creditor demanding payment along with tracking consignment. (Annexure-9).
- Copy of bank statement. (Annexure-11-12).

3) **AVERMENTS IN COUNTER DATED 09.01.2021**

- a) It is averred that the present petition is entirely misconceived and deserves to be dismissed.
- b) It is submitted that upon receipt of demand noticed dated 22.08.2019 from the petitioner, the respondent replied to the demand notice dated 04.09.2021. The reply notice is filed herewith as Annexure-1.
- c) It is submitted that during the transfer of business from petitioner to the respondent, the petitioner withheld crucial facts from the respondent and thus violated the Business Transfer Agreement.
- d) It is submitted that petitioner had breached its representations, warranties and other obligations under the Business Transfer Agreement and entered into business transfer agreement by withholding crucial facts from the knowledge of the respondent.
- e) It is submitted that there were several contracts transferred by the petitioner to the respondent under the Business Transfer Agreement. One such contract was originally entered into between the petitioner and an insurance provider and thus the petitioner was providing call center services to the insurance provider. It is averred that the petitioner was supposed to maintain call recordings as per law and regulations framed by the Insurance Regulatory and Development Authority. However, the petitioner failed to do so and did not transfer the required call recordings to the respondent.

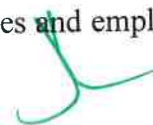


- f) It is submitted that petitioner has committed three breaches: firstly petitioner failed to maintain required call recordings as per law. Secondly, the petitioner failed to disclose to the respondent that call recordings had not been maintained and falsely represented and warranted that it was in compliance with applicable law. Thirdly, the petitioner failed to transfer such call recordings as per Business Transfer Agreement.
- g) It is submitted that under the Business transfer agreement, the respondent is not liable to undertake certain excluded liabilities, which are defined as inter alia any liability arising out of the transferred business before a certain cut-off date. Thus, the petitioner must bear all liabilities in relation to said failure to provide call recordings to respondent and/or failure to maintain call recordings.

4) **REJOINDER FILED BY THE OPERATIONAL CREDITOR DATED 05.03.2021**

The averments/ allegations are denied by the operational creditor by replying to the counter as follows:

- a) It is submitted that corporate debtor has not replied to the demand notice and specifically denied in its entirety as incorrect.
- b) Operational creditor in its rejoinder vide para (d) has produced the relevant clause from the BTA and submitted that the representations and warranties of the operational creditor have no relevance to the purchase of the business by the corporate debtor. Thus the alleged dispute now being raised by the corporate debtor ought to be rejected at the threshold by this Tribunal.
- c) Operational creditor has extracted the Clause 2.2 and Clause 6.1(a) and 7.1 of the Business Transfer Agreement in its rejoinder and submitted that purchase consideration excludes (i) Transfer Taxes; and (ii) costs and fees; associated with the Transfer of Business. However, it is clearly stated that any fees and costs payable pursuant to the actions of seller under clauses 6.1(a) & 7.1 of BTA shall be the sole responsibility of the Purchase, i.e the corporate debtor. Further submitted that the corporate debtor having enjoyed the benefits under the BTA by receipt of business, purchased assets and assumed liabilities and employees from

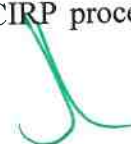


the operational creditor has wilfully and deliberately defaulted in paying the legitimate amounts, due and payable to the operational creditor.

- d) It is submitted that corporate debtor requested the operational creditor to provide the call recordings in a different format and the operational creditor has handed over the call recordings in the required format. And further there was never a dispute under the BTA and the operational creditor. The corporate debtor has raised the issue to evade the proceedings.
- e) It is submitted that the corporate debtor is referring to transferred contract but not categorically stated as to how the alleged act of the operational creditor is in breach of transferred contract. Without prejudice to the allegations corporate debtor failed to prove that the alleged disputes were raised by the corporate debtor on the operational creditor and for this reason along, the alleged disputes do not hold good and ought to be rejected.

5) **WRITTEN SUBMISSIONS BY OPERATIONAL CREDITOR DATED 29.10.2021**

- a) It is submitted that corporate debtor has made part payments of the total due amount and agreed to make balance payment to the operational creditor. However, corporate debtor raised disputes in the counter and failed to prove that the alleged disputes raised by the corporate debtor were “pre-existing” i.e dispute existed prior to receipt of demand notice/Form-3.
- b) It is submitted that corporate debtor failed to prove under which ground should this application be rejected as enumerated under Section 9(5)(ii) of IBC. And further prayed the Tribunal to admit the petition for having satisfied the requirement under Section 9(5) of IBC.
- c) It is further contended that none of the grounds pleaded by the corporate debtor are either established or fall within Section 9(5)(ii) of IBC, therefore this petition is liable to be dismissed. Thus contending learned counsel for operational creditor prayed the Tribunal to admit the petition and initiate CIRP process against the corporate debtor.



- d) Operational creditor has placed reliance on the following rule of Hon'ble Supreme Court of India in re, of *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited.*, (2018) 1 SCC 353, wherein it was held that:

“...34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

- i. Whether there is an “operational debt” as defined exceeding Rs. 1 Lakh?
- ii. Whether the documentary evidence furnished with the application shown that the aforesaid debt is due and payable and has not yet been paid? And
- iii. Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?
- iv. If any one of the aforesaid conditions is lacking, the application would have to be rejected ...”

6) **WRITTEN SUBMISSIONS BY CORPORATE DEBTOR DATED 01.11.2021**

- a) The Corporate Debtor submits that petitioner has breached its obligation to properly transfer the SBI Life contract under the Business Transfer Agreement by not providing the respondent with the call recordings. Thus, the corporate debtor is not liable to pay any further consideration to the petitioner under the Business Transfer Agreement.
- b) Clause 2 of the Business transfer agreement defines and provides for ‘Excluded Liabilities’. Excluded liabilities are those which arose prior to the cut-off date. Thus, the petitioner must bear all liability in relation to said failure to provide call recordings to respondent and/or failure to maintain call recordings.
- c) Thus the petitioner has breached its representations and warranties under the BTA and shall be liable to indemnify any loss, costs, expenses etc. incurred by the Respondent in relation to failure to provide the call recordings.





- d) In view of this, the respondent is not liable to pay any amounts claimed by the petitioner. Thus the petition is liable to be dismissed with costs.
- 7) In the light of the contest, supra, the point that emerges for consideration is whether the petitioner had made out the case for initiation of CIRP against the corporate debtor? We heard learned counsel for both sides. Perused the records, written submissions and the case law.
- 8) It is the case of operational creditor that both parties entered into business dated 17.07.2017 (BTA). Under said BTA all costs and fees relating to transfer of business shall be borne by the corporate debtor and operational creditor had incurred fees and costs towards services rendered by the operational creditor to the corporate debtor under the Agreement BTA. Operational creditor thus raised invoices as :

Invoice No. IA1A00005 dated 29th October, 2017 for Rs.2,19,804.50/-.

Invoice No. IA1A00013 dated 24th August, 2017 for Rs.18,30,902.50/-.

Invoice No. IA1A00014 dated 24th August, 2017 for Rs.68,30,902.50/-.

Out of above invoices corporate debtor has duly acknowledged its liability towards Invoice No.IA01000013 to the operational creditor and the submitted proof of part payment was filed by the operational creditor. Thereafter, corporate debtor has failed to make balance payments. Therefore, operational creditor has issued demand notice/Form-3 Under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the corporate debtor, dated 22.08.2019.

However, there was no reply to the Demand Notice. The operational creditor has submitted the copy of the Demand Notice along with Track Consignment.

- 9) The corporate debtor in his counter has stated that both the parties entered into Business Transfer Agreement dated 17.01.2017 for transfer of certain business process outsourcing business of the petitioner to the respondent. Under the stated Business Transfer Agreement, the petitioner was supposed to transfer certain contracts to the Respondents, along with the data relating to said contracts, one such Contract was with SBI Life for providing BPO Operations relating to insurance services.



- 10) The petitioner/operational creditor was mandated by said Contract and IRDA Regulations to maintain call recordings for BPO work done. It is the case of corporate debtor that he repeatedly requested the petitioner for proper copies of call recordings, but the petitioner only provided certain electronic records/files to the respondents which could not be opened as they were password protected/encrypted and were never converted into a readable format. Upon request of the respondent, the petitioner replied that proper copies could only be provided at high cost to the respondent. As such the same would have to be outsourced by the corporate debtor. Copies of the emails regarding failure to provide call recordings of the SBI Life contract are filed by the corporate debtor.
- 11) Corporate debtor further contended that till date petitioner has not provided proper copies of the call recordings to the respondent, which was the obligation of the petitioner under the Business Transfer Agreement.
- 12) It is also the case of corporate debtor that operational creditor intentionally and deliberately not brought these facts to the notice of the Hon'ble Tribunal in an attempt to obfuscate the true facts of the present dispute.
- 13) Thus contending Learned Counsel for corporate debtor has submitted that there is pre-existing dispute as the petitioner has breached its obligation to properly transfer the SBI Life contract under the Business Transfer Agreement as such the respondent is not liable to pay any further consideration to the petitioner. Learned Counsel also relied on clause 2 of the Business Transfer Agreement which defines and provides for 'Excluded Liabilities' which arose prior to the cut-off date and contended that the petitioner must bear the liability in relation to said failure to provide call recordings to respondent and failure to maintain call recordings.
- 14) In response to the above submissions operational creditor while denying all the submissions made by the corporate debtor, submitted that reply dated 04.09.2019 alleged to have been sent in response to the Demand Notice/Form-3 was not received by the Operational Creditor and is denied as "misrepresentation of facts" of the case. As such he contended that there is no dispute raised prior to the demand notice. He further submitted that corporate debtor duly acknowledged and admitted its liability





with regard to the dues payable to the operational creditor vide email between the parties which is provided as Annexure-15 in the Application. Therefore, operational creditor has contended that all the disputes raised by the corporate debtor is nothing but an afterthought manufactured by the corporate debtor to escape paying the legitimate dues of the operational creditor.

15) Operational creditor has also referred the landmark Judgement of Hon'ble Supreme Court of India in re of Mobilox Innovations Private Limited vs. Kirusa Software Private Limited: (2018) 1 SCC 353:

“All that the adjudicating authority is to see at the stage of admitting/rejecting the application is whether there is plausible contention which requires further investigation and that the “dispute” is not patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the authority does not need to be satisfied that the defence is likely to succeed, so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application. Moreover, the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e it must exist before the receipt of the demand notice or invoice”.

16) Heard the learned Counsel for operational creditor and learned counsel corporate debtor. Perused the records and we are of the view that the contentions raised by the corporate debtor is not having any documentary evidence. Even corporate debtor did not produce any evidence that there is a pre-existing dispute before the demand notice is received by them. On the contrary, email correspondence produced by the operational creditor clearly indicates that corporate debtor has agreed for the dues payable. In fact the correspondence clearly demonstrates the fact that corporate debtor is liable to pay operational debt to the operational creditor and there is no pre-existing dispute before demand notice is issued. Therefore, as claimed now by the operational creditor based on the Judgement of

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Hon'ble Supreme Court of India Judgment of Mobilox Innovations Private Limited vs. Kirusa Software Private Limited we have come to a conclusion that, since there is no pre-existing dispute between the parties, the petition is therefore liable to be admitted.

17) The learned counsel for the operational creditor requested the Hon'ble Tribunal to appoint the IRP who is deemed to be fit.

18) Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

- (a) Corporate debtor, M/s. Karvy Data Management Services Limited is admitted in Corporate Insolvency Resolution Process under Section 9 of the I&B Code, 2016.
- (b) The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- (c) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (d) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under



any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

- (e) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (f) That the order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- (g) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (h) That this Bench hereby appoints Mr. Golla Ramakantha Rao, having IBBI Registration No. IBBI/IPA-003/IP-N00310/2020-2021/13364, & email-id gollarama@yahoo.com as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code. Registration is valid till as per the information available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.
- (i) Accordingly, this Petition is admitted.
- (j) The Applicant/Operational Creditor is directed to deposit an amount of Rs.2 Lakhs with the IRP to meet the initial CIRP expenses including the fee of IRP.



- (k) Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.


Veera Brahma Rao Arekapudi
Member Technical


Dr. N.V. Ramakrishna Badarinath
Member Judicial

Pavani