

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT No. V, MUMBAI BENCH**

C.P. No. 1165/I&B/2020

Under section 8 & 9 of the IBC, 2016

In the matter of

Bharti Airtel Limited

Bharti Crescent, 1, Nelson Mandela,
VasantKunj, phase II, New Delhi - 110070

.... Petitioner / Operational Creditor

V/s.

Credosync Infosoft Private Limited

S N 49A/18, Erandvana, FL-4 Swastik
Apartment, Gulmohar Path, Pune - 411004.

.... Corporate Debtor

Order Reserved on: 02.11.2023

Order Pronounced on: 05.12.2023

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearances (Physically):

For the Petitioner: Adv. Esha Malik

For the Corporate Debtor: Adv. Nikhil Chavan

ORDER

Per: - Madhu Sinha, Member (Technical)

1. This Company petition is filed by Bharti Airtel Limited (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Credosync Infosoft Private Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor had failed to make payment of a sum of Rs. 10,11,46,456/- having principal amount of Rs.5,54,68,818.4 and Interest of Rs. 4,56,77,639/- @24% p.a. calculated up to 15.07.2020.

The submissions by the Operational Creditor: -

3. Vide agreement dated 30.10.2017, the Corporate Debtor entered into an agreement with the Operational Creditor for availing Voice over Internet protocol services (VoIP) from the Operational Creditor. The agreement hereinafter referred to as VoIP agreement. Under the said VoIP agreement the Corporate Debtor was required to issue distinct purchase orders for availing VoIP services for different countries.
4. In view of the aforesaid VoIP Agreement, the Corporate Debtor issued two purchase order dated 30.10.2017 and 22.12.2017 for different set of countries. The services were commenced from 24.11.2017 and the invoices were issued by the Operational Creditor on 05.03.2018 and 23.03.2018 for the month of December 2017, January 2018 and February 2018. Thereafter the invoices

were raised by the Operational Creditor on the monthly basis for the month of March 2018 and April 2018. However, the Corporate Debtor failed to make the payments. The details of the invoices are as under:

S r N o	Invoice No.	Invoic e Date	Billing Period	Invoice Amount	Due Date
1	978	05-03- 2018	01/12/2017 to 31/12/2017	5,90,000.00	15-03- 2018
2	42016	05-03- 2018	01/01/2018 to 31/01/2018	2,51,62,911.00	15-03- 2018
3	42017	23-3- 2018	01/02/2018 to 28/02/2018	52,03,224.00	03-04- 2018
4	42018	06-04- 2018	01/03/2018 to 31/03/2018	1,40,59,045.00	16-04- 2018
5	Debit Note-1 (Supple m entary bill for	06-04- 2018	01/03/2018 to 31/03/2018	7,63,868.00	16-04- 2018

	March 2018)				
6	42019	09-05- 2018	01/04/2018 to 30/04/2018	1,02,79,768.00	19-05- 2018
			Total Billed amount	5,60,58,816.00	

5. Thereafter, the Operational Creditor issued an email dated 08.03.2018 to the Corporate Debtor to make the payment towards the invoices for the month of December 2017 and January 2018. However, the Corporate Debtor only made a partial payment of Rs.500,000/- towards the invoice for the month of December 2017. Therefore, the Operational Creditor vide email dated 13.03.2018 demanded the balance payment as well as the payment towards the invoice for the month of January 2018 from the Corporate Debtor. However, the Corporate Debtor failed to make any payment.

6. In pursuance of the above, the Operational Creditor visited the office of the Corporate Debtor on 06.04.2018 to collect the balance payment. However, the Corporate Debtor instead of making any payment issued two cheques of Rs. 50,00,000/- viz cheque No. 462205 and cheque No. 462206 dated 23.04.2018 and 27.04.2018 respectively drawn on ICICI Bank, Pune Branch, with a commitment of clearing the payment of the Operational Creditor failing which the Operational Creditor was to deposit the said cheques to recover the outstanding payment. Further, the Corporate Debtor also urged the Operational Creditor not to disconnect the services as the same will hamper the business of the Corporate Debtor.

7. The Operational Creditor further submits that the unpaid dues of the Corporate Debtor has crossed 4 crores and thus it was getting difficult for the Operational Creditor to sustain and continue such huge outstanding dues on account of the Corporate Debtor. Thereafter, the Corporate Debtor vide email dated 14.04.2018 requested more time to make the payment and informed the Operational Creditor to use the cheque issued as security by the Corporate Debtor.
8. The Operational Creditor deposited the cheques issued by the Corporate Debtor on 10.05.2018, however the said cheques were dishonored under the remarks "payment stopped by drawer" which was intimated by the bank to the Operational Creditor vide Return Memos dated 11.05.2018.
9. The Operational Creditor therefore, by its Advocate's Notice dated 08.06.2018 called upon the Corporate Debtor to clear the admitted outstanding dues owed to the Operational Creditor. However, instead of making payment, the Corporate Debtor replied to the said notice through their Advocate's letter dated 26.06.2018 and raised issues which otherwise were never raised by the Corporate Debtor while receiving the services from the Operational Creditor.
10. Consequently, the Operational Creditor was convinced that the Corporate Debtor is not in a position to pay the debts and therefore issued a demand notice dated 05.09.2019 under section 8 of the Insolvency and Bankruptcy Code, 2016 under Form 3. However, the Corporate Debtor failed to respond to the said Demand Notice. Hence the Present Petition.

Reply filed by the Corporate Debtor: -

11. The Corporate Debtor had filed their Affidavit in Reply ("**Reply**") and denied each and every statement, contention and allegation made by the Petitioner.

12. It is submitted in their reply that the Corporate Debtor has entered into a mutual understanding with the Operational Creditor on 30.10.2017 for availing Voice Over Internet Protocol Services (hereinafter referred to as "VoIP Services") through its authorized representative Mr. Anurag Gupta and has never entered into any written VoIP agreement with the Operational Creditor. They also contended that the sign on the Agreement attached to the Company Petition by the Operational Creditor is forged and fabricated.
13. It is further submitted that the Corporate Debtor was never satisfied with the services of the Operational Creditor and the same was constantly mentioned by the Corporate Debtor in several emails to the Operational Creditor.
14. The Corporate Debtor submits that the invoices were never issued on time. The services were commenced on 24.11.2017 by the Corporate Debtor but the Operational Creditor raised the invoices in the month of March 2018. The invoices for the month of December 2017 worth Rs. 5,90,000/- was issued out of which Rs. 5,00,000/- were paid immediately by the Corporate Debtor. This shows the delay and the negligent behavior of the Operational Creditor towards the business.
15. It is submitted that the invoices for the month of December 2017 should be on pro-data basis but the charges were applied for the whole month. The actual utilization amount should be Rs.3,76,263.51/- instead of Rs. 5,90,000/- and the same was informed to the Operational Creditor on 10.03.2018.
16. The Corporate Debtor further submits that the security cheque which were given to the Operational Creditor was under influence of coercion and was deposited in the bank without any prior intimation to the Corporate Debtor and therefore the same was rejected by the bank.

Findings:

17. We have heard the Counsel for the parties and perused the documents available on the record.
18. From a perusal of the record, it is revealed that the Respondent has availed the Voice over Internet protocol services (VoIP) from the Petitioner and the Respondent has issued two purchase orders dated 30.10.2017 and 22.12.2017 to the Petitioner. The services were commenced from 24.11.2017 and the Petitioner issued invoices dated 05.03.2018, 06.04.2018 and 09.05.2018 to the Respondent. However, the Respondent failed to make the payment and the default as per the Part IV of the Company Petition occurred on 05.03.2018. The Petition was filed on 06.08.2020. Hence the petition is well within the period of Limitation.
19. Subsequently, the Respondent vide an email dated 10.03.2018 has acknowledged the receipt of the invoice for the month of December 2017 and raised the contention that the amount of the invoice should be on the prorata usage instead for the whole month. Therefore, the actual utilization amount should be Rs. 3,76,263.51/- instead of Rs. 5,90,000/- and sought a revision of the said invoice. In response to the above contention the Petitioner submits that on 12.03.2018, the Petitioner has clarified the Respondent that no additional charges were claimed in the invoice and the same was communicated to the Respondent vide an email dated 12.03.2018. Thereafter, the Respondent made a partial payment of Rs. 500,000/- towards the invoices raised by the Petitioner. Hence, in view of the aforesaid circumstances the bench is of the considered view that the Respondent had itself made the partial payment of Rs. 5 Lakh towards the invoice for the month of December 2017, after being clarified by the Petitioner. Therefore, no existing dispute is evidenced with regards to the amount of the Invoice raised by the Petitioner. This Bench further observes that the Petitioner has filed an affidavit dated 01.08.2020 under Section 9(3)(b) of the Insolvency & Bankruptcy Code, 2016 stating

that no notice has been given by the Corporate Debtor acknowledging any dispute related to default or unpaid debt. Therefore, the contention of the Respondent does not survive.

20. The second contention raised by the Respondent is that the two security cheques No. 462205 and 462206 dated 23.04.2018 and 27.04.2018 respectively were given to the Operational Creditor under coercion and were deposited in the bank by the Petitioner without any prior intimation to the Respondent, which were eventually rejected by the bank vide memo dated 11.05.2018. In view of the above contention this Bench has relied on the email dated 06.04.2018 and 14.04.2018 annexed as “Exhibit F (colly)” and “Exhibit H” respectively of the Company Petition, issued by the Respondent to the Petitioner wherein the Respondent has himself requested more time to make the payment and informed the Petitioner to use the cheques given by the Respondent as security in case of the non-payment of the dues till 15.04.2018. Hence, the contention of the Respondent that the cheques were deposited by the Petitioner without its intimation does not survive. The relevant extract of the Email is as under:

To: John Thomson P <john.thomsonp@airtel.com>
 Cc: Ashutosh Zadoo <Ashutosh.Zadoo@airtel.com>; Avijit Saxena <Avijit.Saxena@airtel.com>; Rudranil Dutta <Rudranil.Dutta@airtel.com>; poornesh k <poornesh.kantharajappa@gmail.com>; sandip rana <a_sandip.rana@airtel.com>; Jitendar Kumar <jitendar3.Kumar@airtel.com>
 Subject: Re: Credosync_Invoice Dec'17 & Jan'18

Hello,

We have been issued cheque for the bill raised to us and we have raised the bill for our client also for the month of January, you can find the attached screenshot of

Cheque issued to Bharti Airtel limited.

This will be the security amount we have given to you and you can only issue cheque if we failed to do RTGS payment till 15th April 2018. But in the same case kindly do not barred the services as we are in the continuous work agreement with our client. If service gets barred then our all payments will get stuck so please do the needful accordingly. Delay happen because of the late invoicing from your side as we continuously asking for the bill of january and also we have received your bill of February today only, so we want you to cooperate with us for this delay.

Also send us the bill of March 2018 by 7th April 2018 itself so that we can raised the bill to our client. In meanwhile kindly sort out our technical issue, as we are expecting to utilise our all ports.

Thank you..

21. The third contention of the Respondent is that the Respondent had entered into a mutual understanding with the Petitioner and had never entered into a written VoIP agreement dated 30.10.2017 with the Petitioner for availing the Voice over Internet protocol services (**VoIP**) from the Petitioner. The Respondent further contended that the sign on the Agreement attached by the Petitioner to the Company Petition is forged and fabricated. In view of the above contention this Bench is of the considered view that it is an undisputed fact that the Respondent has availed the services of the Operational Creditor and had issued two purchase orders dated 30.10.2017 and 22.12.2017. Further the invoices raised by the Petitioner were also acknowledged by the Respondent vide email dated 10.03.2018. Also, the Respondent vide an email dated 06.04.2018 seeks more time from the Petitioner to clear the dues. However, the Respondent failed to make the payment of the outstanding dues which shows that there was a clear understanding between the parties for the use of VoIP services. Hence in our opinion the two essential qualifications required for admission under Section 9 of the IBC, i.e., the existence of '**debt**' and '**default**', in this case are proved.

22. With regard to the fourth contention of the Respondent that the Corporate Debtor was never satisfied with the services of the Operational Creditor and there was a deficiency in the service provided by the Petitioner, this Bench is of the considered view that the Respondent vide its email dated 06.04.2018 had admitted its liability for full payment without raising any objection to the bills raised by the Petitioner and also authorized the Petitioner to deposit the security cheques of Rs. 1 crore in case the Respondent failed to make the RTGS payment of the full amount then due by 15.04.2018. Additionally, the technical deficiency issue was raised belatedly by the Respondent vide its advocate letter dated 26.06.2018 much after the termination of the VoIP agreement by

the Petitioner vide termination notice dated 03.05.2018, due to non-payment of dues by the Respondent. Therefore, the contention raised is merely a moon shine defense and cannot be used to avoid an undisputed liability.

23. Owing to the non-payment of the dues, the Petitioner has duly issued a demand notice on 05.09.2019, in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, on the Corporate Debtor but the latter failed to respond to the said demand notice.
24. As a result of the foregoing discussion, we are of the considered view that the Petitioner has been able to establish that there is an existence of “**operational debt**” and “**default**” committed by the Corporate Debtor and an **absence of the Pre-Existing dispute** in this case.
25. This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code.
26. The Operational Creditor has not proposed any Resolution Professional. Therefore, this Tribunal is to appoint a Resolution Professional from the panel approved by the IBBI.
27. Accordingly, the above Company Petition is ‘**admitted**’ by passing the following:

ORDER

- a. The above Company Petition No. 1165/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Credosync Infosoft Private Limited**.
- b. **Neha Jain Nemani**, having registration No. IBBI/IPA-001/IP-P-02465/2021-2022/13927, having email Id-nehavkjain@gmail.com, having address - 2404B Parthenon

Building, ,JP Road, 4 Bungalows, Andheri West ,Mumbai City, Maharashtra ,400053 having Mobile Number- 9137918747, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; 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. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Pune, for updating the Master Data of the Corporate Debtor.

Accordingly, CP 1165 of 2020 is **admitted**.

SD/-

Madhu Sinha

Member (Technical)

/Abhay/

SD/-

Reeta Kohli

Member (Judicial)