

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (Court-II)
KOLKATA**

C.P. (IB)/618(KB)2020

An application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

In the matter of:

Reliance Broadcast Network Limited [CIN U64200MH2005PLC158355],
having its registered office at Unit No. 503, 5th Floor, ARC Plaza Industrial
Estate, 48 Oshiwara Village, Jogeshwari (West), Mumbai, Mumbai City –
400102;

...Operational Creditor

-Versus-

Yescom India Softech Private Limited[CIN U74120BR2015PTC024533],
having its registered office Incubation Unit-Ganga-2,3,4, Near Govt.
Polytechnic, Rajeev Nagar Road, Pataliputra Colony, Patna – 800013.

...Corporate Debtor

**Date of hearing: 09 February, 2023
Order Pronounced on: 01 May, 2023**

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical)

For the Operational Creditor;

Mr.Sourojit Dasgupta, Adv.

Ms. Soumya Dag, Adv.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)

Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Gaurang Mehta and Mr. Neeraj Jain, Authorized Signatories, Reliance Broadcast Network Limited(*'Operational Creditor'*)duly authorised *vide* Board Resolution dated 16 December, 2019¹for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Spectra Yescom India Softech Private Limited (*'Corporate Debtor'*).
3. The present Petition was filed on **25 February, 2021** before this Adjudicating Authority. The total amount claimed in default is Rs.47,27,875/- (Rupees Forty Seven Lakh Twenty Seven Thousand Eight Hundred Seventy Five only), including interest @18% per annum. The date of default is stated to be as on **30 April, 2018**.
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs.5,00,000/- (Rupees Five Lakh only) with subscribed share capital of Rs. 1,00,000/- (Rupees One Lakh only). Part – IV of the Petition deals with the particulars of the Operational Debt.
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - 5.1 Operational Creditor is engaged in media engagement conglomerate which play across radio, television, intellectual properties and television production. The Operational Creditor and the Corporate Debtor entered into a Master Sales Agreement (*'Agreement'*)dated 15 January, 2018.
 - 5.2 As per the aforesaid Agreement, Operational Creditor agreed to advertise the Corporate Debtor on its radio channels, on an agreed rate, which was

¹Annexure – C, Page 30 of the Petition.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

***Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020***

unequivocally admitted by the Corporate Debtor by its letter dated 17 January, 2018. The said advertisements were duly broadcasted on the radio.

- 5.3 In pursuance of the same, the Operational Creditor issued several invoices for the said services from 30 April, 2018 till 29 May, 2019. The said invoices were duly received and accepted by the Corporate Debtor without any demur or protest.
- 5.4 That, under Clause 12 of the aforesaid Agreement, the Corporate Debtor was required to point out defects in the invoices within 5 (five) days from the date of receipt, which the Corporate Debtor had never done. The Corporate Debtor has failed and neglected to make payment of the amount covered by the subsequent invoices (i.e. invoices from 30 April, 2018 to 29 May, 2019).
- 5.5 The Corporate Debtor has not made any payment till date, with regard to the said invoice, to the operational creditor. At the time of raising the invoice, the Corporate Debtor had not raised dispute with regard to the services rendered by the Operational Creditor and accepted the services of the Operational Creditor to its utmost satisfaction.
- 5.6 In fact, the Corporate Debtor has been benefitted for the services rendered by the Operational Creditor and is continuing to receive such benefits. The Operational Creditor on several occasions has sought for payment of the outstanding sum from the Corporate Debtor.
- 5.7 Despite a number of requests and repeated demands made by the Operational Creditor, the amount of Rs.39,89,422/- and interest of Rs.7,38,453/- is yet to be received, being the outstanding amount which is due and payable by the Corporate Debtor to the Operational Creditor.
- 5.8 The Operational Creditor has also served a demand notice in Form 3 under section 8 of the Insolvency and Bankruptcy Code, 2016 dated 13 August, 2019 on the Corporate Debtor, which has been duly received by the Corporate Debtor.
- 5.9 In response to the demand notice, the Corporate Debtor has sent its reply *vide* letter dated 10 October, 2019 through its advocate, raising several

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

*Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020*

unjustified, baseless and unsustainable allegations, for the first time only after receipt of the said demand notice. Such allegations were afterthoughts.

5.10 Further, in the letter dated 10 October, 2019, the Corporate Debtor has also evinced its interest to settle the outstanding dues, which clearly amounts to an admission and acknowledgement of liability.

6. *Per contra, submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor.*

6.1 That, the Application has been filed in abuse of the process of law, and is not maintained either in facts or in law.

6.2 That, the Application is vexatious and has been filed with purpose of harassing the Corporate Debtor.

6.3 That, the Application is coercive and has been made with ulterior motive and malafide intent of extracting money from the company and exerting pressure on the Corporate Debtor for an illegal and unlawful demand of the Operational Creditor. Further, the Application does not disclose any cause of action or any alternative cause of action.

6.4 The Corporate Debtor has no debt or liability towards the Operational Creditor and the debt is illusory and without any basis.

6.5 The Operational Creditor has suppressed material facts and failed to disclose several documents and records which categorically show that no money is due or payable by the Corporate Debtor.

6.6 This Application should be dismissed and exemplary cost should be imposed on the Operational Creditor for filing the Application with malafide intent. Also, the alleged claim by the Operational Creditor is barred by limitation.

6.7 Further, no undisputed amount is due and payable to the Operational Creditor. According to the Operational Creditor the alleged date of default is from 30 April, 2018 to 29 May, 2019. However, on the contrary, on 29 May, 2019, the Corporate Debtor released a payment of Rs.1,00,000/- (Rupees One Lakh only) and asked for clearance of doubt and raised issue of deficiencies in the services

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

*Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020*

- 6.8 The Corporate Debtor has raised a dispute prior to the statutory notice dated 13 August, 2019 under section 8 of the Code, and it has been explicitly mentioned by the Corporate Debtor in their reply dated 10 October, 2019 to the statutory notice.
- 6.9 At the time of the Contract, the Operational Creditor had committed that they will broadcast the add in the first position, but inspite of several requests and call to station head they did not broadcast. Even after repeated request the Operational Creditor failed to follow the terms of the Agreement but kept on raising the invoices.
- 6.10 Every time the invoices were raised by Operational Creditor, the Corporate Debtor asked them to discuss the bills and settle it. The Corporate Debtors has never denied from paying the invoices but it has asked for doubt clearance on the invoices.
- 6.11 The intention of the Operational Creditor is to harass the Corporate Debtor through multiple proceedings. Despite the pendency of the present application before this Adjudicating Authority, they have also filed a case with respect to the same subject matter before the Civil Court at Mumbai.

Analysis and Findings

7. We have heard the Learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the documents on record.
8. It is seen that the Corporate Debtor has taken the plea of pre-existing dispute. They have contended that a dispute prior to the statutory notice dated 13 August, 2019 under section 8 of the Code. However, be that as it may, from the records it is distinct that no dispute was ever raised before the the statutory notice dated 13 August, 2019.
9. In their reply that Corporate Debtor has also taken a plea that on 29 May, 2019, they release an amount of Rs.1,00,000/- (Rupees Onle Lakh only) and asked for the clearance of dount and raised issue of deficiencies in services and they have referred to Annexure –A of the Reply. Whereas on the perusal of the said Annexure at Page 9 and 10 of the Reply, it is seen that they have

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)

Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020

acknowledged the debt by saying ‘we are waiting of the payments and Trying to clear the dues as soon as possible. Apologies for delay initiation’.

10. Section 8 (2) and 9 (1) of the Code as reproduced herein below:

“8 (2) *The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—*

a. *existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute; ...”*

“ 9 (1) *After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process. ...”*

11. The Hon’ble Supreme Court in ‘*Transmission Corporation of Andhra Pradesh Limited*’ v. ‘*Equipment Conductors and Cables Limited*’², while deciding the issue of Pre-Existing Dispute and in ‘*Mobilox Innovations Pvt. Ltd.*’ Vs. ‘*Kirusa Software (P) Limited*’³ has clearly laid down the law that the ‘existence of dispute’ must be Pre-Existing’ i.e. it must exist before the receipt of the Demand Notice or invoice as the case may be. In ‘*Mobilox Innovations*’ (Supra) the Hon’ble Supreme Court has observed as follows;

“33. *The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and*

²(2019) 12 SCC 697

³2017 1 SCC OnLine SC 353

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

*Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020*

payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that 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, as the case may be.”

“17. In the said case, the Hon’ble Supreme Court held as to what are the facts to be examined by the Adjudicating Authority while examining an application under Section 9, which is as follows: 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? (See Section 4 of the Act) (ii) Whether the documentary evidence furnished with the application shows 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? If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)

Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020

“18. From the aforesaid decision, it is clear that the dispute must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice. If it comes to the notice of the Adjudicating Authority that the ‘operational debt’ is exceeding Rs. 1 lakh and the application shows that the aforesaid debt is due and payable and has not been paid, in such case, in absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt -23- Company Appeal (AT) (Insolvency) No. 98 of 2019 of the demand notice of the unpaid ‘operational debt’, the application under Section 9 cannot be rejected and is required to be admitted.”

(Emphasis Supplied)

12. Further, the Hon’ble NCLAT in *M/s. Next Education India Private Limited v. M/s. K12 Techno Services Private Limited*⁴ has held that;

“The Appellant brought on record (Form 5) of ‘debt’ and ‘default’. It is also brought on record the Demand Notice u/s 8(1) of the ‘I&B Code’ was issued on 8th August, 2017. The Adjudicating Authority on the ground that the respondent has filed reply on 8th September, 2017 to the Demand Notice noticed that several disputes had been raised. They have also annexed several correspondences about the defective services provided by the Appellant. However, when we asked, the learned counsel for the Respondent could not lay hand on any of the correspondence to show that prior to Section 8 notice, the Respondent (Corporate Debtor) intimated that there were defective services provided by the Appellant. It is a settled law that if any dispute is raised prior to the issuance of the invoices or Demand Notice u/s 8(1) of the I&B Code with regard to quality of service or goods or pendency of the suit or arbitration, in such case one may take the plea that there is an ‘existence of dispute’ but if any dispute is raised after issuance of Demand Notice u/s 8(1) that cannot be termed

⁴Company Appeal (AT) (Insolvency) No. 98 of 2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)

Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020

***to be a 'pre-existing dispute'.** We find that the Adjudicating Authority has failed to notice the aforesaid issue and observed that 'debt' in question is not only serious dispute but also barred by limitation and laches and not discussed under which provision the 'Master Service Agreement' with 'Sri Gowtham Academy of General and Technical Education' was consequentially issued on 8th February, 2016 and the reply to the Demand Notice was issued on 8th August, 2017. For the reasons aforesaid, we set aside the impugned order dated 20th December, 2018 and remit the case to the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench for admitting the application u/s 9 of the 'I&B Code' after notice to the 'Corporate Debtor'. We allow the 'Corporate Debtor' to settle the claim before its admission, if it so chooses. The appeal is allowed with aforesaid observations and directions."*

(Emphasis Supplied)

13. The Petition establishes that the Corporate Debtor is in default of debt due and payable and that the default is more than the of amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. Further, as envisaged under section 9(3)(b) of the Code, an affidavit has also been filed by the Operational Creditor.
14. In view of the above precedence, we make the following orders:-
 - (a) The application bearing **CP (IB) No. 618/KB/2020** filed by Reliance Broadcast Network Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Spectra Yescom India Softech Private Limited, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016, and moratorium prohibits the following:
 - i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

*Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020*

- of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) Mr. S.V. Ramani registration number - **IBBI/IPA-002/IP-N00530/2017-2018/11692**, email : **ramanisv56@gmail.com**, is **hereby appointed as Interim Resolution Professional (IRP)** of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

*Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020*

or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code read with relevant regulations.

- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (h) The Operational Creditor shall deposit a sum of **Rs.3,00,000/- (Rupees ThreeLakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-II)**

*Reliance Broadcast Network Limited v. Yescom India Softech Private Limited
C.P. (IB)/618(KB)2020*

compliance report in this regard to the Registry of this Court within
seven days from the date of receipt of a copy of this order.

- 15.** *CP (IB) No. 618/KB/2020* to come up on **02.06.2023** for filing the first progress report
- 16.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The order is pronounced on 01 day of May, 2023

SA [LRA]