IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH
KOLKATA

C.P (IB) No.1800 /KB/2019

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

In the matter of:

M/s Global Advertisers, having its registered office at 6th Floor, Shri Ram Trade Centre, S.V.P. Road, Borivali(W), Mumbai- 400092.

... *Operational Creditor*

Versus

In the matter of:

M/s Selvel Media Services Pvt. Ltd., having its registered office at 10/1B Diamond Harbour Road, First Floor, Kolkata, West Bengal- 700027.

Also at

710-711, Meghdoot Building,94 Nehru Place, New Delhi-110019

...*Corporate Debtor*

Date of hearing :19/04/2022

Order Pronounced on : 09 /06/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Girish Keida, Adv.] For Operational Creditor

1. Mr. Subhankar Sanyaual, Adv.] For Corporate Debtor

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by **M/s Global Advertisers,** through its authorised representative Mr. Sanjiv Manmohan Gupta , (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **M/s Selvel Media Services Pvt. Ltd.,** having its registered office at 10/1B Diamond Harbour Road, First Floor, Kolkata, West Bengal- 700027, (hereinafter referred as the Corporate Debtor).

3. It is submitted in the petition that the Operational Creditor is engaged in the business of Advertisements and pursuant to the confirmation of letter dated 11.06.2018 and release order dated 28.06.2018, the Corporate Debtor had called upon the Operational Creditor to carry out the display and advertisements by displaying the same on Hoardings at 20 sites in Mumbai for Rupees 18,88,000/- (including Mounting Charges). It is submitted that in compliance with the same, the Operational Creditor carried out the display and submitted the necessary bill no. 350 along with the copy of release order which were received by the Corporate Debtor under the terms that the payment is to be effected within 30 days, failing which, the Corporate debtor would be liable to be pay interest @ 21% p.a. for the delayed period, therefore, the total amount of debt payable by the Corporate Debtor to the Operational Creditor is Rs.18,88,000/- along with interest @ 21% per annum to be paid from the date of default till the realization of the unpaid amount.

4. It is stated that the date of default is 30 days after raising invoice. The

date of default for an amount claimed is 29/07/2019, which is the last date for making payment against the invoice.

5. The Operational Creditor has submitted that all advertisements were carried out under the Contract Act as evidenced by the Confirmation letter, Release Order, Invoice and Emails and Section 37 of the Indian Contract Act, 1872 creates an obligation on a party to a contract i.e. the Corporate Debtor herein to perform the promise to pay agreed amount in consideration of the services rendered by the other party i.e. Operational Creditor.

6. The Operational Creditor has enclosed with the petition the following documents:-

i. Copy of the Demand Notice dated 19.11.2018 as in Form 3 & 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 served on the corporate debtor along with Reply to Demand Notice dated 11.12.2018 and Rejoinder to Notice dated 15/04/2019 (Annexure-I).

ii. Company Master Data (Annexure-II(A).

iii. Registration Certificate of the Operational Creditor (Annexure-II(B).

iv. Confirmation Letter dated 11/06/2018 issued by Operational Creditor and duly confirmed by Corporate Debtor (Annexure-II(c).

v. Release Order dated 28/06/2018 issued by Corporate Debtor to Operational Creditor Annexure-II(D).

vi. Invoice dated 29/06/2018 issued by the Operational Creditor to the Corporate Debtor Annexure-II(E).

vii. Overdue of payment letters dated 20/09/2018, 01/10/2018 and 12.11.2018 (Annexure-II(F).

viii. Lodger Account maintained by the Operational Creditor (Annexure-II(G).

ix. Letter dated 27/09/2018 by Concept Communications Ltd. Annexure-II(H).

x. Extract of Form 26 AS of the Proprietor of Operational Creditor Annexure-II(I).

xi. Copy of the relevant accounts from the banks and / or financial institutions maintaining accounts of the Operational Creditor confirming that there is no payment of the relevant unpaid operational debt by the operational creditor, if available. (Annexure-III).

xii. Affidavit in support of the Application in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

xiii. Written Communications by the proposed interim Resolution Professional as set out in Form-2, Annexure-(V).

xiv. Affidavit of Applicant under section 9(3) (b) of Insolvency and Bankruptcy Code, 2016.

7. When the payment was not made on the due date, the Operational Creditor issued a Statutory Notice dated 19th November, 2018, calling upon the Corporate Debtor to pay the unpaid amount of Rs.18,88,000/- along with interest @ 21% per annum. The Notice was duly served on the Corporate Debtor and vide its reply dated 11th December, 2018 through its advocate stated that the Notice is not in compliance of Section 8 of the Code. It is stated that in the said notice that the relevant extract of the reply is as under:-

> *" a. That your client was called upon to carry out display of advertisements of RITES-IPO Campaign by displaying the same on various hoarding sites in Mumbai and evidently vide confirmation letter dated 11.06.2018, the said contract was set to be carried on for a span of 8 days (with extra 2 days without any additional charge) commencing from 13.06.2018 till 20.06.2018 for a total consideration of Rs.14,00,000/- exclusive of GST.*

b. Subsequently, my client also communicated the same with the office of Concept Communication P.LTD. that the advertising campaign for RITES IPO will continue for 10 days instead of 8 days.

c. However, due to sudden change in the stance of your client, your client removed all the advertisement displays on 20.06.2018 itself. The office of Concept Communications P/LTD. also questioned my client towards this misrepresentation and inefficiency in service. My client's staff also raised the same grievance to your client. Contrarily, your client raised the demand of extra fee for continuing the contract for another two days.

d. Inadvertently, at the risk of hampering the goodwill of my client, my client had to succumb to your client's exorbitant demand for carrying out the campaign for further period of 2 days at an additional charge of Rs.1,50,000/- plus 18% GST , so that the advertising campaign/ project could continue for the initially agreed dates of 10 days.

e. That such acts of your client not only amounts to misrepresentation and extortions, furthermore, your client unethically and dominatingly just dictated the revised terms of the contract which were though not consented by my client but, under the prevailing circumstances, my client had to face such loss at the cost of losing goodwill.

f. That my client is now standing at a loss of Rs.1,77,000/- because of your client's inefficient service and complete disregard to the business ethics".

8. After receipt of the reply from the Advocate of the Corporate Debtor, the Operational Creditor through its advocate sent another letter dated 15th April, 2019 reiterating the contentions made in the Notice dated 19th November, 2018. It was further mentioned in the said letter that it is an admitted fact that the Operational Creditor has carried out the display advertisement and

after that, the Corporate Debtor has issued a Release Order dated 28th June 2018 confirming their liability in respect of their work carried out by the Operational Creditor. It was further mentioned in the said letter that after receipt of the release order only the Operational Creditor had prepared the bill and submitted the same to the Corporate Debtor and that the contentions raised by the Corporate Debtor are devoid of any substance and made a mala fide and dishonest intentions to avoid the legitimate dues due and payable by the Corporate Debtor. It was further stated in the said letter that the Operational Creditor had only charged for a period of 8 days and have not charged for a period of 2 days as mentioned in the reply to the notice and that the representative of the Corporate Debtor had come to the office of the Operational Creditor and confirmed the same. It was further written in the said letter that the Operational Creditor denied that the hoardings were removed on 20th June,2018 as alleged by the Corporate Debtor in its reply to the notice, and that the same were in existence upto 22nd June, 2018 and necessary photographs in that behalf had already been submitted to the Corporate Debtor. It was specifically written in the said letter that the Operational Creditor had not charged any additional amount beyond the period of 8 days as per the Deal. It was further stated in the said letter that the claim of loss amounting of Rs.1,77,000/- is irrelevant and the same has been made to avoid the legitimate dues due and payable to Operational Creditor.

9. It is stated that even the TDS amount deducted on the bill of Rs.18,88,000/- had already been deducted and paid by the Corporate Debtor and therefore, the Corporate Debtor had already confirmed and admitted their liability and at this stage avoiding to discharge its liability would be nothing but a mala fide and dishonest intention on the part of the Corporate Debtor

10. The Operational Creditor has also filed Affidavit under Section 9(3)(b) of the Code, mentioning the requisite details /averments.

11. In the **reply** to the petition, the Corporate Debtor filed reply affidavit of one of its employees namely, Bikramaditya Routra, authorised by the Board of Directors through Resolution dated 31.10.2019. It is submitted in the reply affidavit that the petition is not maintainable and the Operational Creditor is not entitled to receive any sum of Rs.18,88,000/- because the subject contract in question was never performed by the Operational Creditor and as such, no legitimate and legally enforceable claim is maintainable.

12. It is submitted that the Operational Creditor failed to adhere to the terms of the Confirmation letter dated 11th June, 2018. It is stated that the Operational Creditor was called upon to carry out display advertisements of RITES-IPS campaign by displaying the same on various hoarding sites in Mumbai. It is submitted that the terms of the confirmation letter dated 11th June, 2018 are binding contract between the parties whereby the said advertisement would be carried out for a period of 8 days with extra 2 days without any additional charge commencing from 13.06.2018 to 20.06.2018 which was previously agreed. But it is specific case of the Corporate Debtor that the Operational Creditor in its whims and caprice had removed all advertisements in the morning of 20.06.2019.

13. It is stated that the said illegal action on the part of the Operational Creditor is in patent violation of the contractual terms of the Confirmation letter which is the binding contract between the parties. It is submitted that considering goodwill of the corporate debtor and the long standing relationship with the client Concept Communication Pvt. Ltd., the Corporate Debtor had to succumb to the exorbitant demand for additional sum of Rs.1,50,000 plus Applicable taxes. It is submitted that due to such breach of contract by the Operational Creditor, the Corporate Debtor had suffered a loss for a sum of Rs.1,77,000/-

14. It is further submitted that the claim of the Operational Creditor is not

maintainable in law and that the Corporate Debtor has never admitted any such sum of claim in the application under section 9 IBC.

15. It is submitted that there is no confirmation or acknowledgement by the accounts department of the Corporate Debtor, the Corporate Debtor has thus submitted that since there is pre-existing dispute between the parties and such disputes have been raised by the Corporate Debtor prior to the issuance of the demand notice by the Operational Creditor. Therefore, this application is not maintainable.

16. In the **Rejoinder**, the Operational Creditor has submitted that the contentions and submissions in the application reiterated and reaffirmed. It is submitted that the Corporate Debtor has admitted all the facts of the petition and the only defence raised by the Corporate Debtor is untenable in law and moonshine because in the reply dated 11th December, 2018, the Corporate Debtor has admitted the liability to the tune of Rs.17,11,000/- and the entire grievance shown in the reply is that the Operational Creditor ought to have charged the display charges only for 8 days. In fact , the Operational Creditor has charged the display charges only for 8 days and what is subsequently charged was nothing but mounting charges, which is confirmed by them in writing by issuing the Release Order on 22.06.2018 after the display. Therefore, the defence is devoid of any substance and required to be rejected at threshold. It is submitted that the application of the Operational Creditor deserves to be admitted.

17. We have gone through the petition, reply ,rejoinder and other documents placed on record and we find that vide confirmation letter dated 11th June, 2018 was executed by the Operational Creditor, which specifically mentioned that **"the above package, we are offering you @ Rs.14,00,000/- net for the period of 8 days " display charges only"**, the amount fell due and payable by the Corporate Debtor to the Operational Creditor, which the

Corporate Debtor has failed to pay in spite of statutory notice and has tried to wriggle out of its liability by raising the defence in reply to the notice, which cannot be accepted as a pre-existing dispute.

18. In view of the aforesaid discussions, we do not think there is any pre-existing dispute and, therefore, the present petition deserves to be admitted. We, therefore, pass the following orders:-

O R D E R S

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.

ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

ix) The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Mr. Surendra Kumar Agarwal, IRP** having Reg. No. **IBBI/IPA-001/IP-P00825/2017-2018/11401,** email ID surendraca@gmail.com act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.

x) **Mr. Surendra Kumar Agarwal, IRP,** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

xii) The Operational Creditor/Applicant is directed to deposit **Rs.1,00,000/- (Rupees One LaC only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

19. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

20. List the matter on 29/07/2022 for filing of **Progress Report**.

21. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

HARISH CHANDER SURI Digitally signed by HARISH CHANDER SURI Date: 2022.06.09 16:20:04 +05'30'

ROHIT KAPOOR Digitally signed by ROHIT KAPOOR Date: 2022.06.09 15:58:38 +05'30'

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this, the 9th day of June 2022

PJ