

**CORRECTED ORDER  
IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
Company Petition (IB)No.2618/ND/2019**

**In the matter of:**

**The Insolvency and Bankruptcy Code, 2016**

**AND**

**In the matter of:**

**Section 9 of the Insolvency and Bankruptcy Code, 2016**

**AND**

**In the matter of :**

**Totem Media Solutions Private Limited**

**6/267, Vineet Khand, Gomti Nagar,**

**Lucknow, Uttar Pradesh - 226010**

*.....Petitioner/Operational Creditor*

**AND**

**V2 Retail Limited**

**Khasra No. 928, Extended Lal Dora**

**Abadi Village Kapashera,**

**Tehsil Vasant Vihar,**

**New Delhi- 110037**

*.....Respondent/Corporate  
Debtor*

**ORDER DELIVERED ON: 25.06.2020**

**CORAM :**

**Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)**

**Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)**

**For the Applicant/ Operational Creditor: Adv. Karan Gandhi &  
Adv. Sudiksha**

**For the Respondent/ Corporate Debtor: Adv. Roshan**



**ORDER**

**AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 by the Applicant/ operational creditor, i.e. *“Totem Media Solutions Private Limited”* for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company *“V2 Retail Limited”*.
2. The Operational Creditor is engaged in the business of various business activities including sale of advertising print space.
3. The Corporate debtor herein carrying on the business of retailing of merchandise of goods, placed order for purchase of advertising print space on various dated during July, 2018 to May, 2019 to the Operational Creditor.
4. Brief Facts of the case are as follows:
  - i. The Operational Creditor arranged the publications in newspapers as details placed in the respective purchase orders.
  - ii. For 24 invoices and services provided thereunder, the understandings with regard to the providing of services were agreed prior to the execution of service with the Corporate Debtor. The same was done by way of approval taken from the Corporate debtor upon the purchase orders, which were done by the director of the Corporate Debtor by signing the respective purchase order.



- iii. The 24 invoices were raised in this regard at the rates specified in the purchase orders placed by Corporate Debtor, out of which amount due and payable as on Rs. 82,10,374/- plus Interest of Rs. 4,51,022/- aggregating to Rs. 86,61,396/-. As agreed terms and conditions, amount becomes due from the expiry of 30 days of the date of invoice.
- iv. The operational Creditor has sent several reminders to Corporate Debtor vide emails dated 08.05.2019, 10.05.2019, 13.05.2019, 16.05.2016, 24.05.2019 and 04.05.2019 seeking due amount along with interest thereon. However, the dues have not been paid till date.
- v. The demand notice dated 23.07.2019 under Section 8 of the Code was served by the Operational Creditor to the Corporate Debtor on 29/07/2019 and it was also served on the residential address of the directors, CFO & Company Secretary of Company.
- vi. The Corporate Debtor sent reply to the demand notice dated 16.08.2019 to the Operational Creditor stating that the invoices raised clearly reflect the excessive and arbitrary rates, which has been charged and none of the invoices has been admitted/ received or expressly signed by any representative from the corporate debtor company.



5. The Corporate Debtor vide its reply dated 29.11.2019 contends that:
- i. The present Application suffers from material irregularities as the requirement of Section 9(3)(c) has not been complied with by the Operational Creditor and further, the affidavit under Section 9(3)(b) is false as notice relating to a dispute pertaining to the alleged unpaid operational debt by way of reply dated 16.08.2019 to the demand notice dated 23.07.2019 has been given to the Operational Debtor.
  - ii. The employee of the Corporate Debtor intimated the operational creditor regarding anomalous high pricing for the services provided by the Operational Creditor.
  - iii. The agent of the corporate debtor has informed the Operational Creditor to fix the rate at a nominal and fair price for the said services through electronic communication via whatsapp and email. But the operational creditor did not oblige to the request of the Corporate Debtor.
  - iv. The invoices raised by the Operational creditor clearly reflect excessively high, abnormal, unreasonable and arbitrary rates.
  - v. The corporate Debtor has also placed an order for advertisement for another group company namely, **V Bazar**, with Hindustan



Media Ventures Ltd. and the said company charged a very nominal and fair market rate for the same type of service.

- vi. The Operational Creditor has generated different price invoices against the same service. The same can be reiterated from the fact that the operational creditor has generated two different price invoices for the publication of advertisements of same quality and quantity.
  - vii. The Corporate Debtor never gave any purchase orders through oral/verbal communication to the Operational Creditor.
  - viii. The Corporate Debtor has already paid a sum of Rs. 17,84,336/- to the Operational Creditor for the services rendered by the latter.
  - ix. The bank statement of the Corporate debtor shows the payment of Rs. 26,64,338.32/- has been made to operational creditor.
  - x. The invoices raised by the Operational creditor do not contain the signature/stamp/seal of the Corporate Debtor and the same are not acknowledged by the Corporate Debtor.
6. The Operational creditor in its rejoinder dated 09.01.2020 stated that:
- i. The whatsapp communication between both the parties is not related to the invoices claimed to have been due or the business relationship between the Applicant and Corporate Debtor. Also, there are no emails in the annexures as claimed in the reply by the Corporate Debtor.



- ii. The rates for the publication of the advertisements are dependent upon various factors including nature/type of advertisement, type /business of client, volume of deal, nature/category of advertisement and many others and therefore, same service can be provided to different parties at different rates.
  - iii. The compliance of Section 9(3)(c) is directory in nature and not mandatory in nature.
  - iv. Last payment of Rs. 10,70,931/- was received on 10.04.2019 from the Corporate Debtor and demand notice was issued on 23.07.2019.
  - v. As per the terms and conditions of the invoice, discrepancy, if any, should have been raised/ reported within a week from the receipt of invoice failing which the invoice shall be final. However, the Corporate Debtor has never raised any dispute regarding the same before filling the application.
7. We have heard the Ld. Counsels for the applicant as well as the respondent.
8. Ld. Counsel for Operational Creditor in course of his argument submitted that the demand notice was delivered on 29.07.2019 on the registered address of the Corporate Debtor as well as residential address of the directors and other persons but the Corporate Debtor has sent the reply to the demand notice on 16.08.2019 much after the prescribed period mentioned under Section 8(2) of the IBC. He further submitted that the contention of the Ld. Counsel for Corporate Debtor



that invoices reflected excessive and arbitrary rates has been charged is not liable to be accepted because earlier payment was being made on that rate by the Corporate Debtor.

9. He further submitted that Corporate Debtor wrongly mentioned in the reply that he received the demand notice on 10.08.2019 because the postal receipts enclosed with the paper book shows that it was delivered on 29.07.2019.

10. He further submitted that Corporate Debtor has placed reliance upon the what's app communication made between two persons i.e. Hindustan Naresh Yadav and Vm. And according, to the Operational Creditor the Vm is Vaurm Mehta who is the employee of the Corporate Debtor and Hindustan Naresh Yadav is associated with Hindustan News Paper. He further submitted that there is no emails enclosed as claimed in the reply but only what's app communication between the employee of the Corporate Debtor and some third person are enclosed which are not liable to be accepted.

11. He further submitted that Corporate Debtor has never disputed the services of the Operational Creditor but only contention raised by the Corporate Debtor is that the Operational Creditor has significantly charged the higher price for the publication of advertisement. He further submitted that the rates of advertisement differs from nature and category of the advertisement, therefore, the same services can be provided to different parties at different rates.

12. He further submitted that he has raised the invoice on the basis of purchase order and the last date of invoice is 15.04.2019, which is within time.

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13. On the other hand, Ld. Counsel for Corporate Debtor submitted that Varun Mehta is the person to whom email correspondence has been made with the Operational Creditor regarding the payment of the amount which would be evident from page 98 of the paper book as Annexure-7.

14. He further submitted that What's app communication is with one Hindustan Naresh Yadav is associated with Hindustan News Paper and he further submitted that the Corporate Debtor has never issued a purchase order and the said purchase order enclosed with the petition is not signed by any person.

15. He further submitted that Corporate Debtor has placed an order for advertisement for another group namely, V Bazar with Hindustan Media Ventures Ltd. And the said company charged a very nominal and fair market rate for the same type of service and he also enclosed the copy of invoices generated by Hindustan Media Ventures Ltd. as Annexure A-5 and on the basis of that he claimed that Operational Creditor has charged abnormal, unjust and exorbitantly high price from the Corporate Debtor. He further submitted that Operational Creditor has generated different price invoices against the same service.

16. Now, in the light of the submissions made on behalf of parties, we have gone through the averment made in the application, reply and rejoinder and documents enclosed by the parties respectively and we find that Operational Creditor has claimed amounts on the basis of invoices, which the Operational Creditor has referred at page 15 to 20 of the paper book and we further find that Operational Creditor has sent



the demand notice dated 23.07.2019, which was duly delivered on the registered office of the Corporate Debtor on 29.07.2019, which would be evident from the tracking report available at page 180 of the paper book and we further find that demand notice has also been sent on the different persons of the Corporate Debtor and enclosed tracking report show that demand notice has been delivered to the person concerned. We further find that Corporate Debtor has sent the reply to the demand notice on 16.08.2019 which would be evident from Annexure A-12 at page 185 of the paper book.

17. At this juncture, we have gone through the reply to the demand notice filed by the Corporate Debtor and we find that it was mentioned in the reply that Corporate Debtor has received the demand notice on 10.08.2018 but in support of that Corporate Debtor has not enclosed any document to show that they have received the demand notice on 10.08.2019, whereas the Operational Creditor has enclosed the tracking report, which has been referred above, and that show that demand notice was duly delivered on the registered office of the Corporate Debtor on 29.07.2019, therefore, we find that the Corporate Debtor has not sent the reply to the demand notice within 10 days as prescribed under Section 8(2) of the IBC and in order to justify his stand they mentioned in the reply that they received the demand notice on 10.08.2019 without enclosing any document to show that the demand notice was received on 10.08.2019, therefore, we have no option but to hold that the reply to the demand notice was sent after 10 days of the receiving of demand notice, hence, at this juncture, we would like to refer Section 8 & 9 of the IBC and the same are quoted below:-



Section 8

*(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*

*(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, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;*

*(b) the repayment of unpaid operational debt—(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or*

*(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

*Explanation.—For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.*

Section 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.*

*(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.*

*(3) The operational creditor shall, along with the application furnish—*



(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor by the corporate debtor, if available; and

(d) such other information as may be specified.

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no repayment payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and



(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been repayment payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.

Mere plain reading of the provisions shows that under Section 8 of the IBBI Code on the claim of default, the Operational Creditor at first is required to deliver the demand notice of unpaid Operational Creditor and liberty is given to the Corporate Debtor to bring the notice of the Operational Creditor existence of the disputes and the payment of or other unpaid Operational Debt within a time of 10 days of the receipt of the demand notice.



18. Whereas Section 9 of the IBC Code 2016 says that after the expiry of period of 10 days from the date of delivery of the notice or invoice demanding payment under Section 8(1) IBC, if the Operational Creditor does not receive the payment from the Corporate Debtor or notice of the dispute has not been raised by the Corporate Debtor then the Operational Creditor may file an application before the Adjudicating Authority.

19. Now, in the light of aforesaid provisions, when we shall consider the case in hand then we find that Corporate Debtor has not raised the dispute or notice of dispute as required under Section 8(2) of the IBC within 10 days from the date of receipt of demand notice hence, of course, after filing the reply to the demand notice he has raised dispute that Operational Creditor has charged abnormal, unjust and exorbitantly high price from the Corporate Debtor for the service and in support of that they have enclosed the What's app communication being made between tone VM and Hindustan Naresh Yadav since, notice of dispute has not been raised within the period prescribed under Section 8(2) of the IBC, therefore, in our considered view that cannot be taken into consideration when the Corporate Debtor in response to summons appear and filed the reply.

20. Moreover, we have gone through the What's app communication made between one VM and Hindustan Naresh Yadav, which the Corporate Debtor enclosed at page 12 to 16 of the reply as Annexure-4 and we find that it is in between one VM and Hindustan Naresh Yadav.

21. At this juncture, we would also like to refer para 3(g) of the reply in which the Corporate Debtor claimed they have placed an order for advertisement for another group namely, V Bazar with Hindustan

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Media Ventures Ltd. and the said company charged a very nominal and fair market rate for the same type of service and they also enclosed the copy of invoices generated by Hindustan Media Ventures Ltd. as Annexure A-5 which shows that What's app communication is in between Hindustan Media Ventures Ltd and Corporate Debtor and not in between the Operational Creditor and Corporate Debtor, therefore, in our considered view that What's app communication upon which Corporate Debtor placed reliance is not liable to be accepted, so, these documents are not relevant.

22. As it is settled principle of Law that the power of Adjudicating Authority under Section 9 is very limited. At this juncture, we would like to refer the decision of Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2017) SCC Online SC 1154 dated 21.09.2017 in which Hon'ble Supreme Court held that "It is clear, therefore, that once the Operational Creditor has filed an application, which is otherwise, complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the Operational Creditor the "Existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the dispute is not a 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 Court does not



*need to be satisfied that the defence is likely to succeed. The Court does not at this stage examined the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

23. Now, in the light of the aforesaid decision when we shall consider the case in hand then we find that Corporate Debtor has not denied this fact that service has been rendered by the Operational Creditor the only grievance of the Corporate Debtor is that Operational Creditor has charged abnormal, unjust and exorbitantly high price from the Corporate Debtor. we have already held that Corporate Debtor has not raised the dispute by filing reply within 10 days as prescribed under Section 8(2) of the IBC, rather filed the reply after 10 days of the delivery of demand notice. Moreover, we held that What's app communication is in between Hindustan Media Ventures Ltd. and Corporate Debtor and not with the Operational Creditor and except that there is no other document to show that ***record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute.***

24. Under such circumstances, in view of Section 9(5)(i)IBC, the Adjudicating Authority has to see that the application is complete and there is no payment of the unpaid operational debt, the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor and no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and if these are established by the Operational Creditor then Adjudicating Authority has no option but to admit the application



25. Now, in the light of aforesaid discussion, when we shall consider the case in hand then we find that it has been established by the Operational Creditor that there is no payment of unpaid operational debt, the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor and no notice of dispute has been received by the operational creditor within 10 days from the receipt of demand notice or record of dispute in the information utility.

26. Therefore, in view of Section 9(5)(i) of IBC, we inclined to admit this application and Accordingly, this petition is ADMITTED. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

**1. effect forthwith staying:-**

*(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 debt or 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;*

*(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.*

**Further:**



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

*(3) 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.*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*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 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.*

27. The Operational Creditor has proposed the name of IRP. Accordingly, we appoint, Mr. Amit Gupta, an Insolvency Professional, Registration No. IBBI/IPA-002/IP-N00021/2016-17/10048, email: amitguptacs@gmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

28. Operational Creditor is directed to deposit the fee of Rs. 2,00,000/- to meet the immediate expenses of the IRP within two weeks. The same



shall be fully accountable by the IRP and shall be reimbursed by the CoC. to the Operational Creditor to be recovered as CIR costs and IRP is directed to follow the rules and regulations as per Section 15, 16, 17 & 18 of IBC.

29. Copies of the order be sent to both the parties as well as to the IRP.

30. The office is directed to send a free copy of this order to both the parties.

Sd/-

**K. K. Vohra**  
(Member Technical)

Sd/-

**Abni Ranjan Kumar Sinha**  
(Member Judicial)