

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. I)  
KOLKATA**

**C.P (IB) No.221/KB/2021**

*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.*

***In the matter of:***

**Pivot roots Digital Private Limited (CIN U74999MH2016PTC272352)**

*... Operational Creditor*

*Versus*

**Basic first Learning (OPC) Private Limited (CIN U74999JH2019OPC012596)**

*...Corporate Debtor*

Date of hearing: 08/12/2022

Order Pronounced on: 12/01/2023

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Balraj Joshi, Member (Technical)***

**Counsels appeared through Video Conference/Physical hearing**

***For the Operational Creditor*** : Mr. Ashish Rao, Adv.  
Mr. Piyush Agrawal, Adv.  
Ms. Utsha Dasgupta, Adv.

**O R D E R**

***Per: Rohit Kapoor, Member (Judicial)***

- 1.*** The Court is convened via hybrid mode.
- 2.*** This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ("***Code***") by Mr. Shibu Shivanandan Achudhan,

Director, Pivotroots Digital Private Limited (“*Operational Creditor*”), duly authorised *vide* Board Resolution dated 30 July, 2021<sup>1</sup> seeking to initiate Corporate Insolvency Resolution Process (“*CIRP*”) against Basicfirst Learning (OPC) Private Limited (“*Corporate Debtor*”). The Corporate Debtor was incorporated on 21 February, 2019, under the Companies Act, 2013, having its registered office at 1<sup>st</sup> Floor, H.NO- 463/A, Ashok Nagar, Ranchi – 834 002.

3. The present petition was filed on 06 August, 2021 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make a payment of a sum of Rs.1,57,06,526/- (Rupees One Crore Fifty-Seven Lakh Six Thousand Five Hundred Twenty Six only) [*Principal - Rs.1,47,08,282/- & Interest - Rs.9,98,244/-*].
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs.10,00,000/- (Rupees Ten Lakh only) with subscribed share capital of Rs.2,00,000/- (Rupees Two Lakh only). Part – IV of the Petition deals with the Particular of the Operational Debt.

***Submission of learned Counsel appearing for the Operational Creditor***

5. The Operational Creditor entered into a Master Services Agreement dated 01 July 2020 for provision of services relating to digital media with the Corporate Debtor. However, due change in the scope of services, a fresh Master Services Agreement dated 01 July 2020 (*‘Agreement’*) was executed for provision of inter alia, advertising services including digital media, content based learning and creative services.
6. Thereafter, a series of e-mails were exchanged between the Operational Creditor and the Corporate Debtor, confirming the scope of services and the amounts payable in relation thereto, under the Agreement [*Annexure – E*].
7. From time to time, invoices were raised by the Operational Creditor on the Corporate Debtor for services rendered under the Agreement till October 2020. However, no payments were received by the Operational Creditor. Multiple emails were also sent by The Operational to the Corporate Debtor

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<sup>1</sup> Page 22 of the Petition.

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Creditor between November 2020 to January 2021 [*Annexure – G & H*].

8. Thereafter, on 11 January 2021, pursuant to ongoing discussions between the parties, the Corporate Debtor furnished 9 (Nine) post-dated cheques towards the part payment of the invoices. Further, 8 (Eight) additional tax invoices were raised by the Operational Creditor in March 2021, against the Corporate Debtor, for which pro forma invoices were already raised on the Corporate Debtor. A total of 12 (Twelve) invoices were raised by the Operational Creditor, details of which are as follows;

<i>SI. No.</i>	<i>Invoice Details</i>	<i>Amount</i>
1.	Invoice No. G0455-PR131/2020 dated 17 July 2020	Rs.2,36,000/-
2.	Invoice No. G0466-PR131/2020 dated 22 July 2020	Rs. 11,68,200/-
3.	Invoice No. G0760-PR131/2020 dated 9 September 2020	Rs.1,77,000/-
4.	Invoice No. G0892-PR131/2020 dated 1 October 2020	Rs.4,08,019/-
5.	Invoice No. G1726-PR131/2020 dated 4 March 2021	Rs.11,800/-
6.	Invoice No. G1904-PR131/2020 dated 31 March 2021	Rs.15,34,000/-
7.	Invoice No. G1905-PR131/2020 dated 31 March 2021	Rs. 47,20,000/-
8.	Invoice No. G1906-PR131/2020 dated 31 March 2021	Rs. 47,20,000/-
9.	Invoice No. G1907-PR131/2020 dated 31 March 2021	Rs.15,93,000/-
10.	Invoice No. G1908-PR131/2020 dated 31 March 2021	Rs.1,09,976/-
11.	Invoice No. G1909-PR131/2020 dated	Rs.18,487 /-

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	31 March 2021	
12.	Invoice No. G1910-PR131/2020 dated 31 March 2021	Rs. 11,800/-

9. The Operational Creditor *vide* its e-mails dated 20 April, 2021 and 22 April, 2021 requested the Corporate Debtor to clear the pending invoices [Annexure – L]. The Operational Creditor also offered to accept a lump sum payment of Rs. 1 Crore, if such payment is to be made within ten days by the Corporate Debtor. However, on the contrary the Corporate Debtor offered to pay a meager amount of Rs.60 Lakh against the amount due and payable.
10. On 23 April, 2021, the Corporate Debtor sent an email to the Operational Creditor stating that it had discontinued the use of the server developed by the Operational Creditor and also asked the Corporate Debtor to raise the relevant invoices [Annexure – O].
11. Accordingly, on 26 April, 2021, the Operational Creditor addressed two-emails to the Corporate Debtor, raising its invoices for server and maintenance invoices [Annexure – P]. However, the Corporate Debtor refused to accept the invoices without any reason [Annexure – O].
12. Despite repeated follow-up over email on pending payments due from the Corporate Debtor against the Invoices raised, no payments were received. Under these circumstances, the Operational Creditor under a bona fide belief deposited the post-dated cheques tendered to it in January 2021 towards outstanding invoices, with its bankers. Details of the post-dated cheques are as follows;

<i>SI. No.</i>	<i>Cheque Details</i>	<i>Amount</i>
1.	Cheque No.000163 dated 25 March, 2021	Rs.1,62,000/-
2.	Cheque No.000174 dated 25 March, 2021	Rs.1,00,656/-
3.	Cheque No.000164 dated 10 April, 2021	Rs.3,73,441/-
4.	Cheque No.000172 dated 10 April, 2021	Rs.21,60,000/-
5.	Cheque No.000170 dated 20 April, 2021	Rs.9,04,000/-
6.	Cheque No.000165 dated 25 April, 2021	Rs.21,60,000/-

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7.	Cheque No.000166 dated 10 May, 2021	Rs.21,60,000/-
8.	Cheque No.000171 dated 10 May, 2021	Rs.14,58,000/-
9.	Cheque No.000173 dated 10 May, 2021	Rs.21,60,000/-

- 13.** However, on 18 June 2021, the Operational Creditor was shocked to learn that all of the aforementioned cheques had been dishonoured and returned unpaid on account of '*Payment stopped by Drawer*'. Under these circumstances, on 23 June 2021, the Operational Creditor was constrained to issue a statutory demand notice under Section 8 of the Code demanding the amounts due and payable by the Corporate Debtor to the Operational Creditor aggregating to Rs. 1,47,08,282/- [*Annexure – S of the Petition*].
- 14.** No response was received by the Applicant to the Statutory Demand Notice, demonstrating either the existence of a pre-existing dispute between the parties or the payment of the Operational Debt by the Corporate Debtor [*Annexure – T of the Petition*].

***Reply filed on behalf of the Corporate Debtor***

- 15.** The Operational Creditor was appointed by the Corporate Debtor for digital designing and marketing/advertising. Whereas, the business of the Corporate Debtor is fully dependent on online platform, any kind of delay in setting up the content digitally or advertisement would have caused huge losses to the Corporate Debtor.
- 16.** The Operational Creditor *vide* mail dated 27 July, 2020 issued a proforma invoice for a sum of Rs.66,00,000/- (Rupees Sixty Six Lakh only). And the Corporate Debtor *vide* its mail dated 27 July, 2020 accepted to pay 15% of the proforma invoice and further requested the Operational Creditor to align the invoices according to the achievement of the milestones. It is pertinent to mention that as per the Agreement, the Design was divided into four milestones and advance proforma invoices were to be raised only after achieving the same.

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- 17.** The Corporate Debtor on 15 September, 2020 and 26 November, 2020 released payment for a total sum of Rs.6,85,000/- (Rupees Six Lakh Eighty Five Thousand only) against the proforma invoice dated 18 August, 2020 [*Annexure – R-2 of the Reply*].
- 18.** The Operational Creditor *vide* its email dated 07 September, 2020 issued proforma invoice for the tech development for the month of September, 2020. On the basis of the proforma invoice received by the Corporate Debtor for the month of September, 2020, the Corporate Debtor raised a dispute against the invoice and requested the Operational Creditor to share the details of the manpower working on the project as the Agreement is based on the manpower employed by the Operational Creditor [*Annexure – R-3 of the Reply*].
- 19.** The Operational Creditor has not approached this Adjudicating Authority with clean hand; there exists a dispute between the Corporate Debtor and the Operational Creditor in relation to the Operation Debt.
- 20.** The Corporate Debtor was not satisfied with the services provided by the Operational Creditor, which was intimated to the Operational Creditor through e-mails and telephone communications [*Annexure – R-4 of the Reply*]. The Corporate Debtor on various occasions raised disputes related to the services provided and the invoices raised by the Operational Creditor. As the services provided by the Operational Creditor were not up to the mark, the Corporate Debtor was left with not option but to stop payment.
- 21.** The Operational Creditor with no intention to resolve the service-related disputes, kept on raising proforma invoices without achieving the milestones and without providing the supporting documents along with the invoices [*Annexure – R-5 of the Reply*].
- 22.** The Operational Creditor without taking into consideration the disputes raised by the Corporate Debtor against the services provided and the advance invoices raised continued to pressurize the Corporate Debtor to issue post-dated cheques with the threat to shut down the server and stop all the operations of the online platform of the Corporate Debtor Company which was handled by the Operational Creditor. The Corporate Debtor in distress to avoid

huge daily losses being borne by the company issued post dated cheques to the Operational Creditor against the disputed invoices and services rendered.

23. Several meetings in this regard were conducted between the parties but the same was not settled between the Parties and the Corporate Debtor was left with no other option but to instruct the bank to stop payment of the Posted dated cheques issued in favour of the Operational Creditor. *Vide* email dated 22.02.2021 the Corporate Debtor keeping in mind the long term relationship had offered the Operational Creditor to settle the matter for a sum of Rs. 60 Lakhs even though the Operational Creditor was in breach of the Agreement but the same was not accepted to the Operational Creditor.
24. The Operational Creditor being fully aware of the pre existing dispute against the services rendered and the invoices raised by the Corporate Debtor rather than pursuing arbitration proceeding , as a blackmailing tactic issued a demand notice under section 8 of the IBC Code and filed the present application to cause wrongful loss to the Corporate Debtor

#### ***Analysis and Findings***

25. We have heard the Ld. Counsel appearing on behalf of the Operational Creditor. A reply affidavit affirmed on 06 December, 2021 has been filed by the Corporate Debtor but none appeared on behalf of the Corporate Debtor after 08 September, 2022. Accordingly, the matter was set ex-parte and reserved for orders on 08 December, 2022.
26. We have perused the documents on record. From the reply filed by the Corporate Debtor, it is seen that the Corporate Debtor has raised the issue of pre-existing dispute between the parties by relying on pages 21, 22 and 23 of the Reply. However, on perusal of pages 21, 22 and 23 of the Reply, it does not ring the bell for pre-existing dispute but mere communication between the parties. Further there are no other documents on record which would substantiate the defence of pre-existing dispute as taken by the Corporate Debtor.

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27. Further, as contended by the Corporate Debtor that it has released payment for a total sum of Rs.6,85,000/- (Rupees Six Lakh Eighty Five Thousand only) against the proforma invoice dated 18 August, 2020 on 15 September, 2020 and 26 November, 2020 towards the Operational Creditor. However, be that as it may, the invoice dated 18 August, 2020 does not form a part of this instant petition.
28. In view of the above facts and circumstances, it is seen that the petition is within limitation and further we are satisfied that the present petition made by the Operational Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum 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.
29. It is, accordingly, hereby ordered as follows:-
- a. The application bearing *CP (IB) No. 221/KB/2021* filed by Mr. Shibu Shivanandan Achudhan, Director, Pivotroots Digital Private Limited, 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 Basicfirst Learning (OPC) Private Limited, is ***admitted.***
  - b. There shall be a moratorium under section 14 of the IBC.
  - 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.

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- 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 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.
- 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 Three Lakh 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.

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- 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 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.
- 30.** *CP (IB) No. 221/KB/2021* to come up on **17.02.2023** for filing the periodical report.
- 31.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

The order is pronounced on 12<sup>th</sup> day of January, 2023

SA [LRA]