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IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-868/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s Ashwini Infocom Pvt. Ltd.
Having its Registered office at:-
C-58, Kalkaji,
New Delhi-110019

...Applicant

Versus

M/s Spectacular Media Marketing Pvt. Ltd.
Having its Registered office at:-
403, Prabhat Kiran,
17, Rajendra Place,
New Delhi-110008.

...Respondent



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25/11/2019

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Coram:

SHRI ABNI RANJAN KUMAR SINHA
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Ms. Sonal Anand & Ms. Aayush Sai
Counsel for Respondent: Dr. Saif Mahmood



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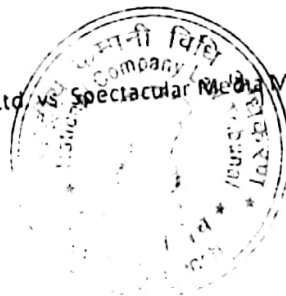
ORDER

Date: 20.11.2019

1. This is an application filed by the Applicant M/s Ashwini Infocom Pvt. Ltd., seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 against the Respondent M/s Spectacular Media Marketing Pvt. Ltd. for the alleged default on the part of the Respondent in settling an amount of Rs. 1,07,32,455/- towards the supply of mobile phones. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant engaged in the trading of mobile phones. The Respondent is involved in advertisement related activities.
- ii. In September 2017, the Respondent, on behest of M/s TV18 Home Shopping Network Ltd., placed an order of 27,000 "Titan T40" mobile phones with the Applicant, from the month of September, 2017 to October, 2017, vide 4 purchase orders, at an agreed price of Rs. 1,600/- per unit (incl. of GST), the total amount of which came to be Rs. 4,31,99,957/-.
- iii. With respect to the said purchase order, total of 16,300 mobile phones were delivered to the Respondent against which 6 Bills were raised by the Applicant i.e. AIPL Bill No.(s) 001-006

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bearing the dates as 26.09.2017, 26.09.2017, 29.09.2017, 29.09.2017, 05.10.2017 & 15.10.2017, amounting to Rs. 31,99,997/- Rs. 39,99,996/-, Rs. 39,99,996/-, Rs. 4,80,000/-, Rs. 47,99,995/- and Rs. 95,99,990/-, respectively, totaling to Rs. 2,60,79,974/-.

- iv. The Respondent made part payment of Rs. 1,10,00,000/- qua AIPL Bill No.(s) 001-003 and the rest of the amount i.e. Rs. 1,50,30,374/- qua AIPL Bill No.(s) 004-006 stood unpaid, despite duly receiving the delivery of all the units as ordered. As per the payment terms, the payments had to be made within 30 days from receiving the units, however, all the payments paid by the Applicant were delayed.
- v. Thereafter, the Applicant sent numerous reminders vide emails and telephonic calls to the Respondent, with respect to their outstanding payment, however to no avail. The Respondent had been delaying the payments on some pretext or the other.
- vi. Further, without first settling their previous accounts as mentioned above, the Respondent issued a subsequent purchase order dated 03.01.2018 to the Applicant for the delivery of additional 1,500 units of "Titan T40" mobile phones for a sum of Rs. 23,99,998/-, however, the same was

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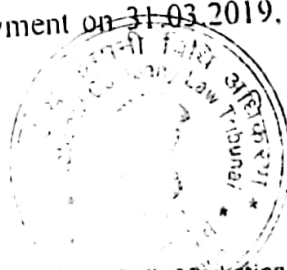
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rejected by the Applicant, due to their non-payment for the earlier purchase order.

vii. The Applicant on 14.11.2018 issued a demand notice demanding payment. After receiving the said demand notice, the Respondent contacted the Applicant and subsequently, a meeting was held between them on 23.11.2018, wherein the Respondent issued a cheque of Rs. 10,00,000/- dated 23.11.2018, bearing Ch. No. 002953, drawn on RBL Bank to the Applicant and further assured that the balance amount shall be made by them before 31.12.2018.

viii. Thereafter, vide an email dated 18.12.2018, the representative of M/s TV 18 Home Shopping Network Ltd. while admitting the liability of the Respondent, sent a payment plan with respect to the outstanding payment, whereby, an amount of Rs. 20,00,000/- per month was to be remitted to the Applicant for 05 months w.e.f. from December, 2018 and the balance amount was to be paid in the 6th month i.e. 31.05.2019.

ix. However, the said payment plan was not acceptable by the Applicant, who then asked the Respondent to clear the entire outstanding payment on 31.03.2019, which was agreed by the Respondent.



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- x. Thereafter, the Respondent made the 1st installment of Rs. 22,97,919/- on 08.01.2018 vide a cheque dated 08.01.2019, bearing Ch. No.003012, drawn on RBL Bank, which was supposed to be paid on 31.12.2018. For January 2019, the Respondent made part payments of Rs. 5,00,000/- on 31.01.2019 vide a cheque dated 31.01.2019, bearing Ch. No. 003058, drawn on RBL Bank and thereafter, on 05.02.2019 of Rs. 5,00,000/- vide a cheque dated 05.02.2019, bearing Ch. No. 003059, drawn on RBL Bank, however, did not make any subsequent payments.
- xi. Thereafter, the Applicant contacted the Respondent and also, the officials of M/s TV 18 Home Shopping Network Ltd., for the balance payments, however, to no avail. Therefore, it is pertinent to mention that the payment plan was not adhered to.
- xii. Therefore, after deducting the part payments made by the Respondent amounting to Rs.42,97,919/-, the Respondent is liable to pay the Applicant, a sum of Rs. 1,07,32,455/- along with 18% interest p.a. w.e.f. 30 days of the receipt of the respective goods on the unpaid amount.
- xiii. It is submitted that the Applicant had earlier filed an application being IB-600 (ND) of 2019 for the same cause of action which was withdrawn on 26.03.2019 with liberty to file

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afresh which was granted by this Hon'ble Court as there were certain inadvertent errors which had crept into the earlier application filed.

2. Consequent to the issue of notice by the Applicant as well as by the Tribunal. Mr. Vivek Agarwal Advocate appeared on behalf of the Respondent and undertook to file Vakalatnama within a couple of days and reply within 10 days. However, on 06.08.2019 the learned Advocate orally submitted his intention to withdraw his Vakalatnama from the matter and reported that he has no instruction for filing of reply by the Respondent. Hence, the Respondent's right to file reply was closed. On 28.08.2019 Mr. Mrinal Bharti, Advocate filed a memo of appearance on behalf of the Respondent who was directed to file reply as a final opportunity subject to a cost of Rs. 10,000/- to the Prime Minister Relief Fund.
3. On 11.09.2019 the advocate for the Respondent confirmed that no reply is required to be filed in the matter from his client's side and as a result the right to file reply by the Respondent was once again closed. The Respondent was not present on the subsequent hearings.



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4. The matter was taken up on 14.11.2019 for final arguments. We heard the arguments made by the counsel for the Applicant and perused the documents filed by him. From the pleadings made by the counsel for the Applicant it is clear that the Applicant has supplied materials to the Respondent on various occasions and the Respondent has made part payments. After issue of the demand notice under Section 8 of the Code by the Applicant, the Respondent contacted the Applicant and subsequently a meeting was held between them on 23.11.2018 wherein the Respondent issued a cheque of Rs. 10,00,000/- dated 23.11.2018 bearing Ch. No. 002953 drawn on RBL Bank to the Applicant and further assured that the balance amount shall be made by them before 31.12.2018. The Respondent has even given a payment plan which was not acceptable by the Applicant. From the above discussions it is clear that the Applicant has established the existence of debt and default on the part of the Respondent. Since, the Respondent has nothing to offer as reply, this Tribunal initiates CIRP on the Respondent with immediate effect.

5. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including

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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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002:

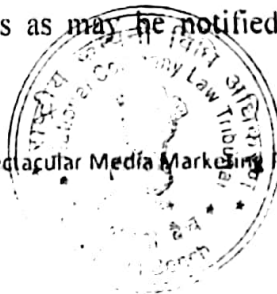
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

(2) The supply of essential goods or services to the Respondent 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

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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.”

6. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Mohd. Nazim Khan (Email – nazim@mnkassociates.com. Mobile – 9818156340) and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute. more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

Dr. V.K. Subburaj

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

Deepak

Abni Ranjan Kumar Sinha

(ABNI RANJAN KUMAR SINHA)
MEMBER (JUDICIAL)



Deputy Registrar
25.11.19

National Company Law Tribunal
CGO Complex, New Delhi-110003

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