IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through physical/VC hybrid mode)

CP (IB) No.84/BB/2023
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/s Innovoprism Trading LLC, (Limited Liability company-sole owner)
J. Saravanan Karthik
Flat No: 321, Samari Residency, Building 18,
Ras Al Khor, Dubai, United Arab Emirates
Represented by Mr. Raghavan Jayaraman
... Petitioner/Operational Creditor

Versus

Allgovision Technologies Private Limited,
Registered Office No: 55, Third Floor,
Paramahansa Yogananda Road,
Indira Nagar - 560098
... Respondent/Corporate Debtor

Order delivered on: 05.04.2024

Coram: Hon'ble Shri. K. Biswal, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Mr. S. Narendra Kumar
For the Respondent : Mr. Abhishek Bagga

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 15.06.2023 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s **M/s Innovoprism Trading LLC** (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. **Allgovision Technologies Private**

Limited (hereinafter referred as 'Corporate Debtor/Respondent') on the ground that the Corporate Debtor has committed a default for an outstanding amount of Rs. 1,34,45,734/-. The date of default mentioned in Form 5 is 15.04.2022.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

i. The petitioner states that it is an entity under the laws of UAE, by name called "Innovoprism FZE". The petitioner moved its business from Free Zone Establishment to Main Land Dubai License on 20.01.2022 and consequently it changed the name from "Innovoprism FZE to Innovoprism Trading LLC," which is an entity Limited Liability Company – sole owner registered in Dubai and Mr. Saravanan Jayaraman being the sole shareholder. The respondent M/s. Allgovision Technology Pvt. Ltd is a company registered under the Companies Act, 1956 and is engaged in the business of video analytics product, hardware/software development etc.

ii. The Respondent entered into "Marketing Service Agreement" with the M/s. Innovoprism Trading LLC for marketing and sales representation in the UAE and Middle East. Allgovision had to pay 12% commission on invoiced value upto US $1 Million and for US $ 1 Million to 3 US $ 3 Million it was 10% incremental invoiced value.

iii. The petitioner secured four orders from the following companies:

a. "Site Technology Limited Company" P.O dated 16.07.2020 amounting to US $ 15,300
b. "Informatica Qatar W.L.L" P.O dated 18.11.2020 amounting to US $ 15,648
c. "Honeywell-Egypt Limited" P.O dated 23.01.2020 amounting to US $ 18,35,438
d. Black Arrow – Security Systems & Services W.L.L. P.O dated 05.11.2019 amounting to US $ 6,44,300

iv. Honeywell paid 50% (initial Payment) of the purchase order amounting to US $ 18,35,438 to the respondent and in turn respondent has also paid to the petitioner. On 25.02.2021 one of parties to the purchase order namely M/s. Black Arrow cancelled the order on the Respondent because of abstention and the failure had affected Black Arrow's reputation, image and name in Qatar.

v. The respondent terminated the agreement with the petitioner on 04.03.2021. The petitioner submits that the respondent had last paid Rs. 14,75,351/- on 30.12.2021.

vi. The petitioner has raised invoices on the respondent on 28.03.2022 amounting to US $ 5,209.90 for delayed payment and charged interest at 12% as per the agreement. The petitioner also raised the invoice on the Respondent for the commission receivable amounting to US $ 1,56,267.03 on 05.12.2022.

vii. The petitioner did not receive any payment from the Respondent for the above said invoices. Therefore, the petitioner sent notice under section 8 of the IBC, 2016 on 18.03.2023. The respondent replied to this notice, but did not raise any "dispute" between the petitioner and respondent.

3. The Learned Counsel for the respondent filed statement of objection dated 25.08.2023, and sur-rejoinder dated 04.10.2023. Further, in the written submissions dated 07.12.2023 it was contended as follows:

a) It is submitted that the corporate debtor entered into Service Marketing Agreement-1 (SMA-1) with Mr. Saravanan dated 01.07.2018 and the SMA-2, SMA-3 & SMA-4 was entered between Innovoprism FZE and the corporate debtor. The petition is filed by the Innovoprism Trading LLC, which has a commercial license from the Government of Dubai.

b) The operational creditor failed to produce any documentary proof of debts/rights and obligations being transferred from one entity to another.

c) The present petition has been filed by the operational creditor i.e., Innovoprism Trading LLC which has a commercial licence from the Government of Dubai. However, all the marketing agreements were entered with Innovoprism FZE with a commercial license from

Umm Al Quwain Free Trade Zone authority, which is a different entity and stands de-registered.

d) After termination of services, the Operational creditor raised invoices bearing IPT001/220328 and IPT002/220328 dated 28.03.2022 and invoice bearing no. IP1009-221205 dated 05.12.2022 claiming the outstanding amount of Rs. 1,36,10,414.01/- from the corporate debtor. The said invoices were duly disputed by the Corporate Debtor vide email dated 21.12.2022 (Page 124 of CP) and further disputed when the claim was made on the NeSL portal.

e) Demand notice was issued on 15.03.2023 under Form 3 which was issued by speed post on 18.03.2023 and delivered on 20.03.2023. The reply to demand notice was issued on 28.03.2023 once again disputing the claims. The raised invoices dated 28.03.2022 are with respect to the interest for the delayed payment during the years 2018-2019 to 2020-2021. The total sum of such invoices was for amount of USD 7,705.34. The claim for entitlement of interest solely was not maintainable.

f) The invoice dated 05.12.2022 for an amount of USD 156267.03 was claimed by the Operational Creditor. The SMA-4 was terminated on 07.12.2020 and the same was effective from 07.03.2021. Thus the invoices dated 05.12.2022 was beyond 1 year post termination of SMA-4. Hence, this invoice was invalid.

g) It is mentioned that 15% commission on Taala Invoice 159 was in accordance with SMA-3. As per Annexure A of SMA-3 it excludes the payment of commission for integration, customization & support; and thus the invoice was in violation of SMA-3. Accordingly, the CD issued an email dated 24.08.2021. Thereafter, operational creditor vide email dated 25.08.2021 agreed to adjust the Taala invoice 159 which is for USD 24176 towards pending payment from the Corporate Debtor. However, in the application it was mentioned that the 15% commission on Taala invoice 159 as "revoking adjusted" which was never agreed; and has been included with malafide intention to reach the minimum threshold required.

h) With regard to the 15% commission on Honeywell ACUD Project during SMA-3, invoices IP 183/AGV was raised on 03.05.2020 and IP 218/AGV on 07.10.2021, which was after 1 year post termination of SMA-4. The corporate debtor has duly paid the operational creditor for the invoice IP 183/AGV and proof of payment was annexed. However, in terms of SMA-4 the corporate debtor is nowhere liable to pay to the operational creditor the 15% commission on ACUD Project 1 year after termination.

i) With regard to the 3% additional commission on Honeywell ACUD Project, as per the terms & conditions agreed in SMA-3 the sales target year 2019-2020 was set at USD 20,00,000. The corporate debtor was to pay the operational creditor a commission on net sale value of Allgovision products secured by the operational creditor upto 75% of sale Target; and an additional 3% was payable on achieving above 75% of sales target. During the FY 2019-2020, the operational creditor achieved merely $827,347 after the operational creditor revoked the Taala invoice 159. Therefore, as per the agreed terms and conditions, the corporate debtor is only liable to pay a 15% commission and not 18% for the target achievement over 75%. The same payment of SMA-3 was agreed for SMA-4 via email dated 24.05.2020.

j) With regard to the 12% commission on Special Force, the purchase order was received from customer on 16.07.2020, as per the order 60% i.e., USD 9180 was paid in advance to the corporate debtor for which commission was paid. The Corporate debtor has not received 40% of payment from the customer for which the CD in his books of accounts has made entry for bad debt. The CD is only liable to pay the said commission amount once the payments are received from the customer. However, the CD has not received any payments from the customer. The said clause II(b) & (c) with respect to SMA-4. Hence, this claim of 12% commission does not have any locus standi.

k) With regard to 12% commission on HMC, the CD is liable to make the payments of commission to the OC only after the receipt of the payments from the customers i.,e, as per Clause II (b) in SMA-4. In respect of HMC, 12% commission does not arise since the project did not materialise and was cancelled. This claim proves the malafide of the OC.

l) In accordance with FEMA and RBI Regulations, the company can write off the debt by itself if the amount is below 15% of the total export proceeds realized during the calendar year preceding the year in which the write-off is being done, and does not require any prior permission from the RBI.

4. The Learned Counsel for the Petitioner filed its rejoinder and written submissions vide diary No. 4849, 5575 and 258 dated 20.09.2023, 03.11.2023 and 11.01.2024. In the written submissions dated 11.01.2024 which was reiterated on 18.01.2024 it was stated as under:

1. Interest invoices for delayed payments:

a. The Petitioner submits that, that all the "Service Marketing Agreement entered between the Respondent and the Petitioner right from 01.7.2018 till 01/04/2020 had contained the interest clause under the **head III Agreement.**

b. The relevant Para II AGREEMENT (b) "….. AGV shall pay Representative commission within 30 (days) from the date of receipt of payment by AGV from the clients. **Any overdue beyond Thirty (30) days will attract 12% interest per annum**. (Page No 69 of the Petition for sample)

Therefore, the Petitioner is eligible to claim interest at the rate of 12% PA on all delayed payments made by the Respondent. Further, SMA -3 (01/04/2019 to 31/03/2020) Agreement contains herein under the head "II **TERM & TERMINATION**" clause (d)"

Sl # 1 - 15% commission on Taala invoice 159: The Petitioner submits that, as per the agreement Service Marketing Agreement dated 01/04/2019 the relevant Para is extracted herein under. (Page No: 73).

Net sales value does not include the following cost involved : (unless Mutual agreed by the both Parties)

. Any commission paid to the distributor, consultant or other parties involved in the project.

. Any customization fee charged as part of the project.

. Any integration cost, any installation support cost.

The Petitioner submits that, the Respondent had agreed to pay to the Petitioner "customization, integration cost any installation support cost."

The Petitioner submits that the Respondent had raised invoice on the "Black Arrow Security Systems" on 6/11/2019 for US $ 1,61,075 and received the money from the "Black Arrow Security Systems " and in-turn the Petitioner raised the invoice on "Allgovision – Respondent ' on 16/12/2019 and the Respondent had paid the commission to the Petitioner for "integration and customization fee and part of the support fee".

The Black Arrow security Systems" had terminated the agreement with Respondent on 25/02/2021 (Refer

Page No: 122 of the Petition) “due to performance abstention and failure affected BA’s relationship with the Ministry of interior, and BA’s reputation, image and name in Qatar, resulting losses to BA.”

Due to this termination TAALA project the Respondent requested the Petitioner in email dated 24/08/2021 at Page No: 35 of rejoinder had stated as follows:

AGV can adjust INP invoice # 159 towards the balance payment, for which I can provide only mail confirmation which I have explained Monica.

I am awaiting for the mail confirmation separately to proceed with 50% payment.

In email dated 19/08/2021 the Petitioner had agreed to as follows:

With reference to the below mail, please find the below response, INP came with amicable solution only on TAALA Project and other invoice/ subject are not up for negotiation. Page No: 35 of the rejoinder of the Petitioner.

Petitioner’s further response : Since, the balance payment was not received from the Respondent as agreed, the Petitioner raised the invoice for the integration, customization and support. The Respondent had received the payment from the customer, and Respondent had paid the commission to the Petitioner as mentioned in the Page No: 29 and 30 of the rejoinder.

The Petitioner to clarify further, the Respondent had paid the invoice No: 159 on 21/04/2020, for a TAALA project initiated by the Petitioner on 30/09/2019. Unfortunately, the project was terminated on 12/01/2021, due to Respondent’s delays, leading to the deduction of the paid invoice without prior discussion. Further, the Agreement between the

Petitioner and Respondent did not contain clause addressing commission return /refund in case of cancellation of project. The Respondent and Petitioner had discussion, the Petitioner agreed as goodwill gesture, to adjust the deducted payment, only on condition upon clearing all the payments owed by the Respondent as communicated in its email, for which the Respondent never raised the objections. Therefore, the Petitioner raised credit note on the Respondent and now the pending payment never cleared by the Respondent, therefore raised the invoice on the Respondent.

Sl #2 - 15% commission on ACUD: The Respondent is relying on wrong or irrelevant Service Marketing Agreement i.e. Service Marketing Agreement dated 01/04/2020 whereas the relevant Agreement is "Service Marketing Agreement dated 01/04/2019" and not as stated by the Respondent in its email dated 21/12/2022 (Page No: 124 of the Petition). The agreement relating to Service Marketing between the Respondent and the Petitioner from 01/04/2019 to 31/03/2020 is relevant and not as contended by the Respondent by referring to Service Marketing Agreement dated 01/04/2020, which pertains to the period from 1/4/2020 to 31/03/2021.

During the period 1/4/2019 to 31/3/2020 covered by the agreement dt.1/04/2019, the Petitioner had obtained two orders.

a. Black Arrow Security Systems (TAALA Project) order dated 05/11/2019 amounting to US $ 6,44,300

b.Honeywell" (ACUD) project dated 23/01/2020 amounting to US $ 18,35,438 for the Respondent.

The Petitioner submits that Innovoprism and Allgovision Technologies Private Limited entered into

Service Marketing Agreement dated 01/04/2020 for the period of one year from 1st April of 2020 to 31 March of 2021. During this period the Petitioner obtained two orders namely:

a.Site Technology Limited Company (Special Force Project) , order dated 16/07/2020 for US $15,300

b.Informatica Qatar W.L.L (HMC- Project) order dated 18/11/2020 for US $ 15,648

Total value of the order amounting to US $ 30,948.

The Petitioner submitted that only in Service Marketing Agreement dated 1/4/2020 pertaining to the period from 1/04/2020 to 31/03/2021 at Annexure A (at Page No: 79 of the Petition), contained a limitation clause, which reads thus:

"... Agreed commission shall be also be applicable to all invoices raised within a contract period of 1 year of continuation/ termination of this agreement from such customers with whom the contractual relationship was established by the representative during the period of this agreement...."

On the contrary the Service Marketing Agreement dated 01/04/2019, pertaining to the period from 1/4/2019 to 31/03/2020 did not contain any such restriction of limiting commission on invoices raised during the period of one year continuation / terminating of this Agreement.

The Petitioner obtained purchase order dated 23/01/2020 from M/s. Honeywell (ACUD Project) for the Respondent i.e. during the tenure of Service Marketing Agreement dated 01/04/2019, wherein there were no such restrictions, regarding payment of commission to invoices raised within a contract period of 1 year of continuation/ termination of this agreement from such customers with whom the contractual relationship was established by the representative during the period of the agreement. (per Page No: 73 of the Petition). The Respondent has relied on a wrong/irrelevant Agreement just to deny the legally eligible commission to the Petitioner and to make it appear as a purported dispute.

This is also evident from the self-contradictory averment in the e-mail dated 21.12.2022 in the very next para (p.124 of the petition), which refers to the agreement dated 1/4/2019. The said averment in the e-mail dated 21.12.2022, is hereby abstracted for convenience of reference:

Sl#3- "3% additional commission on ACUD: The Respondent had referred to AGV_INP Agreement dated 01/04/2019, which is the relevant agreement for payment of commission on M/s. Honeywell (ACUD-Project) to the Petitioner and also payment of additional commission of 3% .

The Petitioner obtained two orders for the Respondent during the subsistence of Service Marketing Agreement dated 01/04/2019 during the period from 1/4/2019 to 31/03/2020:

a. Black Arrow Security Systems (TAALA Project) order dated 05/11/2019 amounting to US $ 6,44,300.

b. Honeywell" (ACUD) project dated 23/01/2020 amounting to US $ 18,35,438 .

The total value of the order w.r.t. Service Marketing Agreement dated 1/04/2019 is US 24,79,738, which exceeds the Sales target for the Financial year 2019-2020 fixed at US $ 20,00,000. Further the said agreement also contained a clause that the AGV shall pay its Representative a commission on the net sale-value of AGV product secured by Representative as per the following terms:

- 15% of net sales value up to an amount equivalent to 75% sales target.
- 18% of the net value for sales achieved over and above 75% of sales target.

  The Petitioner had claimed 18% commission on the total value of the orders secured by the Petitioner as the sales target exceeded US $ 20,00,000 including additional commission @ 3% over and above 15% commission on ACUD project and Taala Project.

Sl # 4 - 12% commission on special force: The Petitioner reiterate stand taken in the rejoinder to the objections of the Respondent.

Sl #5 - 12% commission on HMC: The Petitioner reiterate stand taken in the rejoinder to the objections of the Respondent.

The Petitioner also submits that all the Service Marketing Agreements between the Petitioner and Respondent contained clause " Term & Termination" (for example Page No: 76 of the Petition) clause (c) and (d) even after termination by either Party the other Party was entitled to claim accrued liabilities from other party.

In the rejoinder, for the above Sl.No. 4 & 5, the following explanation was furnished:

> Sl # 4 – The respondent had not produced any documentary evidence to prove that regarding non receipt of payment. This fact was not brought to the notice of petitioner. Further, the no-email correspondence to this effect has been furnished by the respondent. The petitioner submits, in terms of FEMA the amount due in foreign exchange require to be received and before writing off, whether permission from the RBI has been obtained and if so, the respondent has not produce the same.

Sl # 5 – Once the invoice is raised on a foreign party the payments have to be received within 270 days as per FEMA. If the foreign exchange amount due from the foreign parties were not received then, the respondent was required to obtain permission from the RBI for write – off of debt, whether the Respondent had exhausted all the remedies available under the FEMA, to write – off the debt. The respondent has not produced copies of the correspondence between the respondent and the HMC before seeking write-off of foreign exchange receivable from the foreign party for rendering the services.

5. Heard both the counsels and perused the records available.

6. This Tribunal on 12.01.2024 directed the petitioner to file brief synopsis by explaining the pre-existing dispute and the same is complied vide diary dated 18.01.2024.

7. The present petition is filed by the Operational Creditor for an outstanding amount of Rs. 1,34,45,734/- for outstanding commission. It is seen from the petition that the parties entered into a Master Service Agreement dated 01.04.2019 and 01.04.2020 wherein the Operational Creditor raised invoices on the respondent on 28.03.2023 and 05.12.2022. However, the Respondent failed to make timely payments.

8. It is seen from the statement of the objection that Respondent relied upon email communications between the petitioner and the respondent to prove that there was a pre-existing dispute. On perusal of the email communication dated 07.12.2022 it is observed that the petitioner has stated as under:

"*all the INP's emails regarding the pending payments have not been responded and conveniently ignored by the AGV. However, as per the AGV-INP agreement Clause II B, Please find the delayed interest invoice & other project payment invoices. We request that payment be made as per the agreement before the due date to avoid any delays or complication*". However, it is seen from the email dated 21.12.2022 sent by the respondent that the respondent has disputed and rejected the claims of commission raised on the delayed payments. The extract of the email communication dated 21.12.2022 issued by the respondent to the petitioner is as follows:

> " *Invoices IPT001-220328 and IPT002-220328:* We reject these interest invoices as *Invoice IPT001-220328* has been raised post termination and *IPT002-220328* has been raised upon expiry of 1 year post the termination date of the relevant Agreements.
>
> *Invoice IP1009-221129.* We reject this invoice as given below:

- *Sl #1 – 15% commission on Taala invoice 159: The Agreement dated 1st April 2019 executed between AllGoVision Technologies Pvt. Ltd. and Innovoprism FZE, excludes payment of commission for integration, customization & support (as per Annex A of the Agreement dated 1st April 2019). Since this invoice was raised for commission on deliverables for integration, customization & support, the payment was reversed as agreed with you earlier. Hence this item is rejected.*
- *Sl #2 – 15% commission on ACUD: We have paid the commission to Innovoprism for invoices raised during the period of our Agreement dated 1st April 2020 and within 1 year of the termination of Agreement (as per the post termination clause in Annex A of the AGV_INP Agreement dated 1st April 2020). Therefore, Innovoprism is not eligible for any commission for invoices raised by AGV after expiry of 1 year post the termination date. Hence, this item is rejected*
- *Sl #3 – 3% additional commission on ACUD: In 2019-20, the sales achieved by Innovoprism was less than 75% of the sales target. Therefore, as per the Annex A of the AGV_INP Agreement dated 1st April 2019, only 15% commission is applicable and not 18%. Hence, this item is rejected.*
- *Sl #4 – 12% commission on special force: Beyond the commission already paid to Innovoprism during the Agreement period for this PO, no further billing from AGV has happened. In any case, Innovoprism is not eligible for receiving commission after expiry of 1 year post the termination date. Hence, this item is rejected.*
- *Sl #5 – 12% commission on HMC. : Payment was never made the customer even though we billed it during the agreement period. Customer eventually cancelled the project (email and cancellation letter from the customer attached). Since commission is payable only on realization of payment from the customer (as per clause II (b) of the AGV_INP Agreement, this item is rejected."*

9. Thus, in response to email dated 07.12.2022, the Respondents have raised the objections vide email dated 21.12.2022 for each of invoices related to interest and commission. Moreover, with the C.P. at Pg. 193, the petitioner have also filed the Record of default with submission date of 08.05.2023 issued by the information utility; which categorically shows the authentication of debt as "Disputed".

10. In this connection it is pertinent to refer to the Judgment of Hon'ble Supreme Court in the matter of *Mobilox Innovations Private Limited Versus Kirusa Software Private Limited* dated September 21, 2017, *(2017) ibclaw.in 01 SC* wherein it was 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 examine 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."

11. In the present case there is a dispute between the parties as it is clear from the ROD issued by the information utility in Form-D. Further, it is noticed that the Demand Notice in Form No.3 was issued on 15.03.2023, while the email communication pointing out the dispute is dated 21.12.2022, i.e., much prior to the issue of Demand Notice. This in accordance with the above mentioned judgment of the Hon'ble Apex Court, since there is a record of dispute in the Information utility; we need not go in the merits of the dispute for this purpose, as there is prima facie a pre-existing dispute. In its written submission filed on 18.01.2024 the petitioner has tried to explain in detail regarding each of the disputes raised vide email dated 21.12.2022. However, it is not the mandate of this Tribunal to look into the merits of the dispute. Moreover, the petitioner has filed the rejoinder dated 20.09.2023 and written submissions dated 18.01.2024, wherein it was noticed that the Petitioner has not given any specific response to the matter regarding 12% commission on special force, and 12% commission on HMC project. Further, in the above para 4 with respect to amount due for commission inspite of cancellation of the HMC project, there was no explanation given by the petitioner.

12. In the light of the foregoing discussion, it is concluded that in the case in hand there is a pre-existing dispute and therefore the petition under section 9 is not liable to be admitted.

13. Accordingly, the Present petition bearing **CP (IB) No. 84/BB/2023** is hereby **dismissed.** However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so advised.

-Sd/-	**-Sd/-**
(MANOJ KUMAR DUBEY) **MEMBER (TECHNICAL)**	**(K.BISWAL)** **MEMBER (JUDICIAL)**