

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.196/BB/2019
U/s. 9 of the IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Platinum Communications Private Limited
349, Business Point,
Western Express Highway Andheri (East)
Mumbai City,
Maharashtra – 400 069 - Petitioner/Operational Creditor

Versus

M/s. Primus Lifespaces Private Limited
Mantri House,
No.41, Vittal Mallya Road,
Bengaluru – 560 001 - Respondent/Corporate Debtor

Date of Order: 20th November, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Ashok B Patil with
Ms. Pauline Priyanka
For the Respondent : Shri K. Dushyantha Kumar

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.196/BB/2019 is filed by M/s. Platinum Communications Private Limited (Petitioner/Operational



Creditor) U/s.9 of the IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Primus Lifespaces Private Limited (Respondent/Corporate Debtor), on the ground that it had committed default for an amount of Rs.9,98,756/- (Rupees Nine Lakhs Ninety Eight Thousand Seven Hundred and Fifty Six only) which included principal amount and interest @ 18% p.a.

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

- (1) M/s. Primus Lifespaces Private Limited (herein after referred to as Respondent/Corporate Debtor) is a Private Limited was Company incorporated on 01.05.2006, under the Companies Act, bearing CIN: 45201KA2006PTC039 176. Its Authorised Share Capital is of Rs.2,00,000/- and the Paid-up Capital of Rs.1,51,510/-.
- (2) The Corporate Debtor has engaged the services M/s. Platinum Communications Private Limited (herein after referred to as Petitioner/Operational Creditor) for display of outdoor advertisements at various sites at Bangalore for promotion and marketing of its various real estate projects from August, 2016 onwards.
- (3) Accordingly, for the services rendered, the Operational Creditor raised an Invoice No. DLP/09/16-17/2015, dated 30.09.2016, P.O. No. WO/MCY/298 dated 16.08.2016 for an amount of Rs.8,15,926/- on the Corporate Debtor. The Corporate Debtor paid Rs.2,00,000/- out of above amount. The Operational Creditor has been regularly



following up with the Corporate Debtor regarding the payment of the outstanding amount by way of e-mails and telephone calls. However, the Corporate Debtor has failed and neglected to make the payment. In such a situation, the Operational Creditor was left with no alternative but to discontinue the advertising services to the Corporate Debtor from October 2016 onwards.

- (4) The Operational Creditor issued a legal notice dated 03.10.2018 to the Corporate Debtor seeking payment of total outstanding amount of Rs.9,10,062/- which includes interest @ 18% as calculated up to 01.10.2018. Thereafter, the Operational Debtor has issued a reply letter dated 26.11.2018 to the advocates of the Operational Creditors, denying the liability on the ground of deficiency of service. In response to the said reply, another reply dated 17.12.2018 was issued to the Corporate Debtor. In response, the Corporate Debtor issued a reply letter dated 02.01.2019 to the advocates of the Operational Creditor by denying the liability.
- (5) Subsequently, the Operational Creditor issued demand Notice dated 08.01.2019 to the Corporate Debtor in Form-4 under Rule 5, Sub-Rule (1), Clause (b) of the Insolvency and Bankruptcy Code 2016, by demanding to pay an amount of Rs.9,52,713 which include interest @ 18% as calculated up to 15.01.2019 within 10 days from the date of receipt of copy of reply. Accordingly, the Respondent issued reply dated 18.01.2019, by inter-alia contending that they have paid the due amount even though they have provide poor quality of service. Aggrieved by the non-payment of alleged



outstanding amount, the instant Petition has been filed.

3. The Company Petition is opposed by the Respondent/Corporate Debtor by filing Statement of Objections dated 11.09.2019, by inter alia contending as follows:

- (1) It is stated that the claim made in the Application is false, frivolous and is filed with a mala fide intention in order to harass the Corporate Debtor and to derive unjust enrichment by way of this Application. The Petition is not filed with bona-fide intent and is liable to be dismissed in limine.
- (2) The Corporate Debtor is not in such circumstances that it is unable to pay its debts and it is not an Insolvent Company. It has made a payment of Rs.2,00,000/- (Rupees Two Lakhs only) by way of a cheque bearing No.473918, which was duly acknowledged by the Petitioner. It had duly replied to the demand notice sent in Form-3 dated 08.01.2019, on 18.01.2019 wherein, it has again reminded about the poor quality of service provided, which was intimated earlier through written communication.
- (3) It is contended that it had communicated to the Petitioner as to the deficiency in services so provided by the Petitioner multiple times. However, such intimation or communications were persistently ignored by the Petitioner without taking any action. It is contended that communication as to lacunae in the quality of services tantamount to raising of dispute and such dispute was raised well before filing of the Petition amounting to pre-existing dispute. The Petitioner had never given proper



response to the issues with respect to quality so raised by the Corporate Debtor. The hoardings so placed by the Petitioner were not visible and the project name of the Company was not projected properly on such hoarding. The project name of the Company was to come to a proper view of the passers-by and daily commuters on the road. However, it was not placed in such a manner and this would not be of any advantage to the Corporate Debtor. Therefore, the Corporate Debtor had discontinued the services of the Petitioner before 31st October, 2016 vide their reply dated 26.11.2018 issued in reply to their legal notice dated 3.10.2018.

- (4) It is alleged that the Petitioner is trying to put up pressure on the Corporate Debtor by invoking the provisions of the Section 9 of the IBC, 2016. The Corporate Debtor had not approached the Tribunal with clean hands and has not filed even legible material documents on file to examine by the Tribunal. The Petitioner cannot be oblivious of the fact that the Corporate Debtor is an ongoing concern having regular business and employment of employees, initiation of Insolvency Proceedings would adversely affect the functioning of the Corporate Debtor. Insolvency proceedings under the IBC, 2016 and Rules there under cannot be adopted as recourse to recovery of debt. It is alleged that the Petitioner intends to use the provisions of the Code only for the purpose of realization of the amount, which is alleged to be due to the Petitioner, which is against the objective of the Code. The main objective of the Code is to streamline the insolvency process but not debt recovery.



The Petitioner objective is not in conformity with the intention of the legislature in making the said Code.

4. Heard Shri Ashok B Patil with Ms. Pauline Priyanka, learned Counsels for Petitioner and Shri K. Dushyantha Kumar, learned PCS for the Respondent. We have carefully perused the pleadings of both the parties and extant provisions of the Code and rules made there under.
5. Shri Ashok B Patil, learned Counsel for the Petitioner, while reiterating various averments made in the Company Petition and also in synopsis, as briefly stated supra, has further submitted that since the Corporate Debtor admittedly deducted TDS in respect of the claim made by the Petitioner, the Corporate Debtor is liable to pay remaining amount and the plea of defective services is an afterthought and the same is not tenable. He has relied upon a Certificate dated 23.10.2019, given by their Chartered Accountant S. R. Rege & Company, wherein it is by inter-alia stated that TDS of Rs.18,150/- had been deducted by the Corporate Debtor on 30.06.2017 against the total amount of the invoice in question, and thus the amount due is not paid. And the certificate produced by Respondent is without any basis. Therefore, he urged the Tribunal to admit the case as prayed for.
6. Shri K. Dushyantha Kumar, learned PCS for the Respondent, on the other hand submitted that mere deduction of the TDS would not prove the outstanding amount as claimed by the Petitioner. Moreover, they have settled the invoice claimed by the Petitioner dated 16.08.2016 after taking into account of the



defective service. They have also responded to the legal notice dated 18.01.2019, by inter-alia reiterating the issue of defective service etc. And the Petitioner kept quiet till the legal notice dated 8.01.2019 is issued.

7. The Petitioner has raised the invoice dated 30.09.2016 for the contract period between 05.08.2016 and 04.10.2016, by claiming an amount of Rs.8,15,926/-. The terms and conditions as per the invoice is 30 days from the date of submission of invoice and interest @ 18% p.a. will be charged on delayed payment. In pursuant to that invoice, the Respondent paid total amount of Rs.2,00,000/- and by inter-alia contending that service rendered by the Petitioner was defective in nature. The Respondent also given reply dated 26.11.2018 to the Petitioner, in reply to the demand notice dated 03.10.2018, by inter-alia stating that they have received an estimate of work from the Petitioner for a period of three (3) months i.e. from 01.08.2016 to 31.10.2016. However, the alleged hoardings on Metro Pillars were placed too high for the passer-by to see, it was above the eye level the agency's name 'Ripple Media' has created a lot of confusion as the size of the font of 'Ripple Media' was bigger than that of Respondent project name, Courtyard and it was at a high wherein Ripple media was more prominent than the intended communication that was supposed to be charged for. Therefore, they have discontinued the services of the Petitioner i.e., before 31st October 2016, and same was communicated to the Petitioner. There is no further communication from them, till they have received an invoice for an amount of Rs.8,15,926/-. Therefore, they have asked them to



revise the billed amount as the quality of service was not up to the mark, by denying the averments made in the notice dated 03.10.2018. Again, the Petitioner has issued reply dated 17.12.2018, to the Respondent, by inter-alia admitting that the Respondent Company has raised several grievances with regard to the hoardings on the Metro pillars and simply cancelled the estimate or work. Subsequently, the Petitioner has issued demand notice in Form-4 under the provisions of the Code, dated 08.01.2019, to the Respondent by demanding to pay total an amount of Rs.9,52,713/- which include principal amount and interest. In pursuant to the demand notice, the Respondent has given reply dated 18.01.2019, by denying the contentions made in the demand notice dated 08.01.2019, and again reiterated their earlier contentions that they have provided poor quality of service and thus they did not pay the entire claim amount, and they have not revised the bill as demanded earlier. The Petitioner has not filed any copy of the purchase order in support of the case. Moreover, the Petitioner did not dispute the poor quality of service and has not placed on record what steps they have taken in pursuance to the termination of the services of the Petitioner before the contract period, if the Petitioner supplied the services in question, as per the specifications of the order, given by the Respondent.

Therefore, it is to be held that there is pre-existing dispute in respect of the alleged outstanding amount in question. The facts and circumstance of the case is covered by decision of the Hon'ble NCLAT, New Delhi, rendered in Company Appeal (AT) (Insolvency) No. 01 of 2019 in the matter of *M/s. Yash Technologies Pvt. Ltd. Vs. M/s. Base Corporation Limited.*



8. The contention of the Petitioner that deduction of TDS would itself prove the outstanding amount is not correct. It is to relevant to point out here that both the parties have produced their respective certificates dated 08.10.2019 issued by Mr. B. B. Deshpande, Chartered Accountant another certificate dated 23.10.2019 issued by Auditor of the Petitioner, to support their case. And these certificates prove that there is dispute between the parties with regard to the claim in question.
9. The Petitioner has filed the instant case, after receiving part payment claiming the disputed amount. Moreover, it is not the case of Petitioner that the Respondent Company is insolvent. It is settled position of law that the provisions of Code cannot be invoked for recovery of outstanding alleged amount. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*,¹ has inter alia, held that IBC, 2016 is not intended to be substitute to a recovery forum. In another latest judgment rendered in *Transmission Corporation of A.P. Ltd. Vs. Equipment Conductors and Cables Ltd.*,² Supreme Court of India, it is inter alia held that existence of undisputed debt is sine qua non of initiating CIRP. As per para 34 of judgment, it is stated that Adjudicating Authority, while examining an application filed under Section 9 of the Code, will have to determine:
- a) Whether there is an 'operational debt' as defined exceeding Rs.1Lakh?



¹ (2018) 1SCC 353

²(CA No.9597 of 2018) dated 23rd October, 2018, 2018,(2018) 147 CLA 112 (SC)

- b) Whether documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
- c) Whether there is existence of dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before receipt of demand notice of the unpaid operational debt in relation to such dispute?

If any one of aforesaid conditions is lacking, the application would have to be rejected.

10. For the aforesaid reasons and circumstances and the law on the issue, we are of the considered opinion that the Petitioner failed to make out any case so as to initiate CIRP as prayed for basing on the necessary documents produced.
11. In the result, C.P. (IB)No.196/BB/2019 is hereby dismissed. However, this order will not come in the way of the Petitioner to invoke any other remedy available to it, under any other law. The Respondent is directed to examine the issue again, if the Petitioner files its revised bill by substantiating it, as suggested by the Respondent, in their replies given earlier to the petitioner. No order as to costs

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL