

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

CP (IB) 810/MB/2020

Under section 9 of the Insolvency and Bankruptcy
Code, 2016

**ID8 MEDIA SOLUTIONS PRIVATE LIMITED
[CIN: U92100MH2007PTC174187]**

Reg. Office: 10 Rajat Apartments Mount Pleasant Road
Mumbai 400006 MH

...Operational Creditor/Petitioner

Versus

**SPARSH INFRA TECH PRIVATE LIMITED
[CIN: U45209PN2007PTC130130]**

Reg. Office: Brahma Cottage 122/1, Koregaon Park,
Pune 411001 MH

... Corporate Debtor/Respondent

Order Delivered on 03.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. Pirani, Advocate.

For the Corporate Debtor : Mr. Ojas Deolankar, Advocate.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This Company Petition is filed under section 9 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **ID8 Media Solutions Private Limited** (“**the Operational Creditor**”) seeking to initiate

Corporate Insolvency Resolution Process (CIRP) against **Sparsh Infratech Private Limited ("the Corporate Debtor")**.

2. The Corporate Debtor is a Company incorporated under the Companies Act, 1956 and has its registered office at 3 Queens Garden, Residency Club, Pune 411001 MH was incorporated 14/05/2007 under the Companies Act, 1956. Its Company Identification Number (CIN) is U45209PN2007PTC130130 Therefore, this Bench has jurisdiction to deal with this petition.
3. The total amount of debt claimed is Rs.13,13,519/- (Rupees Thirteen Lakhs Thirteen Thousand Five Hundred and Nineteen Only) is the principal amount and Rs.1,44,355/- (Rupees One Lakh Forty-Four Thousand Three Hundred Fifty-Five Only) is the interest @ 0.75% per month till 11.11.2019 and further interest is due and payable as per Exhibit - C. The default occurred from 17.02.2018 till 12.12.2018.

Submissions made by Operational Creditor:

4. The Operational Creditor is a consulting organization in the field of reputation management, including business public relations, marketing, digital media, graphic design and visual communication, events and films. to the Corporate Debtor.
5. The Operational Creditor was providing Creative Designs, Social Media Marketing, Search Engine Optimization, Website Design including booking module and Website Maintenance sine 2017.
6. The Operational Creditor agreed to provide to the Corporate Debtor the said professional Services in the F.Y. 2018-19 for which monthly consultancy fees was agreed under the Agreement dated 14.07.2017 made

between the Operational Creditor and Corporate Debtor. Copy of the said Agreement is annexed to the Company Application as Exhibit – A (pages 28-38). The Operational Creditor provided consultancy services to the Corporate Debtor as per the said Agreement and for the period of 01.02.2018 to November 2018 raised 11 Invoices and 3 Vouchers aggregating to Rs.13,13,519/- which remained unpaid by the Corporate Debtor. Under the said Agreement, the Corporate Debtor agreed to pay interest on the outstanding amount at 0.75% p.m. which is computed to be Rs.1,44,355/- as detailed in Exhibit – C and on the said interest GST @ 18% amounting to Rs.25,984/- is payable by the Corporate Debtor. The details of the Invoices and Vouchers raised by the Operational Creditor are as under:

- (a) For the period April 2017 to August, 2017, the Corporate Debtor agreed to pay for Artistic work Rs.75,000/- per month; for SEO work Rs.24,000/- per month and for SMM work Rs.95,000/- per month (for SMM work) as per Clause 7.1.1; 7.2.1 and 7.3.1 respectively.
- (b) For the period September 2017 onwards until termination of the said Agreement, the Corporate Debtor agreed to pay 10% in addition to amounts as mentioned in clause 7.1.1, 7.2.1 and 7.3.1 of the said Agreement and pay the same in advance on or before 5th of every calendar month.
- (c) All out of pocket expenses incurred were agreed by the Corporate Debtor to be reimbursed within 30 days of receipt of the Invoice. The Corporate Debtor also agreed to pay an interest at 0.75% p.m. in the event of any delayed payments, from the due date until the date of payment.

- (d) The Operational Creditor has provided services to the Corporate Debtor and against the said services the Operational Creditor had raised the following 11 Invoices and 3 Vouchers between 01.02.2018 and 26.11.2018 aggregating to Rs.13,13,519/- (Rupees Thirteen lakhs thirteen thousand five hundred and nineteen only). The said invoices were not paid on the due date mentioned in **Exhibit-C**, thus interest amounting to Rs.1,44,355/- become due and payable at the aforesaid rate of 0.75% p.m. and GST at 18% amounting to Rs.25,984/- aggregating to Rs.14,83,857/- became payable as detailed in Tabulation Exhibit – C annexed to this application.

Details of Invoices and Vouchers and Date on which it fell due :

Sr. No.	Details of Invoices / Vouchers	Exhibit Nos	Due Date
1.	InvoiceNo.07/02/A/17-18 dated 01.02.2018 for Professional Fees for SEO Service for February 2018 for an amount of Rs.14,160/- annexed as Exh-B1.	Exhibit - B1	17.02.2018
2.	Invoice No.18/02/A/17-18 dated 15.02.2018 for Website Maintenance for 15.02.2018 to 14.03.2018 for an amount of Rs.14,160/- annexed to Company Petition	Exhibit – B2	03.03.2018
3.	Voucher No.43 dated 15.02.2018 for Reimbursement for Facebook advertising (23.12.2017 to 01.01.2018) for an amount of Rs.47,648/- annexed.	Exhibit – B3	03.03.2018
4.	Invoice No.06/03/A/17-18 dated 01.03.2018 for Professional Fees for	Exhibit – B4	17.03.2018

	SEO Service for March 2018 for an amount of Rs.14,160/- annexed.		
5.	Invoice No.18/03/A17-18 dated 19/03/18 for 50% Professional Fees for Website design and development for an amount of Rs.70,800/- annexed.	Exhibit – B5	04.04.2019
6.	Voucher No.20/18-19 dated 24.05.2018 for Reimbursement for (travel) an amount of Rs.900/- annexed.	Exhibit – B6	09.06.2018
7.	Invoice No.05/07/A/18-19 dated 02.07.2018 for Professional Fees for Social Media and Creatives for July, 2018 for an amount of Rs.2,20,660/- annexed.	Exhibit – B7	18.07.2018
8.	Invoice No.05/08/A/18-19 dated 02.08.2018 for Professional Fees for Social Media and Creatives for August, 2018 for an amount of Rs.2,20,660/- annexed	Exhibit – B8	18.08.2018
9.	Invoice No.05/09/A/18-19 dated 03.09.2018 for Professional Fees for Social Media and Creatives for September 2018 for an amount of Rs.2,20,660/- annexed.	Exhibit – B9	19.09.2018
10.	Invoice No.12/09/A/18-19 dated 15.09.2018 for Website Maintenance for 15.09.2018 to 14.10.2018 for an amount of Rs.14,160/- annexed.	Exhibit – B10	01.10.2018
11.	Invoice No.07/10/A/18-19 dated 03.10.2018 for Professional Fees for Special Media and Creatives for October 2018 for an amount of Rs.2,20,660/- annexed.	Exhibit – B11	09.10.2018
12.	Invoice No.16/10/A18-19 dated 15.10.2018 for Website Maintenance for 15.10.2018 to	Exhibit – B12	31.10.2018

	31.10.2018 for an amount of Rs.7,080/- annexed.		
13.	Invoice No.03/11/A/18-19 dated 02.11.2018 for Professional Fees for Social Media and Creatives for November 2018 for an amount of Rs.2,20,660/- annexed.	Exhibit – B13	18.11.2018
14.	Voucher No.73/18-19 dated 26.11.2018 for Reimbursement for Facebook advertising for an amount of Rs.27,151/- annexed.	Exhibit – B14.	12.12.2018

7. The Corporate Debtor despite availing the said services from the Operational Creditor failed to pay the agreed fees of Rs.13,13,519/- to the Operational Creditor hence defaulted in making payment of the said Invoices.
8. The Operational Creditor therefore issued Demand Notice dated 19.11.2019 in Form 3 under Sec.8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, along with a copy of the said defaulted Invoices and demanded the Invoices and Vouchers amount along with interest. Copy of the Demand Notice dated 19.11.2019 in Form – 3 is annexed as Exhibit – D to this Petition (Pgs 56-68).
9. The Corporate Debtor vide its letter dated 11.12.2019 replied the Demand Notice dated 19.11.2019 issued by the Operational Creditor.

Submissions made by the Counsel for Corporate Debtor by way of Affidavit in

Reply:

10. The Corporate Debtor submits that the liability alleged in the Petition amounting to Rs.14,83,857/- was and has never been

accepted/admitted/acknowledged. There is already a dispute on the amount claimed and other facets of the agreement between the parties dated 14.07.2017. Further submitted that efforts were being made with the parties to resolve the difference that had arisen out of reconciliation statement. Hence the Petition itself is not maintainable under the IB Code.

11. It is further stated that the Agreement relied upon the Operational Creditor was for a period of one year from 01.04.2017 to 31.03.2018. There was no extension of this Agreement, the Invoices raised by the Operational Creditor are beyond the period of the Agreement, hence the Agreement cannot be relied upon conclusively to adjudicate the dispute.
12. It is further stated that the Operational Creditor is relying on proforma invoices and not tax invoices. Even with the Application the proforma invoices have been annexed. The Corporate Debtor submits that proforma invoices are not documents to demand money, unless the tax invoices are raised, the Operational Creditor cannot claim/demand any alleged and outstanding amount. The Corporate Debtor also pointed out this in its reply dated 11.12.2019 to notice issued by Operational Creditor under IB Code. However, till date tax invoices have not been issued.
13. The Corporate Debtor denies the contents of Form No.5. The Corporate Debtor submits that the claim of the Operational Creditor of Rs.14,83,857/- is sham and bogus. All 11 invoices and 3 vouchers amounting to Rs.13,13,519/- and interest claimed thereupon taking it to Rs.14,83,857/- is not admitted by the Corporate Debtor. The Operational Creditor has not brought on record the documents, communications between the parties which show dispute. The Operational Creditor submits that Agreement was terminated by the Corporate Debtor in October 2018 itself, this fact was not brought on record.

14. The Corporate Debtor submits that relying upon the Operational Creditor, the Corporate Debtor engaged the Professional Services of the Operational Creditor including booking module and Website Maintenance since 2017 vide agreement dated 14.07.2017. Thereafter, the Operational Creditor commenced working under the said Agreement and raised invoices some of which have been paid. But in due course the service rendered was in breach of the agreement on account of errors in the advertisements from the end of the Operational Creditor. Although the ads were approved from the end of the Corporate Debtor, while displaying/publishing the ads there were errors on the part of the Operational Creditor not once but in many circumstances. Time and again the Corporate Debtor informed the Operational Creditor that the quality of service was poor and that there were errors but the same continued on the part of the Operational Creditor. The Corporate Debtor states that it is an international accredited wellness resort plying on very high standards. The errors on the part of the Operational Creditor not only caused embarrassment to the Corporate Debtor or cut a sorry figure in the market, it also caused loss to the Corporate Debtor.
15. The Corporate Debtor points out discrepancies/errors of the Operational Creditor in the creatives which were sent approved but never used. The issue of defects and discrepancies were raised by the Corporate Debtor vide email dated 27.09.2018, thereby pointing the breach of contract and disputing the payment of amount claimed against the invoices. With the emails the Corporate Debtor has attached all the instances of the discrepancies. It is also pointed out that Corporate Debtor would raise invoices (Debit Notes) upon the Operational Creditor for recovering the losses from Operational Creditor. Annexed herewith **Exhibit – R1 (pgs 9-25)** is the copy of the email dated 27.09.2018.

16. Further, since the performance of the Operational Creditor was not found satisfactory, the Corporate Debtor terminated the contract/arrangement by notice through email dated 27.10.2018. The same is accepted by the Operational Creditor vide email dated 29.10.2018. Thereafter, it is evident from the emails exchanged between the parties that there was a reconciliation of the accounts for arriving at final figure after considering the debit note from the end of the Corporate Debtor. After sharing the data from both the sides, a reconciliation was arrived at, which was communicated to the Operational Creditor by email dated 12.12.2018. As per the said reconciliation the Corporate Debtor had raised a debit note of Rs.6,68,775/-. Hence after deducting the said amount the total payable amount to Operational Creditor stood at Rs.4,19,836.16. Annexed herewith **Exhibit – R2** is email dated 27.10.2018 & 29.10.2018, **Exhibit – R3** is email dated 12.12.2018 and **Exhibit- R4** 'colly' (**Pages 26-27; 28-29**) are other emails for reconciliation.
17. The Corporate Debtor submits that the amount claimed in the application was never admitted by the Corporate Debtor and there was an ongoing dispute. Hence the reconciliation issue got extended. However, the Operational Creditor accepted the reconciliation and by email dated 17.06.2019 forwarded the draft of the closure of account. The attachment to the settlement letter has stated the amount of settlement as Rs.4,19,836/-. Further stated that the letter also has admissions of errors in the ads as pointed out in foregoing paras. From this email it is evident that the reconciliation of account was accepted by the Operational Creditor. Annexed herewith **Exhibit – R5 is email dated 17.06.2019 (pages 37-38)**.

18. The Learned Counsel submits that by an email dated 19.07.2019 the Corporate Debtor conveyed to the Operational Creditor that one invoice dated 31.03.2018 was billed twice and hence required deduction which amounted to Rs.12,000/-. It is further submitted by the Counsel that vide email dated 03.12.2018 the Operational Creditor had also accepted the said fact but still in the instant application the bill has been included. Annexed herewith **Exhibit – R6 (Page 39)** is email dated **19.07.2019** and **Exhibit – R7 email dated 03.12.2018 (Page 40)**.
19. The Counsel further submits that the reconciliation accepted by the Operational Creditor based on the debit note and errors caused by it. The reconciliation was revised in June-July 2019. The Operational Creditor submits that in one of emails to the Corporate Debtor dated 31.07.2019 ha mentioned that amount due to the Operational Creditor is Rs.6,24,487/- after deducting the debit note of the Corporate Debtor. Hence the amount claimed is clearly an afterthought disregarding and disputing the reconciliation that it had once accepted. Copy of the email dated 31.07.2019 is annexed herewith as **Exhibit – R8 (page 41)**.
20. The Counsel states that the Operational Creditor in utter shock to the Corporate Debtor again by email dated 04.10.2019 demanded Rs.13,13,519/- from the Corporate Debtor without even reference to the reconciliation that was going on for almost one year. The said email was replied on 05.10.2019 by the Corporate Debtor retaliating the amount due was Rs.4,01,088/- after deduction. The Operational Creditor in reply on 7.10.2019 came up with a new theory that they had accepted the amount of Rs.4,19,836/- as good gesture provided that the payment is made by the Corporate Debtor in 48 hours. In the said email the Operational Creditor has accepted reconciliation amount of Rs.4,19,836.16 but citing

a lame reason of 'disappointing approach' again demanded Rs.13,13,519/- with interest. It is further submitted that the Corporate Debtor in reply dated 7.10.2019 has once again disputed the same amount and stated that after final reconciliation the amount was fixed at Rs.4,01,088/- and once again sought balance confirmation. From this email and all the emails referred above, the amount claimed by the Operational Creditor is not acknowledged by the Corporate Debtor and that there is a dispute. It is submitted that while Corporate Debtor has been making sincere endeavours to resolve the issue amicably, the Operational Creditor failed to respond and explore all available avenues to arrive at an amicable settlement. In the present case the salient issue is that the amount of Rs.4,01,088/- was fixed and mutually accepted by both the parties. The Corporate Debtor submits that they even now is willing and stand committed to this figure of Rs.4,01,088/- but the Operational Creditor, has taken 'U-Turn' and is making a dispute ignoring what has been mutually accepted and agreed. All these documents have been suppressed by the Operational Creditor. Copies of emails dated 01.10.2019; 07.10.2019 and emails of both the parties dated 07.10.2019 annexed herewith as **Exhibits R9, R10 and R11 (pages 42, 43 & 44)** respectively.

21. The Counsel submits that Demand Notice in Form – 3 dated 19.11.2019 the total amount of alleged debt is shown as Rs.13,13,519/- with further interest amounting to Rs.1,44,355/- till 11th November 2019 @ 0.75% p.a. which Corporate Debtor has emphatically denied in its reply dated 11.12.2019. The Corporate Debtor has never admitted/accepted the said amount at any time, as it is neither based on facts nor substantiated with contemporary records. The Corporate Debtor submits that the claim of Rs.13,13,519/- and interest is moonshine claim.

22. It is submitted that as per facts on records, the parties have mutually accepted and agreed on the balance payable amount of Rs.4,19,836/-. The amount claimed by the Operational Creditor is false and sham. No visible efforts have been made to explore all available avenues for amicable settlement and the agreed conditions of the purchase orders/agreement have not been complied with.
23. Further submitted that there exists pre-dispute already raised by Corporate Debtor on the amount claimed in the application and thereafter the reconciliation emails show that contradictory conduct of the Operational Creditor. First time dispute was raised by way of email dated 27.09.2019. The Operational Creditor in one email dated 31.07.2019 has admitted an amount of Rs.6,24,487/-; in email dated 17.06.2019 admitted dues of Rs.4,19,836/- and qua the application are claiming Rs.14,83,857/- on proforma invoices. The Corporate Debtor states that this shows the malafide conduct of the Operational Creditor. The Corporate Debtor has been attempting to settle all the issues amicably and on mutually acceptable terms with the said payment as per reconciliation. It is stated that the total Scenario makes it aptly clear that Operational Creditor wants to extort more money, than what is payable by filing the Application under Insolvency and Bankruptcy Code 2016 with an intent to pressurize the Corporate Debtor.
24. Considering the factual position explained above and the fact that both the parties have deliberated upon the said issue and mutually accepted and agreed on the said amount of Rs.4,01,088/-, the Corporate Debtor is notwithstanding anything agree to pay to the Operational Creditor an amount of Rs.4,00,836/- since the same was agreed by both parties. The present Application is totally uncalled for and unwarranted. The said

proceeding is not maintainable under the Insolvency and Bankruptcy Code, 2016. It is an absolute abuse of the provisions of law. The Corporate Debtor has been unnecessarily subjected to hardship and cost, which need to be saddled upon the Operational Creditor.

25. The Corporate Debtor prayed that the application of the Operational Creditor may be dismissed with heavy costs.

Rejoinder Affidavit on behalf of the Operational Creditor to the reply filed by the Corporate Debtor.

26. The Operational Creditor has filed the Rejoinder Affidavit to the reply filed by the Corporate Debtor. The Operational Creditor in its preliminary submissions stated that the Applicant being an Operational Creditor filed the Petition on 03.03.2020 to initiate a Corporate Insolvency Resolution Process of the Corporate Debtor under Sec.9 of the Code as the Corporate Debtor had defaulted in making the payment of Rs.13,13,519/- due and payable by the Corporate Debtor under 11 Invoices for the services rendered to, and 3 Vouchers for the expenses incurred on behalf of the Corporate Debtor by the Operational Creditor in accordance with the agreement dated 14.06.2017 entered into by Corporate Debtor with the Operational Creditor for providing the services mentioned therein.

27. The Corporate Debtor has raised principally the following grounds for non-payment of the amounts claimed by the Operational Creditor which are reproduced and responded to by the Operational Creditor as under:

(a) The Corporate Debtor claims that no demand can be made by the Operational Creditor on Proforma Invoice and to sustain a claim there must be a taxable invoice.

The Corporate Debtor submits that section 3(6) of the Insolvency and Bankruptcy Code, 2016 (the Code) claim means – a right to payment, whether or not such right is reduced to judgement, fixed, disputed, undisputed, legal, equitable, secured or unsecured. Further, the Insolvency Resolution Regulation, 2016 in Regulation 7(2)(b) and (ii) provides that the existence of debt due to the Operational Creditor under the Regulation may be proved including on the basis of a contract for the supply of goods and services with the Corporate Debtor or on an Invoice demanding payment for the goods and services supplied to the Corporate Debtor.

Therefore, in the light of the aforesaid it is submitted that the defence raised by the Corporate Debtor that Taxable Invoice is pre-requisite for demanding payment is without any basis and contrary to the law. It is submitted that the Operational Creditor has a right to payment though disputed by the Corporate Debtor and though demanded by the Operational Creditor on Proforma Invoice. Additionally, there is an Agreement between the Corporate Debtor and the Operational Creditor under which the sums demanded are due and payable by the Corporate Debtor.

(b) The Corporate Debtor further claims that there is a dispute with regard to the amount claimed and facets of the agreement namely —

(i) That the invoices raised by the Operational Creditor are beyond the period of agreement dated 14.07.2017 which was for the period of 1 year from 01.04.2018 to 31.03.2018 or at least after termination of the Agreement and

- (ii) *That the Operational Creditor has twice billed the Corporate Debtor a sum of Rs.12,000/- and*
- (iii) *That the Corporate Debtor suffered a loss of Rs.6,68,775/- on account of breach of the agreement described as 'errors in advertisement' for the agreement described as 'errors in advertisement' for which the Corporate Debtor raised a Debit Note of the said sum which the Operational Creditor accepted and that there was a settlement between the Corporate Debtor and the Operational Creditor whereunder the Operational Creditor agreed to receive the sum of Rs.4,19,836.16 after setting off the Debit Note amount of Rs.6,68,775/-.*

(c) With regard to the dispute raised in the Reply of the Corporate Debtor that the Invoices were raised beyond the period of Agreement, the Counsel states that the dispute is completely dishonest and malafide. The Corporate Debtor availed of services under the Agreement even after 31.03.2018 until it was terminated by the Corporate Debtor on 27.10.2018. The emails annexed to the Reply Affidavit of the Corporate Debtor bears testimony to it. Further it is submitted that the Corporate Debtor for the first time raised false disputes only on 27.09.2019 when all Invoices had become overdue. It is pertinent to note that the Invoices raised on the Corporate Debtor are payable under the Agreement, in advance, within 15 days of the month for which the same is raised. It is further submitted that the invoices dated 02.07.2018 (Ex-B7) was payable on 15.07.2018; Invoice dated 02.08.2018 (Ex-B8) was payable on 15.07.2018; Invoice dated 03.09.2018 (Ex-B9) and so forth. Entire dispute raised by the Corporate Debtor is dishonest, false and mala fide.

- (d) The Corporate Debtor claims that Operational Creditor twice has billed the Corporate Debtor a sum of Rs.12,000/- is false to their own knowledge and is denied. The Corporate Debtor in the least could have remonstrated from the Petition, Bills which were allegedly billed twice by the Operational Creditor.
- (e) It is stated that the claim of the Corporate Debtor that it suffered a loss of Rs.6,68,775/- on account of breach of the agreement described as 'errors in advertisement' for which the Corporate Debtor raised a Debit Note of the said sum which the Operational Creditor accepted and that there was a settlement between the Corporate Debtor and the Operational Creditor whereunder the Operational Creditor agreed to receive the sum of Rs.4,19,836.16 after setting off the Debit Note amount of Rs.6,68,775/- is completely false and is denied. Under the said agreement the responsibility of the Operational Creditor is to prepare the creative which is then sent to the Corporate Debtor. the Corporate Debtor approves/modifies the creatives and sends he same for publication. The Operational Creditor does not have any control on the publication of the advertisement. Without prejudice to the aforesaid, the Corporate Debtor does not impute breach of any stipulation of the Agreement on the part of the Operational Creditor. The Operational Creditor emphatically denies that there is any breach on its part in the performance of agreement. The Operational Creditor states that no such debit note was raised by the Corporate Debtor nor received by the Operational Creditor though claimed, and finds it mention, in the reconciliation statement sent by Corporate Debtor to the Operational Creditor for its acceptance. The Operational Creditor does not admit that alleged embarrassment has any nexus with the alleged error in advertisement or that it is capable of reparation in law.

The Operational Creditor submits that it is a settled law that there cannot be a claim for damages without the proof of alleged injury to the part claiming damages, and there is no injury to the Corporate Debtor on account of alleged error in advertisement and in any event the Corporate Debtor without the proof of injury and damages if suffered are not entitled to straight away raise any debit note upon the Operational Creditor and set off an unjust and arbitrary amount of Rs.6,68,775/- against the amounts due to the Operational Creditor for services rendered and expenses incurred by it under the valid agreement.

- (f) The claim of the Corporate Debtor that there was a reconciliation of the claims made by the Operational Creditor and the amount payable was arrived at Rs.4,19,836.16 after a deduction of Rs.6,68,775/- is false. The alleged reconciliation was prepared by the Corporate Debtor suggesting that Operational Creditor accept at a sum of Rs.4,19,836.16. The Operational Creditor did not accept the deduction sought to be made by the Corporate Debtor. The draft closure letter, suggested by the Corporate Debtor, was not signed by the Operational Creditor and was conditional on simultaneous payment by the Corporate Debtor. since the Corporate Debtor failed to make payment, no settlement was arrived at and the question of renegeing from the settlement did not arise.
28. The Corporate Debtor's claim that it is willing to pay the amount of Rs.4,19,836.16 according to his own calculation is a moonshine and not genuine. Without prejudice to the aforesaid, the Operational Creditor is not willing to accept a petty sum offered by the Corporate Debtor. The

Corporate Debtor does not have any funds to pay the claim amounts and is only showing a carrot to the Operational Creditor.

29. The Corporate Debtor claims that it raised for the first time the dispute with regards to errors in the advertisement on 27.09.2019 much belatedly after the amounts became due and it was clear to the Corporate Debtor that they were unable to pay the same to the Operational Creditor. The Operational Creditor raised the first Invoice on 02.07.2018 which was payable in advance on or before 15th of that month i.e. on or before 15.07.2018 raising of the dispute. Similarly, all Invoices were raised by the Operational Creditor were due and payable in advance on or by 15th of that month. The last Invoice dated 02.11.2018 was also payable before 15.11.2018. It is admitted that there was no dispute when the payments under the Invoices became due. The dispute raised by the Corporate Debtor is not genuine and is malafide.

Findings :

30. We have heard the submissions of the Counsel for both sides and perused the records.
31. It is observed that the services were rendered by the Operational Creditor as per agreement dated 01.04.2017 which was entered for initial term of 12 months though services were continued till the Agreement was terminated by the Corporate Debtor 27.10.2018. Therefore, the bills raised till the date of termination shall be governed by the same Agreement. Hence the defence taken by the Corporate Debtor that bills raised are beyond terms of Agreement can not be considered.
32. In the present case the amount of Rs.4,01,088/- was fixed and mutually accepted by both the parties. The Corporate Debtor submits that

they even now is willing to pay Rs.4,01,088/-. As the Petition is filed prior to the amendment under section 4(1) of the IBC therefore the threshold for the same is Rs. 1 Lakh. Amount claimed and admitted are clearly beyond minimum amount stipulated under section 4(1) of the IBC.

33. Further it is noted that the issue of defects and discrepancies were raised by the Corporate Debtor vide email dated 27.09.2018, thereby raised dispute for the payment of amount claimed against the invoices. In light of the legal proposition laid down in the case of Mobilox Innovations Private Limited vs. Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017], the Hon'ble Supreme Court has held the following:

“40. 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.”

34. In light of the above facts and circumstances and the law laid down in this regard, it is clear that there exists a pre-existing dispute. Hence, we are of the view that this petition is not maintainable under IBC and hence reject the Company Petition on the grounds stated above.
35. The petition bearing **CP (IB) 810/MB/2020** filed by **ID8 Media Solutions Private Limited** the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Sparsh Infratech Private Limited [CIN: U45209PN2007PTC130130]**, the Corporate Debtor, is rejected.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)
03.02.2023
SAM/Jenny

Sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)