

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI

IB-2054/(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 Harshit Info Solutions Pvt. Ltd

Having its office at:-
E-36/304, Jawahar Park.
Laxmi Nagar, Vikas Marg
Delhi-110092

...Operational Creditor/Petitioner

Versus

Adzperform Media Pvt. Ltd.

Having its Registered office at:-
H.No-266-E/3-IC
W.No.2, Near Water Tank, Bhutani Chowk
Mehrauli, Delhi-1100030

...Corporate Debtor/Respondent Company

Coram:

Sh. Abhni Rajan Kumar Sinha
Hon'ble Member (Judicial)

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

Order Delivered on:25.02.2021

ORDER

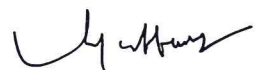
As Per Dr. V.K Subburaj, Member (Technical)

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate



Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

2. The applicant, M/s Harshit Infosolutions Private Limited has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.
3. It is the case of the applicant that it had provided its platform to the Corporate Debtor for digital advertisements and promotion by other entities as the operational creditor deals with the web and mobile app development to cater the users through use of the technology. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:-
 - a. That the Applicant deals with the web and mobile app development to cater the users through use of the technology and thus provided digital advertisements and promotion to the corporate debtor.
 - b. That the Corporate Debtor approached the operational creditor in the month of July 2016 and the parties had executed Insertion Order dated 02.08.2016 for the purpose of lead generation, mobile app user acquisition, video promotion and other online promotion.
 - c. That on the basis of the Insertion Order, the operational creditor ran the digital campaigns for the Corporate Debtor.
 - d. That the operational creditor sent a Demand Notice dated 09.08.2019 demanding payment of an unpaid operational debt of Rs. 4,86,933/- as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Copy of the Demand Notice demanding payment in prescribed Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to



Adjudicating Authority) Rules, 2016 duly served upon the address as per the website of Ministry of Corporate Affairs, Government of India.

4. The Corporate Debtor in its reply to the application has raised certain objections against the claim of the operational creditors which are as follows:
 - a. It is submitted that in the month of the May, June, 2017, a lot of fake installations were reported in the working of the operational creditor which was communicated by the advertising agency "Madhouse" managing the advertising campaign of Idea and Vodafone. Further submitted that a very high numbers of installations were came out as fraudulent and the advertising agency reluctantly agreed to Value Additions and required the re-delivery of the fraudulent installation which was based on the condition that the performance will be accepted only on the complete performance of the agreement. Copy of the email dated 02.08.2017 from Madhouse filed on record.
 - b. That on the basis of the said report of Fraudulent Installation, the Corporate Debtor informed the operational creditor vide email dated 06.08.2017.
 - c. Further the corporate debtor issued another email dated 08.08.2017 giving the details of the monthly campaign wise fake installations which the operational creditor had delivered. Copy of email dated 08.08.2017 is annexed alongwith.
 - d. It is submitted that vide email dated 10.08.2017, the operational creditor admitted to fraudulent installations and agreed to give the



Value Additions for all the fake installations wherein the exact amount of delivery as to the services rendered is in the month of June 2017 is seriously disputed. Copy of the email dated 10.08.2017 is annexed alongwith. Furthermore the operational creditor acknowledged to fraudulent installations and submitted that it had not performed its part of the agreement for the month of May, June and July, 2017.

e. Furthermore it is submitted that the operational creditor raised "Performa Invoice" for the month of June, 2017 dated 06.12.2017 which is self contradictory and cannot be relied upon based on following:

- a. That the operational creditor seeks the demand payment on the said invoice which is not a final invoice raised.
- b. No GST had been deposited under the said Invoice being a Proforma Invoice.
- c. That the amount mentioned in words and figures in the invoice is different. Further when the corporate debtor had disputed about the quality and quantity of the services provided by the Operational creditor, the operational creditor himself was not aware about the total amount claimed by him.
- d. Furthermore the amount in the said invoice arises for the first time between the parties on 15.01.2018 and not before that date and infact the applicant had in reply to the email dated 15.01.2018 had not accepted the said amount and demanded a higher amount.

5. Heard the parties and perused the case records.

6. In respect of definition of “dispute” in the Code, Hon’ble Supreme Court has held in the case of Mobilox Innovative Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. 2018 1 SCC 353 *inter-alia* that:

*“Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required 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 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.**” (emphasis given).*

7. It is the case of the respondent that there has been a pre-existing dispute as there is lot of fake installations were reported in the working of the operational creditor which was communicated by the advertising agency “Madhouse”. Further vide email dated 10.08.2017, the operational creditor admitted to fraudulent installations and agreed to give the Value Additions for all the fake installations wherein the exact amount of delivery as to the services rendered is in the month of June 2017 which is seriously disputed. Furthermore the operational creditor seeks the demand payment on the invoice for the June, 2017 dated 06.12.2017 which is not a final invoice raised.

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8. In the factual background it is seen that there has been no admission of operational debt by the respondent. In fact, there has been a dispute on the fake installations reported in the working of the operational creditor and an email dated 10.08.2017 wherein the operational creditor admitted to fraudulent installations and agreed to give the Value Additions for all the fake installations. Further the operational creditor seeks the demand payment on the invoice dated 06.12.2017 which is not a final invoice raised. Respondent has raised dispute with sufficient particulars. The amount of claim raised by the applicant clearly falls within the ambit of disputed claim. The claim of dispute suggests the need of elaborate investigation. In the facts it is reiterated that existence of genuine dispute in the present case cannot be ruled out.
9. As per Section 9 (5) (ii) (d) of the Code provides that adjudicating authority shall reject the application if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility.
10. For the reasons stated above this petition fails and the same is rejected.
11. We make it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the Applicants before any other forum shall not be prejudiced on account of dismissal of instant application.

Let the copy of the order be served to the parties.

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

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(ABHNI RAJAN SINHA)
MEMBER (JUDICIAL)