IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-2693/ND/2020

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

IN THE MATTER OF:

MANOJ SRIVASTAVA MEDIA CORPS PRIVATE LIMITED

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

INDIA SPORTS FLASHES PRIVATE LIMITED

...RESPONDENT/ CORPORATE DEBTOR

ORDER DELIVERED ON: 16.09.2021

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (TECHNICAL)

For the Applicant : Mr.Depaish, Adv.

For the Respondent : Mr. Vaibhav Mishra, Adv

MEMO OF PARTIES

MANOJ SRIVASTAVA MEDIA CORPS PRIVATE LIMITED

Having its registered office at:

45-A Vijay Mandal Enclave

Hauz Khas near Kalu Sarai

South Delhi DL 110016

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

INDIA SPORTS FLASHES PRIVATE LIMITED

Having its registered office at:

70-A/23, Third floor, Rama Road

Industrial Area, Najafgarh Road

New Delhi 110015

...RESPONDENT/ CORPORATE DEBTOR

ORDER

AS PER SUMITA PURKAYASTHA (MEMBER TECHNICAL)

1. The present application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by Manoj Srivastava Media Corps Private Limited (for brevity 'Applicant') through Mr. Manoj Srivastava (Director of the Applicant Company) with a prayer to initiate the Corporate Insolvency process against India Sports Flashes Private Limited (for brevity 'Corporate Debtor').

2. The Applicant Manoj Srivastava Media Corps Private, the Operational Creditor, incorporated on 07.08.2012 under the provisions of Companies Act 1996 CIN being U92490DL2012PTC239898 having its registered office 45-A Vijay Mandal Enclave Hauz Khas near Kalu Sarai South Delhi DL 110016. It is involved in the business of Film Production, Film Line Production, Content distribution, Marketing campaigns, Film Rights management and Film Festivals.

3. The Respondent India Sports Flashes Private Limited is a company incorporated on 01.08.2016 under the Companies Act, 2013 having its registered office at 70-A/23, third floor,Rama Road, Industrial Area, Najafgarh Road New Delhi New Delhi DL 110015 and CIN U22219DL2016PTC303793 and is engaged in sports news, information, and streaming services..

4. As per the averments made by the Applicant, the Corporate Debtor engaged the Applicant on 2 assignments i.e. Assignment 1 for production of movie on cricket - "The Battle of cricket" through a Service Provider agreement dated 03.02.2019 and Assignment 2 for production of 5 Mahindra Films by agreeing on email as on 04.06.2019, and the said films were delivered to the Corporate Debtor via email on 16.06.2019. The Copy of the emails dated 04.06.2019 and 16.06.2019 have been annexed. The Applicant Further submits that an advance of Rs. 10,00,000/- has been received on 30.05.2019 for above mentioned Mahindra films Assignment- 2.

5. It is submitted by the Applicant that as per the Service Provider agreement dated 03.02.2019 the Corporate Debtor agreed to make payment of Rs. 17,00,000/- for Assignment no. 1 Battle of Films through installments i.e. First installment of Rs. 2,00,000 on signing on the film in February 2019, Second installment of Rs. 3,00,000/- in first week of March, Third installment of Rs. 3,00,000/- when the shoot of the film ends, Fourth installment of Rs. 5,00,000/- in first week of April 2019 and Fifth installment of Rs. 4,00,000/- on delivery of the first copy. Along with this the Corporate Debtor also agreed to bear all the Production Cost incurred by the Applicant associated with the production of the film. The Corporate Debtor made payment of the first installment when the invoice dated 19.02.2019 for Rs. 2,36,000/- was raised however, other invoices (for principal amount + GST) dated 06.03.2019 (for an amount of Rs.3,54,000/-) , 31.03.2019 (for amount

of Rs.3,54,000/-), 06.04.2019 (for amount of Rs. 5,90,000/-), 07.05.2019 (for amount of Rs. 4,72,000/-) remain unpaid along with the reimbursement of Rs.7,04,557/- sought by the Applicant for the expenses incurred in Delhi, Bangalore and Kolkata by the Applicant.

6. The Applicant kept following up through mails. The copies of email from 07.05.2019 to 24.04.2019 have been annexed. The Corporate Debtor in its email dated 25.06.2019 further mentioned his difficulty to clear the entire outstanding amount stating that "*he is stuck somewhere and going through tough times*". The copy of the email dated 25.06.2019 has been annexed.

7. The Applicant was constrained to issue demand notice dated 17.08.2019 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the Corporate Debtor to pay an amount of Rs.21,33,337/- (inclusive of 18% interest p.a.) . The notice was served upon the Corporate Debtor vide speed post and registered post and delivered as on 22.08.2019. The demand notice was also served through an email dated 21.08.2019 to which the Corporate debtor replied on 30.08.2019 and stated that they have already paid for the services which were not delivered to them. The relevant extract of the reply are reproduced here:

"At the outset, we are appalled at the false claims made by you. We have already overpaid Manoj Srivastava for the services that were not delivered to us by him and his team. We have 'been very patiently trying

to resolve the matter considering the old relationship Mr Manoj had with our CEO but your false claims can't be accepted. We even sent Our accounts team to his office to understand the facts but the lot of details given by his team are false and unapproved by us thus can't be accepted as expenses undertaken on our behalf.

In addition to the above, we would also like to add that your client has verbally threatened our CEO of a physical harm and used abusive language which is uncalled for given that you are claiming to take legal recourse with all documentation that you have.

And you have also been harming our business interests by falsely claiming unpaid dues payable to your dent. By sharing false demand notices with our shareholders, business associates and clients, you have severely hampered our business and you are liable for losses suffered by us due to such action of yours. Our lawyers will be taking appropriate action on the matter."

8. The Applicant has filed this application as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. Rs.21,33,337/- (inclusive of the interest at 18% p.a.) towards unpaid invoices for the services provided by the Operational Creditor.

9. Notice to the Section 9 application was issued to the Corporate Debtor vide order dated 02.12.2019 of the Adjudicating Authority.

10. The Corporate Debtor filed its reply dated 24.02.2020 and submitted that the Applicant and the Corporate Debtor had only one agreement i.e the Service Provider Agreement dated 03.02.2019 and there was no agreement for any work on Mahindra short films and no payment was to be made in relation to the same. It is further submitted that the total consideration of the Service agreement between the parties is of Rs.17,00,000/- whereas the alleged outstanding claim of the Applicant

as per the Application is Rs. 21,33,337/-. The Corporate Debtor submitted that the Applicant is relying upon false and frivolous invoices to make the alleged claim against the Corporate Debtor.

11. The Corporate Debtor further submits that invoices have been raised by the Applicant without any approval or confirmation of the same from the Corporate Debtor. The Corporate Debtor submits that they have already made a payment to the tune of Rs. 16,00,000/- (approx) and have annexed a bank statement for the same. The Corporate Debtor submits that the Applicant is twisting the language of the mails which were exchanged between the parties and the Corporate Debtor has never admitted/accepted any debt payment towards the Applicant.

12. The Corporate Debtor submits that the Corporate Debtor never agreed to bear any production cost incurred by the Applicant in association with the production of film apart from what is mentioned and covered in the service agreement.

13. Both the parties were heard and liberty was granted to file a written submission. The Applicant filed the written submission dated 20.03.2021 and submits the following:

    a) It is submitted that the Corporate Debtor owes an undisputed amount to the Applicant. The Applicant has duly raised five invoices dated 19.02.2019 to 07.05.2019. It is further stated that out of aforesaid due invoices only one invoice was cleared, thus leaving the total outstanding amounting to Rs. 17,70,000 including GST for unpaid invoices and further the Reimbursement amount of Rs 2,20,053/- is also due and payable by the Corporate Debtor. The agreement dated 03.02.2019 clearly provides that "Sports Flashes" agreed to borne all the production costs associated with the production of films by the directors/service provider" thus apart from making the agreed consideration with taxes the Corporate Debtor is also liable to make the payment of expense.

b) It is submitted that the Corporate Debtor`s defense is self-contrary and moonshine defense since the Corporate Debtor at the first stage alleged that invoices raised by the Applicant are false and frivolous and further stated that the claim of the petitioner is out of bounds as the agreement provides for Rs 17,00,000/- only and the invoices are also raised without any approval from the Corporate Debtor whereas, the Corporate Debtor has stated that they had paid Rs 16,00,000/- approx. to the Applicant. It is stated such a stand of the respondent is self contrary since the Corporate Debtor will never pay any amount if the invoices are disputed or false or frivolous.

c) It is submitted that the Corporate Debtor has further taken false defense that there is no agreement at all in respect of Mahindra Short Films, the said defense is yet again false defense which is evident from the email agreement dated 04.06.2019 and advance of Rs 10,00,000/- was received on 30.05.2019 for Mahindra film which was never disputed by the Corporate Debtor. The Applicant submitted that a total of Rs. 14,84,504/- is received from the Corporate Debtor which is duly reflected from the bank statement annexed with the application. That out of total payment of Rs. 14,84,504/- the bank payment of Rs. 10,00,000/- was received on 30.05.2019. The balance payment of Rs. 4,84,504 was towards the part reimbursement of total expense of Rs. 7,04,557/- thus leaving the unpaid balance of Rs. 2,20,053/- which was duly stated in amount of default in the Operational debt.

d) It is submitted that the Corporate Debtor has admitted its liability and a copy of the email dated 25.06.2019 is annexed where the Corporate debtor has accepted the default by confirming that he is stuck somewhere and going through tough times.

14. The Corporate Debtor filed the written submissions dated 31.03.2021 and has made the following submissions:

a. It is submitted that the total consideration of the Service agreement between the parties is of Rs.17,00,000/- whereas the alleged outstanding claim of the Applicant as per the Application is Rs. 21,33,337/-. The Corporate Debtor submitted that the Applicant is relying upon false and frivolous invoices to make the alleged claim against the Corporate Debtor.

b. The Corporate Debtor submits that the payments as per the bank balance were made and the same are reflected in the bank statement:

TRANSACTION DATE	AMOUNT TRANSFEREED
22.04.2019	Rs.40,000/-
29.04.2019	Rs.1,00,000/-
02.05.2019	Rs.1,00,000/-
04.05.2019	Rs. 1,10,000/-
08.05.2019	Rs.34,505/-
08.05.2019	Rs. 1,00,000/-
30.05.2019	Rs.10,00,000/-
TOTAL	**Rs. 14,84,504/-**

c. It is submitted that the Applicant is going beyond the terms of the service provide agreement dated 03.02.2019. The Applicant has to amend the application to file for remaining Rs.2,15,496/- (Rs.17,00,000 (-) Rs14,84,504 = Rs.2,15,496/-) and is put to strict proof to prove that it did work for Rs.2,15,496/-.

d. It is reiterated that the invoices raised by the Applicant are wrong and are frivolous in nature. The payment has already been made by the Corporate Debtor.

e. The Corporate Debtor submits that there was no agreement for any work on Mahindra short films between the Applicant and the Corporate Debtor and no payment was to be done for anything related to it.

15. The date of default is not mentioned in form 5 of the application however, from the pleadings it is seen that the date of last invoice is 07.05.2019 and the account being a running account the present application is filed within time Hence, the application is not time barred and filed within the period of limitation.

16. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

17. On perusal of the documents placed on record, We have observed that the Corporate Debtor has not denied its liability of payment of Rs. 17,00,000/-, arising out of the Service agreement dated 03.02.2019 and has further admitted its liability by submitting that a payment Rs14,84,504/- has been made and the Applicant has to amend the application to file for remaining Rs.2,15,496/-. The Operational Creditor has also placed on record the emails dated 25.06.2019 wherein the Applicant has raised an issue with respect to the payments and the Corporate debtor has accepted the default by confirming that he is stuck somewhere and going through tough times. We are of the view that this is a clear cut admission on the part of the Corporate Debtor hence, this Adjudicating Authority initiates CIRP of the Corporate Debtor.

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 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 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."

18. Since no name of the IRP was proposed by the applicant this bench appoints Mr. Rahul, Registraion no. IBBI/IPA-002/IP-N01095/2021-2022/13581 and the email id: rk_3398@rediff.com 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.

19. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

20. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-	SD/-
SumitaPurkayastha	**Dr. DeeptiMukesh**
Member (T)	**Member (J)**