



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 8/KB/2023

***An Application 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:

Outline Systems India Private Limited

... Applicant/ Operational Creditor.

Verses

Sree Mudranalaya Technology Private Limited

[CIN: U22210WB2006PTC107203]

... Respondent/ Corporate Debtor.

Date of Pronouncement: January 11, 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For Applicant:

Mr. Dhruv Gandhi, Adv.

For Respondent:

Mr. Abhrajit Mitra, Sr. Adv.

Mr. Shaunak Mitra, Adv.

Mr. Ishaan Saha, Adv.

ORDER

Per: D. Arvind, Member (Technical)

- 1.** This Court is congregated through hybrid mode.
- 2.** Heard the Learned Counsel for the Applicant and the Learned Senior Counsel along with the Learned Counsel for the Respondent.

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Factual Matrix:

3. This instant application is preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity “IBC” by the **Outline Systems India Private Limited**, hereinafter referred to as the “Applicant”/ “Operational Creditor” or “OC” against **Sree Mudranalaya Technology Private Limited (SMTPL)**, hereinafter referred to as “Respondent” / “Corporate Debtor” or “CD” seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process, (for brevity “CIRP”) in respect of the Corporate Debtor.
4. The Corporate Debtor is a private limited company incorporated on January 10, 2006, having Nominal Share Capital of Rs. One Crore and Paid-Up Share Capital of Rs. 63,61,200/-.
5. The amount claimed to be in default is Rs. 2,76,70,962/- and the date of default claimed in the application is November 21, 2022.

Applicant’s submissions:

6. The Learned Counsel for the Applicant submits that on October 28, 2015, Webel Technology Limited (WTL) an undertaking of the Government of West Bengal, issued a Work Order in favour of the Corporate Debtor to render service of scanning/digitalization and allied services of public records, registered documents, legacy documents/records maintained by various registration offices under the Directorate of Registration and Stamps Revenue, across the State of West Bengal.
7. It is further submitted that the Corporate Debtor had entered into a Memorandum of Understanding with the Operational Creditor on January 21, 2016 (“MOU”), whereby the Corporate Debtor had formally engaged the Operational Creditor, and assigned the



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- Operational Creditor the mandate to perform the services on behalf of Corporate Debtor, in terms of WTL Work Order, concerning sixty-four (64) registration offices situated across the eastern region of the State of West Bengal. It is contended that based on MOU, one Purchase Order dated January 28, 2016 (“PO-OC”) was issued by Corporate Debtor to the Operational Creditor.
- 8.** It is claimed that after receiving the mandate, the Operational Creditor performed its part in terms of the PO-OC, in line with the instructions received from Corporate Debtor from time to time, and the Operational Creditor had issued several invoices upon the Corporate Debtor between the period June 29, 2017, till March 5, 2020, and on 15.03.2019, the Operational Creditor received Rs. 5 Lakh from the Corporate Debtor in furtherance to of one of the many raised invoices.
 - 9.** Further it is claimed that neither the Corporate Debtor nor WTL presented any issues and or deficiency in respect of the services performed by the Operational Creditor, relating to the quality or quantum of services rendered or otherwise, on the part of the Operational Creditor as part of the services performed as per MOU executed between CD and OC.
 - 10.** Further, it is claimed that after raising the invoices, the Operational Creditor persistently followed up with CD demanding payment of the Operational Debt. In this regard, the Operational Creditor had written various communications to the concerned officials in CD’s organisation and held meetings with the senior officials of CD.
 - 11.** However, despite admitting the liability towards the Operational Creditor, till date, CD has only avoided payment of the operational

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- debt by presenting unwarranted excuses to veil its inability to discharge its liability towards the Operational Creditor.
- 12.** Further, it is contended that the Operational Creditor had deposited an amount of Rs. 43,23,436/- with the relevant revenue authorities towards Service Tax and GST arising from the invoices raised upon CD from time to time, and despite having failed to discharge its obligation to pay the operational debt to the Operational Creditor, CD continued to avail credit of the said amount deposited by the Operational Creditor towards Service tax and GST as “Input Credit” under GST law.
- 13.** It is submitted that the Applicant had issued a Demand Notice under Section 8 of the I&B Code on **July 22, 2022**, however, no concrete communication towards payment of outstanding liability is done, except receiving an email stating that CD would require some time for reconciliation of their accounts from their finance team.
- 14.** It is further submitted that on 29.08.2022, an RTI under Section 6(1) of the RTI Act, 2005, was filed by the Operational Creditor, to acquire information on the status of payments received by the Corporate Debtor and it came to know that CD, consistently raised invoices in furtherance to the work done by the Operational Creditor on WTL and got payments regularly from WTL, in terms of its Work Order, but failed to forward the prescribed fees to the Operational Creditor. The Copy of the RTI application is annexed at Page 261 as Annexure “X” and Copy of the Reply from the WTL along with the details of payment made by WTL to M/s. CD is annexed at Pages 264-269 as Annexures XI and XII.
- 15.** Thus, he submits that there is a default of payment of operational debt on the part of CD to the Applicant, the defaulted amount is

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more than threshold limit, the application filed within the time limit prescribed and hence merits admission.

Respondent's submissions per contra:

- 16.** The Learned Senior Counsel for the Respondent contended that the Applicant's scope of work as per (MOU)
- 17.** PO-OC executed between the Applicant and the Respondent was based on scope of work covered in WTL's Work Order awarded to CD dated October 28, 2015. As per the MOU / PO-OC, Applicant at its at its own expense, should employ people, invest in infrastructure such as scanners, networking equipment hardware and software to perform scanning/ digitization of records maintained by Registration offices across the state of west Bengal.
- 18.** Further, it is claimed that the contract between the parties dated **21st January 2016** read with the work order of WTL dated **28th October 2015**, the Respondent carried out the entire scope of work at its own expense for the months of **April and May 2016** and thereafter.
- 19.** It is claimed that the in-Respondent's Books of Account, the balance owed to the Applicant on the date the application filed was only **Rs. 49,38,143,68**.
- 20.** It is further submitted that if the Applicant has fulfilled its obligations under the terms of the purchase order dated **January 21, 2016**, it is now required to disclose any additional costs incurred if any for the scanning, digitization of legacy documents and registered instruments **from May 1, 2016**, as required by the purchase order and the MOU dated **January 21, 2016**.
- 21.** Ld. Counsel denied that the Applicant provided any services (for which invoices had been raised by them post May 2016) from 1st

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May 2016. Since the Applicant did not provide any services from May 2016, the issue payment for the services claimed to have been performed from May 2016 does not arise.

- 22.** It is submitted that the contractual requirement is that the Operational Creditor incurs all expenses including the cost of hardware, workforce, and all other services for the purpose of providing services, the Operational Creditor incurred expenses of only Rs. 53,77,069/- and that too only up to 8th July 2016 and the ledger account on record have been disputed contemporaneously or for that matter in the Application. As per the Ledger in the Books of CD, only Rs. 49,38 143 is due to OC which is well below the threshold limit for commencing CIRP under section 9 of IBC.

Ledger Account

Period	Particulars And Page No.	Amount payable to OPERATIONALCREDITOR	Date
27/04/2016 to 08/07/2016	Operational Creditors email dated 17/12/2018 (page 242-243 Petition)	53,77,069.32	As on 08/07/2016
29/06/2017 to 01/04/2021	Corporate Debtor's email dated (pages 36-76 of the petition)	49,38,143.68	As on 01/04/2021 (Page 76)

Counter submission made by the Applicant:

- 23.** The Ld. Counsel for the Applicant contends that the claim of the Corporate Debtor has miserably failed to uprise this Adjudicating

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Authority with the true nature of transaction that occurred between the Operational Creditor and Browse Info Systems. He claims that he is at a loss to understand how the Corporate Debtor has made arbitrary adjustments in its books in the ledger account with Operational Creditor.

- 24.** He further submits that all the debits made by CD (claiming to have incurred expenses on manpower, infrastructure on behalf of OC) is not supported with any prior approval of OC or with proper documents. Thus, he pleaded that all such debits are bogus and should be ignored, if such arbitrary debits are taken out of the equation, the due payable to OC by CD would be Rs. 2,76,70,962
- 25.** It is further submitted that the Corporate Debtor very is conveniently denying the GST payments that were made by the Operational Creditor in furtherance to the Invoices raised by the Operational Creditor after taking credit of GST. He placed the invoices which are in **Annexure E** to the application.

Analysis and Findings of this Adjudicating Authority:

- 26.** To admit any application filed under Section 9 of the I&B Code, 2016, the Adjudicating Authority requires to check the criteria catered to in the provisions of the Code. The Section 5(21) of the I&B Code envisages the definition of “Operational Debt” as *a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.*
- 27.** It is evident from the Memorandum of Understanding (PO-OC) dated January 21, 2016; relevant part annexed at page 79 to the

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application that the Scope of work has been categorically mentioned as:

- a. *To assist SMTPL (CD) to execute: The backlog IGR Digitalization, Government of West Bengal and related contracts and other projects in the area of operation by providing required infrastructure in terms of hardware and manpower, liaise and co-ordinate with various authorities for this purpose in West Bengal and outside West Bengal by participating in various business deals, tender, Expression of Interest (EOI), discussion, negotiation, meeting with various parties and by collecting necessary data, information and documents pertaining to various parties and their business activities.*
 - b. *If required, OSPL (OC) will be available to provide various expertise, services such as, provide local skilled workforce, project management services, Engineering & Design Services various subcontracting services in allied fields or any other related services. The scope of the said activities will be defined through a separate agreement between both parties.*
- 28.** We find that the MoU has specifically mentioned that “OSPL (OC) shall carry out the above scope of work at its own expenses as per agreement in individual work orders.”
- 29.** It is further evident vide email dated 29/5/2019 of the OC that, in place of OC carrying on the work at its own expense, it was mutually agreed that the moneys that would be received from WTL by CD against the work carried out would be utilised for incurring the expenses which the OC was to incur as per the MOU made between them.
- 30.** We have examined the ledger account of the OC maintained in the books of CD, where all expenses incurred on behalf of OC by CD

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have been debited. Meeting was held on 31/12/2021 to resolve the disputes relating to such debits and the same has been mentioned in the emails exchanged between the parties and the same are in record in the application as well as reply.

- 31.** After the meeting, emails have been exchanged regarding reconciliation of accounts between the books of OC and CD. In OC's email dated 10/8/22, no objection whatsoever was raised by OC about any debits made by CD but mentions about reconciliation of accounts.
- 32.** We find, only at the stage of filing this application, disputes relating to such debits made by CD is being questioned by OC and not any time before directly.
- 33.** Thus, we find, there are disputes regarding the quantum of amount due to OC. As per CD, the maximum amount payable to OC is Rs. 49,38,143/-, whereas per OC, it is Rs.2,76,70,962/- if such debits made by the CD are removed out of equation.
- 34.** In view of above, pending reconciliation of accounts and the agreement between parties, undisputed amount payable to OC has not been crystallised yet. When that being the case, we can only infer that there are pre-existing disputes between the parties on the final amount payable and the quantum of due crystallised on the date of the application is only Rs. 49,38,143/- which is less than the threshold limit.
- 35.** Therefore, we find no merit in this application being **Company Petition (IB) No. 8/KB/2023** and accordingly **dismiss** it.
- 36.** No costs.
- 37.** **The Registry** is hereby directed to communicate this Order to the Parties by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.



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- 38.** Further, the **Registry** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means.
- 39.** Urgent certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 11th Day of January, 2024.

Tiwari, V. [LRA]/ Bose, R. K. [LRA]