

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT -V**

C.P. (I.B) No. 697/MB/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

M/s High Ground Enterprise Limited

Having its office no. 2, OM Heera Panna Mall, 2nd Floor, Oshiwara, Andheri (West) Mumbai-400053.

...Operational Creditor/Petitioner

Vs

M/s. Roshan Space Brand Com Private Limited

Having its office at Shop No.2, Ground Floor, Roha Orion Business Premises CSL, CTS No.F/492, Plot No-343, 16th Road, Bandra(West) Mumbai- 400050.

...Corporate Debtor/Respondent

Order Dated: 01.05.2024**Coram:**

MADHU SINHA

REETA KOHLI

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)

Appearances:

For Petition: Adv. Aniruth Purusothaman (PH)

For Respondent: Adv. Shyam Kapadia (VC)

ORDER

1. This Company Petition is filed by **M/s High Ground Enterprise Limited** (hereinafter referred as “**the Operational Creditor/Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) **M/s. Roshan Space Brand Com Private Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **INR 94,00,000/- (Rupees Ninety-Four Lakhs Only), along with the interest @ 24% per annum.** The date of default is stated to 19.04.2018 as per part IV of the Company Petition. Demand Notice dated 17.10.2019 was sent by the Petitioner and the same was replied by the Respondent

denying the liability on 25.10. 2019. Hence the present petition.

Brief Facts: -

1. The Petition reveals that the Petitioner is engaged in providing engineering, procurement, construction management, and media, consulting and allied services and the Respondent is engaged in the advertising display and off line media and related works and runs the business through its directors.
2. The Petitioner and the Respondent entered into an understanding, under which the advertising campaign material was provided by the Respondent to the petitioner that had to be displayed on the Petitioner billboard locations during period commencing from 17.03.2018 to 03.04.2018, a total of 18 days.
3. The case of the petitioner is that work order was issued by the Respondent to install hoardings at various sites in Mumbai and the said work was performed by the them against which they issued 4 tax invoices dated 30.03.2018. The said invoices stipulated penal interest at @ 24% p.a. on the overdue amount. (Page 14 of petition). Further the Respondent paid an advance amounting to Rs.22,00,000/- (Rupees Twenty-Two Lakhs Only). On 19.04.2018 which is the last payment received by the Petitioner for all the completed work. The same can be seen in the Bank Statement.

4. Further the case of the petitioner is that post the completion of work the Respondent has defaulted in paying the remaining amount of Rs. 94,00,000/- for the services provided by them. The Petitioner stated that the Respondent has provided a confirmation of Balance Dated 01.04.2018 for a total receivable payment of Rs.1,16,00,000/- (Rupees One Crore Sixteen Lacs Only)
5. The case of the Petitioner is that it deposited all the GST payables both on paid and unpaid bills and duly disclosed that in its GST returns vide GSTR1 and B2B form, wherein it is detected that the Respondent has availed the input tax credit, which establishes the facts that the Respondent has claimed expenditure against the unpaid bills of the Petitioner in his books of accounts. Further the alleged reversal of GST entries from 2018-2019 was only filed through GST returns on March 24, 2021, by the Corporate Debtor.
6. The Petitioner further sent several reminders to the Corporate Debtor to release their pending dues however since there was no response, the petitioner sent a Demand Notice dated 17.10.2018 under the Code to the Corporate Debtor. The same was replied by the Corporate Debtor on 25.10.2019 denying the liability to pay towards the petitioner. Hence the present petition.

7. The Respondent in its reply to the Demand notice and the present petition denied all the claims, allegations in the said Demand Notice and the petition.
8. The case of the Respondent is that the total contract value was Rs.1,16,00,000/- of which admittedly it paid Rs.22,00,000/- as an advance, and the balance amount of Rs.94,00,000/- towards alleged display of advertising work which was strictly payable upon the petitioner providing proof of displaying the said advertisement on the billboard locations to Respondent's satisfaction. This proof of display is a standard industry practice as submitted by the Respondent.
9. The Respondent further states that the petitioner is guilty of suppressio veri and suggestio falsi, since it has deliberately concealed and suppressed documents/correspondence evidencing the pre-existence of dispute between the Petitioner and Respondent thereby its liable for nondisclosure of dispute under Section 76 of the Code.
10. The case of the Respondent is that as per the Advertisement Agreement between the parties the amounts would be due to be paid by the Respondent only after proof of displaying the advertisement was provided by the petitioner to the Respondent to its satisfaction.
11. Additionally, relying on the petitioner's representations and warranties, the Respondent in good faith confirmed

the invoice ledger amounts on April 1, 2018, and made payments toward TDS under those invoices even before the services stipulated in the advertising agreement by the petitioner were rendered.

12. It is the case of the respondent, that since the period for displaying the Respondent's advertisements had lapsed and the Petitioner had not communicated regarding proof of display, on 15.05.2018, the Respondent sent a letter to the Petitioner, inter-alia, stating that it had withheld payment, since the same would be due post work is done to its satisfaction and sought confirmation as to completion of the advertised work. However, as there was no response by the Petitioner for a considerable time, on 20.01.2019, the Respondent sent another letter as a final reminder to communicate regarding the advertisement work assigned to the petitioner failing which the respondent would be forced to cancel the advertisement agreement.
13. It is submitted by the Respondent that as the Petitioner did not reply to the above letter and failed to render service under the advertisement agreement and since there was no formal contract between the parties, on 05.04.2019, the Respondent sent a letter to the Petitioner cancelling the advertisement agreement, and stated that it had reversed the transaction in its books of accounts and accordingly sought credit note to that effect from the

Petitioner. Till date, the Petitioner has not replied to the said Letter. In furtherance of the above, the Respondent reversed the transaction in relation to the advertising agreement in its books of accounts along with the GST credit and accordingly the Respondent was not liable to the Petitioner, for any amounts, whatsoever.

14. It is further submitted that on September 19, 2019, the Ministry of Finance, in conjunction with the Mumbai Zonal Unit of the Directorate General of GST Intelligence (DGGI-MZU), issued a press release via the Press Information Bureau. Among other points, it was noted that the Petitioner had purportedly utilized counterfeit Input Tax Credit amounting to Rs. 77 crores, based on invoices valued at Rs. 420 crores. Subsequent to this notification, the Petitioner promptly dispatched a Demand Notice under the Code to the Respondent, urging the initiation of Corporate Insolvency Resolution Process against the Respondent. Notably, the Notice inaccurately claimed that an alleged debt of Rs. 94,00,000/- became due on March 30, 2018, contradicting the terms of the advertisement agreement. Furthermore, it neglected to provide specific particulars or disclose any disputes raised by the Respondent.

Findings/Conclusion

Upon thorough consideration of the arguments presented by both the Operational Creditor and the Corporate Debtor, as well as a review of the provided records, the following key points have emerged:

15. It is evident that the Operational Creditor and Respondent were involved in understanding wherein the advertisement of the Respondent was to be displayed on petitioner's billboard against which the respondent was to pay Rs. 1,16,00,000/- out of which Rs. 22,00,000/- was paid as advance by the Respondent and the balance amount of 94,00,000/- was to be paid on providing the proof of display of the advertisement by the petitioner. Demand Notice dated 17.10.2019 was sent by the Petitioner and the same was replied by the Respondent denying the liability on 25.10. 2019.

16. On March 30th, 2018, the Petitioner invoiced the Respondent for Rs. 1,00,00,000/- as part of an advertisement agreement, which included a 24% penal interest rate on overdue amounts. However, payment was conditional upon the Petitioner/Operational Creditor providing satisfactory proof of advertisement display, a requirement which the Operational Creditor failed to meet. Despite multiple correspondences from the

Respondent/ Corporate Debtor seeking proof of advertisement work vide letters dated 15.05.2018 and 20.01.2019, the Operational Creditor failed to provide the proof. The relevant part of the above stated letters are reproduced as under-

Letter Dated 15.05.2018

“Dear Sir,

With regards to the above subject we are yet to receive the confirmation from your end as to when the assigned work will get completed by your office.

We have held the payment as a policy and it is paid post work is completed to our satisfaction,

Do let us know on priority.

Regards,

For Roshan and Space Brandcom Pvt. Ltd.”

Letter Dated 20.01.2019

“Dear Sir,

This is to inform you that we have not yet received any communication from your end with regards to the status of work assigned to you.

Please consider this as a final communication, post which we will be forced to cancel the work from our end.

Regards,

For Roshan Space Brandcom Pvt. Ltd”.

Further, the Petitioner did not respond and breached the agreement by not providing the agreed services or any proof thereof. Consequently, the Respondent terminated the agreement on April 5.04.2019 and reversed the transaction in its books, supported by debit notes dated 01.06.2019. Despite requests, the Petitioner did not issue a credit note. The Respondent's ledger reflects the reversal of the transaction. Therefore, having accepted the termination and transaction reversal on 01.06.2019, the Petitioner is estopped from disputing these actions in the Petition. The fact that the reversal was done much prior to the issuance of Demand notice dated 17.10.2019 in itself establishes that there existed a dispute with regards to the services having been rendered by the

petitioner. On this account there cannot be stated to be a crystallized debt due on the part of the Corporate Debtor to be paid to the Operational Creditor.

17. During arguments, this Hon'ble Tribunal enquired from the Petitioner's counsel whether it had any documents to demonstrate that the Petitioner had rendered and completed the services for which amounts are sought in the present Petition. The Petitioner's counsel conceded that it had no document on record to demonstrate the same and merely relied upon the ledger confirmation to substantiate its alleged claims. A ledger (particularly one that is subsequently reversed) without proof of having rendered the services cannot tantamount to operational debt, which is being sought in the present Petition. The Petitioner has not placed any document in the Petition or any correspondence on record evidencing proof of advertisement work carried out by it. Hence, the lack of material particulars and /or documents on record breached the contention of the Petitioner seeking balance amounts for advertisement work done by it.

18. Thus in the view of the above stated fact, the bench is of the opinion that as per provisions of Section 5(6) read with Section 8(2) of the Code, there is an existence of a dispute between the Petitioner and the Respondent, prior

to the issuance of Demand notice with regards to carrying out of the assigned work. In view of the same there is no crystallized debt due towards the Operational Creditor. In this context, the Bench relies on the judgment of the Hon'ble Apex Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited AIR 2017 SC 4532*** wherein the Hon'ble Supreme Court observed that what 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.

19. Further, in ***Kay Bouvet Engg. Ltd. v. Overseas Infrastructure Alliance (India) (P) Ltd., (2021) 10 SCC*** it was held as under-

“It is thus clear that once the operational creditor has filed an application which is otherwise complete, the adjudicating authority has to reject the application under Section (9)(5)(ii)(d) IBC, if a notice has been received by operational creditor or if there is a record of dispute in the information utility. What is required is that the notice by the corporate debtor must bring to the notice of operational creditor the existence of a dispute or the fact that a suit or arbitration proceedings relating to a dispute is pending between the parties. All that the Adjudicating authority is required to see at this stage is, whether there is a plausible contention which requires further investigation and that the dispute is not a penalty feeble legal argument or an assertion of fact unsupported by evidence”.

Therefore, applying the above analogy laid down by the Hon’ble Supreme Court to the present case on hand, this Bench has no option except to hold that there are “pre-existing disputes” between the parties. There is no merit in the above Company Petition and thus above Company Petition deserves to be ‘dismissed’.

20. Further it is evident that the falsity in the Petitioner's case of amounts being due and payable towards alleged

advertisement work is evident from the fact that the Petitioner has contended two dates of default for the basis of its alleged claims. In the Petition, the Petitioner has contended the date of default as "19.04.2018 and in the demand notice, the Petitioner has contended the date of default as '30.03.2018'. Hence the petitioners case is inconsistent stand and deserve dismissal on this ground too.

21. In view of the foregoing, inter-alia including 'Pre-existing disputes between the parties' 'Not Crystallized Debt' and 'Not coming to the court with clean hands' the above petition merits no consideration. **Hence dismissed.**

SD/-

MADHU SINHA
MEMBER (TECHNICAL)
/Aakansha/

SD/-

REETA KOHLI
MEMBER (JUDICIAL)