

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **26.04.2024** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No : -
Petition No : CP/67(CHE)/2022
Name of Petitioner : Ananda Vikatan Production Pvt Ltd
&
Name of Respondent : Vs
Transportwale 5D Technologies LLP
Section : Sec 9 Rule 6 of IBC, 2016

ORDER

Present: Mr. Vinodh Prabhu, Ld. Counsel for Petitioner.
Mr. Sashidar Sivakumar, Ld. Counsel for Respondent.

Vide separate order announced in open Court, the petition is allowed. The Respondent / Corporate Debtor is admitted into CIRP. Sh. Sudhir GS, is appointed as IRP.

-sd-

**[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)**

MS

-sd-

**[SANJIV JAIN]
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/IB/67/CHE/2022

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

In the matter of Transportwale 5D Technologies LLP

Ananda Vikatan Productions Pvt Ltd

Having Registered Office at No.757,
Anna Salai, Chennai-600 002.

... Applicant/Operational Creditor

-Vs-

M/s Transportwale 5D Technologies LLP

No.17, Ground Floor,
Shyamalvadhana Street,
West Mambalam, Chennai- 600 033.

...Respondent/Corporate Debtor

Order Pronounced on 26th April 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Operational Creditor: Vinodh Prabhu, Advocate

For Corporate Debtor : Mohan S, Advocate

ORDER

(Heard through -VC-)

This Application has been filed by Ananda Vikatan Productions Private Limited (hereinafter referred to as 'Operational Creditor') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 against Transportwale 5D Technologies LLP (hereinafter referred to as 'Corporate Debtor'). It is prayed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part-I of the Application sets out about the Operational Creditor. It is stated that the Operational Creditor is a Private limited company which was incorporated under the Companies Act, 1956 on 02.08.2012 with CIN No: U22130TN2012PTC087054. Part-II of the Application gives all the particulars of the Corporate Debtor. It is stated that the Corporate Debtor is a LLP having office at Ground Floor, No 17, Shyamalavadhana Street, West mambalam, Chennai- 600 033 and was incorporated on 18.05.2016 under the Limited Liability Partnership, Act, 2008. In Part III of the application, the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of this Tribunal to appoint anyone from the panel of Insolvency professionals maintained by IBBI.

3. The Affidavit verifying the application is placed at Page No- 10-11 of the Application typeset and one Mr.V.Srinivasan, CFO of the Operational Creditor has sworn the Affidavit as the authorized signatory of the Operational Creditor. However, the Ld. Counsel for the Applicant has filed a memo dated 12.07.2022, stating that the Authorized representative of the OC has been changed to one Mr.V.Kumar, the Executive Director of the

Applicant Company vide board resolution dated 27.06.2022 as the earlier representative has resigned from the Company.

4. In Part-IV of the Application, it is stated that a total sum of Rs.1,40,62,400/- (Rupees One Crore Forty Lakhs Sixty Two Thousand Four Hundred only) is being claimed by the Operational Creditor as the Operational debt. The Operational Creditor has stated the date of default to be 20.09.2019.

5. Part – V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in order to prove the 'Operational debt'

6. It is stated that the Applicant is a production house in Tamil Nadu and produces prime time serials, award functions on television.

7. It is stated that, the Corporate Debtor had accepted sponsorships of the Award functions viz., (i) Ananda vikatan Cinema and Nambikai Awards 2018 for Rs. 94,40,000/- (Rupees Ninety Four Lakhs Forty Thousand Only), (ii) Aval Vikatan Awards 2018 for Rs.11,80,000/- (Eleven Lakhs Eighty Thousand Only) and (iii) Nanayam Vikatan Business Conclave Award 2018 for Rs. 17,70,000/- (Seventeen Lakhs Seventy Thousand Only) for promoting their brand "MAuto". However, the corporate debtor paid only Rs. 20,50,000/- (Rupees Twenty Lakhs and Fifty Thousand Only) as on

19.09.2019, and the balance outstanding amount as mentioned is due from 20.09.2019 till date.

8. It is stated that the Respondent approached the Applicant for the promotion of its brand named MAuto (Makkal Auto). Subsequently, Memorandum of Understanding dated 15.11.2018 and 20.12.2018 were executed between the Applicant and the Respondent.

9. It is stated that Invoices dated 26.12.2018,16.12.2018 and 09.01.2019 were raised claiming a sum of Rs.1,23,90,000/- against which only Rs.20,50,000/- was received by the Applicant.

10. It is stated that, the Applicant sent Form-3 Demand Notice dated 08.10.2021 to the Respondent for payment of remaining dues. The Amount claimed in the demand notice is Rs.1,40,62,400/- including 18% interest from 20.09.2019.

11. It is stated that, the Respondents did not reply to the Form-3 Demand Notice.

12. It is stated that, even before the issuance of Form- 3 Demand notice, various remainder mails were sent to the Respondent to pay the remaining

dues as per the terms agreed upon. The said mail communication between the Applicant and the Respondent is extracted hereunder

(31)

From: yasmeen [mailto:yasmeen@mauto.in]
Sent: 09 December 2020 00:53
To: srinivasanv
Cc: Easwaran N S; Ganeshmurugan B; parthiban.p; mak; Finance
Subject: Payment update for Vikatan Award associations
Importance: High

Respected sir ,

Greetings!

Due the pandemic covid19 corona virus, whole world seems to be slowed down in one hand but on the other hand, people started to witness the real pollution free ecosystem. As by reports almost India's Air pollution level have gone down nearly by 40 % and world pollution by 30%. This clearly emphasis to the people the need of electric vehicles and electric mobility!. On the contrary , This period also emphasizes the importance of digital media , which Vikatan is pioneer in it . Salute to the Vikatan Team for bring uo digital platform with a wide visionary.

It's our immense pleasure to be associated with vikatan. As a startup , vikatan platform was a biggest support till date . Our heartfelt thanks and everlasting gratitude to MD of Vikatan groups for believing in our idea of electric vehicle retro fitment back in the ideation stages itself. His words have been a true inspiration to make our idea as a successful scalable product today.

I would like to bring to your kind attention about our payment update towards Vikatan award associations:-

As discussed, we have mutually agreed upon the below payments against the total value of 1.05cr + GST

Aval Awards - 10 L (Invoice no-5/AVL/DEC/1819)

Naanayam Awards - 15 L (Invoice no-107/NAW/DEC/1819)

Ananda Vikatan Awards - 80 L (Invoice no- 13/AW2019/JAN/1819)

In which we have paid **27,50,000/-** and balance to be made is **96,40,000/-** (incl.GST). Due to unforeseen situation of Covid , as committed verbally to the representatives of Vikatan we werent able to make the payments , as known global shut down we weren't operational. Unlike other industry our transport industry didnt bounce back to normal that easily.

Now the company is getting stable and the export orders to Africa are being made, payments are expected soon against our orders too, so we wish to proceed with our payments shot by shot. Thanks for providing us time understanding the struggles of Start-ups & its scalability. Our Heart felt gratitude to the CFO, who have been extra supportive to us.

Considering the pending deliverables that aren't utilized which are worth of around 45L to 50L, we wish to have a meeting with the vikatan team and plan the payment with

deliverables simultaneously which will support us now. As the whole world is towards digital marketing.

Adding on to the point , Prime peak time of telecast was changed and for the same we havent asked for any negotiation as we want a long time fruitful relationship with Vikatan groups, even few print media materials also not used yet. we are a startup we took such a courageous decision to sponsor much in vikatan and it's award shows in order to have a fruitful relationship with vikatan and a greater exposure among the public .

we will be providing the schedule of payment along with the cheque for first slot of payments. Kindly let us know how to take it forward.

--

Thanks & Regards

Yasmeen Jawaharali

CEO, MAUTO GROUP OF COMPANIES

Mail : yasmeen@mauto.in

Phone : +91 99529 64088

Websites: www.melectric.in

13. In response to the mail sent by the Respondent, the Applicant has responded as follows

(33)

From: Srinivasan V [mailto:srinivasan.v@vikatan.com]
Sent: 09 December 2020 14:31
To: 'yasmeen'
Cc: 'Easwaran N S'; 'parthiban.p'; 'mak'; 'Finance'; ganesh_vms Vikatan (ganesh_vms@vikatan.com)
Subject: RE: Payment update for Vikatan Award associations

Dear Ms. Yasmeen,

Greetings

With reference to the trailing mail,

01. Kindly note that, the invoices raised by us were ;

- a. Aval Vikatan Awards ; Inv No : 5 / ALV / DEC / 18 - 19 dt 16.12.18 : **INR 11,80,000 /-**
- b. Nanayam Vikatan Awards ; Inv No : 107 NAW / DEC / 18 - 19 dt 26.12.18 : **INR 17,70,000 /-**,
- c. AV Awards ; Inv No. : 13 / AW 2019 / JAN / 18 - 19 dt 09.01.19 : **INR 94,40,400 /-**
- d. Total Billing value is **INR 1,23,90,000 /- (incl GST)**
- e. Total Payments received is **INR 20,50,000 /-** last payment received on 19.09.19 , not **INR 27,50,000 /-** as mentioned in your mail,
- f. So the Balance Outstanding payable by you is **INR 1,03,40,000 /-** (INR One crore three lakhs and forty thousands), Not **96,40,000 /-** as mentioned in your mail

02. Ofcourse yes, Covid 19 pandemic is a world wide issue, but the pandemic came after 1 year of the invoice dates for the payments etc...., in this regard , we have mailed and met you many times for payments and all your promises were in air...

03. As far as the telecast, the change in telecast timings were informed to you very well in advance and also during the finalisation of the deal, it was clearly informed to you that the telecast timings are with the channel's decision...so raising this point now, doesn't make sense...

04. As far as meeting with the our team , you can visit us anytime and meet with advance information to us... During the meeting don't come up with JUST A SCHEDULE for payments, as we have come across many such schedule of payments which all in air...

05. Also please be noted Mr. Ganesh Murugan is not working with us anymore..

Thanking You

With Warm regards

V. Srinivasan

CFO - Vikatan Group

757, Anna Salai,

Chennai - 600 002.

HP : + 91 97000 00323

Mail : srinivasan.v@vikatan.com

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14. It is stated that, there is a clear admission of debt by the Corporate Debtor, in the mail dated 09.12.2020. This is a clear case of debt and default. It is thus prayed that CIRP may be initiated against the Corporate Debtor as per the provisions of IBC, 2016.

15. The Respondent in this matter has filed a reply/counter statement on 01.07.2022 before this Tribunal.

16. In para 6 of the counter, it is stated that due to covid 19 pandemic the respondent was unable to honor the terms and conditions agreed under the MoU's mentioned *Supra* and sought for time extension to fulfil the

obligations, but the Applicant had not responded to any of the communications.

17. It is stated in para 7 of the counter that, the Applicant had initiated a case under section 138 of Negotiable Instruments Act, 1881 (CC) No. 892 Of 2020 before The Metropolitan Magistrate Court, Saidapet, Chennai and the case is being heard by the 8th Fast Track Court.

18. It is stated that in 2022, the applicant had made a police complaint before the Inspector of Police, Central Crime Branch, EDF 11, Team 37. Vepery, Chennai-07 for dishonour of cheques and a First Information Report (FIR) has been filed [CCB Crime No. 111/2022 u/s 420 of Indian Penal Code.

19. It is stated in para 8 of the Counter that, as per the Memorandum of Understandings (MOUs) dated 15.11.2018 & 20.12.2018 there is an arbitration clause for any resolution / dispute arising out those MOU transactions. Though it is very clear that, in-case of any dispute resolution an arbitration should be commenced in accordance with the Arbitration and Conciliation Act 1996, which was never invoked by the Applicant herein.

20. It is stated that, the subject matter of this Application is a civil dispute and hence this Tribunal may dismiss the Application with costs.

21. In response to the reply filed by the Respondent, the Applicant has filed a rejoinder before this Tribunal on 12.07.2022.

22. It is stated that, sufficient time was given to the Respondent to settle the outstanding dues, however the Respondent deliberately avoided all the correspondences by the Applicant.

23. Further, the applicant had issued notice under Form-III Demand notice under Section 8 of the IBC,2016, to the respondent on 08.10.2021, which was delivered to the respondent on 12.10 2021. However, no reply or any notice of dispute, if any, under section 8(2)(a) of the code has not been received by the applicant till the date of filing this Application i.e.06.02.2022.

24. It is stated that, the applicant had made the respondent as Co-sponsor to their famous award functions such as, "(i) Ananda Vikatan Cinema and Nambikai Awards 2018, (ii) Aval Vikatan Awards 2018 and (iii) Nanayam Vikatan Business Conclave Award 2018" for promoting the respondent's brand 'Mauto' and raised respective invoices for such promotional and advertisement activities for effective reach of the said brand amongst the public, wherein the respondent had paid only 20% of the bill value and had not cleared the outstanding dues or raised any disputes or approached the

applicant for any negotiation or settlement of the due amount, till the date of the application.

25. It is stated that, on following up with the Respondent for payment of the pending dues, the respondent had issued cheques favouring the applicant towards the said outstanding dues. However, the respondent had failed to honor the cheques and hence, the applicant had initiated criminal proceedings under section 138 of the Negotiable instrument act 1881 by following the due process and procedure laid down under the Negotiable Instrument Act, 1881 and the said petition was numbered as CC No. 892 of 2020, before the 8th Fast Track Court Metropolitan Magistrate, Saidapet. The said petition is still pending for disposal.

26. It is stated that, the contention of the Respondent for invoking the arbitration clause is baseless. Even after repeated pursuits, the Respondent was unresponsive and indifferent to all the communications sent to clear the outstanding dues.

27. Heard the submissions of both the parties and perused the documents placed on record.

28. From the factual statements made above, this Tribunal is of the considered opinion that there is a clear case of admission of 'debt' and

'default' as per the email communication dated 09.12.2022 sent by the Respondent to the Applicant.

29. It is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic. Hence the Corporate Debtor cannot seek shelter under Section 10A of IBC, 2016.

30. In the reply statement filed by the Respondent/CD, it has been stated that, as per the Memorandum of Understandings (MOUs) dated 15.11.2018 & 20.12.2018 there is an arbitration clause for any dispute arising out those MOU transactions and in-case of any dispute resolution an arbitration should be commenced in accordance with the Arbitration and Conciliation Act 1996, which was never invoked by the Applicant.

31. This defence taken by the Respondent herein does not hold water as, it was categorically held by the Hon'ble NCLAT that, "there is no embargo on the Operational Creditor, to file Section 9 Petition, under I & B Code, 2016, even if there is an 'Arbitration Clause', in the 'Agreement'" in the case **of Shahi Md. Karim –Vs- Kabamy India LLP**, [(2023) SCC Online NCLAT 180].

32. In continuum, the Hon'ble Supreme Court in various landmark judgements has reiterated that, the adjudicating authority is merely to see

the records and other evidence produced and satisfy itself that a default has occurred in IBC cases relating to Section 7 and Section 9.

33. Under the said circumstances, we are of the view that this Application filed by the Operational Creditor is required to be **admitted** under Section 9 of IBC, 2016. As a consequence thereof the Corporate Debtor viz., *Transportwale 5D Technologies LLP* is admitted to Corporate Insolvency Resolution Process under Section 9 of the IBC, 2016. Since the Operational Creditor has not proposed the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between **January 2024 – June 2024** appoints **SUDHIR GS** with **Reg No: IBBI/IPA-001/IP-P-02744/2022-2023/14183** (e.mail: sudhircaip@gmail.com) as the “Interim Resolution Professional” subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor

shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

34. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota,

concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

35. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

36. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

37. The Operational Creditor is directed to pay a sum of **Rs.3,00,000 /-** (*Rupees Three lakhs only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

38. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

39. Accordingly CP/67/CHE/2022 stands **admitted**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Vinita Varshini