

IN NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT- V

C.P. IB/849(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

Pioneer Publicity Corporation Pvt. Ltd.

Pioneer House, Plot No. 6, Block No. 2C, New Rohtak Road, WEA, Karol Bagh, New Delhi- 110005

**....Operational Creditor/
Petitioner**

Vs

Frontage Media Pvt. Ltd.

(U74990MH2010PTC202897)

608, Takshashila Commercial Center, Near Bank of Baroda Extension, RHB Road, Mulund (West), Mumbai-400 080.

....Corporate Debtor/Respondent

Order Reserved On: 17.02.2023

Order Pronounced On: 15.03.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Videoconferencing)

For the Applicant: Adv. Ajay Panicker a/w. Adv. Akshay Patil a/w. Rajat
Bhosale i/by Ajay Law Associates

For the Respondent: None

Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company Petition is filed by Pioneer Publicity Corporation Pvt. Ltd., hereinafter called as the ("**Operational Creditor**"), seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Frontage Media Private Ltd, hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 14,07,250/-, which includes Rs. 13,14,951/- as Principal Amount and Rs. 92,299/- as Interest payable @ 21% in accordance with the Statement of Claim.

BRIEF FACTS OF THE CASE

2. The Petitioner/ Operational Creditor engaged in the business of providing outdoor publicity services. The Corporate Debtor approached the Petitioner seeking outdoor publicity services and placed orders dated 27.03.2019 and 08.08.2019.

3. In respect of the services provided to Corporate Debtor, multiple bills were raised by the Petitioner. Despite clear undertaking and assurance as to the terms of payment of 30 days, the Corporate Debtor did not make any payment even after repeated follow up by the Operational Creditor.
4. The Petitioner's Advocate sent a legal notice dated 03.09.2020 demanding a total amount of Rs. 15,20,665/- in respect of outstanding invoices, along with interest at 21% after two cheques issued by the Corporate Debtor bounced. The Corporate Debtor's Advocate replied vide letter dated 24.09.2019, admitting the liability to pay the aforesaid Principal amount but disputed claim for interest. In addition, the Corporate Debtor forwarded two Demand Drafts for Rs. 1,16,000/- each towards part payment. Later, three more invoices were raised by the Petitioner against the Corporate Debtor.
5. The Petitioner, under letter dated 04.10.2019, accepted the aforesaid payments, without prejudice to right to claim interest and agreed to waive the interest, subject to the full balance payment within 10 days. No further reply or payment was received thereof.
6. The Petitioner sent Demand Notice under Section 8(1) of the Code, Claiming a Principal amount of Rs. 13,14,951/- along with an interest of Rs. 92,299/-, aggregating Rs. 14,07,250/- until 31.01.2020. The Corporate Debtor has not replied to the aforesaid Demand Notice, and therefore, this present petition is filed.
7. The Respondent has not appeared before this Bench despite notices have been duly served and has been proceeded against **Ex-Parte**.

FINDINGS

8. We have heard the Ld. Counsel appearing for the Petitioner and perused the record.
9. The present Company Petition is filed by the Operational Creditor for the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, where the Operational Creditor provided services of Outdoor Publicity to the Corporate Debtor and the Corporate Debtor has failed to pay the Principal Outstanding Dues of Rs. 13,14,951/- and Rs. 92,299/- as Interest payable @ 21% in accordance with the Statement of Claim. Therefore, the total amount of default, calculated up to 31.01.2020, is Rs. 14,07,250/- as confirmed under Annexure A, of the Company Petition.
10. We find that the Corporate Debtor has defaulted in the payment of the rightful, non-disputed dues, of the Operational Creditor. Therefore, Operational Creditor issued the Demand Notice under Section 8 of the Code, in Form no. 3 and Form no. 4, demanding the payment of the outstanding amount.
11. It is not in dispute that the Petitioner has provided outdoor publicity services and petitioner has raised various bills, as confirmed by the Tax Invoices issued by the Operational Creditor, from time to time, in the favour of the Corporate Debtor. The Tax Invoices are annexed to this petition under Annexure A1 to A7.
12. The Ld. Counsel of the Petitioner brought to the notice of this court that the Corporate Debtor issued two cheques, bearing no. 000302 and 000301, in part payment of the above invoices, but both cheques were dishonoured and returned by the Bank stating the reason of “**Funds Insufficient**”. Thereupon, a Legal Notice dated 03.09.2019 was sent to the Corporate Debtor, demanding the entire outstanding sum of Rs.

15,20,665/- along with the agreed interest @ 21% p.a. The Legal Notice of the Petitioner is Annexed to the petition under Annexure B. The Ld. Counsel of the Petitioner further submitted that Corporate Debtor acknowledged the letter sent by the Petitioner and accordingly sent two Demand Drafts bearing Nos. 793688 and 793689, both dated 23.09.2019, amounting to Rs. 1,16,000/- each, aggregating the total Rs. 2,32,000/-. It was further submitted that the Corporate Debtor, in the reply, has given an undertaking to pay remaining outstanding sum of Rs. 12,88,665/- by equal 12 instalments i.e. Rs. 1,07,388.75/- each per month commencing from October 2019. The Reply of the Corporate Debtor is annexed to this petition under Annexure C. With the given acknowledgement and undertaking, it is concluded that there is an existence of 'debt' in the present case, which the Corporate Debtor has not repaid.

13. The Petitioner reminded the Corporate Debtor to make the balance payment and sent a reminder letter through an Advocate, dated 04.10.2019. But, the Corporate Debtor has failed to honor its commitment with regards to the payment of the balance amount. The Petitioner sent a Demand Notice to the Corporate Debtor, dated 30.01.2020, as per Section 8(1) of the Insolvency and Bankruptcy Code, 2016 in form 3 and under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Tracking Report of the consignment stated delivery of the Demand Notice as "Item Delivered" to Corporate Debtor. The Ld. Counsel of the Petitioner submitted that the Corporate Debtor has not replied to the aforesaid Demand Notice, and therefore, this present petition is filed. The Ld. Counsel of the Petitioner submitted that the period of 10 days from the receipt of Demand Notice sent to Corporate Debtor expired on 18.01.2019 and till date, the outstanding amount is not received by the Petitioner.

14. With regards to the levy of Interest, the Corporate Debtor, in the reply dated 24.09.2019, stated that they did not agree to pay the interest @ 21% for the delayed payment. Addressing the same, the Petitioner in its letter dated 04.10.2019, stated that interest was mutually agreed between the parties. However, the Petitioner agree to waive the interest, if the Corporate Debtor make the entire balance amount within 10 days of the receipt of the said letter. It is required to be noted that Terms & Conditions on the Invoices mention that interest @21% per annum will be charged on account of unpaid invoices after receiving after 60 days of receiving. As the said condition is not fulfilled, the Corporate Debtor is duty bound to pay the interest @ 21%. The Corporate Debtor has also not fulfilled the pre-condition of the Petitioner, to pay the entire balance amount to avail waiving of the interest, thus, the Corporate Debtor is required to pay the given interest.
15. It has been brought to the notice of this Bench by the Ld. Counsel of the Petitioner that Corporate Debtor has never appeared before this bench, by itself or through any of its representative.
16. The Bench also noted that the petition is not hit with the provisions of Section 10A of the Insolvency and Bankruptcy Code, 2016 as the date of default is given as 31.01.2020.
17. After hearing the submissions and upon perusing the material available on record and considering the Corporate Debtor has been proceeded against ex-parte, the claim of Operational Creditor remains unchallenged. Hence, this Bench feels that the Petitioner has successfully demonstrated the existence of “**debt**” and “**default**” committed by the Corporate Debtor in this case.
18. Accordingly, the above Company Petition is ‘**admitted**’ by passing the following:

ORDER

- A. The above Company Petition No. (IB) 849 of 2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Frontage Media Private Limited.**
- B. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Manish Lalji Dawda**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P02506/2021-2022/13797, having Email id dawdamanish@gmail.com and Contact Number-8767645419 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- C. The Operational Creditor shall deposit an amount of Rs. Two Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- D. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial

interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- E. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- F. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- G. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- H. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- I. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- J. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- K. Accordingly, the **C.P.(IB) 849 of 2020** is **admitted**.
- L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)