

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

C.P. No. 427/IBC/MB/2019

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

**Outdoor Advertising Professionals
(India) Private Limited**

(CIN :- U74300MH2002PTC136270)

.....Operational Creditor

Vs

Graphene Media Private Limited

(CIN: U74120MH2014PTC252223) Having
Registered Office at : Dreamland
Apartments, 7th Floor, Opp. Lok Group
Tower, 18-Ambedkar Road, Khar (West),
Mumbai – 400052, Maharashtra.

.....Corporate Debtor

Order delivered on:- 25.01.2022

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. Rohan Rajadhyaksha, Advocate
For the Corporate Debtor : Mr. Rohit Patil, Advocate

ORDER

Per :- Justice P.N. Deshmukh, Member Judicial

1. The present Company Petition is filed by *Outdoor Advertising Professionals (India) Private Limited (OAPL)* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Graphene Media Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to pay an amount of Rs. 1,36,23,096/- (Rupees One Crore Thirty Six Lakh Twenty Three Thousand and Ninety Six only) and Interest calculated @ of 21% p.a. as per clause 1.2 of the Settlement Agreement dated 03.08.2018 amounting to Rs. 21,62,265/- (Rupees Twenty One Lakh Sixty Two Thousand Two Hundred and Sixty Five Only) aggregating to Rs. 1,57,85,361/- (Rupees One Crore Fifty Seven Lakh Eighty Five Thousand Three Hundred and Sixty One Only).
3. **The Submissions of the Operational Creditor are as follows:**
 - a. The Operational Creditor submits that between February, 2018 and April 2018, OAPL was engaged by the Corporate Debtor for providing services on

assignment basis for out-of-home advertising campaigns across India for a client of the Corporate Debtor, Canara Robeco.

- b. The Operational Creditor issued an estimate of the services to the Corporate Debtor setting out the General Business Terms, date, time and place of supply of Services etc. the said Estimate was a binding contract between the parties for the services rendered by OAPL and four invoices amounting to Rs. 2,27,05,160/- (Rupees Two Crores Twenty Seven Lakhs Five Thousand One Hundred and Sixty Only) including GST were raised by the Operational Creditor between 01.03.2018 and 26.03.2018.
- c. Pursuant to the completion of work, the Operational Creditor would submit a proof of performance, installation status sheets etc. with photographs against each invoice of the work carried out for the Corporate Debtor. The said had been communicated to the Corporate Debtor during the period of its service via email and the same was also acknowledged by the Corporate Debtor to which no dispute was raised at the relevant time.
- d. Further, from February 2018 to March 2018, the Operational Creditor regularly intimated the Corporate Debtor and Canara Robeco about the completion of work. Further, Canara Robeco signed and confirmed work completion report dated 05.03.2018, 02.04.2018

and 13.04.2018 evidencing the successful execution of the work assigned to the Operational Creditor.

- e. Further in addition to the above, the Corporate Debtor vide letter dated 04.07.2018 addressed to Canara Robeco, acknowledged that an outstanding amount of Rs. 2,01,54,064 (post TDS deduction) was received by the Corporate Debtor against the work duly executed by the Operational Creditor. The above said letter and the acknowledgment on deduction of TDS by the Corporate Debtor came after when the Operational Creditor informed the Corporate Debtor via email that the Operational Creditor had paid GST out of its own pocket on the invoices raised on the Corporate Debtor.
- f. The Operational Creditor had raised four invoices amounting to Rs. 2,27,05,160/- including GST in March, 2018 and the Corporate Debtor accepted the invoices without any protest. The Corporate Debtor repeatedly acknowledged and accepted the invoices but failed to make payment.
- g. Several letters/emails were exchanged between the Operational Creditor and the Corporate Debtor in connection with the amounts due. The Operational Creditor issued a letter dated 04.07.2018 thereby calling upon the Corporate Debtor to make payment towards the outstanding invoices within 10 days of receipt of the letter. Further the Corporate Debtor addressed letter dated 04.07.2018 confirming the amounts due to the

Operational Creditor under the outstanding invoices as per its books of accounts.

- h. Again on 09.07.2018, one Mr. Ajay More of the Corporate Debtor Company acknowledged the outstanding amount and also ensured that the Corporate Debtor will endeavor to settle the entire amount. Thereafter, the Corporate Debtor addressed a letter dated 11.07.2018 in reply to the Operational Creditors letter dated 04.07.2018 once again confirming that it has to make payments with respect to the outstanding invoices. Thereafter, Mr. Ajay More of the Corporate Debtor Company addressed a letter and an email dated 12.07.2018 raising baseless dispute for the first time with respect to the services provided by the Operational Creditor.
- i. The Operational Creditor states that the same Mr. Ajay More, previously had in writing acknowledged the amounts due and had not raised any dispute. Later, on 20.07.2018 the Corporate Debtor once again assured that it will clear the outstanding dues. Finally in June 2018 the parties executed a Settlement Agreement to inter alia record the dates by which the amounts due would be paid by the Corporate Debtor. According to the said Agreement the Corporate Debtor was to make the payment in 3 installments. First and Second installment were paid by the Corporate Debtor.
- j. On 06.12.2018, Corporate Debtor expressed its inability to make the payment towards the third

installment. The Operational Creditor replied to the said email thereby once again calling upon the Corporate Debtor to pay the third installment. Further correspondences were exchanged between the parties wherein the Corporate Debtor admitted that it will not be able to make payment towards the third installment as per the Agreement and requested the Operational Creditor to fix a meeting. Accordingly, the representatives of the Operational Creditor and the Corporate Debtor met on 14.12.2018 and the Operational Creditor requested the Corporate Debtor to provide post dated cheques for the balance payment. However, the Corporate Debtor failed and neglected to pay. Thus, the Corporate Debtor failed to make payment of the third installment on 15.12.2018.

- k. In view of the above, the Operational Creditor issued a Demand Notice dated 24.12.2018 under Section 8 of the Code. The Corporate Debtor responded to the said notice by its letter dated 08.01.2019 wherein the Corporate Debtor raised extremely frivolous dispute against the claim of the Operational Creditor. The Operational Creditor further submits that there can be no question of any dispute as regards to the claim as the parties had executed settlement agreement and also made multiple admissions of its liability to pay.
1. Further the Operational Creditor has annexed Statements of HDFC Bank for the period 01.10.2018 to 31.12.2018 and Kotak Mahindra Bank for the period of 01.10.2018 to 31.10.2018.

4. Submissions of the Corporate Debtor are as follows :-

- a. The Corporate Debtor states that the Operational Creditor has filed the alleged claim as an afterthought with malafide intentions and ulterior motives. The Operational Creditor has filed the instant Petition due to Corporate Debtors alleged inability to pay for an alleged claim arising out of the services on an assignment basis for out of home advertising campaigns across India for Canara Robeco.
- b. The Corporate Debtor submits that there existed a bonafide dispute between the Operational Creditor and the Corporate Debtor which the Operational Creditor deliberately failed to put on record.
- c. The Corporate Debtor had done a business worth Rs. 12 Crores of the outdoor activities for the Operational Creditor for last 5 years and the Corporate Debtor has been making payments duly in bonafide belief and good faith.
- d. The Corporate Debtor states that the auditors of the Corporate Debtor Company raised various queries pertaining to the earlier invoices raised by the Operational Creditor. The Corporate Debtor passed on the queries to the Operational Creditor and requested the Operational Creditor to respond.
- e. Further in response to the queries raised by the Corporate Debtor, the Operational Creditor through its CFO, vide an email dated

13.07.2018, gave evasive contentions on the issue raised. In the said mail it was also claimed that the Operational Creditor had all the supportive data which would be submitted to the Corporate Debtor as per their requirements. The Operational Creditor required to submit a photograph of the start date and a photograph on the end date as proof of performance along with the photographs to be taken along with the copy of newspaper of the same date to substantiate the authenticity.

- f. The Corporate Debtor submits that the Operational Creditor failed and neglected to submit any supporting data to the Corporate Debtor for the queries raised by the Corporate Debtor for the activities purportedly carried out by the Operational Creditor.
- g. Further, the Corporate Debtor was shocked and surprised to the fact that on verifying the records of the purported services allegedly extended by the Operational Creditor, almost 90% of the alleged activities had not been properly submitted by the Operational Creditor.
- h. Hence the Corporate Debtor submits that the lacunae are not mere queries but are fraudulent documents purported from the Operational Creditor. The data as submitted by the Operational Creditor was not submitted according to the SOP clauses.
- i. The Corporate Debtor submits that in spite of the disputes and differences regarding the services provided by the Operational Creditor and the dispute raised by the Corporate Debtor, in good faith the Corporate Debtor demonstrated its intent to amicably settle the matter a Settlement Agreement dated 03.08.2018 was executed between the Operational Creditor and the Corporate

Debtor by which the Corporate Debtor agreed to pay an amount of Rs. 2,27,05,160/- (Rupees Two Crores Twenty-Seven Lakhs Five Thousand One Hundred and Sixty Only) in three instalments. The Corporate Debtor paid 1st, and 2nd installment. Further after paying the first and the second instalment, time and again Corporate Debtor made repeated requests to the Operational Creditor to provide clarifications and supporting documents to enable the Corporate Debtor to reconcile the accounts with the Operational Creditor. But the Operational Creditor failed to provide the same.

- j. The Corporate Debtor submits that there was no effort from the Operational Creditors end to resolve the queries and dispute with valid and legitimate documentation. Further since the dispute was not resolved by the Operational Creditor satisfactorily, the 3rd installment of Rs. 1,36,23,096/- (Rupees One Crore Thirty Six Lakhs Twenty Three Thousand and Ninety Six Only) due on 15.12.2018 was not paid.
- k. The Corporate Debtor states that this Tribunal vide its Order dated 16.02.2021 posed a query to the Operational Creditor with regard to nature of dispute and supporting documents as sought by the Corporate Debtor, but the Operational Creditor failed to annex any photograph.
1. The Corporate Debtor further states that the present Petition filed under Section 9 of the Code claiming an outstanding amount of Rs. 1,57,85,361/- (Rupees One Crore Fifty Seven Lakhs Eighty Five Thousand Three Hundred and Sixty One Only) including interest as Operational Debt arose out of an unpaid 3rd installment of Settlement Agreement dated 03.08.2018 and the same is not

maintainable as unpaid installment as per the Settlement Agreement cannot be treated as Operational Debt under Section 5 (21) of the Code and failure or breach of settlement agreement cant be a ground to trigger CIRP against the Corporate Debtor.

- m. Further the Corporate Debtor submits that the dispute raised by the Corporate Debtor pertains to non-submission of supporting evidence towards the services rendered by the Operational Creditor. The Corporate Debtor submits that the present Company Petition is not maintainable and the same has been filed with regards to the unpaid third installment of the Settlement Agreement dated 03.08.2018 which does not come under the definition of Operational Debt as per Section 5 (21) of the Code.

FINDINGS

5. We have heard the submissions of the Counsel appearing for the Operational Creditor and Counsel appearing for the Corporate Debtor. It is seen from the available records that there are various correspondences between the parties. The Operational Creditor has called upon the Corporate Debtor on various occasions to make payments against the invoices raised by the Operational Creditor. Thereafter the Corporate Debtor on all occasions correctly accepted and admitted that the Operational Creditor had completed the work assigned and the Corporate Debtor is liable to make payments towards such services. On 04.07.2018, the Corporate Debtor sent a letter to the Operational Creditor thereby confirming the balance of Rs. 2,23,20,328/- as on 31.03.2018.
6. The Corporate Debtor also on 11.07.2018, issued a letter to the Operational Creditor endeavoring to settle the entire amount which is due and payable.

Further it is seen that suddenly on 12.07.2018, the Corporate Debtor raised an dispute as to the services provided by the Operational Creditor and stated that the work executed had various shortcomings and lacunae and also it failed to provide any evidence about the executed work.

7. It is observed that the Corporate Debtor has changed its stance every day. On various occasions the Corporate Debtor has acknowledged the outstanding dues and requested the Operational Creditor to consider the delayed time in settlement. The Corporate Debtor has made contradictory statements on its own letters thus this conduct shows that the Corporate Debtor is buying time. Even after raising the dispute, Settlement Agreement was executed between the parties for payment of the outstanding dues which was not disputed by the Corporate Debtor which also amounts to an unequivocal acceptance and acknowledgement of the debt payable by the Corporate Debtor. The said Settlement Agreement was entered in to by the same person who raised the disputes with the Operational Creditor. The dispute raised by the Corporate Debtor is malafide and an after thought to escape from making the debt amount.
8. The Corporate Debtor was also fully paid by Canara Robeco which is evident from the letter dated 04.07.2018 issued by the Corporate Debtor to Canara Robeco and also shared with Operational Creditor and was also acknowledged by the Corporate Debtor that the Corporate Debtor had received the entire payment against the invoices from Canara Robeco.
9. Further it is also seen that the Corporate Debtor has paid the part payment of the amount due in the form of first and second installment. Hence, it is observed by this bench that the part payment made by the Corporate Debtor proves that it owes the claimed amount to the Operational Creditor and hence it is deemed to be an admission on the part of the Corporate Debtor.

10. Further according to the Corporate Debtor the dispute was raised by the Corporate Debtor vide letter dated 04.07.2018 prior to the Demand Notice under section 8 of the Code. This Bench observes and records that the Notice under Section 8 of the Code was sent by the Operational Creditor on failure of payment on part of the Corporate Debtor of the third installment according to the Settlement Agreement. The Corporate Debtor before that had already acknowledged the debt and had also expressed its inability to make payment due to sudden financial planning disturbance. Such inability was due to lack of funds. This itself is an admission on part of the Corporate Debtor. The purported dispute raised is utterly false and contrary and is merely a façade attempt to raise a bogus and spurious dispute to evade making payment of the amount due.
11. The Corporate Debtor has also deducted and paid TDS on the amounts payable to the Operational Creditor and also the Corporate Debtor had already availed GST amounts paid by the Operational Creditor to the GST authorities by way of input credit. The deposit of TDS and utilization of GST input credit by the Corporate Debtor is also an evidence that the amount is owed by the Corporate Debtor to the Operational Creditor.
12. The Operational Creditor has successfully demonstrated and proved the debt and default in this case and has also proved that there is absolutely no reason for the Corporate Debtor to hold on to the payment of the invoices. The Operational Creditor has also suggested the name of proposed Interim Resolution Professional along with his consent letter in Form-2. Hence this Bench is left with no option except to admit the above

Company Petition, since the above Company Petition in hand satisfies all necessary legal ingredients for admission under Section 9 of the Code.

13. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

ORDER

- a. **The above Company Petition No. (IB) -427(MB)/2019 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Graphene Media Private Limited.
- b. This Bench hereby appoints **Mr. Ritesh Prakash Adatiya**, Insolvency Professional, Registration No: **IBBI/IPA-001/IP-P01334/2018-19/12013** as the Interim Resolution Professional having address at B-401, the First, B/h ITC Hotel, B/s Keshavbaugh Party Plot, Vastrapur, Ahmedabad - 380015 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**JUSTICE P. N DESHMUKH
(MEMBER JUDICIAL)**