



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

CP (IB) No.16/BB/2024
Application U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Ivalua Inc.,
805 Veterans Blvd,
Redwood City,
California- 94063
United States of America

... Petitioner/Operational Creditor

Versus

Wipro Limited
Doddakanenelli,
Sarjapur Road,
Bangalore- 560035
Karnataka- India

... Respondent/Corporate Debtor

Order delivered on: 22/10/2024

Coram: Hon'ble Shri K. Biswal, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner	:	Meena Venugopal, Shri Manohar
For the Respondent	:	Shri Lomesh Kiran Nidumduri, Ms. Prashasthi Bhat & Ms Abhijna S

ORDER

Per: Shri K. Biswal, Member(Judicial)

1. The present Company Petition is filed on 29/05/2023, under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity



IB Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by Ivalua Inc. (for brevity 'Operational Creditor/Petitioner'), inter alia, seeking to initiate Corporate Insolvency Resolution Process against Wipro Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs 2,81,63,150.18/- as on 13/02/2023. In Part IV of Form No.5 filed with Petition, the following information is given:

2	Amount claimed to be in Default and date on which the Default occurred (Attach the workings for computation of amount and days of Default in Tabular Form)(Annexure-1)	<p>a. The total amount which is in default and is due to Ivalua from Wipro under the SSA and the Order Form as on 13/02/2023 is 3,41,046.18USD (Equivalent to 2,81,63,150.18 Rs).</p> <p>b. Invoice No.IN2003637 dated 30/09/2021 became due on 30/10/2021 for a sum of USD 103410.</p> <p>c. Invoice No.IN2004719 dated 01/09/2022 became due on 01/10/2022 for a sum of USD 103410.</p> <p>d. Invoice No.IN2005095 dated 30/01/2023 became due on 01/03/2023 for a sum of USD 103410.</p> <p>Date of Default: 13/02/2023.</p>
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2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner, are as follows:

- i) Ivalua Inc (Operational Creditor) and Wipro Limited (Corporate Debtor) entered into a Ivalua Master Subscription Services Agreement (SSA), dated 28/07/2021 (Annexure – 2 of the Petition) inter alia for provision of cloud services, maintenance and support services.



- ii) As per the Order Form #1 annexed to the SSA, the term of subscription by Wipro to the services offered by Ivalua under the SSA shall commence on the subscription effective date i.e. 01/09/2021 and shall continue for a period of 3 years i.e. until 31/08/2024. The Operational Creditor raised various invoices on the Corporate Debtor as per the terms and conditions of the SSA and the Order Form. The Corporate Debtor has also acknowledged the same (Annexure -7) of the Petition).
- iii) The Operational Creditor has sent a demand notice under Section 8 of IBC, dated 13/02/2023 (Annexure – 8 of the Petition) to the registered office of the Corporate Debtor by RPAD and also by email. The Corporate Debtor has acknowledged receipt of the said Demand Notice (Annexure – 11 of the Petition). However, the Corporate Debtor has not yet raised any dispute whatsoever with regard to the amount of debt owed by it to the Operational Creditor.

3. The Respondent filed its statement of objection, vide Diary No: 2299 dated 16/04/2024, and written submission vide Diary No: 5498, dated 24/09/2024, in which it is contented as under:

- i) The Operational Creditor and the Corporate Debtor had entered into a Master Services Agreement dated July 28, 2021. As per the Agreement, the Operational Creditor was to satisfy the Respondent with PoC (Proof of Concept) for a period from July 28th to August 31, 2021. However, the PoC period was delayed and commenced only on October 4, 2021, and ended on November 9, 2021. This fact has been admitted by the Operational Creditor. Therefore, as per the terms of the Agreement, any invoice raised by the Operational Creditor was to be raised after November 9, 2021, only if the Corporate



Debtor agreed to proceed with the cloud services provided by the Operational Creditor.

- ii) On November 9, 2021, the Operational Creditor issued an e-mail to the Corporate Debtor enquiring if the Operational Creditor can proceed with disabling the notifications and shutting down the PoC (Annexure B, Page No. 20 of the Statement of Objections). The Corporate Debtor has responded to the e-mail of the Operational Creditor providing a go-ahead to shut down the environment. Considering that the environment had been shut down immediately after the completion of the PoC period (which was provided at no-additional cost), the Operational Creditor had not provided any services to the Corporate Debtor.
- iii) Despite being aware of the circumstances, even before the commencement of the PoC period, the Operational Creditor issued invoice no. 2003637 dated September 30, 2021 ("First Invoice") demanding payment of \$103,410 purportedly for services from September 1, 2021, to August 31, 2022 (Annexure 4, Page No. 63 of the Petition). The payment has been demanded for (a) the PoC period which was at no-additional cost and despite no services having been provided, and (b) after the environment was shut down upon the completion of the PoC period, thereby disabling provision for any services. This is impermissible under the Agreement and law.
- iv) The First Invoice has been disputed by the Corporate Debtor much prior to issuance of the demand notice dated February 13, 2023, under Section 8 of the Code and the filing of the Petition by the Operational Creditor. The communications on record would clearly show that the Corporate Debtor had



made it clear that the First Invoice could have been raised only if the PoC was successful and that the Corporate Debtor had disputed the validity of the First Invoice in 2021 itself.

- v) It is also be relevant to note that is the PoC period ended on November 9, 2021, and the environment was shut down. In other words, no services could have been provided after November 9, 2021. Despite this, the Operational Creditor issued an e-mail dated December 9, 2021, enquiring about the payment status of the First Invoice. The Corporate Debtor responded on December 9, 2021, seriously disputing the First Invoice as under:

“...I’m not sure where we’re disconnected. We all understand that we are in a competitive pilot engagement at SDB right? We can’t guarantee payment for an annual license agreement that would not/ might not be used in advance of an actual award from the client in good faith. At the account level P&L, I, the account manager cannot justify a \$100k incursion to try to sell Ivalua in a new account...” (emphasis added)

The contents of this e-mail make it clear that the Corporate Debtor categorically disputed the First Invoice and made it clear that the payment of the First Invoice cannot be justified. Reliance is placed on the judgment of *Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353* for showing pre-existing dispute.

- vi) The Operational Creditor is attempting to mislead this Hon’ble Tribunal that the Corporate Debtor has admitted the debt. The Operational Creditor has produced an e-mail dated December 9, 2021, at Annexure 7 of the Petition to state that the Corporate Debtor had admitted to the debt



under the First Invoice. However, the Operational Creditor has failed to produce the entire trail e-mail and has unscrupulously culled out only the e-mail dated December 9, 2021, issued by the Corporate Debtor to mislead this Hon'ble Tribunal to support its allegation that the Corporate Debtor has admitted to the debt under the First Invoice.

- vii) Regarding second invoice no. 200471 dated September 01, 2022, and third invoice no. 2005095 dated January 30, 2023; On July 5, 2022, the Operational Creditor issued a notice to the Corporate Debtor terminating the Agreement ("Termination Notice"). In the Termination Notice, the Operational Creditor has categorically stated *"...this notice is to officially inform you that effective immediately, we have decided to suspend your access to the Cloud Service and terminate the SSA due to your material breach..."*
- viii) Despite the Termination Notice, the Operational Creditor raised the Second and Third Invoice. This is untenable. The Operational Creditor expects to be paid after termination of the Agreement when no services could be provided. Even as per the Agreement, upon termination, all Orders would be cancelled and hence, not payable. Therefore, no debt exists under the Second Invoice and Third Invoice.
- ix) Without prejudice, even if it is considered that the First Invoice is payable, the pecuniary threshold under the Code would not be met. The Corporate Debtor has failed to substantiate as to how the claim under the First Invoice would exceed the threshold of INR 1 crore. The table of computation (Annexure 1, Page No. 25 of the Petition) shows that the Corporate Debtor has claimed \$103410 (for the First Invoice) at the exchange rate of INR 82.5787 which



comes to INR 85,39,463.367, which is below the threshold limit. The Operational Creditor has provided a purported calculation for all three invoices. The Operational Creditor has failed to show the interest calculation on the First Invoice, even though the onus was on them to prove its claim. The Operational Creditor has come up with a figure of \$23,991.12 (equivalent to INR 19,81,155.50) without providing any basis for the same. On this ground alone, the Petition must be rejected.

4. The Petitioner filed its rejoinder, vide Diary No: 2866 dated 21/05/2024, and written submission vide Diary No: 5393, dated 17/09/2024, in which it is contented as under:
 - i. The Operational Creditor submits that, in accordance with terms and conditions of the SSA and the Order Form, the Operational Creditor raised invoice dated 30/09/2021 seeking payment of the Subscription Amount due in accordance with the Order Form #1. After having made multiple attempts to secure payments, the Operational Creditor issued letter dated 04.01.2022 to the Corporate Debtor but the Corporate Debtor failed to reply to the letter nor raised any dispute nor paid the invoice amount. The Operational Creditor left with no other option, sent a Termination Notice dated 05-07-2022, terminating the SSA due to the flagrant material breach committed by the Corporate Debtor. However, it was made clear that the Corporate Debtor was not exempt from making any payments as agreed under the SSA. In fact, the Survival Clause of the SSA (Clause 6.6) also sets out that the "Fee" Clause will survive even in case of termination of the SSA for any reason. Corporate Debtor is trying to take advantage of its own breach by claiming that it is not liable to pay the invoices.



- ii. The Operational Creditor submits that subsequent to the termination of the SSA, the Operational Creditor raised invoices for the payment of the entire subscription amount for three (3) years as was previously agreed by both Parties in the SSA. The Operational Creditor raised invoices dated, 01/09/2022 and 30/01/2023, which went unpaid by the Corporate Debtor, with no rhyme or reason. It is relevant to mention here that at no point during this entire period, the Corporate Debtor raised any objection or dispute with respect to the terms and conditions of the SSA, the quality of the service provided or any related aspect of the SSA.

- iii. One of the contentions raised by the Corporate Debtor in its statement of objections is that the Operational Creditor was required to provide the cloud service to five (5) users for a specified period known as the “Proof of Concept” period (hereinafter referred to as “PoC period” for brevity) and only after the Corporate Debtor was satisfied the SSA would come into effect. This contention of the Corporate Debtor is completely against the terms of the SSA, which clearly states that the Agreement will commence on the effective date, which in the present case is on 01-09-2021. There is no clause in the SSA which supports this absurd stance taken by the Corporate Debtor. The SSA clearly states that the POC is free. On the contrary, the Corporate Debtor is making this claim in order to avoid its liability under the contract and make illegal gains in the process. The Operational Creditor submits that, it is true that the PoC period that was initially contemplated as July 28,2021 to August 31,2021 got postponed to period from October 04,2021 to November 09,2021 as mentioned in Para No.17 of the statement of objections. But the Operational Creditor hereby denies that the PoC was postponed due to lapse on the part of Operational Creditor.



- iv. The Corporate Debtor has also raised the objection of pre-existing dispute in order to defeat this Application. In this regard, this contention is only a fabricated plea, which is aimed at escaping their liability under the SSA. Other than stating in their objections that there was a pre-existing dispute, there is not a single shred of evidence adduced by the Corporate Debtor to support this claim. Reliance is placed on the NCLT (Delhi bench) in *K.K Capital Services Limited Vs. Sristi Hospitality Private Limited in Company Appeal (AT) (Ins) 320 of 2019*.
- v. It is humbly pointed out that the Corporate Debtor has referred to emails dated 12-10-2021 and 14-10-2021 as their proof of pre-existing dispute, however the contents of these emails disclose no such dispute. In fact the email dated 12-10-2021 is an auto-generated response, requesting the Operational Creditor to share revised invoices and have not disputed the debt nor mentioned that they are not liable to pay the invoices. Much after the above email, on December 09, 2021 the Corporate Debtor has admitted that it cannot justify a \$100k invoice. This would be an internal problem of the Corporate Debtor. The Corporate Debtor is a corporate entity having commercial wisdom and not a lay person and had entered into an SSA after much deliberations and negotiations. In this regard, the NCLT (Ahmedabad bench) has held in "*Raghuvir Buildcon Pvt Ltd vs Ketan Construction Ltd*" in *C.P (IB) No.57/9/NCLT/AHM/2019*, that "normally commercial/ legal differences per se are not dispute unless such differences are ascertained into a claim on which both the parties have opposite /different views and want to settle the same through some legal process or otherwise. Thus, in our view, routine correspondence in commercial relationship



cannot automatically or necessarily be considered and admitted as dispute unless such stage is reached.”

- vi. The Operational Creditor submits that, the Corporate Debtor has sent a reply to the Demand notice on 17.07.2023 i.e., after lapse of 5 months of issuing of demand notice and the same cannot be considered.

5. We have heard the learned counsel for both the parties and have perused the material available on record.

- a) The Petitioner and the Respondent had entered into a ‘Master Subscription Services Agreement’ dated 27/07/2021. The petitioner herein has raised three invoices dated 30/10/2021, 01/09/2022 and 30/01/2023. The main argument of the Respondent is that these invoices were against the agreement and were disputed as such constituting pre-existing dispute as per Section 8 of the IB Code.
- b) For a more thorough review of the current issue, the clause 2 of the Agreement is reproduced below ;

2. ACCESS TO THE SERVICES

2.1 Proof of Concept. Between July 28th to August 31st, 2021, Ivalua will make the Cloud Service available to Customer for five (5) Users, for Customer’s internal evaluation purposes exclusively and at no additional cost. During this period, Ivalua provides the Cloud Service as is, without any warranty of any kind. Except as otherwise provided by law, Ivalua does not provide any warranty of any kind, express or implies, related to the Cloud Service, including warranty of suitability or conformity to Customer’s needs.



It is clear that the Petitioner herein had exclusively agreed to make the services available between July 28th to August 31st at no additional cost. In spite of this the Petitioner herein has raised invoice dated 30/09/2021 bearing no: IN2003637.

- c) The invoice dated 30/09/2021 has been clearly disputed by the Respondent herein in various emails. Email that clearly marks the dispute raised is reproduced below for the same of convenience.

From: Deepali Waghmare (CPO) <deepali.waghmare@wipro.com>
Sent: Thursday, October 14, 2021 2:32 AM
To: VENKATESH YOGESWARAN (iDEAS-Apps & Data) <venkatesh.yogeswaran@wipro.com>; John Fritch <jfr@ivalua.com>; Dana R Wolfe (Americas 2) <dana.wolfe@wipro.com>
Cc: Saravana S (iDEAS-Apps & Data) <saravana.s75@wipro.com>; GHV Resolutions <ghv.resolutions@wipro.com>; Jean-Manuel Bullukian <jmb@ivalua.com>; Jose Ruiz <jor@ivalua.com>; VARUN SINGH (iDEAS-Apps & Data) <varun.singh18@wipro.com>
Subject: RE: Ivalua, Inc. - invoice on hold - IN2003637

Dear Valued Partner,

Please note that we are cancelling this invoice /invoices as we have not got the required resolution from your end. Request you to submit the revised invoice/ supportings as per the trail mail at-

IRS - invoice.receipt@wipro.com

IRT - irtgroup.fmg@wipro.com

Synergy - invoice.wisynergy1@wipro.com



From: VENKATESH YOGESWARAN (iDEAS-Apps & Data) <venkatesh.yogeswaran@wipro.com>
Sent: Tuesday, 12 October 2021, 22:36
To: John Fritch; Deepali Waghmare (CPO)
Cc: Saravana S (iDEAS-Apps & Data); GHV Resolutions; Jean-Manuel Bullukian; Jose Ruiz; VARUN SINGH (iDEAS-Apps & Data)
Subject: Re: Ivalua, Inc. - invoice on hold - IN2003637

John

This will only be applicable if we win the POC. Let us know if you want to discuss.

We have issued 2 PO's already. One for 5 user lic at no additional cost and the other for services to execute this Poc.

Please send the invoices for that only.

Jose, please share the PO with john which I shared with you already.

Copying JMB and Jose.

Thanks and regards
 Venky

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Hence, it is clear that the Respondent herein had raised the dispute regarding the invoice dated 30/09/2021 bearing no: IN2003637.

- d) The Petitioner, now at the stage of proceedings is contending that the invoice was raised as per the Form #1 of the agreement, which clearly mentions that subscription to be paid on September 1st and the present invoice was raised on 30/09/2021. However, this Tribunal need not concern itself with the merits of such dispute. In this regard reliance is placed on the judgment of Hon'ble Supreme Court in the case of *Mobilox Innovations Pvt Ltd v. Kirusa Software Pvt Ltd (2017) ibclaw.in 01 SC, dated 21/09/2017*

"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is



pending between the parties. Therefore, all that **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.”

(Emphasis Supplied)

As discussed above, this Tribunal need not concern itself with the correctness of the invoice raised or merits of the dispute and to only see if there is a genuine dispute existing between the parties. It is proved to the satisfactory effect by the Respondent that there is plausible contention of pre-existing dispute as laid down under Section 8(2) with respect to Invoice dated 30/09/2021 bearing no: IN2003637.

- e) Now, coming to the invoices dated 01/09/2022 and 30/01/2023. Both the invoices were raised after the Termination of agreement dated 05/07/2022 by the Petitioner itself, and also for the period when the agreement was already terminated. Subsequently, the invoices
 - dated 01/09/2022 bearing No IN2004719 for the period 01/09/2022 to 31/08/2023 &
 - dated 30/01/2023 bearing No IN2005095 for the period 01/09/2023 to 31/08/2024 was raised.
- f) It is clear that the above two invoices were raised for the period after the Termination of the Service i.e dated 05/07/2022. Moreover, the Invoice dated 30/01/2023 was raised for 01/09/2023 to 31/08/2024. The Application itself came to be filed on 29/05/2023, which is inexplicable. There is no proof provided by the Petitioner herein to show that there was continued services even after the termination of service.



We do not find any merit in such invoices raised unilaterally by the Petitioner, after itself terminating the Services.

- g) In so far as the argument of the Petitioner regarding the Corporate Debtor raising replying to the Demand Notice after a lapse of 5 months is concerned, reliance is placed on the judgement of Hon'ble NCLAT in *Greymatter Entertainment Pvt Ltd v. Pro Sportify Pvt Ltd (2023) ibclaw.in122 NCLAT order dated 09/02/2023*, wherein it was held that, “13.....the Corporate Debtor is not prevented from establishing by way of a Reply and relevant documents, any ‘pre-existing dispute’.....”
- h) It is settled law that the provisions of the Code cannot be invoked for recovery of outstanding debt. On the above mentioned background, it can be safely concluded that with multiple events as discussed herein, that there is sufficient evidence of a pre-existing dispute regarding the first invoice dated 30/09/2021 and also incorrect raising of final two invoices.
- 6.** Accordingly, the Petition is not maintainable under Section 9 of the Code in view of the pre-existing dispute, Hence, the instant Company Petition bearing **C.P.(IB)No.16/BB/2024 is hereby dismissed.**

Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

Sd/-

**(K.BSWAL)
MEMBER (JUDICIAL)**