



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV**

C.P. (IB) No. 1045/MB/2023

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Auburn Digital Solutions Limited

(CIN: U72300MH2013PTC240709)

...Operational Creditor

v/s.

Gigs Media Private Limited

(CIN: U74999MH2017PTC303079)

...Corporate Debtor

Order Pronounced on: **16.10.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Petitioner :

Mr. Rohit Patil a/w Mr. Rajesh
Khandelwal and Ms. Kanksha
Vyas i/b Juris Link.

For the Respondent :

None for the Respondent.



ORDER

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) on 18.10.2023 by **Auburn Digital Solutions Private Limited** (“Operational Creditor”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against **M/s Gigs Media Private Limited** (“Corporate Debtor”) for the amount(s) payable to the Operational Creditor.
2. The Operational Creditor *viz.* Applicant in the captioned petition is a Private Company engaged in the business of strategy, creative communications and campaigns, digital products and marketing. The Corporate Debtor is a Private Company incorporated on 19.12.2017 under the Companies Act, 2013, having its Registered Address at Building no. II, 4th floor, Spectrum Tower, Off. Link Road, Mindspace, Malad (W), Mumbai, Maharashtra - 400064.

Submissions of the Operational Creditor

3. The Operational Creditor submits that, as per the Media Service Agreement dated 13.01.2021 executed between Financial Creditor and Corporate Debtor. Consequently, Operational Creditor rendered advertisements and related services to the Corporate Debtor. As against the said services, invoices were raised from 19.07.2021 till 30.10.2021, aggregating to a principal amount of INR 5,94,70,352/- as stipulated in the said invoices along with INR 4,20,861/- towards TDS against invoices and interest @ 12% p.a. amounting to INR 73,41,000/-.
4. The Date of Default, as specified in Part-IV of the present petition, is 19.08.2021.



5. The details pertaining to the said invoices have been extracted as hereunder:

Invoice Number	Invoice Date	Invoice Amount in Rs.	TDS Amount Receivable	Amount Due in Rs.	Due date of Invoice	Date on which the default occurred	No of Delay days	Interest @12%
ADS/2122/07/053	19-07-2021	1,41,58,204	-	1,41,58,204	18-08-2021	19-08-2021	429.00	19,99,888
ADS/2122/08/037	20-08-2021	1,21,21,085	-	1,21,21,085	19-09-2021	20-09-2021	397.00	15,82,051
ADS/2122/09/115	25-09-2021	1,48,08,687	-	1,48,08,687	25-10-2021	26-10-2021	361.00	17,58,568
ADS/2122/10/118	23-10-2021	1,06,96,498	-	1,06,96,498	22-11-2021	23-11-2021	333.00	11,71,047
ADS/2122/10/131	30-10-2021	15,52,840	-	15,52,840	29-11-2021	30-11-2021	326.00	1,66,430
ADS/2122/11/134	29-11-2021	1,05,630	-	1,05,630	29-12-2021	30-12-2021	296.00	10,179
ADS/2122/11/135	29-11-2021	40,63,732	-	40,63,732	29-12-2021	30-12-2021	296.00	3,95,462
ADS/2122/11/136	29-11-2021	19,63,676	-	19,63,676	29-12-2021	30-12-2021	296.00	1,91,030
ADS/2021/02/046	16-02-2021	-	4,166.00	4,166.00	18-03-2021	19-03-2021	582.00	797
ADS/2021/03/080	10-03-2021	-	40,056.00	40,056.00	09-04-2021	10-04-2021	560.00	7,375
ADS/2021/03/258	31-03-2021	-	59,198.00	59,198.00	30-04-2021	01-05-2021	539.00	10,490
ADS/2122/05/041	24-05-2021	-	1,21,406	1,21,406	23-06-2021	24-06-2021	485.00	19,358
ADS/2122/06/100	28-06-2021	-	1,42,190	1,42,190	28-07-2021	29-07-2021	450.00	21,036
ADS/2122/07/093	30-07-2021	-	48,094	48,094	29-08-2021	30-08-2021	418.00	6,609
ADS/2122/09/116	25-09-2021	-	5,282	5,282	25-10-2021	26-10-2021	361.00	627
ADS/2122/10/132	30-10-2021	-	469	469	29-11-2021	30-11-2021	326.00	50
Total		5,94,70,352	4,20,861	5,98,91,213				73,41,000

6. The Operational Creditor submits that Corporate Debtor vide letter attached to its email dated 14.09.2021 committed schedule for payments to Operational Creditor and handed over 2 Post dated cheques for INR 6,00,00,000/- and for INR 99,50,000/- and same got dishonoured due to “Insufficient Funds” and proceeding pursuant to section 138 of the NI Act were initiated before Hon’ble Metropolitan Magistrates Court, Vikhroli.
7. The Operational Creditor claims that despite various reminders and communications to Corporate Debtor to make the requisite payments, the same has not been acted upon at the behest of the latter, and more specifically so, at the backdrop of a Demand Notice issued by the Operational Creditor in FORM-4 dated 28.04.2023 (*and received by the Corporate Debtor on 29.04.2023, as evidenced by Proof of Service which forms part*



of the record hereto). The Corporate Debtor replied vide its reply dated 11.05.2024 to the Demand Notice. In its reply, Corporate Debtor stated that Operational Creditor and Corporate Debtor entered into an agreement for advertisement, publicity and related services. Also, the dishonoured cheques were issued as a security deposit and were deposited without any intimation to the Corporate Debtor, which violates the terms of their agreement. Additionally, there is a dispute pending before 78th Vikhroli Court u/s 138 r.w. 141 of Negotiable Instrument Act 1981 and said dispute has not been resolved yet which they claimed as a pre-existing dispute.

8. The Operational Creditor thus claims that the Corporate Debtor has failed to make payment towards the amount in default and entire outstanding amount is due and payable by the Corporate Debtor to the Operational Creditor.

Hence, the present petition.

Analysis and Findings

9. We have heard the Counsel for the Operational Creditor and have gone through the record.

9.1. We note that the Corporate Debtor viz. Respondent herein has chosen not to appear in the instant proceeding apropos the captioned petition despite service of notice vide order dated 08.11.2023 which is delivered on 25.11.2023. Notwithstanding the same, and in the interest of principles of natural justice, this Bench sought to re-issue a fresh court notice to the Corporate Debtor which is delivered on 03.01.2024. The Respondent has further chosen not to file its Reply, despite last chance given from this bench vide order dated 05.02.2024. Consequently, this Tribunal was thus constrained to adjudicate the captioned petition **ex-parte**, as there were no representation on behalf of the Corporate Debtor either in person or through Counsel as



duly recorded in the Order dated 07.06.2024. The case was listed for hearing on 22.07.2024, 21.08.2024 and 25.09.2024. On these dates as well none for the Corporate Debtor appeared nor any reply has been filed. Thus, the case is being decided on merits based on material available on record.

10. The Date of Default, as specified by the Operational Creditor in Part – IV of the Petition is 19.08.2021. The captioned petition has been filed on 29.08.2023, and is thereby within the Limitation period as specified under law and, this Tribunal thus has the jurisdiction to adjudicate upon the same.
11. In the present circumstances, we note that Operational Creditor has provided advertisement services for which necessary invoices were raised and there has been no payments of the unpaid operational debt. The issued raised by the Corporate Debtor in its reply to Demand Notice dated 11.05.2024 that there is a pre-existing dispute with respect to dishonour of cheques (issued by Corporate Debtor for security deposit) u/s 138 of Negotiable Instrument Act 1981 do not hold any ground in proceeding u/s 9 of IBC, 2016 as this cannot be construed as a pre-existing dispute with respect to transaction between Operational Creditor and Corporate Debtor.
12. There exists an ‘operational debt’ in terms of Section 5(21) of IBC, 2016, to the tune of INR 5,98,91,213/- (inclusive of interest), being an amount due under the invoices as afore-established and further validated by the Ledger of Accounts maintained by the Operational Creditor in respect of the Corporate Debtor for F.Y. 2020-21, 2021-22, and that there exists a ‘default’ in payment thereof in terms of Section 5(12) of IBC, 2016.
13. In light of the afore-stated aspects in relation to existence of ‘**debt**’ and ‘**default**’ in so far as the captioned petition is concerned, **no pre-existing**



dispute brought out in documents filed before the bench, coupled with the dictum laid down in law in this regard; We opine that the captioned petition is complete in all aspects and deserves to be Admitted, and that Corporate Insolvency Resolution Process ought to be initiated in respect of the Corporate Debtor herein.

14. It is accordingly hereby ordered as follows:

- (a) The captioned Company Petition bearing C.P. No. (IB) 1045/MB/2023 is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process is ordered against **Gigs Media Private Limited**, viz. the Corporate Debtor herein.
- (b) In consonance with the afore-stated, this Tribunal deems it fit to appoint Mr. Padmanabham Nair, Registration No. IBBI/IPA-001/IP-P-02289/2020-2021/13495 (E-mail Id – paddy.ideck@gmail.com) , as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC, 2016 from the empanel list of IP as Operational Creditor has not suggested the name of Resolution Professional. The fee payable to the IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
- (c) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the IBC, 2016. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of **two weeks** from the date of receipt of this Order, in default of which coercive steps will effectively follow.



- (d) The Operational Creditor shall deposit a sum of **INR 5,00,000/-** (Rupees Two-lakhs only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be Interim Finance and paid back to the Operational Creditor viz. Applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- (e) There shall be a moratorium under Section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.



(f) Notwithstanding the above, during the period of moratorium:

- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of sub-Section (1) of Section 14 of the IBC, 2016, shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (g) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-Section (1) of Section 31 of the IBC, 2016, or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- (h) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post **and** E-mail immediately, and in any case, not later than **two days** from the date of this Order.
- (i) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)