



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

TP (Co. Act.)- 38(PB)/2023 Old CP No. 451/2013

TP (Co. Act.)- 39(PB)/2023 (Old CP No.429/2013)

TP (Co. Act.)- 40(PB)/2023 (Old CP No.450/2013)

**ORDER 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:

TP (Co. Act.)- 38(PB)/2023 Old CP No. 451/2013

M/s Aidem Ventures Pvt. Ltd.
Registered Office at.
3rd Floor 1/A, Kaledonia,
Shaar Road
Off Western Expressway Highway
Andheri (E)
Mumbai – 400069

Also at, 5th Floor, 501,
HDIL Towers,
Anant Kanekar Marg,
Bandra (East), Mumbai,
Maharashtra- 400051

Applicant/Operational Creditor

Versus

M/S. News24 Broadcast India Limited.
(Previously Known as B.A.G. Newslite Network Pvt. Ltd.)
C/4 Shivalik, Near Malviya Nagar Market
New Delhi-110017

Also at 352, Aggarwal Plaza
Plot No.8,
Kondli, East Delhi,
New Delhi- 110096

Respondent/Corporate Debtor



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In the matter of

TP (Co. Act.)- 39(PB)/2023 (Old CP No.429/2013)

M/s Aidem Ventures Pvt. Ltd.

Applicant/Operational Creditor

Versus

M/S. E24 Glamour Limited

Respondent/Corporate Debtor

(Formerly Known as B.A.G. Glamour Pvt. Ltd.)

&

In the matter of

TP (Co. Act.)- 40(PB)/2023 (Old CP No.450/2013)

M/s Aidem Ventures Pvt. Ltd.

Applicant/Operational Creditor

Versus

M/s. Skyline Radio Network Limited

Respondent/Corporate Debtor

(Previously Known as B.A.G. Infotainment Pvt. Ltd.)

Order Pronounced On: 13.02.2026

CORAM:

CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SHRI RAVNIDRA CHATURVEDI

HON'BLE MEMBER (TECHNICAL)



Appearances:

For the Financial Creditor: Mr. Deepak Joshi, Advocate along with Mr. Rudra Pratap, Advocate

For the Corporate Debtor : Mr. P. Nagesh, Senior Advocate along with Mr. Sachin Anand Shukla, Mr. Alok Singh and Mr. Aman Chaurasia, Advocates

ORDER

1. The prayer in TP (Co. Act.)- 38(PB)/2023- is to initiate CIRP against M/S. News24 Broadcast India Limited. (Previously Known as B.A.G. Newslime Network Pvt. Ltd.) for a default of **Rs.43,71,768/- (Rupees Forty-Three Lacs, Seventy-One Thousand, Seven Hundred and Sixty-Eight only)**.
2. The prayer in TP (Co. Act.)- 39(PB)/2023 is to initiate CIRP against M/s E24 Glamour Limited (Formerly Known as B.A.G. Glamour Pvt. Ltd. for a default of **Rs. 8,69,345/- (Rupees Eight Lakh Sixty-nine Thousand Three Hundred and Forty-five Only)**
3. The prayer in TP (Co. Act.)- 40(PB)/2023 is to initiate CIRP against M/s Skyline Radio Network Limited (Previously Known as B.A.G. Infotainment Pvt Ltd.) for a default of **Rs. 23,08,627/- (Rupees Twenty-three Lakh Eight Thousand Six hundred and Twenty-seven only)**

It is to be noted all the three petition i.e. TP (Co. Act.)- 38(PB)/2023, TP (Co. Act.)- 39(PB)/2023 and TP (Co. Act.)- 40(PB)/2023 have been transferred from the Hon'ble High Court of Delhi raising similar issues, therefore TP (Co. Act.)- 38(PB)/2023 is being treated as the lead matter and a common order is being passed.



The present application i.e. TP (Co. Act.)- 38(PB)/2023 has been filed by M/S Aidem Ventures Pvt. Ltd. (hereinafter referred to as 'Applicant'/ 'Operational Creditor') u/s 9 of the Insolvency and Bankruptcy Code, 2016 ('The Code'), r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against M/s. News24 Broadcast India Limited (hereinafter referred to as ('Respondent'/Corporate Debtor') for a default of Rs.43,71,768/- (Rupees Forty Three lakh Seventy one thousand Seven hundred and Sixty-Eight only).

PARTIES

1. The 'Operational Creditor' (OC) herein is M/S Aidem Ventures Pvt. Ltd (CIN U74300MH2008PTC181045) incorporated under the Companies Act 1956, having its registered office at 3rd floor, 1/A, Kaledonia, Shaar road, off Western Express highway Andheri (E) Mumbai – 400069, 5th Floor, 501, HDIL, TOWERS, ANANT KANEKAR MARG, Bandra (East), Mumbai, Bandra, Maharashtra, India, 400051. The Operational Creditor is represented through Mr. Dinesh Gupta.
2. The Corporate Debtor (CD) herein is M/S. NEWS24 Broadcast India Limited. (CIN: U32204DL2007PLC162094), having its registered office at 352, AGGARWAL PLAZA PLOT NO.8, KONDLI, East Delhi, NEW DELHI, Delhi, India, 110096. The respondent herein was incorporated on 16/04/2007 with a Paid Up Capital of Rs. 35,36,42,520 (Thirty Five crore Thirty Six Lakhs Forty Two Thousand Five Hundred Twenty Only) and Authorized Capital of Rs. 37,00,00,000 (Thirty Seven Crore Only). Therefore, this Bench has jurisdiction to deal with this application. A copy of Company's Master Data has been annexed at Page 263 of the application.



BRIEF FACTS

1. The present matter has a got a chequered history, therefore, it is relevant to mention the chronology of events resulting into filing of the present petition before dealing with the issues raised in the petition. It is submitted by the applicant that it entered into a common Agreement (“Agreement”) with the three companies namely B.A.G. Infotainment Ltd., B.A.G. Newline Network Ltd. and the Corporate Debtor herein, B.A.G Newline Ltd., on 22.04.2010 whereby the Applicant was appointed by the Corporate Debtor to act as the exclusive representative in the territory for selling Available Advertising options for the Channel namely News 24 and was to receive a commission as consideration. The Applicant was responsible for soliciting and negotiating on behalf of the Corporate Debtor. It is stated that the applicant was entitled to a commission of 12% of the Net Ad Sales Billing where the Available Advertising Options (AAO) plus the value of exclusions cumulatively for the Channels is less than Rs. 70 crore. If the annual sale of AAO plus the value of the exclusions for the channels was Rs. 70 crore, the commission would be 15% of the Net Advance Sales Billings and 25% if the annual sale exceeded Rs. 70 crore, in relation to the AAO as per clause 6 of the Agreement.

2. The commission was payable to the applicant within 7 days of collections made by the Applicant and paid to the Corporate Debtor, in accordance with the terms of the Agreement, and the differential commission shall be payable within one month from the end of the month in which the collection made by the applicant, paid to CD, crosses 70 crore. It is submitted that the applicant was duly performing its obligation and that during the period 16th May 2010 to 30th April 2011, it had obtained and submitted the amount of Rs. 20,81,02,172/-, the CD was liable to pay an amount Rs. 43,71,768/- to the Applicant herein.



It is stated that the aforesaid amount was unpaid and the Vice President, Shri Dinesh Gupta, was in constant touch with Shri Ajay Jain, the representative of the Corporate Debtor, while representing that a substantial amount of commission is unpaid from all three, which is admitted by the CD. The applicant relies upon email dated 04.10.2011 sent by the Vice President of the Applicant to the Corporate Debtor to clear the dues of Rs. 61 lakhs. The applicant received a reply dated 11.10.2011, stating that since the cash flows of the Corporate Debtor Company were tight, they desired that the Applicant collect the balance amounts and deposit them to the Corporate Debtor so that the Corporate Debtor could pay the amounts due to the Applicant. The applicant submits that the CD acknowledged its liability vide the aforesaid letter. The contents of the letter will be dealt with in later part of the order. Further reliance is placed on email dated 24.10.2011 which was replied by the applicant by an email dated 28.10.2011. The applicant has relied upon various correspondence dated 19.12.2011, 11.1.2012 and 24.2.2012.

4. In view of the same, the applicant alleges that it had duly performed its obligation as per the agreement dated 22.4.2010, the CD failed to pay its admitted liability to it and had even broken contact with the Applicant herein, As a consequence thereof as on 30.8.2011 a sum of Rs 43,71,768/- (Rupees Forty Three lakh Seventy one thousand Seven hundred and Sixty-Eight only) had become due and outstanding from the CD.

That in view of the alleged default, the applicant had issued a statutory notice under Sections 433 and 434 of the Companies Act, 1956 dated 24.01.2013 calling upon the Corporate Debtor to pay the aforementioned admitted amount. The CD replied on 02.04.2013 denying the liability. It is also stated that meeting took place between the applicant and the CD for amicably resolving the issue, however nothing worked out.



Thereafter, the applicant filed a petition before the Hon'ble High Court of Delhi for winding up of the CD under sections 433,434,439 of the Companies Act, 1956, bearing Company Petition No. 451/2013, and the notice was issued in the petition on 30.08.2013. The reply was filed by the CD, and further, the rejoinder. It is stated that the Hon'ble High Court of Delhi on 08.03.2016 restrained the Corporate Debtor herein from 'Selling, transferring, alienating and/or creating any third party interest in its immovable assets to the extent of Rs. 43,71,768/- (Rupees Forty Three lakh Seventy one thousand Seven hundred and Sixty-Eight only).

6. However, in the meantime, IBC. 2016 came into force and that as per Section 4 of the Code matters relating to (Part-II of the Code relating to Insolvency Resolution and Liquidation for Corporate Person) the insolvency and liquidation of corporate debtors were to be processed when minimum amount of the default is Rs. 1,00,000/- (*thereafter increased to Rs. 1 crore on March 24, 2020*) and the National Company Law Tribunal was designated as the adjudicating authority to deal with aforesaid matters. Thereafter, on 07.12.2016, the Ministry of Corporate Affairs passed notification no. G.S.R. 1119(E) issued a notification directing the transfer of the pending proceeding of winding-up on the grounds of inability to pay debts to the National Company Law Tribunal.
7. Pursuant to which, on 19.10.2023, the Hon'ble High Court of Delhi transferred the matter to NCLT. The relevant portion of the order dated 19.10.2023 is extracted below:

11. This Court has also examined the legal position in respect of cases where the winding up petition is not at an advanced stage in judgement dated 25th July, 2023, *Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited, 2023:DHC:5206.*

12. In the opinion of this Court, since hardly any proceedings have been taken towards winding up of the company, the petition no longer deserves to be continued before this Court. The petition is itself at the very nascent stage and no substantive orders have been passed towards winding up of the company. Accordingly, in view of this position and in view of the settled law,



the petition is liable to be transferred to the NCLT. Ordered accordingly.

13. No fresh demand would be required to be issued by the Petitioner to the Respondent, inasmuch as these are petitions which have already been filed before the Court after issuance of notices under Section 433 in accordance with law at the relevant point of time.

14. The NCLT shall now proceed in accordance with law in all three petitions. The Registry to transfer all these petitions as also the electronic record of this Court to NCLT. Parties to appear before the NCLT on 5th December, 2023.

8. On 18.12.2023, this Adjudicating Authority passed the following order:

ORDER

Mr. Yashas RK, Ld. Counsel for the Petitioner appears through VC.

Mr. Kartikay Dutta, Ld. Counsel for the Respondent appears through VC.

Ld. Counsels for both Parties submitted that the present petition has been transferred to this Tribunal by Hon'ble High Court in terms of the provisions of Section 434 of the Companies Act, 2013.

Ld. Counsel appearing for the Applicant undertakes to file the requisite Form in terms of the provisions of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Ld. Counsel for the parties shall also ensure the filing of their power before the next date of hearing. They shall also place on record the hard copies of the pleadings.

List the matter on 06.02.2024.

Thereafter, the applicant filed the Form-5 in terms of the IBC, 2016. The respondent thereafter filed its reply. The respondent denies the averments made in the application on the following grounds:

- a. It is stated that the application is not maintainable since there exists a pre-existing dispute between the parties. It is submitted that the applicant had agreed to manage all the advertising collections on behalf of the Respondent since the complete territory within India under sales was outsourced by the Applicant and the applicant could not perform its obligation to collect the outstanding dues payable to the Respondent, which cause losses to the respondent, therefore the



applicant cannot claim for commission. The respondent relies upon various clauses of the agreement to strengthen its arguments. Further it is stated that an email dated 06.06.2011 was sent to the applicant about the total outstanding payments to be collected by the Applicant, which was duly acknowledged by the Applicant.

- b. Further reliance has been placed on an email dated 24.10.2011 requesting the applicant to collect the balance amount, as it is stated that it was pivotal for the company to collect all its debt as it was reportable to the board of directors. On 28.10.2012, the applicant acknowledged its liability and that some of the collections did not materialise, as it is stated that some of the cheques issued by the clients returned dishonoured.
- c. Reliance has been placed on Clause 6.7 of the agreement to state that the applicant was only entitled to commission only after making collections from the clients to whom sales were made, despite having acknowledged its obligation to manage the collection of payments for the Respondent, has failed to collect the invoiced amounts raised by the Respondent. The respondent relied upon the email dated 14.09.2011.
- d. It is further averred that the applicant is to indemnify losses incurred by several customers, who have been wronged due to false commitments given by the Applicant as per Clause 10 of the agreement. The respondent has raised an objection w.r.t to the terms and conditions of the agreement, stipulating that all sponsorships and commercial entitlements would lapse if not consumed within the deal period, Bharti Airtel unexpectedly demanded a credit note of Rs. 50 lakhs for the carry forward of unutilized entitlements from the Respondent. The same would be dealt with in detail if need be.



- e. Since the IBC is not a recovery mechanism and the object of the code is to revive a distressed company, the present petition is liable to be dismissed. The applicant herein has filed the application for alleged default in non-payment of its commission. That an application for initiating CIRP with a view of enforcing payment of a disputed debt is an abuse of process of the court. Further, the application does not meet the minimum threshold of Rs. 1 crore as mandated under Section 4 of the IBC, therefore the petition is liable to be dismissed.

In view of the above, objections, the CD prays for dismissal of the present petition. A rejoinder was filed by the applicant denying the averment made in the reply. We have heard Ld. counsels for both sides and perused the documents submitted. We have also gone through the judgments referred to by both parties. In our considered view, it would be relevant to deal with the present application issue-wise.

Analysis and Findings

Whether the present petition is maintainable in light of the pre-existing dispute as alleged by the Corporate Debtor.

9. Before dealing with the issue, it would be relevant to look at the statutory scheme of IBC governing the situation. The relevant provision of the code is extracted below:

8. Insolvency resolution by operational creditor. - (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor –



(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the payment of unpaid operational debt-

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor. Explanation. – For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding 3[payment] of the operational debt in respect of which the default has occurred.

9. *Application for initiation of corporate insolvency resolution process by operational creditor. –*

*(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of **section 8**, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.*

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish-

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;



(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt [by the corporate debtor, if available;]

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

.....

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

(a) the application made under sub-section (2) is complete;

(b) there is no 3[payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if –

(a) the application made under sub-section (2) is incomplete;

(b) there has been 1[payment] of the unpaid operational debt;



(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

A bare perusal of the above provision connotes that on the occurrence of a default, an operational creditor shall deliver a demand notice of unpaid operational debt, copy of an invoice to the corporate debtor demanding payment of the amount involved in the default. Then the corporate debtor shall within 10 days of the receipt of the demand notice or copy of invoice bring to the notice of the operational creditor any existence of dispute or record of the pendency of the suit or arbitration proceeding, filed before the receipt of such notice or invoice in relation to such dispute or the payment of unpaid operational debt as prescribed under Section 8 (2) (b) clause (i) and (ii). For the present it would be noteworthy to highlight section 5 (6) of the code which stipulates as under:

(6) “dispute” includes a suit or arbitration proceedings relating to–

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty;

10. It connotes that disputes includes a suit or arbitration proceedings relating to the existence of amount of debt; quality of goods or service; breach of a representation or warranty. In this light, the Hon’ble Supreme Court in **“Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** held as under:



33. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that the operational creditor has encashed a cheque or otherwise received payment from the corporate debtor [Section 8(2)(b)]. It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2). This application is to be filed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 5, accompanied with documents and records that are required under the said form. Under Rule 6(2), the applicant is to dispatch by registered post or speed post, a copy of the application to the registered office of the corporate debtor. Under Section 9(3), along with the application, the statutory requirement is to furnish a copy of the invoice or demand notice, an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Apart from this information, the other information required under Form 5 is also to be given. Once this is done, the adjudicating authority may either admit the application or reject it. If the application made under sub-section (2) is incomplete, the adjudicating authority, under the proviso to sub-section (5), may give a notice to the applicant to rectify defects within 7 days of the receipt of the notice from the adjudicating authority to make the application complete. Once this is done, and the adjudicating authority finds that either there is no repayment of the unpaid



operational debt after the invoice [Section 9(5)(i)(b)] or the invoice or notice of payment to the corporate debtor has been delivered by the operational creditor [Section 9(5)(i)(c)], or that no notice of dispute has been received by the operational creditor from the corporate debtor or that there is no record of such dispute in the information utility [Section 9(5)(i)(d)], or that there is no disciplinary proceeding pending against any resolution professional proposed by the operational creditor [Section 9(5)(i)(e)], it shall admit the application within 14 days of the receipt of the application, after which the corporate insolvency resolution process gets triggered. On the other hand, the adjudicating authority shall, within 14 days of the receipt of an application by the operational creditor, reject such application if the application is incomplete and has not been completed within the period of 7 days granted by the proviso [Section 9(5)(ii)(a)]. It may also reject the application where there has been repayment of the operational debt [Section 9(5)(ii)(b)], or the creditor has not delivered the invoice or notice for payment to the corporate debtor [Section 9(5)(ii)(c)]. **It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility [Section 9(5)(ii)(d)]. Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a). Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected [Section 9(5)(ii)(e)].**

34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and



(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.

51. 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)(i)(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.

56. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the



appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defence is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterising the defence as vague, got up and motivated to evade liability.

57. The learned counsel for the respondent, however, argued that the breach of NDA is a claim for unliquidated damages which does not become crystallised until legal proceedings are filed, and none have been filed so far. The period of limitation for filing such proceedings has admittedly not yet elapsed. Further, the appellant has withheld amounts that were due to the respondent under NDA till the matter is resolved. Admittedly, the matter has never been resolved. Also, the respondent itself has not commenced any legal proceedings after the email dated 30-1-2015 except for the present insolvency application, which was filed almost 2 years after the said email. All these circumstances go to show that it is right to have the matter tried out in the present case before the axe falls.

(emphasis supplied)

In Sabarmati Gas Ltd. v. Shah Alloys Ltd., (2023) 3 SCC 229 it was held as under

55. In this context the meaning of the word “reconciliation” is to be looked into. Going by Black’s Law Dictionary, 10th Edition, the apt meaning suitable to the situation in relation to accounting, reads thus: “an adjustment of amounts so that they agree, especially by allowing for outstanding items”. It is submitted by the learned counsel for the respondent that such a reconciliation had not taken place and also that indisputably, DRS was not formulated and approved. The aforesaid facts revealed from Annexure 40 together with the stand taken by the



respondent in the letter dated 04.01.2013 (Annexure 36) would reveal the existence of a pre- existing dispute between the parties.

56. In the contextual situation it is only apposite to be remindful of the observation in Mobilox Innovations that in doing the act of separating the grain from chaff the Court need not to be satisfied that the defence is likely to succeed. It is enough that a dispute exists between the parties and in other words, what is to be seen is whether there was a plausible contention requiring investigation for the purpose of adjudication. Taking note of the nature of the dispute of the respondent as referred hereinbefore in respect of the claim made by the appellant, we do not find any reason to disagree with the concurrent findings of the Tribunals that there existed a 'pre-existing dispute' between the parties before the receipt of demand notice under Section 8 IBC. In other words, the dismissal of the application under Section 9 IBC on the ground of 'pre-existing dispute' cannot be held to be patently illegal or perverse. We also do not find any reason, in the facts and circumstances, to hold that the case set up by the respondent was a patently feeble legal argument. At any rate, we are not inclined to brush aside the case of the respondent as spurious.

57. We may hasten to add here that we shall not be understood to have held that the dispute set by the respondent regarding the dues is ultimately to be upheld. Certainly, when the expression 'pre- existing dispute' is used it will only indicate the existence of a dispute prior to the receipt of a demand notice under Section 8 IBC, and the correctness or its truthfulness is a matter of evidence. In short, the respondent has succeeded in raising a dispute describable as 'pre- existing dispute'. In that view of the matter once we find that the Tribunals have rightfully held that there existed a 'pre-existing dispute' between the parties there cannot be an order of remand



of the matter to the Tribunal for reconsideration of Section 9 application under IBC.””

Further in Mr. Sanjay Kumar v. Gannon Dunkerley & Co Ltd. and Ors., (2024) ibclaw.in 541 NCLAT, the Hon’ble NCLAT held as under:

5. The above quoted observations of the Hon’ble Supreme Court with regards to a pre-existing dispute qualifies a pre-existing dispute to be a defence which is not spurious, mere bluster, plainly frivolous or vexatious. Thus it enjoins an obligation upon the **Adjudicating Authority to arrive at a prima facie satisfaction that a dispute indeed exists with regards to quality or price, which in common parlance and in matters of civil jurisdiction, would be regarded as a triable issue of fact. However, it does not call upon the Adjudicating Authority to venture into the appreciation of the merit of pre-existing dispute and embark upon the adjudication of rival contentions of parties. If the dispute is raised by the CD and if the CD shows the disputed issues of facts which require adjudication by a competent court of law, then Section 9 of IBC would not empower the Adjudicating Authority to take upon itself the task of sifting through the rival contentions raised and to give a judgement upon it. However, it has to determine whether there truly exist a dispute which may or may not ultimately succeed, but at the stage of consideration of an application under Section 9 IBC the jurisdiction is limited to consideration of existence of a dispute.**

6. On perusal of the impugned order the Adjudicating Authority had taken out whether the defence raised by the appellant was general or will he succeed. Thus what was required to be observed was as to if from the material on record if there exist claims or counter claims in respect of amount to be paid and if the defence is not spurious or mere bluster. Even if no reply to the demand notice was given, it would have not precluded the corporate debtor to bring immediately before the



Adjudicating Authority to establish a pre-existing dispute which would lead to rejection of Section 9 petition. **Thus the underline rational with regard to a petition of pre existing dispute is clearly that as long as there are trivial issues of facts which requires consideration and adjudication, the same shall be recorded a pre-existing dispute to reject the petition filed under Section 9 of the IBC.**

7. In *Raj Ratan Babulal Agarwal Vs Solar Tech's India Pvt Ltd (2023) 1 SCC 115* the Hon'ble Supreme Court has sounded a word of caution the Court must not be oblivious to the limited nature of examination of the case of Corporation Debtor projecting a pre existing dispute. **Overlooking the boundaries of jurisdiction can cause a serious miscarriage of justice besides frustrating the object of IBC. Thus where there is an indication of an existence of dispute prior to receipt of demand notice under section 8 of IBC then the correctness of its truthfulness is only a matter of evidence.**

(emphasis supplied)

11. Keeping the above judicial precedents in mind, now let us resort back to facts of the present case. The applicant entered into an agreement dated 22.4.2010 with the corporate debtor whereby the Applicant was appointed by the Corporate Debtor to act as the exclusive representative in the territory for selling Available Advertising options and was to receive a commission as consideration. The relevant portion of the agreement is as follows:



2. AD-SALES REPRESENTATION

- 2.1 AIDEM having represented to BAG that it has the relevant expertise and manpower to consult, strategize and execute all advertising sales activities such as on-air and off-air promotional activities, manage collections, sell advertising air time and sponsorships, BAG appoints AIDEM for acting as the exclusive representative in the Territory for selling Available Advertisement Options for the Channels in accordance with the terms and conditions of this Agreement and AIDEM accepts such appointment.
- 2.2 Subject to the terms and conditions of this Agreement, AIDEM will be responsible for soliciting and negotiating on behalf of BAG all deals as defined in "Available Advertisement Options" on the Channels in the Territory during the Term as per the agreement.
- 2.3 AIDEM will be under obligation to perform advertising sales representation services as contemplated in this Agreement of a standard of quality, which is equivalent to the standard to which same or similar services are provided to the owners or operators of other channels on which AIDEM or its designees or agents sell Available Advertisement Options.

3. AIDEM - OBLIGATIONS AND DUTIES

- 3.1 At all times during the Term, AIDEM shall, in accordance with the terms and conditions of this Agreement, undertake and be responsible for the following:
 - 3.1.1 Developing in mutual agreement with BAG, strategic marketing and sales plans for the Channels to support the Available Advertisement Options; it is however clarified that implementation of such trade marketing plans would be BAG's responsibility in consultation with AIDEM.
 - 3.1.2 AIDEM has prepared revenue projections for the Channels, detailing the target and the weekly phasing of the target. These projections are attached as Annexure 1. BAG agrees that such projections are not guaranteed by AIDEM and AIDEM confirms that it shall not limit itself in maximising revenues beyond the said projections as annexed.
 - 3.1.3 Within one month of signing this agreement, AIDEM shall provide BAG with the entire process flow setting out the milestones for bookings, traffic, scheduling/logging, confirmation of airing, billing and collection.
 - 3.1.4 Establishing and maintaining a team of qualified persons whose activity, throughout the Term, will be substantially and directly devoted to co-ordination and performance of AIDEM obligations under this Agreement. AIDEM will after consultation with BAG hire some of the persons employed by BAG from their Ad Sales team. It is hereby agreed by BAG that AIDEM may assign such persons to any business that AIDEM is involved in.
 - 3.1.5 Soliciting advertisements on the Channels on such terms as to pricing and rate cards as AIDEM may decide from time to time;
 - 3.1.6 Pursuing vigorously any leads, which BAG provides to AIDEM.



4. BAG - OBLIGATIONS AND DUTIES

4.1 At all times during the Term, BAG shall, in accordance with the terms and conditions of this Agreement, undertake and be responsible for the following:

4.1.1 Make available on each of the channels forming part of the Channels, commercial inventory (ie commercial air time on the Channels including sponsorship opportunities) of not less than 20 minutes per hour.

4.1.2 Managing the traffic functions of Available Advertisement Options sold.

4.1.3 Consult with and inform AIDEM of the budget for the Channels specific trade promotion and merchandising, as may be determined at BAG's in consultation with AIDEM from time to time;

4.1.4 Providing AIDEM with such assistance as may be reasonably required to enable AIDEM to perform its obligations under this Agreement, including supplying AIDEM with updated programming grids and other programming information (regular updated information on monthly Channels schedules, highlights and sponsorship packages);

4.1.5 In relation to Available Advertisement Options sold by AIDEM, inserting advertisements in and executing all other options on the Channels, including on-ground events in accordance with this agreement.

4.1.6 Raising invoices on advertisers towards activity on the Channels, in the manner contemplated in this Agreement and forward them (or details thereof) to AIDEM to enable AIDEM to collect the money from advertisers. It is however clarified that billing and payments will, at all times, be directly in the name of BAG Ltd. (or any other entity as determined by BAG at its sole discretion from time to time);

4.1.7 Giving reasonable lead times on new programming initiatives and concepts to AIDEM such that the same can be monetized in a proper and rational manner.

4.1.8 Provide AIDEM with creative scratches/bytes of saleable elements and program pilots if any to showcase the same to clients.

4.1.9 Provide AIDEM with budgetary support as part of trade marketing expenses, in the following manner:



- (i) AIDEM can get the pre approved trade creatives (jointly approved by BAG and AIDEM) released under it's name and bill these expenses over and above the consideration payable to AIDEM under this Agreement; or
- (ii) BAG releases the pre-approved creatives (jointly approved by BAG and AIDEM) as per the media plan, jointly approved by BAG and AIDEM.

4.1.10 Providing AIDEM with 180 secs of air time per day on the Channels, subject to availability, which AIDEM will use to promote the exclusive sales agent status with BAG with the sole purpose of directing potential advertisers to the AIDEM sales team. BAG will also provide the mention of AIDEM and contact information on its website, including a link to AIDEM's website, for the same purpose.

6. ACHIEVEMENT BENCHMARKS, COMMISSIONS AND PAYMENT MECHANISM

6.1 In consideration of the advertising sales representation performed by AIDEM in accordance with the terms and conditions of this Agreement, AIDEM will be entitled to earn a commission (hereinafter referred to as the "AIDEM Commission") in the manner and as per benchmarks specified below :

6.2 Where the annual sale of Available Advertisement Options plus the value of the Exclusions cumulatively for the Channels is less than Rs 70 crore, then the AIDEM Commission shall be 12% of the Net Ad Sales Billings in relation to

6.3 Where the annual sale of Available Advertisement Options plus the value of the Exclusions cumulatively for the Channels is Rs 70 crore or more, then the AIDEM Commission shall be -

- (i) At Rs 70 crore - 15% of the Net Ad Sales Billings in relation to the Available Advertisement Options sold (other than only the on-ground portion of any events) and
- (ii) on the amount beyond Rs 70 crore - 25% of the Net Ad Sales Billings in excess of Rs 70 crores, in relation to the Available Advertisement Options sold (other than only the on-ground portion of any events).

6.4 For the entire period of the term, all barter will be only done with the consent of BAG and BAG has the right to accept or reject any such proposal given by AIDEM. AIDEM will be entitled to a commission on all barter at 15% of the value of the barter in kind. At the option of BAG, the AIDEM Commission on the barter may also be paid by cheque and such commission shall be calculated at 7.5% of the value of the barter.

6.5 In relation to any on-ground and on-ground plus on-air events, a budget will be prepared by BAG and AIDEM together. Such event shall be implemented only if both Parties agree to proceed with the event. If there are material variations from the budget the Parties shall promptly mutually discuss the budget again. BAG agrees that the AIDEM shall be entitled to a 15% commission on the total cost of the event if the event makes a profit. Further, AIDEM is entitled to a further sharing on the net profit of such a ground event, in the proportion of 40:60, where 40% is to AIDEM and 60% is to BAG. The net profit on such event will be calculated after deducting the cost of the event and the 15% commission on the event cost from the total revenue earned on the ground event. The revenue earned on such events towards any on air component will attract commission as per clause 6.2 and/or 6.3 subject to the ground event recovering its total cost.

6.6 Prior to procuring any business from any representatives in any other country for the India Feed of the Channels, AIDEM and BAG shall mutually discuss and agree such terms upon which such business may be accepted.



6.7 The AIDEM Commission, as specified in Clause 6.1 read with Clause 6.2 and Clause 6.3(ii) above, when applicable, shall be payable by BAG to AIDEM within seven days of collections made by AIDEM and paid to BAG, in accordance with the terms of this Agreement.

6.8 The differential AIDEM Commission, as specified in Clause 6.1 read with Clause 6.3(i) above, shall be payable by BAG to AIDEM within one month from the end of the month in which the collections made by AIDEM and paid to BAG crosses Rs 70 crore.

6.9 No commissions shall be due to AIDEM against amounts not received. AIDEM will use its best efforts to ensure the receipt of unpaid amounts to BAG.

6.10 AIDEM will provide creative support for making commercials etc in cases where there is no creative agency for the client. In case AIDEM incurs any cost in making commercials for clients then the same cost will be reimbursed by BAG provided however BAG can also produce the commercial free of cost on case to case basis.

6.11 The Parties mutually agree that all costs and expenses relating to the sales efforts, which will be required to be undertaken in pursuance of this Agreement, within the Territory will be solely borne by AIDEM. It is however clarified that all international travel, board and lodging costs, if required to be undertaken by the representatives of AIDEM, at the request of BAG, will be reimbursed by BAG at actuals.

6.12 As regards billing, BAG (acting directly through itself or its relevant group company) will directly raise bills on advertisers on the Channels, in the manner contemplated in this Agreement and forward them (or details thereof) to AIDEM to enable AIDEM to collect the money from advertisers. It is however clarified that payments are to be made by the advertisers, at all times, directly in the name of BAG Films (or any other entity as determined by BAG, in its sole discretion, from time to time).

6.13 To enable AIDEM to achieve the sales targets BAG will have to ensure the current levels of performance for all components related to the Channels including the distribution in the key markets, marketing and the programming quality for ensuring the viewership as well as the respective channel reach and shares.

6.14 BAG and AIDEM shall discuss and finalise the targets for the next twelve months, two months prior to the completion of the first twelve months.

11



12 TERM AND TERMINATION

12.1 This Agreement shall come into effect on the Effective Date and shall be valid for a period of five (5) years ("Term"), unless terminated earlier in accordance with the terms of this Agreement. Upon expiry of the Term, BAG shall have the right, at its sole discretion, to renew the term of this Agreement, on such terms and conditions as may be mutually agreed with AIDEM.

12.2 Post-expiry of the Term, AIDEM shall continue to remain responsible for managing collections from advertisers/agencies/clients against bills raised during the Term. Accordingly, AIDEM shall also be entitled to earn commissions against such collections, though these may occur after the expiry of the Term.

12.3 No Party shall be entitled to terminate this Agreement before a period of 24 months ("Lock in Period") from the Effective Date. Post the 24 month lock in period and Prior to the expiry of the Term, either Party shall have the right to terminate this Agreement by serving a written notice of not less than 3 months on the other Party concerned. Notwithstanding anything mentioned in this Clause 12.3 hereinbefore, BAG has the right to terminate this Agreement in the event that AIDEM does not achieve 80% of the annual projected revenue as stated in Annexure 1 after completion of the first twelve months from the Effective Date.

12.4 Post the lock in period, during the term of this Agreement, either party ("Non Defaulting Party") shall be entitled to terminate this Agreement forthwith by written notice ("Termination Notice") to the other party ("Defaulting Party") if:

(i) the Defaulting Party commits a material breach of any of the terms and conditions of this Agreement which is not capable of being cured; or where such breach is capable of being cured, it is not cured by the Defaulting Party within 30 days of the date of receipt of a written notice by the Defaulting Party from the Non Defaulting Party of such breach;

(ii) in respect of the Defaulting Party, an application is made to a court for winding up the Defaulting Party, otherwise than for the purposes of reconstruction or amalgamation (irrespective of whether or not the winding up application is presented jointly or severally by the Defaulting Party or its creditors, or its contributories, or the registrar of companies or any person authorised by a governmental authority in that behalf) and the application is not withdrawn within 30 days of its presentation;



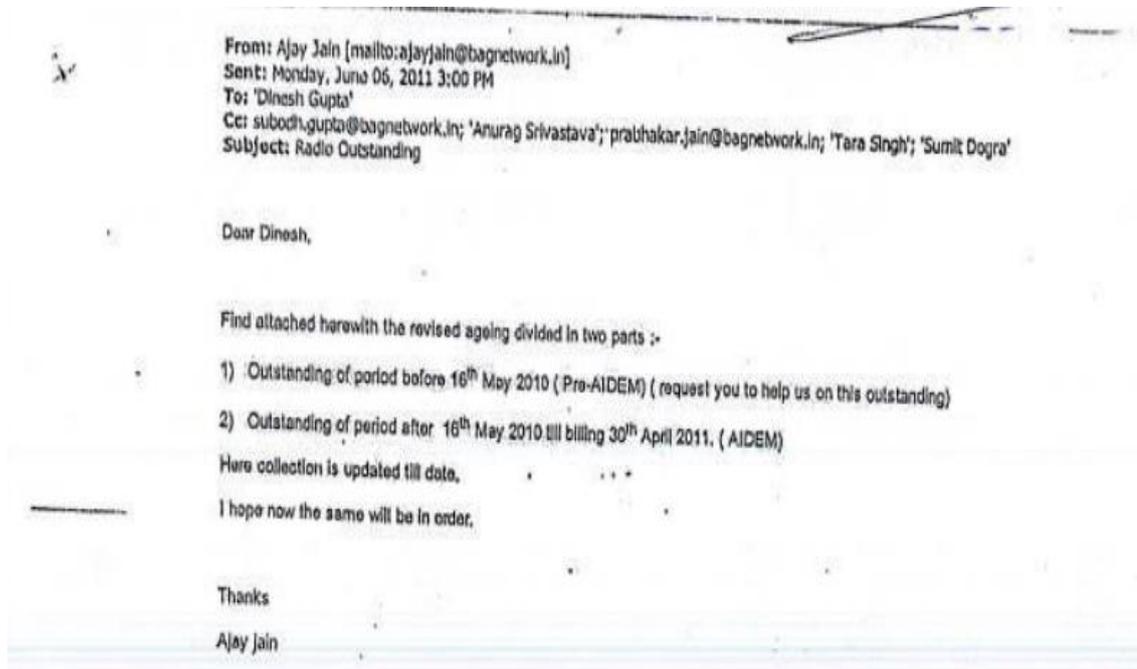
(iii) the Defaulting Party compounds or makes any composition or arrangement with its creditors.

12.5 At any time during the term of this Agreement, BAG shall be entitled to terminate this Agreement forthwith by written notice to AIDEM if:

(i) AIDEM commits any offence or act, which, in BAG's reasonable judgment is likely to adversely affect the goodwill of the business of BAG and/or any of its group companies, the Channels and the Trademarks;

(ii) AIDEM takes any action to prejudice, damage or contest the validity of the Trademarks, the goodwill associated with them or the ownership of them by BAG and/or its relevant group company.

Basis this agreement, it is averred by the CD that as per clause 3.1.13, The Applicant had agreed to manage all the advertising collections on behalf of the Respondent. The respondent repeatedly approached the applicant to perform its obligation and collect the outstanding payments from the vendors, it is stated that the applicant did not honor the same and it caused substantial losses to CD. In this background, the E-mail correspondence between the applicant and the CD are extracted below:





From: Dinesh Gupta [mailto:DineshG@aidem.in]
Sent: Friday, June 03, 2011 4:58 PM
To: Ajay Jain; 'Anurag Srivastava'; Tara Singh
Cc: Nikhil.Dev@bagnetwork.in; Sumit Dogra; subodh.gupta@bagnetwork.in; rohit.vohra@bagnetwork.in; prabhakar.jain@bagnetwork.in
Subject: RE: TLG Payment (Dhamaal Outstanding)

Thanks a lot Sir...

Dinesh Gupta
Vice President - Finance

m +91 9811806612
dineshg@aidem.in

aidem ventures pvt. ltd., No 297, city centre, sector 29, Gurgaon - 122602, India. | t: +91.124.4216808 | f: +91.124.4216801 | www.aidem.in

aidem

From: Ajay Jain [mailto:ajayjain@bagnetwork.in]
Sent: 03 June 2011 16:28
To: Dinesh Gupta; 'Anurag Srivastava'; Tara Singh
Cc: Nikhil.Dev@bagnetwork.in; Sumit Dogra; subodh.gupta@bagnetwork.in; rohit.vohra@bagnetwork.in; prabhakar.jain@bagnetwork.in
Subject: RE: TLG Payment (Dhamaal Outstanding)

Dear Dinesh,

Let me see the matter. What has happened?

It may be the case of non updated MIS send to you

Let me send - updated collections/outstanding MIS to you asap.

I fully agree with your apprehension with client. Let me provide you MIS with outstanding duly knocked off with collections. It will be in four parts -

- a) Outstanding updated during AIDEM tenure 16th May 2010 to 30th April 2011
- b) outstanding PRE AIDEM period in case you can provide any help for collections.
- c) The collections for which details are awaited and has not been knocked off in MIS
- d) PDC list

Dear Subodh/Prabhakar, Correct the MIS immediately as per above instructions.

Thanks & Regards

Ajay Jain



From: Dinesh Gupta (mailto:DineshG@aldem.in)
Sent: Friday, June 03, 2011 3:58 PM
To: Anurag Srivastava; Tara Singh
Cc: 'Ajay Jain'; Nikhil.Dev@bagnetwork.in; Sumit Dogra; subodh.gupta@bagnetwork.in; rohit.vohra@bagnetwork.in;
prabhakar.jain@bagnetwork.in
Subject: RE: TLG Payment (Chamaal Outstanding)

Dear Anurag,

This is really surprising seeing your outstanding statement that you are still showing an outstanding of Rs.3.95 crores, whereas we have collected Rs.2 crores (approx) already and have been sending details to your office regularly. But there is no updation in your records.

How could you expect us to follow up with clients unless we get the latest outstanding statement.

We request you to send the updated outstanding report to follow-up with clients.

Dear Ajay, need your help as it's very difficult to follow up on outstanding without having updated report.

Regards



From: Tara Singh - TaraS@ndem.in
Sent: Monday, June 13, 2011 1:37 PM
To: anurag.srivastava@bagnetwork.in; subodh.gupta@bagnetwork.in
Cc: Sumit Dogra; rohit.vohra@bagnetwork.in; Nikhil.Dev@bagnetwork.in; prabhakar.jain@bagnetwork.in; 'Sanjeev'; Dinesh Gupta; 'Ajay Jain' (ajayjain@bagnetwork.in)
Subject: RE: Radio Outstanding

Dear Anurag,

As discussed in the meeting you were supposed to send me the correct ageing with the detail for the amount collected after 31st March, 2011 latest by Friday (10th June) but till date we have not received any collection detail from your side.

@ Dear Mr. Subodh: As already highlighted to you that the difference between your and our figures was due to the reason, the bills against which you have already received the payment were not deleted from the ageing. We have received the updated ageing from your side but the collection detail is still pending.

Request you to send us the bill wise collection which you have received after 31st March, 2011.

Regards
Tara Singh
9953612469

From: Ajay Jain [mailto:ajayjain@bagnetwork.in]
Sent: Saturday, June 11, 2011 8:46 AM
To: Dinesh Gupta
Cc: Tara Singh; Sumit Dogra; rohit.vohra@bagnetwork.in; 'Subodh Gupta'; 'Anurag Srivastava'; Nikhil.Dev@bagnetwork.in; prabhakar.jain@bagnetwork.in; 'Sanjeev'
Subject: Radio Outstanding
Importance: High

Dear Dinesh,

After the meeting of Tara with my team of Radio, the following summary of outstanding has been finalized. The figures mentioned by Tara in earlier mails were not correct and he endorses the same to our team. The complete details is attached herewith in sheet attached.

BASIS: BILLING AND OUTSTANDING PERIOD 16.5.10 TO 30.4.11. COLLECTION TILL DATE

Total Billing for the above period	Rs. 4,33,82,081.00
Collection till date	Rs. 2,94,17,911.00 (Including advance of Rs. 22,31,888.00)
Outstanding till date (As per Ageing)	Rs. 1,39,64,170.00

*the only difference which Tara and my team agreed is S-tel February 2011 billing of Rs. 4,58,977 which can be sorted out after mutual discussions as we did the billing of the same upfront in FY 2010-11

These above figures have been cross checked from the billing done and collections received and final as per our records.

I would appreciate if the above outstanding can be pushed up rigorously and money to be collected asap.



It is to be noted that the applicant in lieu of its performance under the agreement was entitled to the commission as consideration as decided under Clause 6 of the agreement. The commission was to be paid as per Clause 6.7, which stipulates that the commission shall be payable by BAG to AIDEM within 7 days of collection made by AIDEM and paid to BAG. As per clause 6.9 it is stated that no commission shall be due to AIDEM against amount not received. Basis this clause, the applicant states that it is only seeking the amount in respect of the collections already made and paid to the Corporate Debtor and that there is no set off of commission admittedly payable to AIDEM. Basis this the applicant relies upon email dated 04.10.2011 which reads as under:

From: Dinesh Gupta [mailto:DineshG@aidem.in]
Sent: Tuesday, October 04, 2011 6:20 PM
To: ajayjain@bagnetnetwork.in
Cc: Tara Singh; 'Sanjeev Kumar Singh/Noida/BAGFILMS/BAG'; Prabhakar jain; 'Subodh Gupta/Noida/BAGFILMS/BAG'; anurradha@bagnetnetwork.in
Subject: RE: Aidem outstanding

Dear Ajay,

This is with reference to outstanding of Aidem's commission, which is Rs.61 lacs over due. We had collected this amount long time back, however we are not receiving our commission on time. As you are aware that our company has been passing through a bad phase and have big financial crisis. We have to pay salaries for Sep'11.

We request you to kindly look into it seriously.

We have been making our best efforts to collect Radio outstanding, however as you know the situation very well that Aidem was not at fault on delay of Radio's outstanding.

We need your help, we once again request you to kindly release some funds immediately.



Thereafter, an email dated 11.10.2011 was sent by the CD which is extracted below:

From: Ajay jain [mailto:ajayjain@bagnetwork.in]
Sent: Tuesday, October 11, 2011 9:12 AM
To: 'Dinesh Gupta'
Cc: 'Prabhakar jain'; 'anurradha@bagnetwork.in'; 'rk.arora@bagnetwork.in'; 'Subodh Gupta'
Subject: RE: Aidem outstanding

Dear Dinesh,

We understand the below mentioned financial crises you have mentioned by endorsing the outstanding commission payable to you. But we are also not going through a very good phase either. Our cash flows are also extremely tight. Things are getting slow in settling after the sales transferred to us from you. We also understand that this commission payable to you belongs to the collections you have already collected and remitted to us.

We hereby request you kindly clear the outstanding debtors settled between our team lead by Prabhakar jain and your team towards radio of approximately Rs 65-70 Lacs and small portion of balance of E24 and N24, so that it can ease my cash flow for releasing your complete outstanding commission in one go thereby closing the accounts asap smoothly with us. This message have also been endorsed by our management.

So we again request you to collect the balance outstanding as early as possible and side by side we will be clearing your commission payable.

Again on 24.10.2011, it was stated by the CD as follows:

From: Ajay jain [mailto:ajayjain@bagnetwork.in]
Sent: 24 October 2011 09:47
To: Dinesh Gupta
Cc: 'Prabhakar jain'; 'anurradha@bagnetwork.in'; 'rk.arora@bagnetwork.in'; 'Subodh Gupta'; 'Sanjeev Kumar Singh/Noida/BAGFILMS/BAG'
Subject: RE: Aidem outstanding

Dear Dinesh,

We once again requesting you to kindly collect the balance outstanding money majority of which is in B.A.G infotainment Limited as mentioned below. The debtors are not moving at all in radio as well as some part outstanding in E24 & N24.

Our auditors are pressing hard to clear the debt as soon as possible as we are approaching for closing the six monthly results within next 15 days time. Since we are a listed company it's become more important to collect all the debts as the same is reportable to honorable board of directors also.

As far your commission part is concerned, We are once again committing on behalf of our management that we will be paying your outstanding as and when we start getting the balance collections outstanding.

Since the pressure from auditors and management is at its peak on us, It is now important to collect the money from all debtors asap.

We would appreciate if you can provide us the deadlines to collect the all outstanding (Radio, E24 and N24) so that the same can be communicated further.

Waiting for positive response on the request.

Wishing you and your team a very Happy Diwali!!!!!!!!!!!!!!



The aforesaid email was replied by the applicant on 28.10.2011

From: Dinesh Gupta
Sent: 28 October 2011 18:37
To: 'Ajay jain'
Cc: 'Prabhakar jain'; anuradha@bagnetnetwork.in; rk.arora@bagnetnetwork.in; 'Subodh Gupta'; 'Sanjeev Kumar Singh/Nolda/BAGFILMS/BAG'; Vikas Khanchandani
Subject: RE: Aidem outstanding

Dear Ajay,

We really appreciate your concern on these long overdue outstanding and we have been making our best efforts to collect these outstanding.

We would like to highlight the facts of the outstanding Channel wise as this is not true that there is no movement in collections:

- News-24 / E-24
 - o The total outstanding as per your statement is Rs.31 lacs, (details attached)
 - Due from Government is Rs.14.70 lacs
 - Already collected Rs.5.45 lacs
 - Bad debts Rs.2.95 lacs
 - Payment expected by 1st week of Nov'11 Rs.63,000
 - Invoice copy required of Rs.3.76 lacs
 - Agency to revert Rs.3.60 lacs

If you go through the details the collectible other than Government clients is Rs.7.50 lacs only.

- Bag Infotainment - (details attached)
 - o The total outstanding as per your statement sent in 1st Week of Sep'11 was Rs.99 lacs, which has been reduced to Rs.76 lacs as per your latest outstanding statement, hence there is a collection or adjustment of Rs.23 lacs. Apart from this the clients/agencies have made a direct payment to your office of Rs.7.15 lacs, hence the outstanding further reduced to Rs.69 lacs. Following are the remarks on Radio outstanding:

- As you are aware that the Bag was not able to provide us the correct outstanding in the last one year as the same in mess. We had many meeting and have exchanged many mails to sort out the issues.
- We also got to know after one year that the few chqs worth of Rs.7 lacs got bounced, which never ever informed to us as a result we are not able to contact the people particularly in the remote areas like in Haryana, Bihar and Maharashtra etc.
- There is doubtful debts of Rs. 10 lacs
- We have been following up with clients/agencies for Rs.45 lacs, however we can't commit the time frame as few clients have major cash crises like S-Tel etc.
- Outstanding on Government clients is Rs.2.56 lacs, which will take more time to pay.
- Payment is under process is Rs.2.68 lacs, which is expected in Nov'11
- Bad Debts Rs.0.85 lacs

In light of the above facts we request you please do not correlate our due amount with your outstanding as there have been many issues from your end. We have been asking our commission only on the amount which we have collected long time back, which is Rs.72 lacs. Since in the last two months the clients/agencies have released the payment directly to your office but we did not receive any amount from your office. We request you to kindly release at least 50% of the due amount immediately.

Should you have any further clarification, please feel free to call me.

Thanks & regards

Dinesh Gupta
Vice President - Finance



From the perusal of the above correspondence between the parties, it is clear that the applicant is pressing for its commission on the amount already collected; however, the CD presses upon the difficulty it is facing due to the outstanding amount to be collected. There is therefore demand from both sides for their respective dues. The Parties were working with the intent of mutual benefit in a franchise venture.

Further, on 19.12.2011, it was again iterated as follows:

From: Dinesh Gupta
Sent: 19 December 2011 18:04
To: 'Ajay jain'
Cc: 'Prabhakar jain'; 'anuradha@bagnetnetwork.in'; 'rk.arora@bagnetnetwork.in'; 'Subodh Gupta'; 'Sanjeev Kumar Singh/Noida/BAGFILMS/BAG'; Vikas Khanchandani
Subject: RE: Aidem outstanding

Dear Ajay,

This is with reference to our several discussions and meeting that you will release our due commission against the collection, the total due commission is Rs.72 lacs. We have been making our best efforts to collect your outstanding form the agencies/advertisers and your office has been collecting directly from the market.

We request you to release our commission on priority and also send us the latest outstanding statement for follow up with agencies/advertisers.

Thanks & regards

Dinesh Gupta
Vice President - Finance

mob: +91.9811806612
dineshg@aidem.in

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aidem



On 11.1.2012, it was stated as follows:

From: Dinesh Gupta DineshG@aidem.in

Sent: Wed 11-01-2012 17:50

To: Ajay Jain

CC: 'Prabhakar jain' <prabhakar.jain@bagnetnetwork.in>; anurradha@bagnetnetwork.in;
rk.arora@bagnetnetwork.in; 'Subodh Gupta' <subodh.gupta@bagnetnetwork.in>; 'Sanjeev Kumar
Singh/Noida/BAGFILMS/BAG' <sanjeev.singh@bagnetnetwork.in>; Vikas Khanchandani
<vikask@aidem.in>

Subject: RE: Aidem outstanding

Dear Ajay,

This is really sad that we have been making our best efforts to recover your dues from the market and have recovered approx Rs.25 lacs in the last three months, however we have not received any money on account of our dues from your company.

We request you to kindly take it seriously and release our dues on priority basis.

Thanks & regards

Dinesh Gupta
Vice President - Finance

m: +91.9811806612
dineshg@aidem.in

aidem ventures pvt. ltd., sco 297, city centre, sector 29, Gurgaon – 122002, India. | t: +91.124.4216808 | f: +91.124.4216801 |
www.aidem.in



On 24.02.2012, it was stated as follows:

From: Dinesh Gupta DineshG@aidem.in Sent: Fri 24-02-2012 11:15
To: anurradha@bagnetnetwork.in
CC: anurradha@bagnetnetwork.in; rk.arora@bagnetnetwork.in; 'Subodh Gupta' <subodh.gupta@bagnetnetwork.in>; 'Sanjeev Kumar Singh/Noida/BAGFILMS/BAG' <sanjeev.singh@bagnetnetwork.in>; Vikas Khanchandani <vikask@aidem.in>
Subject: RE: Aidem outstanding

Dear Madam,

We have been following up for our due outstanding, however not getting any positive response from your end.

We would like to inform you that we have collected all the outstanding of E-24 and N-24 except an outstanding of Rs.5.00 lacs on Government client, which has also been confirmed by the Commissioner the amount is under process.

We request you to kindly look into the matter and instruct to finance to release our due amount, which is Rs.70 lacs (approx).

We also request you to give an appointment to meet you as per your convenience.

Thanks & regards

Dinesh Gupta
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13. The email correspondence between the parties, as extracted, clearly shows that the CD insisted on the due performance of the contract by the applicant and the applicant demanded its commission based on the amount already recovered. Though, as per clause 6.9 of the agreement, the applicant can demand the commission basis the amount already collected, however as observed from various email correspondence, it can be seen that both the parties insisted on their performance of the obligation under the contract and the CD pressed upon the collection of outstanding dues, since it is stated that it was facing financial crunch. The benefit we hold should be mutual.



Be that as it may, it is amply clear from the conduct of both parties that they had a dispute amongst themselves for the performance of the contract. The aforesaid email exchange between the parties pre-dated the statutory notice issued by the operational creditor, and the Corporate Debtor has raised the aforesaid issue in its reply to the aforesaid notice, it cannot be denied that the dispute amongst the parties was prevalent and it became the cause of action for the initiation of the petition before the Hon'ble High Court. Further, since the email exchange relates to performance of the obligation under the contract, it is needless to state that venturing into a contractual dispute falls outside the purview of the code. In addition to the above, it would also be appropriate to mention that merely stating that the default amount which is being sought from the CD is only for the amount already collected may not be sufficient since the performance of the contract has to be seen in totality. Had it been the case, every contract would frustrate without its full performance, and every party would allege that at least the amount of performance be paid by the party for whom the work has been done. This would lead to an innocuous situation and would defeat the very purpose of entering into the contract. In any event, there is a clear case for pending reconciliation of accounts.

14. Further, while deciding contractual disputes, it has been well-established in a plethora of cases decided by the Hon'ble Supreme Court and Hon'ble NCLAT, that such disputes can only be adjudicated by the Tribunal if it is directly related to the insolvency of the Corporate Debtor. Reliance is placed upon judgments passed by the Hon'ble Supreme Court and Hon'ble NCLAT in the cases of **Gujarat Urja Vikas Nigam Ltd vs Amit Gupta** [(2021) 7 SCC 209] and **SICOM Ltd & Anr. Vs. Kitply Industries Limited & Ors.** [Company Appeal (AT) (Ins) No. 849 of 2021, respectively.
15. Thus, in this context, keeping in mind the judicial precedents as mentioned above, the CD is obligated to show to the Adjudicating Authority to arrive at a prima facie satisfaction that a dispute exists, which in common parlance and in matters of civil jurisdiction, which would be regarded as a triable



issue of fact. The AA is not to venture into the appreciation of facts, which falls within the jurisdiction of the competent court.

16. At the stage of the consideration of the Section 9 application, the AA is to prima facie form an opinion as to the pre-existence of a dispute and if it appears from the conduct of the parties that there exists a dispute, that forms the basis of the dismissal of the petition. Further, the AA cannot adjudicate the contractual dispute and reconcile the account between the parties.

In this context it would be relevant to quote Hon'ble NCLAT in **Pravin Electricals Pvt. Ltd. v. Akshaya Engineering Works Pvt. Ltd.** Company Appeal (AT) (Insolvency) No. 1457 of 2023

*“29. We are therefore satisfied that there is sufficient foundation that genuine pre-existing disputes existed between the two parties not only on whether the debt had crystallised and was payable but also on the deficiencies and shortcomings of the work executed. These disputes though amply borne out by records have been glossed over by the Adjudicating Authority. In the present factual matrix, the defence raised by the Corporate Debtor is plausible, which to our minds, deserves further investigation. The ratio of judgment by the Hon'ble Supreme Court in **Mobilox judgement supra** is squarely applicable in the facts of the present case. **It is not the remit of IBC to investigate such contractual disputes and the defence raised by the Corporate Debtor not found to be moonshine, Section 9 application could not have been initiated at the instance of the Operational Creditor.**”*

Further in Samman Lal Sher Singh Pvt. Ltd. V. RS Print Solution Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 804 of 2025

*33. In the facts and circumstances of the present case we do not find any infirmity in the findings of the Adjudicating Authority. **We cannot come to a conclusion that it is a spurious and a non-existent pre-***



existing dispute. In the summary proceedings we cannot adjudicate on the issue of the dispute between the parties which is pre-existing one. Accordingly, we dismiss the appeal under the Code, with the liberty for the Appellant to pursue his remedies as available under the law. Appeal disposed of accordingly. No orders as to costs

17. The CD also alleges that there is a violation of Clause 6 of the agreement inasmuch as, despite the terms and conditions clearly stipulating that all sponsorship and commercial entitlements would lapse if not consumed within the deal period, Bharti Airtel demanded a credit note of Rs. 50 lakhs for the carry forward of unutilized entitlements from the Respondent. It is stated that the applicant, in order to increase the sale, misrepresented to the respondent that the commitment towards Bharti Airtel was never approved. In view of such circumstances, the CD relying upon clause 10 of the agreement submits that OC is to indemnify the CD for such losses (reference should also be *made to para 15 of the reply to statutory notice*). This clearly shows a counterclaim on behalf of the CD, which in our view can only be adjudicated by the competent authority, taking into account the contract entered into between the parties.

18. In view of the above, the applicant cannot now and come iterate that it is only seeking commission based on the amount already recovered. Thus, in line with the judicial precedents as enunciated above, and the statutory scheme, the AA cannot venture into contractual and pre-existing disputes between the parties. It has been averred by the CD that the applicant has made false representations to boost sales, and it has suffered losses due to that. In view of such circumstances, in our considered view, there exists a dispute between the parties, the CD in its reply dated 02.04.2013 has also highlighted the same (*Reference be made to para 6,7,8,15*).



- Therefore, the CD has been able to show prima facie that there exists a dispute which is a triable issue of fact. This adjudicating authority within the precincts of the IBC cannot go into the merits of the contractual dispute.
20. For the foregoing reasons, we are of the considered opinion that the CD cannot be put under the rigours of the CIRP, since there exists a contractual dispute between the parties which does not fall within the ambit of this AA. The correspondence between the parties clearly shows that both parties inflicted upon each other to perform their obligation and recover their dues. Further, it is to be noted that this is not a recovery proceeding and the IBC is only meant for the resolution of the corporate debtor. In the present scenario, it is amply clear that the present petition has been filed for the recovery of the dues rather than the resolution of the CD. In addition to the above, it is also to be noticed that the IBC mechanism should not be used as a mechanism to deter the CD in order to recover money, it would go against the grain of the code.
21. We are not expressing any views on the merits of the dispute raised, and the applicant can agitate its issue before the appropriate forum as permissible under law.

In view of the above, **TP (Co. Act.)- 38(PB)/2023, TP (Co. Act.)- 39(PB)/2023 and TP (Co. Act.)- 40(PB)/2023** stand **Dismissed** and disposed of.

Sd/-
RAMALINGAM SUDHAKAR
PRESIDENT

Sd/-
RAVINDRA CHATURVEDI
MEMBER (TECHNICAL)